

Graduate Sociology of Law-Sociol 408 - revised

Professor Robert L. Nelson; Winter 2021-Description and Syllabus, subject to change

2.28.21

T, Th 11-12:20; Remote-Synchronous, but recorded for Canvas

Office Hours: 2-3 pm Tuesday and by appointment

### Description

This course is a general introduction to the sociology of law intended for graduate students in all disciplines. The course takes a critical empirical approach to the relationship between law and society, with an emphasis on law and inequality. The course will cover classic and contemporary works on central topics in the sociology of law, including the relationship between social theory, critical race theory, and law; the politics and social organization of disputes; legal pluralism and legal consciousness; law and inequalities of race, gender, and citizenship; the relation of law, rights, and social movements; law, employment rights, and organizations; and the role of litigants, lawyers, and judges as social actors.

### Required Reading Materials

All required readings will be available through canvas or course reserves. We will read substantial portions of two books that may be purchased through Amazon or other outlets.

William Haltom and Michael McCann, Distorting the Law: Politics, Media, and the Litigation Crisis. University of Chicago Press. (2004).

Lauren B. Edelman, Working Law: Courts, Corporations, and Symbolic Civil Rights. University of Chicago Press (2016).

A helpful resource available electronically through NU library is Austin Sarat, editor, Blackwell Companion to Law and Society (2004). Several required and recommended readings are taken from this book.

### Course Requirements

- 1) active and prepared participation in class discussions, including leadership (30%); 2) a report on one of the recommended readings (a book or pair of articles)(30%); and 3) a term paper including a short oral report (40%).

The term paper may be either: (1) a critical review of the literature on some problem or issue in the sociology of law; (2) a small-scale study, which might turn out to be a pilot study for later research; or (3) a research design (proposal) for a future empirical study, e.g. a second-year paper, article, dissertation (this third option is appropriate only if the student has already done preliminary research and knows the literature on the topic). Students need to decide which type of paper they are writing and turn in a short description of their proposed papers in week 3.

Each class begins with a lecture, followed by a student-led discussion on the reading for the class; the class ends with one or more book reviews. I expect all seminar members to prepare and participate actively in discussions.

**Note: Asterisk indicates tentative assignment as discussion leader.**

Week 1: The Trajectory of the Sociology of Law

T January 12 Introduction: Toward a Critical Sociology of Law

Patricia Ewick & Susan Silbey, "Narrating Social Structure: Stories of Resistance to Legal Authority," *American Journal of Sociology* 108:1328. (2003). Think of a story from your own experience of an encounter with legal authority and whether it involved resistance in Ewick's and Silbey's terms.

Recommended

Patricia Ewick and Susan S. Silbey. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.(1998).

Seron and 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. (Library electronic copy)

Th January 14: Legal Estrangement

Monica C. Bell, "Police Reform and the Dismantling of Legal Estrangement," 126 *Yale Law Journal* 2054 (2017) (canvas).

**Leaders: Ochoa, Shames**

Week 2: Classical and Contemporary Theory in the Sociology of Law

T January 19 Durkheim, Weber, Marx, DuBois-read Cotterrell overview and any other two, treat others as recommended.

Roger Cotterrell, "Law in Social Theory and Social Theory in the Study of Law," pp. 15-29, of *Blackwell Companion*.

Cain and Hunt, "The State, Law, and Crime" from Marx and Engels on Law (1979) pages 153-159. [E-reserve through Canvas]

John R. Sutton, "Law and the State: Max Weber's Sociology of Law," pages 99 – 114 of Law/Society: Origins, Interaction, and Change [E-reserve through Canvas]

Durkheim, "Crime and Punishment," in The Division of Labor in Society taken from Lukes and Scull, Durkheim and the Law (1983) pages 59 – 68 [E-reserve through Canvas]

WEB Du Bois, "Introduction," "The Forethought," and, "On the Dawn of Freedom," Intro and chapters 1 and 2 of The Souls of Black Folk (Barnes and Noble Classic Edition, 2003; originally published 1903) pages xv-34. [E-reserve through Canvas]

**Leader: Okai**

### Supplementary Readings

Steven Lukes & Andrew Scull, *Durkheim and the Law*, pp. 1-32 (1986).

Stephen Spitzer, "Marxist Perspectives in the Sociology of Law." *9 Annual Review of Sociology* 103 (1983).

Trubek, David M. "Max Weber on law and the rise of capitalism." *Wis. L. Rev.* (1972): 720.

Th January 21 Foucault, Williams, MacKinnon, Bourdieu (through Dezalay and Madsen), and Crenshaw-read any two, treat others as recommended

Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977) Ch 1, pp. 3-31; online copy available through library.

<https://babel.hathitrust.org/cgi/pt?id=mdp.49015000211756&view=1up&seq=21>

Patricia Williams, “Alchemical Notes: Reconstructing Ideals from Deconstructed Rights,” 22 *Harvard Civil Rights-Civil Liberties Law Review* 406-416 (1987) [E-reserve through Canvas]

Catharine A. MacKinnon, “Law’s Power,” chapter 3 in Butterfly Politics. Belknap/Harvard University Press (2017). [E-reserve through Canvas]

Yves Dezalay and Mikael Rask Madsen, “The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law,” *Annual Review of Law and Social Science*, 2012, 8:433-52.

Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color.” *Stanford Law Review* 43:1241-1300 (1990-91)

**Leaders: Roswalty, White, Okai**

### Supplementary Readings

William Sewell, “A Theory of Structure: Duality, Agency, and Transformation”, 98 *American Journal of Sociology* 1 (1992).

Week 3 – Power, Legitimacy, Pluralism, and Legal Consciousness

T January 26: Marc Galanter “Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change” *Law & Society Review* 9: 95-160 (1974). (focus on pp. 95-124.) (Canvas)

Tyler, Tom, “Procedural Justice”, Pp. 435-452 in Austin Sarat, ed., *Blackwell Companion to Law & Society*. London: Blackwell. 2004.

**Leaders: Kuo, Phillips**

Recommended

Christopher Tomlins, “How Autonomous is Law” *Annual Review of Sociology* 3: 45-68 (2007).

E.P. Thompson, Excerpt from *Whigs and Hunters*

Th January 28: David M Engel, “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community,” *Law & Society Review* 18:551-82 (1984)

Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment, *Law & Society Review* 34: 1055-1090. (2000)

**Leaders: Kang, Mangum\***

### Classics

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

Robert C. Ellickson, "Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County." *Stanford Law Review* 38: 623-687 (1986).

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

### Supplementary Readings

Sally Merry, "Legal Pluralism." *22 Law & Society Review* 897 (1988).

Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech*. Princeton: Princeton University Press. (2004).

Week 4 – Politics and Social Organization of Disputing-“Private” Injuries

T February 2: Selections from Haltom and McCann, *Distorting the Law: Politics, Media, and the Litigation Crisis* (2004)

Ch 1, pp. 1-30-The Social Production of Legal Knowledge; Ch 3, pp. 73-110- In Retort: Narratives versus Numbers.

**Leaders: Kang, Ouellet, Davis**

Recommended

Chs. 2 and 4 of Haltom and McCann

### Classic

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

Th February 4: Selections from Haltom and McCann, Ch 6, pp. 183-226-Java Jive: Genealogy of a Juridical Icon; Ch 8, pp. 265-306-Law Through the Looking Glass of Mass Politics

Leaders: Ouellet, Novak-Herzog

Recommended

Chs. 5 and 7 of Haltom and McCann

Week 5 - Law and Inequalities – Race 1

T February 9: Osagie K. Obasogie, “Do Blind People See Race? Social, Legal, and Theoretical Considerations,” *Law & Society Review* 44:585-616 (2010)(Canvas)

Leaders: Esthappan, White

Recommended

Osagie K. Obasogie, Blinded by Sight: Seeing Race Through the Eyes of the Blind Stanford University Press (2013)

Th February 11: John N. Robinson III, “Making Markets on the Margins: Housing Finance Agencies and Racial Politics of Credit Expansion,” 125 *American Journal of Sociology* 94-1029 (2020) (Canvas)

Leaders: Lee, Roswally, Stallings

Recommended

Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership (Justice, Power, and Politics) (2019) available for free through HeinOnline:

<https://heinonline.org/HOL/P?h=hein.beal/refpthwbs0001&i=1>

Supplementary Reading

[Thomas W. Mitchell, “Destablizing the Normalization of Rural Black Land Loss: A critical Role for Legal Empiricism,” \*University of Wisconsin Law Review\* 557-569 & 609 – 615 \(2005\)](#)

## Week 6 – Law and Inequalities – Race/Ethnicity/Citizenship - 2

T February 16: McCleskey v. Kemp (S Ct 1986)(Canvas); Paul Butler, “Equal Protection and White Supremacy,” *Northwestern Law Review* 112:1457-1464 (2018) (Canvas).

**Leaders: Stallings, Mangum**

Recommended

Jonathan Yovel and Elizabeth Mertz, “The Role of Social Science in Legal Decisions,” pp. 410-431, in *Blackwell Companion*

Supplementary Readings

Paul Butler, Chokehold: Policing Black Men (2018), available online through NU library.

Fear of Too Much Justice: Equal Protection and the Social Sciences, Thirty Years of *McCleskey v. Kemp* Symposium. *Northwestern Law Review*, 112:1259 et seq.

Th February 18: Jamie G. Longazel, “Moral Panic as racial degradation ceremony: Racial stratification and the local-level backlash against Latino/a immigrants,” *Punishment & Society* 2013

**Leaders: Kang\*, Buyukakbus**

Recommended

Emily Ryo, “Deciding to Cross: Norms and Economics of Unauthorized Migration,” *American Sociological Review* 78: 574-603 (2013)

Jamie G. Longazel, *Undocumented Fears: Immigration and the Politics of Divide and Conquer in Hazleton, Pennsylvania* (Penn State U Press 2016)

## Week 7 – Law, Rights, and Social Movements

T February 23: Lovell, McCann, and Taylor, “Covering Legal Mobilization: A Bottom-Up Analysis of *Wards Cove v. Atonio*,” *Law & Social Inquiry* 41:61-99 (2016)

**Leader: Ochoa**

Recommended

Michael McCann, "Law and Social Movements," Pp. 506-522 in Austin Sarat, ed., *Blackwell Companion to Law & Society*. London: Blackwell. (2004).

*Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989)-available online

The Rights Debate:

Michael W McCann, "Reform Litigation on Trial," *Law and Social Inquiry* 17:715-743 (1993).

Gerald Rosenberg, "Hollow Hopes and Other Aspirations: a Reply to Feeley and McCann," *Law and Social Inquiry* 17:761-778 (1993)

### Classics

Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (U of Chicago Press 1991)

Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Social Change* (Yale U Press 1974)

Th February 25: Nicholas Pedriana and Robin Stryker. 2017. "From Legal Doctrine to Social Transformation? Comparing US Voting Rights, Equal Employment Opportunity and Fair Housing Legislation." *American Journal of Sociology* 117(1): 86-135.

**Leaders: Shames, Ochoa\***

Recommended

Lynette J. Chua, "Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore." *Law & Society Review* 46: 713-748 (2012)

### Supplementary Material

Books:

Christopher W. Schmidt, *The Sit-Ins: Protest and Legal Change in the Civil Rights Era*, Chicago: University of Chicago Press (2018) ISBN-13: 978-0-226-52258-6 (e-book)



Doug McAdam, *Political Process in the Development of Black Insurgency, 1940-1970*. (1982, 1999).

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

Michael M. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University Of Chicago Press. (1994).

Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence*. Cambridge: Cambridge University Press. (2013).

Sandra R. Levitsky, *Caring for Our Own: Why There Is No Political Demand for New American Social Welfare Rights*. Oxford: Oxford University Press. (2014).

Week 8 - Employment Rights, Law, and Organizations

T March 2: Lauren B. Edelman, *Working Law: Courts, Corporations, and Symbolic Civil Rights*, (2016) Ch 2, pp. 21-41, “The Endogeneity of Law,” ch 3, pp. 42-73, “Ambiguous Law and the Erosion of the Progressive Vision”

**Leaders: Buyukakbas, Lee**

Recommended

Chs 1, 4 of Edelman

Lauren B. Edelman and Mark C. Suchman, “The Legal Environment of Organizations,” *Annual Review of Law and Social Science* 23:479-515 (1997)

Th March 4: Edelman, Ch 6, pp. 124-150, “The Managerialization of Law;” Ch 8, pp.168-215, “Legal Deference to Symbolic Compliance;” Ch 9 “Symbolic Civil Rights and the Endogeneity of Law.”

**Leaders: Kuo, Phillips**

Recommended

Chs 5, 7 of Edelman

## Supplementary Material

Alexandra Kalev, Erin Kelly, & Frank Dobbin, “Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies,” 71 *American Sociological Review* 589. (2006).

### Books

Ellen Berrey, Robert L. Nelson, & Laura Beth Nielsen, *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality* (2017)

Dobbin, Frank. *Inventing Equal Opportunity*. Princeton, NJ: Princeton University Press, 2009.

Skrentny, John David. *After Civil Rights: Racial Realism in the New American Workplace*. Princeton, NJ: Princeton University Press, 2013.

Stainback, Kevin, and Donald Tomaskovic-Devey. *Documenting Desegregation: Racial and Gender Segregation in Private Sector Employment Since the Civil Rights Act*. New York: Russell Sage Foundation, 2012.

### Week 9 - Lawyers and Social Structure

T March 9: Berrey, Nielsen, and Nelson, “Right Right, Wrong Plaintiff,” ch. 7, pp. 169-201, from *Rights on Trial* (2017)

Sida Liu, “Client Influence and the Contingency of Professionalism: The Work of Elite Corporate Lawyers in China,” *Law & Society Review* 40:751-781 (2006)

**Leaders: Novak-Herzog, Esthappan, Davis**

### Recommended

Nelson et al. “Two Hemispheres Revisited” from *The Making of Lawyer Careers: Inequality and Opportunity in the American Legal Profession* (forthcoming 2021). Draft chapter available on request.

Sandefur, Rebecca L. “Work and Honor in the Law: Prestige and the Division of Lawyers’ Labor.” *American Sociological Review*: 382-403 (2001).

Austin Sarat and William L.F. Felstiner, “Law and Strategy in the Divorce Lawyer’s Office,” *Law & Society Review* 20: 1-42 (1996).

Sandefur, Rebecca L., “Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers’ Impact,” *American Sociological Review* 80:909-933 (2015)

Shaun Ossei-Owusu, “The Sixth Amendment Façade-The Racial Evolution of the Right to Counsel,” *University of Pennsylvania Law Review* 167:1161-1239 (2019)

### Classics

Heinz, John P., and Edward O. Laumann (revised edition, 1994), *Chicago Lawyers: The Social Structure of the Bar*. New York: Russell Sage Foundation. (originally published 1977).

Austin Sarat and William L. F. Felstiner, *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process*. Oxford: Oxford University Press. (1995).

John P. Heinz, Robert L. Nelson, Rebecca L. Sandefur, and Edward O. Laumann, *Urban Lawyers: The New Social Structure of the Bar*. Chicago: University Of Chicago Press. (2005).

Robert W. Gordon, “The Ideal and the Actual in the Law’: Fantasies and Practices of New York City Lawyers, 1880- 1910,” in *The New High Priests: Lawyers in Post-Civil War America* (Gerard Gawalt, ed. Greenwood Press, 1984).

Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy,” 32 *J. Legal Educ.* 591-615 (1982)

Th March 11 – Student Presentations: Elif, Clay, Sino, Alice, Elsinore

Week 10 – Student Presentations

T March 16 – Kristina, Hannah, Maya, Erin, Ewurama

Th March 18 – Leah, Carson, Pepe, Michelle, Carrie, Luna