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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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)


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


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:**


   **Recommended:**


   **Background:**


2. **January 2: Legal Realism**

   **Required:**

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)


3. **January 28: Classic Law & Society**

Required:


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

Recommended:


Background:


**NO CLASS FEBRUARY 4**
4. **MAKE UP CLASS: Law & Society: The Cultural Turn**  
(LUNCH PROVIDED BY PROFESSOR SIMON)

Friday, February 20\(^{th}\) 12:20 – 2:50 pm?  
Friday, February 27\(^{th}\) 12:20 – 2:50 pm?

**Required:**


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

**Recommended:**


**Background:**


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:


Background:

6. **February 18: Governmentality**

**Required:**


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


**Recommended:**


David Garland, Governmentality and the Problem of Crime::Foucault, Criminology, Sociology1 Theoretical Criminology 173 (1997)

Background:

Alan Hunt and Gary Wickham,

Alan Hunt
7. **February 25: New Institutionalism**

Required:


Recommended:


Background:


8. **March 4: Cultural Analysis**

**Required:**


**Recommended:**


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:**


**Recommended:**

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:


Background:

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


13. April 15: Reflexive Sociology

Required:

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

Recommended:

14. **April 22: Science and Technology Studies**

**Required:**


**Recommended:**


**Background**