

SOCIOLOGY OF LAW

Legal Studies 184 (Spring 2020)
Tuesdays & Thursdays 3:30-5:00
160 Kroeber Hall

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COURSE DESCRIPTION

This course explores sociological understandings of law and legal institutions. We will address questions such as: Why do societies have law? What is the relationship between law and social norms or values? How does law interact with culture, social structure, and power? Is law a mechanism for coordinating human activity toward a common good, or a vehicle for conflict and oppression? Why do people and organizations generally obey the law? How effective are legal sanctions at promoting compliance with law? When are sanctions less effective? How do disputes arise and how are they handled both outside of and within the legal order? What roles do judges, juries, lawyers, and police play in society? What are the obstacles to using law to bring about social change? Is everyone equal under the law or does the law provide more resources to some social groups than to others? Although the course emphasizes sociological perspectives, it takes an interdisciplinary approach that includes work in psychology, political science, anthropology, history, and law.

COURSE REQUIREMENTS

	<u>Approximate percent of final grade</u>
Section Participation	20%
Essay #1	15%
Essay #2	15%
Midterm exam	20%
Final exam	30%

COURSE MATERIALS

Kitty Calavita, *Invitation to Law & Society*, Second Edition

David M. Engel, *The Myth of the Litigious Society*

Erik Larson and Patrick Schmidt, eds. *The Law & Society Reader II (LSRII)*

All other readings are available on bcourses

ASSIGNED READINGS

Readings are listed by date on the syllabus and can be found either in the one of the texts or the course readings on the bcourses site. It is important that you read materials prior to class on the date for which they are listed. From time to time, additional readings may be assigned, or assigned readings may be omitted. Any changes to readings will be announced via bcourses.

COURSE REQUIREMENTS

(1) SHORT ESSAYS

You will write two short essays (about 1000 words or 4 double-spaced pages). For each essay, you will conduct a short interview on an assigned topic and relate the results of your interview to particular readings. These essays will help you to explore two important concepts in the sociology of law. The essays will be graded on understanding of the key concepts, quality of writing, explanation of interview results, and use of relevant literature to explain interview results. Essays must be submitted on bcourses by the assigned date and time. Each essay is worth 15 points. Late essays will be penalized 3 points for each day or part of a day that they are late. Although this should be obvious, it bears stating explicitly: any plagiarism or other cheating on essays will result in a failing grade for the course.

(2) EXAMS

The midterm is **Thursday, March 5, during the regular class period**. The final exam is **Friday, May 15** and will be a two-hour exam (location TBA). In order to be fair to all students, **there will be no make-up exams** except in the case of serious illness documented by a physician. Please mark your calendar now with the exam times so that you are sure that you can be there. **If you cannot make these exam times, you should not take the course this semester.**

Exams will each consist of two essay questions. The discussion questions in the syllabus together with key concepts provided at the beginning of each lecture will provide you with a study guide for the exams. If you understand all the key constructs and can answer the discussion questions, citing relevant course materials, you should do well on the exams. You may bring in one page of notes (one side of an 8 by 11 inch piece of paper, no smaller than 10 point font) to jog your memory during the exam. Notes must be printed or handwritten on paper as use of electronic devices will not be allowed during the exam. Keep in mind that you will not be able to use an electronic device to monitor time so plan accordingly.

The midterm exam will cover Units I and II. The final exam will focus primarily on Units III and IV, but the essay questions may require students to invoke concepts from the earlier part of the course as well. All exams will begin promptly at the beginning of the class or exam period and will end at the end of the class or exam period. Students who arrive late for exams must still turn their exams in at the end of the class or exam period and may need to sit on the floor if necessary to avoid disturbing students who are already taking the exam. Unless there is a clerical error, all exam grades are final; there will be no re-grading of exams. Although this should be obvious, it bears stating explicitly: any cheating on exams will result in a failing grade for the course.

(3) DISCUSSION SECTIONS

Students are expected to regularly attend and participate in the discussion section for which they are registered. Section participation is worth 20% of your final grade.

A FEW COMMENTS ON COURSE ETIQUETTE

(1) TARDINESS

Class will begin promptly at 3:40 PM and will end on time. Please do not arrive late to class as it is disruptive both to me and to your classmates. Repeated tardiness will result in a lower grade. If you do arrive late, sit or stand in the side if there is no aisle seat available; it is disruptive to ask others to move their notes or computers to get by once class has started.

(2) CELL PHONES

Please turn off cell phones during lecture and section meetings; this includes text messaging. Failure to comply with this policy will result in a lower grade.

(3) ATTENDANCE

Attendance will be taken and is required during the first four class periods. Anyone who does not attend on any of these days may be dropped to admit someone on the wait list. After the first four class periods, class attendance is required in the sense that exams will be based on both lecture and assigned reading materials. You are responsible for all lecture materials and for any announcements made in class, whether or not you are present. Also, there will be no additional screenings of the videos presented throughout the semester. If you miss class on one of these days, you should ask a classmate to review their notes from that day.

Attendance at and participation in discussion section is required. If you must miss class or discussion section for a prolonged period due to serious illness, you should speak to your GSI or to me as soon as possible.

DISABILITY ACCOMMODATIONS

We are happy to accommodate any documented disabilities, but please let us know within the first two weeks of classes so that we can make appropriate arrangements.

OFFICE HOURS

My office hours will be Thursdays, 1:00 to 3:00 PM at Café Zeb in the law school. You may reserve a time by contacting me at vmellema@berkeley.edu. Students may also drop in during my office hours, but students who have reserved a time will have priority. If you cannot make my regular office hours, you may email me for an appointment. I may occasionally need to change or cancel office hours due to meetings or travel and will provide as much notice as possible of any changes.

SCHEDULE OF CLASSES

UNIT I: The Social Nature of Law

QUESTIONS FOR THIS UNIT: How is law a social institution?

Sub-questions:

What kinds of law do sociologists study?

Where does law come from?

How does law reflect culture, social structure, and power?

What is the Law and Society Movement?

What is the distinction between law on the books & law in action?

What is legal consciousness?

January 21. What is the sociological conception of law? Law is everywhere.

Kitty Calavita (2016), "Introduction" in *Invitation to Law & Society* Chapter 1: pp. 1-10

January 23. Where does law come from? Culture

Stewart Macaulay, Lawrence Friedman, and Elizabeth Mertz (2007), "Cultural Models" *Law in Action* pp. 190-192 (bcourses)

Elizabeth Heger Boyle and Sharon E. Preves (2000), "National Politics as International Process: The Case of Anti-Female Genital Cutting Laws." *LSRII* Chapter 35: pp. 330-338

January 28. Where does law come from? Structure

Stewart Macaulay, Lawrence Friedman, and Elizabeth Mertz (2007) "Social Structural Models" *Law in Action* pp. 192-194 (bcourses)

Kitty Calavita (2016), "Types of Society, Types of Law." Calavita Chapter 2: pp. 11-36

Richard D. Schwartz (1954), "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements" in Lawrence Friedman and Stewart Macaulay, *Law and the Behavioral Sciences*, Second Edition, pp. 579-590 (bcourses)

January 30. Where does law come from? Power

William Chambliss (1996) "A Sociological Analysis of the Law of Vagrancy," Treviño, A.J., *The Sociology of Law*, pp. 373-380 (bcourses)

Matthew Desmond (2016), "Forced Out: For Many Poor Americans, Eviction Never Ends," *New Yorker* February 8 & 15, 2016 (bcourses)

February 4. The Law & Society Movement: Law on the books vs. Law in Action

Kitty Calavita (2016), "Law in the Everyday, Everywhere," in *Invitation to Law & Society* Chapter 3: pp. 37-58

UNIT II: DISPUTES AND DISPUTING

QUESTIONS FOR THIS UNIT: How does law affect disputes, disputing, and dispute outcomes?

Sub-questions:

How do people handle disputes outside of legal channels?

What is the process through which disputes emerge?

How and why do people mobilize (or not mobilize) the law?

How do communities or organizations handle disputes outside of the law?

How does law play a role in informal dispute resolution?

What are the various modes of formal and informal dispute resolution?

Who is advantaged and who is disadvantaged in litigation?

Who is advantaged and who is disadvantaged in informal dispute resolution?

February 6. Dispute Emergence and Rights Mobilization

David Engel (2016), *The Myth of the Litigious Society*, Chapters 1-3: pp. 1-50

William Felstiner, Richard Abel, and Austin Sarat (1981), Chapter 15: pp. 99-104 in Sarat, *The Social Organization of Law*. (bcourses)

Begin working on Essay #1. Due Tuesday, February 18 by noon.

February 11. Community Dispute Resolution

David Engel (2016), *The Myth of the Litigious Society*, Chapters 8-10: pp. 126-196

Note: We are not reading Engel, Chapters 4-7 for this class. However, those of you who are interested in the psychology of dispute resolution may want to read these chapters.

February 13. Bargaining in the Shadow of Law in the Shadow of Social Institutions

Stewart Macaulay (1963), "Non-contractual Relations in Business: A Preliminary Study," in Macaulay, Friedman, and Mertz, *Law in Action* 75-92 (bcourses)

Catherine Albiston (2005), "Bargaining in the Shadow of Social Institutions" in Macaulay, Friedman, and Mertz, *Law in Action* 542-562 (bcourses)

February 18. Why the Haves Come Out Ahead

Marc Galanter (1974), "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change," *Law and Society Review* 9: 95-160 Required: 97-104 (I. A Typology of Parties) [the rest of the article is optional] (bcourses)

Joel B. Grossman, Herbert M. Kritzer, and Stewart Macaulay (1999), "Do the 'Haves' Still Come Out Ahead" LSR II Chapter 1: pp. 13-15

Catherine Albiston (1999), "The Rule of Law and the Litigation Process" LSR II Chapter 3: pp. 16-23

Essay #1 due Tuesday, February 18 by noon in bcourses

February 20. Film: Hot Coffee

Please arrive at class 5 minutes early! Film lasts 5 minutes longer than class period so we will start a few minutes early.

No new readings, but begin reviewing for exam.

February 25. Guest lecture – Karen Sawislak, J.D., Ph.D., labor historian and Executive Director of the Engineers and Scientists of California Local 20, IFPTE discussing disputing and power disparities in the labor relations context

February 27. ADR & IDR

Richard Delgado (1988) "ADR and the Dispossessed: Recent Books about the Deformalization Movement" *Law & Social Inquiry* (book review), 13(1): 145-154 (bcourses)

Lauren B. Edelman, Howard S. Erlanger, and John Lande (1992) "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace," LSR II 11: 103-109

Jill Filipovic, "Restorative Justice in Domestic Violence Cases Is Justice Denied," *The Guardian* January 12, 2013.

<https://www.theguardian.com/commentisfree/2013/jan/12/restorative-justice-domestic-violence>

March 3. Structured Review of Units I and II

March 5. Midterm Exam

The exam is in class during class time. No make-ups except for medical emergencies documented by a physician. Arrive early! Bring two large size exam books. Make sure that exam books have no writing in them at the time you enter the classroom. Write legibly as you may lose credit if the GSI cannot read your writing.

UNIT III: Legal Actors and Legal Institutions
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QUESTIONS FOR THIS UNIT: How do individuals, lawyers, judges, and juries behave and influence the law?

Sub-questions:

Why do people obey or disobey the law?

Under what conditions are legal sanctions, incentives, and peer pressure effective?

What are the normative reasons for compliance with law?

How do regulatory agencies influence organizations?

When and why do organizations obey the law?

Why is it difficult to regulate organizations?

What is symbolic compliance?

What is the role of lawyers?

How does the social stratification of lawyers matter?

How do judges make decisions?

How do juries make decisions?

March 10. Legal Sanctions and Legal Incentives

Lawrence Friedman, *Impact* (2016): 96-127 (Sanctions), 139-147 (Incentives) (bcourses)

March 12. Normative Reasons for Compliance (Peer Pressure, Legitimacy, and Morality)

Lawrence Friedman, *Impact* (2016): 153-170 (peer pressure), 188-197 (legitimacy), 205-208 (Morality) (bcourses)

Begin working on Essay #2 on individual compliance with law. Due Tuesday, March 31 in class.

March 17. Regulation of Organizations

Kitty Calavita, "Many Laws, Many Orders" in *Invitation to Law & Society* Chapter 5: pp. 86-108

Robert A. Kagan, Dorothy Thornton, and Neil Gunningham (2003), "Explaining Corporate Environmental Performance: How Does Regulation Matter?" LSRII Chapter 8: pp. 75-83

Recommended: Christine Parker (2006), "The 'Compliance' Trap: The Moral Message in Responsive Regulatory Enforcement," LSRII Chapter 9: pp. 84-92

March 19. Organizational Response to Law

Lauren B. Edelman (2016), "The Diffusion of Symbolic Structures" Chapter 5: 100-123 in *Working Law: Courts, Corporations, and Symbolic Civil Rights*. (bcourses)

March 31. The Legal Profession

Austin Sarat and William L.F. Felstiner (1986), "Law and Strategy in the Divorce Lawyer's Office," Macaulay, Friedman, and Mertz, *Law in Action*, pp. 921-941

John P. Heinz, Edward O. Laumann, Robert L. Nelson, and Ethan Michelson (2008), "The Changing Character of Lawyers' Work: Chicago in 1975 and 1995" LSRII Chapter 15: pp. 141-146

Recommended: Carroll Seron, Gregg van Ryzin, Martin Frankel, and Jean Kovath (2001), "The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment" LSRII Chapter 17: pp.159-165

Recommended: Michael Sauder and Ryon Lancaster (2006), "Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools" LSRII Chapter 13: pp. 123-130

Essay #2 due Tuesday, March 31 by noon in bcourses.

April 2. Judges and Legal Endogeneity

Nancy Gertner (2016), "Opinions I Should Have Written," *Northwestern University Law Review* 110: 423-438 (bcourses)

Lauren B. Edelman (2016), "Legal Deference to Symbolic Compliance" Chapter 8: pp. 168-181 in *Working Law: Courts, Corporations, and Symbolic Civil Rights*. [Optional: the rest of Chapter 8] (bcourses)

Recommended: Shauhin A. Talesh (2009), "The Privatization of Public Legal Rights: How Manufacturers Construct the Meaning of Consumer Law." LSRII 12: 111-118.

April 7. Juries and Jury Nullification

Phoebe C. Ellsworth (1989), "Are Twelve Heads Better Than One" Chapter 39: pp. 322-329 in Sarat, *The Social Organization of Law*. (bcourses)

Inside the Jury Room (video)

UNIT IV: LAW, INEQUALITY, AND SOCIAL CHANGE

QUESTIONS FOR THIS UNIT: What is the relationship between law and social change?

Sub-questions:

Can social reform law benefit the 'have-nots'?

How and when do rights protect the 'have-nots'?

How effective are courts in protecting rights?

How do social movements matter in effective legal change and social change?

How is law related to class, race, gender, and other dimensions of social inequality?

April 9. Law, Power, and Social Inequality

Kitty Calavita (2016), "The Talk versus the Walk of Law" *Invitation to Law & Society* 6: 109-134

Lawrence M. Friedman and Jack Ladinsky (1967), "Social Change and the Law of Industrial Accidents" Macaulay, Friedman, and Mertz, *Law in Action* pp. 195-210 (bcourses)

April 14. The Rights Debate - How do Rights Matter?

Kitty Calavita (2016), "Law and Social Justice" *Invitation to Law & Society* Chapter 7: pp. 135-170

April 16. Law and Social Movements

Emily Zackin (2008), "Popular Constitutionalism's Hard When You're Not Very Popular – Why the ACLU Turned to the Courts," LSRII Chapter 6: pp. 55-61

Thomas M. Keck (2009), "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights" LSRII Chapter 7: pp. 62-70

April 21. Law, Race, Gender, and Social Change

Kitty Calavita (2016), "The Color of Law" *Invitation to Law & Society* 4:59-85

Osagie Obasogie (2014), "Do Blind People See Race? Social, Legal and Theoretical Considerations," LSRII Chapter 41: pp. 387-398.

Recommended: Lisa Frohmann (1997), "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking," LSRII 4:35-41

Lauren A. Rivera (2012), Diversity within Reach: Recruitment versus Hiring in Elite Firms. *Annals of the American Academy* 639: 71-89.

Jill D. Weinberg (2010), "Transgender Bathroom Usage: A Privileging of Biology and Physical Difference in Law." *Buffalo Journal of Gender Law and Social Policy* 18: 147-155.

April 23. Critical Race Theory (Yael Plitmann)

Readings TBD

April 28. Legal Consciousness

Laura Beth Nielsen (2000), "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment," LSRII 25: 232-242

Anna Maria Marshall (1999), "Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies." LSRII 26: 243-252

April 30. Conclusion and Review

Kitty Calavita (2016), "Conclusion" *Invitation to Law & Society* 9:189-195

Review Session and Final Exam

Review Session with the GSIs (during week of May 4-8, specific time TBD)

May 15: FINAL EXAM (NOTE TIME: 7:00 – 10:00 PM, CHECK EXAM LOCATION)

Final Exam will be two hours. Please be in your seats before 6:55 PM. All exams must be turned in at 9:00 PM. No make-up exams except in cases of serious illness documented by a physician. Bring two large-size exam books.