

Law and Society

Law, Legal Institutions, and the Popular Cultures of Law

"The life of the law is not logic, but experience."

Oliver Wendell Holmes, The Common Law (1881)

"The second most important question to ask about a legal system is, 'What is the law?' The most important question, is 'How is the law applied?'"

Oliver Wendell Holmes, "The Path of the Law"

"The law" ... accumulates, but it never passes; at any instant, it represents a totality. It is by definition complete, yet its completeness does not preclude change. It is a human achievement, yet, by its reversible and lateral excursions, and by its collective voice, it is not identifiably the product of any particular individual or group."

Carol Greenhouse, "Just in Time" (1989)

"That's another way of looking at the system, you know, identifying the right loopholes ... It's amazing what things can be done and cannot be done with ... within the law."

Nikos Stavros, quoted in Ewick and Silbey, The Common Place of Law, (1998)

"As grammar is the rule of language and fashion is the rule of dressing, so is law the rule of force."

Noberto Bobbio, "Law and Force," (1965)

"The prophecies of what the courts will do in fact and nothing more pretentious are what I mean by the law."

Oliver Wendell Holmes, "The Path of the Law" (1897)

*"I needed money and I had none.
I fought the law and the law won."*

Sonny Curtis, "I Fought the Law"

Law is a common and yet distinct aspect of everyday life in modern societies. This course examines the central features of law as a social institution and as a feature of popular culture. We will explore the nature of law as a set of social systems, central actors in the systems, legal reasoning, and the relationship of the legal form and reasoning to social change. The course emphasizes the relationship between the internal logic of legal devices and economic, political and social processes. Emphasis is placed upon developing a perspective which views law as a practical resource, a mechanism for handling the widest range of unspecified social issues, problems, and conflicts, and at the same time, as a set of shared representations and aspirations.

We will explore the range of experiences of law for its ministers (lawyers, judges, law enforcement agents and administrators) as well as for its supplicants (citizens, plaintiffs, defendants). We will examine how law is mobilized and deployed by professionals and ordinary

citizens. We cannot cover all aspects of the legal system, nor focus on all the different actors. A set of topics has been selected to develop understanding of the situational and systemic demands within which actors in the legal system operate and perform their roles; at the same time, we will try to discover systematic patterns in the uses and consequences of law. Throughout the course there is concern for understanding what we mean by legality and the rule of law.

BOOKS RECOMMENDED FOR PURCHASE

D. Graham Burnett, *A Trial by Jury*.

Richard L. Abel, *The Law & Society Reader*.

Leif Carter and Tom Burke, *Reason in Law*.

Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories From Everyday Life*.

Jonathan Harr. *A Civil Action*.

John Sutton, *Law/Society: Origins, Interactions, and Change*.

Recommended books on writing:

Lee Cuba, *Writing About Social Science*.

Strunk and White, *Elements of Style*.

COURSE REQUIREMENTS and EXPECTATIONS

1. **Reading, film viewing, and class participation.** The most basic requirement for this course is that you come to class prepared to participate. Most often, I will lecture, but there will be times when the learning in class will depend on your participation. Generally, you will find the lectures more informative and interesting, and your participation in class discussion more productive for you and your classmates, if you have read the materials before hand. **Each week, I will collect your notes on at least 2 readings.** I will assess your notes in an effort to gauge your progress and involvement. If you hand in all notes and they are satisfactory, you will receive full credit for them. With each assignment missed, you will lose a percentage point. There are no make ups. Several films are essential to the course material and will be screened once a week for class discussion the following week. Thus, students need to be prepared to attend 2-4 mandatory film viewings. (10% of grade)
2. **Three short papers.** In addition to attendance, participation in class discussion, and reading, you are expected to complete three short, 5-6 page papers. Each paper will analyze a film (chosen from a list provided by your instructor) to illustrate how some aspect of the law or legal system works. Instructions for written assignments will be distributed in class and are available on the web site. (50% of grade)
3. **Mid-term exam.** (20% of grade)
4. **Final paper.** Students will select one of the three short papers to revise and expand for a final paper. (20% of grade)

All papers will be graded on the basis of mechanics (spelling and grammar) and good argumentative writing skills (clarity, conciseness, evidence). We will go over in class what counts as good argumentative writing, and, in addition, you should consult Cuba, *Writing about*

Social Science for general instructions on writing social science papers, and Strunk and White, *Elements of Style*, for the mechanics of good writing.

ADDITIONAL HELPFUL HINTS

I have attached to this syllabus, a set of instructions for different ways of reading, with suggestions about how to work through heavy reading assignments.

Keep a copy for yourself of all work submitted for this course.

If you are going to miss a class, make sure to ask someone to bring your assignment in for you. Two unexcused absences will lower your grade by 1/2 a grade. For example, with two unexcused absences your grade will drop from a B to a B-, with four unexcused absences your grade will drop from a B to a C+.

Finally, it is ALWAYS helpful to contact the instructor if you are having difficulty completing the work assigned, understanding the assignments (reading or written assignments), or the class lectures. I am most accessible.

NOTE: *MIT Criteria for HASS CI Subjects. Communication intensive subjects in the humanities, arts, and social sciences should require at least 20 pages of writing divided among 3-5 assignments. Of these 3-5 assignments, at least one should be revised and resubmitted. HASS CI subjects should further offer students substantial opportunity for oral expression, through presentations, student-led discussion, or class participation*

Course Calendar

Viewing #1 Film viewing: *Real Justice, District court*

Viewing #2 Film viewing: *Real Justice, Superior Court.*

3 days before Lec #9 First paper due.

3 days before Lec #11 Mid-term exam, tentative date.

Lec #13 Second paper due.

Lec #19 Third paper due.

Lec #25 Last class. Final paper due.

Dates for reading assignments: This is a tentative schedule that may vary in response to class discussion and commentary. Nonetheless, if you follow this outline of readings, you will be able to space the work over the course of the semester.

COURSE OUTLINE

I. Introduction

What is Law? What does law do? What does law not do?

Natural Law, Legal Positivism, and Legal Realism

"Justice?--You get justice in the next world, in this world you have the law."

William Gaddis, *A Frolic of His Own*, (1994:13)

Lec #1

Richard Abel, "What do we talk about when we talk about law" in *The Law & Society Reader*.

G. Graham Burnett, *A Trial By Jury*, pp.3-76.

Lec #2

John Sutton, *Law/Society*, pp. 135-160.

Oliver Wendell Holmes, "The Path of the Law."

Viewing #1 *Real Justice, District Court*, screening.

II. Law as a Social Process: The Organization of the Criminal Justice System

"To what degree was the law a thing apart from people - an abstract system laid over the messy reality of individuals and their specific situations - and to what degree did the law emerge from the texture and character of people and the details of their cases?"

D. Graham Burnett, *A Trial By Jury* (2001:137)

Lec #3, 4, 5

Elliott Currie, "The control of witchcraft in renaissance Europe."

Donald Black, "Social Organization of Arrest."

Robert Emerson, "Holistic effects in social control decision-making", in *Law & Society Reader*.

Erhard Blankenburg, " The selectivity of legal sanctions: an empirical investigation of shoplifting," in *Law & Society Reader*.

Malcolm Feeley, *The Process is the Punishment*, excerpts.

Albert W. Alschuler, "Plea bargaining and its history," in *Law & Society Reader*.

Michael Radelet and Glenn L. Pierce, "Race and prosecutorial discretion in homicide cases," in *Law & Society Reader*.

Milton Heumann and Colin Loftin, " Mandatory sentencing and the abolition of plea bargaining: the Michigan felony firearm statute," in *Law & Society Reader*.

Kathleen Daly, "Structure and practice of familial-based justice in a criminal court," in *Law & Society Reader*.

Viewing #2 *Real Justice, Superior Court*, screening.

III. Law as a Social Process: The Civil Side.

Lec #6, 7, 8

Jonathan Harr, *A Civil Action*.

David Engel, "The over bird's song: insiders, outsiders, and personal injuries in an American community," in *Law & Society Reader*.

Sally Merry, "Going to court: strategies of dispute management in an urban neighborhood," in *Law & Society Reader*.

Felstiner, Abel, and Sarat, "The emergence and transformation of disputes: naming, blaming and claiming," in *Law & Society Reader*.

Marc Galanter, "Why the 'haves' come out ahead," in *Law & Society Reader*.

Takao Tanase, "The Management of Disputes: Automobile Accident Compensation in Japan," in *Law & Society Reader*.

IV. Players in the System: Judges, Lawyers, Litigants

Lec #9, 10, 11, 12

Carter and Burke, *Reason in Law*, p. 1-126, 158-162.

Jeremy Paul, "Changing the Subject: Cognitive Theory and the Teaching of Law."

John Sutton, *Law/Society*, pp. 221-278.

Austin Sarat and William Felstiner, "Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction," in *Law & Society Reader*.

John Conley and William O'Barr, "Lay expectations of the civil justice system," in *Law & Society Reader*.

V. Alternatives to Law

Lec #13, 14

Thomas Burke, *Lawyers, Lawsuits and Legal Rights*, excerpts.

Deborah Hensler, "Suppose Its Not True."

Susan Silbey, "The Emperor's New Clothes: Mediation Mythology and Markets."

Sara Cobb, "The Domestication of Violence in Mediation."

VI. Law and Social Change: The Consequences of Logic and Organization

Lec #15, 16

Evolutionary Theories of Social Change: Maine and Durkheim

John Sutton, *Law/Society*, pp. 23-60

Brian Telper, "Constructing Safe Communities: Megan's Law and the Purposes of Punishment."

Nathaniel Hawthorne, *The Scarlet Letter*, excerpt p. 75-88.

Paul Berman, "An observation and a strange but true "tale": what might the historical trials of animals tell us about the transformative potential of law?"

Lec #17, 18

Law, Class Conflict and the Economy: Marx

John Sutton, *Law/Society*, pp. 61-98.

William Chambliss, "Vagrancy Law in England and America."

Douglas Hay, "Property, Authority, and the Criminal Law."

E.P. Thompson, "The Rule of Law."

Lec #19, 20, 21

Law and the State: Weber

John Sutton, *Law/Society*, pp. 99-132.

Examples

Jerome Hall, *Law, Theft and Society*, excerpts.

John Sutton, *Law/Society*, pp. 161-220.

Sheldon Ekland-Olson and Steve J. Martin, "Organizational compliance with court-ordered reform", in *Law & Society Reader*.

Janet Gilboy, "Penetrability of administrative systems: political 'casework' and immigration inspections," in *Law & Society Reader*.

Susan Silbey, "The consequences of responsive regulation."

VII. The Rule of Law, Legal Culture, and Everyday Life

"To the pig keepers ... the law was a domain of conflict in whose construction they participated."

Hendrik Hartog, "Pigs and Posivitism" (1985)

Lec #22, 23, 24, 25

Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*.

Carter and Burke, *Reason in Law*, p. 127-157.

Richard Sherwin, *When Law Goes Pop*, excerpt.

Guide to Reading Social Science: How to Work through Long Reading Assignments

Faced with a long list of readings in any social science field, you need to learn to read extensively as well as intensively; it is rarely practical to read everything word for word and line for line. Although close textual reading and interpretation is part of social science tradition, it is often not possible, especially for introductory and intermediate level survey courses. Instead of trying to read every line and word, consider the following suggestions for more efficient and effective course reading.

- I. **Organize reading over the weeks and months.** Look over the material to be covered (syllabus and tables of contents in assigned books). Estimate the amount of reading for the semester and try to divide the work on a weekly basis. Some weeks may have more reading assigned while other weeks less. Although the assignments vary, try to keep your work and pace steady. It will become less burdensome and easier to manage. Make sure to build into your schedule time for written assignments (including first, second and third drafts with time in between for other people's comments, rethinking and revision).
- II. **Begin any reading assignment by reading the abstract, preface, introductions, and conclusions.** These are often the most important parts of any text because the author often signals his or her major themes and arguments. It is necessary, however, to look over, sometimes very carefully and completely, the central portions of the text to identify the evidence provided for the major themes/ theses. Often, the topic (first) sentences of paragraphs provide the links in the author's argument.

Inspectional Reading (of a Book or Article):

- a. Look at the title page and the preface
 - b. Study the table of contents to obtain a general sense of a book's structure
 - c. Check the index
 - d. Read the publisher's blurb
 - e. Skim the summary statements in the opening and closing paragraphs of pivotal chapters
 - f. Formulate what you think you know about this issue. What do you consider the essential points and key explanatory factors?
You may know nothing about the topic; use this ignorance to devise a list of what you need the author to tell you in order to be come informed.
- III. **Mechanics of reading and note taking.** Read the text and make marginal notes (on post-its or separate piece of paper) indicating what seemed like the strongest parts of the text. When you have completed a once through the text, go back and take notes in outline form, by paraphrasing sentences or paragraphs until you have reduced the many pages of text to a few pages. (Make sure to keep an accurate citation to the work so that any future use of these notes and paraphrases can be appropriately cited. You do not want to find yourself engaged in plagiarism.) Do not rely on underlining. Do no rely on highlighting. This is insufficient. In order to "know" a text, you need to convert it into your own words, or your own organization of the text. The text needs to be processed several different ways in your brain. Underlining is passive and does not help you learn the material.

Analytical Reading:

- a. Classify the book or article according to kind and subject matter. Into what paradigm or research program (genre) does that work fit? What is the book about as a whole?
- b. Enumerate the major parts in their order and relations, outline these as you have outlined the whole.
- c. Define the specific problem or problems the author has tried to solve. What question does the author claim to address? You might also want to think about how this reading fits into the course. Why did the instructor place the reading at this point in the course? What is the topic on the syllabus? How does this reading provide an answer or information for this topic?
- d. What theoretical statements does the author make? A theoretical statement proposes a relationship. For example, structural theories of deviance suggest that deviance (that which is to be explained) is a consequence of the structure (organization of the parts) of a society. In other words, social structure produces deviance.
- e. What are the concepts and variables used? Become familiar with the author by defining key words. Know the details of the argument. In the example above: what is social structure? What is meant by deviance? Do structural theorists/ writers assume the reader knows what is meant by social structure? Do you need to find out what this means in order to understand the reading?
- f. How does the author's argument/ position compare with that of others who address the same question or related questions? Where are the points of similarity and difference?
- g. What normative statements (value judgments) does the author make? What values does the author assume readers will share? What assumptions does the author make that may be contestable?
- h. What is the author's methodology? (Here you should be concerned not only with the methods used but the kinds of arguments implied or given about what methods are more or less appropriate.) What constitutes evidence in this reading? Know the author's arguments by finding them in, or constructing them out of, sequences of sentences.
- i. Determine which of the problems the author has solved and which she has not; and of those not solved, decide which the author knows he has failed to solve. If you disagree with the author, on what basis do you rest your disagreement? Is the author uninformed, misinformed, illogical, imprecise, or incomplete? Criticize fairly; do not pass judgment based on personal opinion, taste, or preference. Is the argument internally consistent? Does the evidence (both that presented by the author and other evidence in the field) support the argument?

IV. Abstract (use this format for notes to be handed in each week).

Full Bibliographic citation.

Thesis: 1-2 sentences.

Details: 3-4 well constructed paragraphs.

Themes: 3-4 bullet points defining and using authors key concepts

V. I recommend students consult and use Lee Cuba, [A Short Guide to Writing About Social Science](#), second edition (New York: Harper Collins, 1992) for additional instruction in reading and writing social science, abstracting and summarizing readings. You will find this book helpful for other subjects as well.

Films for writing assignments

Films are available for borrowing from the Anthropology Department Office. Because we have limited copies, and students will need to view the film several times to write a compelling analysis, the different films will need to be distributed among class members. Students will need to provide a list of films in preferential order so that we can distribute them to the class.

Additional information with film format (e.g. VHS, DVD) and detailed instructions will be distributed in class.

Paper #1, due 3 days before Lecture #9: Criminal Justice/ Civil Justice Systems

Criminal Justice

Wiseman, Law and Order

Onion Field

And Justice for All

Thin Blue Line

Sweet Hereafter

Class Action

Erin Broikovich

Paper #2, due in Lecture #13 : Legal Profession

Rainmaker

Accused

Jagged Edge

Anatomy of a Murder

The Verdict

Reversal of Fortune

Paper #3, due in Lecture #19: Rule of Law, Legal Culture, Social Change

Inherit the Wind

12 Angry Men

From the Hip

Amistad

Philadelphia

The People v. Larry Flint

The Verdict