

Foundation Seminar in the Sociology of Law

Law 208.8 Sec. 1

DRAFT

Units: 3

Meeting Time: W 10:10-12:50

Meeting Location: 2240 Piedmont

Course Control Number (Non-1Ls): 49465

Instructor: Jonathan Simon

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Phone: 510.643.5168

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Office: 592 Simon Hall

Office Hours: Weds 2pm – 4:30 pm

Appointments: Constance Curtin, ccurtin@law.berkeley.edu

Course Description:

This seminar aims to provide a general introduction to the sociological study of law in the broadest sense (i.e., legal institutions, legal practices, legal consciousness, and legal discourse) for graduate students in all disciplines as well as law and other professional degree students. Specifically the seminar hopes to accomplish three objectives. First we will explore some of the classic 20th century scholarship from the Legal Realist movement (1910-1940) and the postwar Law & Society movement (1960-1990). This scholarship helped define the sociology of law as an alternative to the formalism and “law in the books” or “black letter law” approach reflected in the then dominant forms of academic legal scholarship and judicial writing about law. Second, we will sample a wide variety of current sociological toolkits that are being productively deployed in studying law in the broadest sense, including: new institutionalism, cultural analysis, reflexive sociology, legal consciousness, social movements, and governmentality. Third, with the instructor’s collaboration, each student will pick a research subject dealing with law in the broadest sense and either conduct a critical review of existing literature or design and at least partially perform a research project that deploys one or more these toolkits.

Learning Goals:

This course aims to conceptually prepare students for conducting or deploying sociological research on legal doctrine, legal institutions, legal practices, legal consciousness, or legal discourse. Participants should experience a substantial enhancement in their abilities to recognize a research topic concerning law that is suitable to sociological analysis and to identify and deploy the toolkits most helpful in conducting that analysis.

Required Texts:

William Fisher, Morton Horowitz, and Thomas Reed, eds. *American Legal Realism* (OUP, 1993)

Kristin Luker, *Abortion and the Politics of Motherhood* (University of California Press, 1985)

Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (OUP 2007)

Abigail Saguy, *What is Sexual Harassment? From Capital Hill to the Sorbonne* (University of California Press 2003)

Loic Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Polity 2008)

Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation 2006)

Other assigned readings (and some background readings) may be found on the Resources section of the course bspace site: <https://bspace.berkeley.edu/> (when you sign in to bspace, this course should appear as one of the options on your “My Active Sites” tab at the top center of your bspace home page. If it is not listed there please contact me by email and I will add you).

Course requirements:

Seminar participants will be responsible for writing and exchanging critiques of the readings via the class wiki on our bspace site. Each student should sign up for **four** critiques over the course of the semester from among either the required or recommended readings. Critiques should be posted to the wiki by the Monday at midnight preceding the class for which the article or book chapter is assigned. Your critique should provide a summary of the article or chapter, and an analysis of the contribution that the author was attempting to make and a critical evaluation of how well the author succeeded and how they might have improved it. What questions would you want the seminar to focus on regarding this article or chapter (provided two or three)? The critique need be no more than 1 or 2 pages in length.

Seminar Papers:

You are required to write a seminar paper (approx 30 pages). There are two ways to approach the seminar paper. One is to write a review essay on a recent book or books dealing with topics or methods in the sociology of law. The review should be of publishable quality and take the form of an essay contribution to the topic of the book(s) rather than simply an evaluation and summary. See for example the book reviews that

appear in *Law and Social Inquiry*. You may also write a similar essay reviewing a series of articles that form a subfield or strand in the sociology of law. See for example, the essays that appear in the *Annual Review of Law & Social Science*.

Alternatively, you may write an original research paper which takes up any aspect of law broadly construed and subjects it to one or more of the research toolkits studied in the course (or if you want to use another one, please consult with me first).

You should send the instructor a brief overview of your proposed topic by March 19. **Papers are due by May 19th at 5pm, in hard copy in my box at the JSP building.** granted if it is requested after the due date of the paper.

Class Schedule and Assignments:

1. January 14: Introduction: Mapping the Sociology of Law

Required:

Bryant Garth and Joyce Sterling, From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State, 32 *Law & Soc'y Rev.* 409, 472 (1998)

Recommended:

Jonathan Simon, Law after Society, 24 *Law & Social Inquiry* 143-194 (1999)

Background:

Roger Cotterrell, "Law in Social Theory and Social Theory in the Study of Law" Pp. 15-29 in Austin Sarat, ed., *Blackwell Companion to Law & Society*. London: Blackwell. 2004.

Carroll Seron and Susan S. Silbey, "Profession, Science, and Culture: An Emergent Canon of Law and Society Research." Pp. 30-60 in Austin Sarat, ed., *Blackwell Companion to Law & Society*. London: Blackwell. 2004.

2. January 2: Legal Realism

Required:

William W. Fisher, Morton J. Horowitz, and Thomas A. Reed, eds. *American Legal Realism, Introduction & Chapters 1-5*

Recommended:

John Henry Schlegel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 *Buff. L. Rev.* 459 (1978)

Background:

Jerome Frank, *Law and the Modern Mind* (Coward McCann, 1930)

Laura Kalman, *Legal Realism at Yale, 1927-1960* (UNC Press, 1986)

John Henry Schlegel, *American Legal Realism and Empirical Social Science* (UNC Press, 1995)

William Twining, *Talk About Legal Realism*, 90 *N.Y.U.L.Rev.* 329 (1985)

G. Edward White, *From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America*, 58 *Va. L. Rev.* 999 (1972)

3. January 28: Classic Law & Society

Required:

Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study" 28 *American Sociological Review* 55 (1963)

Carlin, Jerome E., Jan Howard, and Sheldon L. Messinger. (1966) "Civil Justice and the Poor: Issues for Sociological Research" 1 *Law & Society Review* 9-84.

Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change*, 9 *Law & Society Review* 95-160 (1974)

Laura Nader, *Disputing without the Force of Law* *Disputing without the Force of Law*, 88 *Yale L. J.* 998-1021 (1979)

Felstiner, William L. F., Richard L. Abel, and Austin Sarat. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . ." 15 *Law & Society Review* 631 (1981).

Recommended:

Murray Edelman, Rita James Simon, Presidential Assassinations: Their Meaning and Impact on American Society, 79 Ethics 199-221 (1969)

Lawrence M. Friedman, Jack Ladinsky, Social Change and the Law of Industrial Accidents, 67 Columbia Law Review 50-82 (1967)

Background:

Richard Lempert, A Classic at 25: Reflections on Galanter's "Haves" Article and Work It Has Inspired, 33 Law & Society Review 1099-1112 (1999)

Rita J. Simon, James P. Lynch, The Sociology of Law: Where We Have Been and Where We Might Be Going, 23 Law & Society Review 825-847 (1989)

Robert L. Wolf, Rita J. Simon, Does Busing Improve the Racial Interactions of Children? 4 Educational Researcher 5-10 (1975)

Robert Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce." 88 Yale Law Journal 950 (1979)

Stewart Macaulay, "Lawyers and Consumer Protection Laws" 14 LSR 115 (1979).

Sudnow, D. 1965. "Normal crimes: sociological features of the penal code in public defender office." Social Problems 12:255-76.

Trubek, David (1972), "Max Weber on Law and the Rise of Capitalism," 1972 Wisc. L. Rev. 720-53.

Miller, Richard E., and Austin Sarat. "Grievances, Claims and Disputes: Assessing the Adversary Culture." 15 Law and Society Review 525 (1981)

NO CLASS FEBRUARY 4

4. MAKE UP CLASS: Law & Society: The Cultural Turn
(LUNCH PROVIDED BY PROFESSOR SIMON)

Friday, February 20th 12:20 – 2:50 pm?

Friday, February 27th 12:20 – 2:50 pm?

Required:

David M. Engel, *The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 *Law & Society Review* 551-582 (1984)

Kristin Bumiller, "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection." 12 *Signs* 421 (1987).

Austin Sarat, Susan Silbey, *The Pull of the Policy Audience*, 10 *Law & Policy* 97-166 (1988)

Susan Silbey, *After Legal Consciousness*, 1 *Annual Rev. of Law and Social Science* 323-368 (2005)

Recommended:

Jonathan Simon, *The Ideological Effects of Actuarial Practices*, 22 *Law & Society Review* 771-800 (1988)

Lisa Frohman (1997), "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking." 31 *Law & Society Review* 531 (1997).

Background:

Kitty Calavita, *Blue Jeans, Rape, and the "De-Constitutive" Power of Law*, 35 *Law & Society Review* 89-116 (2001)

Rosemary J. Coombe, *Room for Manoeuvre: Toward a Theory of Practice in Critical Legal Studies*, 14 *Law & Social Inquiry* 69-121 (1989)

5. February 11: Stratification

Required:

Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation 2006), Chapters 1,2, 4,5,6

Recommended:

Devah Pager, "The Mark of a Criminal Record," 108 *American Journal of Sociology* 937 (2003).

Background:

6. February 18: Governmentality

Required:

Michel Foucault, Governmentality, in *The Foucault Effect: Studies in Governmentality*, Graham Burchell, Colin Gordon, and Peter Miller, eds. (Chicago: University of Chicago Press, 1991), 87-104

Nikolas Rose, Peter Miller, Political Power beyond the State: Problematics of Government, 43 *British Journal of Sociology* 173-205 (1992)

Nikolas Rose, Pat O'Malley, and Mariana Valverde, Governmentality, *Annu. Rev. Law Soc. Sci.* 2006. 2:83-104

Recommended:

Colin Gordon, Governmental Rationality: An Introduction, in *The Foucault Effect: Studies in Governmentality*, Graham Burchell, Colin Gordon, and Peter Miller, eds. (Chicago: University of Chicago Press, 1991), 1-52

Dawn Moore and Mariana Valverde, Maidens at risk: 'date rape drugs' and the formation of hybrid risk knowledges, 29 *Economy & Society* 514-531 (2000)

David Garland, Governmentality and the Problem of Crime: Foucault, Criminology, *Sociology* 1 Theoretical Criminology 173 (1997)

Background:

Alan Hunt and Gary Wickham,

Alan Hunt

7. February 25: New Institutionalism

Required:

Edelman, Lauren B. (1992), "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law," *American Journal of Sociology* 97:1531-1576.

Catherine Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 *Law & Society Review* 11-50 (2005)

Recommended:

Edelman, Lauren B. and Mark C. Suchman (1997), "The Legal Environments of Organizations," *Annual Review of Sociology* 23:479-515.

Background:

Halliday, Terence C. (1998), "Lawyers as Institution Builders: Constructing Markets, States, Civil Society, and Community," pp. 242-295 in A. Sarat, M. Constable, D. Engel, V. Hans and S. Lawrence (eds.), *Crossing Boundaries: Traditions and Transformations in Law and Society Research*. Evanston, IL: Northwestern University Press and the American Bar Foundation.

Paul DiMaggio (1994) "Culture and Economy" Pp. 27-57 in Neil J. Smelser and Richard Swedberg, eds. *The Handbook of Economic Sociology*. Princeton: Princeton University Press.

Edelman, Lauren B. and Mark C. Suchman (1999), "When the 'Haves' Hold Court: The Internalization of Law in Organizational Fields," *Law and Society Review* 33(4):941-991.

Suchman, Mark C. (2001) "Organizations and the Law," in N.J. Smelser & P.B. Baltes (eds.) *The International Encyclopedia of the Social and Behavioral Sciences*, New York: Elsevier.

Heimer C. (1999), "Competing Institutions: Law, Medicine, and Family in Neonatal Intensive Care," *Law & Society Review* 33(1):17-67.

Vaughan, Diane (1998), "Rational Choice, Situated Action, and the Social Control of Organizations," *Law & Society Review* 32(1):23-62.

8. March 4: Cultural Analysis

Required:

Abigail Saguy, *What is Sexual Harassment? From Capital Hill to the Sorbonne* (University of California Press 2003)

Swidler, Ann. "Culture in Action: Symbols and Strategies." 51 *American Sociological Review* 273-287 (1986)

Recommended:

William H. Sewell (1992) "A Theory of Structure: Duality, Agency, and Transformation" *American Journal of Sociology* 98:1-29

Edelman, Lauren B. (1990). "Legal Environments and Organizational Governance: The Expansion of Due Process Rights in the American Workplace," *AJS* 95:1401-1440.

9. March 11: Linguistic Analysis

Required:

Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (OUP 2007)

Recommended:

Background:

10. March 18: Social Movements

Required:

Kristin Luker, *Abortion and the Politics of Motherhood* (University of California Press, 1985), chapters 1-5

Recommended:

Valerie Jenness, *Managing Differences and Making Legislation: Social Movements and the Racialization, Sexualization, and Gendering of Federal Hate Crime Law in the U.S., 1985-1998*, 46 *Social Problems* 548-571 (1999)

11. April 1: Social Movements

Required:

Kristin Luker, *Abortion and the Politics of Motherhood* (University of California Press, 1985), chapters 6-9

12. April 8: Reflexive Sociology

Required:

Loic Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Polity 2008), chapters

Recommended:

Pierre Bourdieu and Loic J D Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992), chapters 1 & 2

Background:

Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge University Press 1977)

Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Cambridge, MA: Harvard University Press, 1984)

Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," 38 *Hastings Law Journal* 814-853 (1987)

13. April 15: Reflexive Sociology

Required:

Loic Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Polity 2008), chapters

Recommended:

Josh Page, *Eliminating the Enemy: The Import of Denying Prisoners Access to Education in Clinton's America*, 6 *Punishment & Society* 357-378 (2004)

14. April 22: Science and Technology Studies

Required:

Mariana Valverde and Ron Levi, Studying Law by Association: Bruno Latour Goes to the Conseil D'Etat, 33 *Law & Social Inquiry* 805-825 (2008)

Mariana Valverde, Ron Levi, and Dawn Moore. Legal Knowledges of Risk. In *Law and Risk*, ed. Law Commission of Canada, 86–120. Vancouver: University of British Columbia Press. (2005)

Susan Silbey and Patricia Ewick, The Architecture of Authority: The Place of Law in the Space of Science, in *The Architecture of Authority: The Place of Law in the Space of Science*, Austin Sarat, Lawrence Douglas, Martha Merrill Umphrey, eds. (University of Michigan Press 2003)

Recommended:

Mariana Valverde, Reassembling the Social: An Introduction to Actor-Network Theory. By Bruno Latour, 41 *Law & Society Review* 744 (2007)

Background