



Sociology 114
Autumn 2022

Sociology of Law

Dr. Mary Vogel, Visiting Professor

Classroom: Northgate 105

Meeting Times: Tu 12-1:30 and Th 12-1:30

Office: Department of Sociology, Rm. 444

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Office Hours: Tu 3-4:30 p.m. and Th 3:30-5 p.m. (Pacific Time)

Readers: Mia Antezzo and Kavitha Iyengar

In thinking of law, we imagine a major institution whose reach extends throughout our society and our lives. Law not only bars wrongdoing, but also structures contracts, defines what is property, makes us citizens, accords us rights and helps us to manage risk. In short law plays a key role in constructing our social world. It also provides a means of democratic social ordering and governance. In this course, we explore what law is and how it takes shape. We ask whether laws represent: a normative consensus in society, a rational approach to social ordering, or the policy preferences of the powerful. We problematize law by asking why we obey it and whose order it upholds. We consider the balance of rights and responsibilities; constitutionalism as guarantor of freedom or hegemonic preservation; racialization and gendering of the discourse of law; similar versus different specialized treatment as approaches to equity; and queer theory's proposals to tackle inequality. Of special interest is whether law has the capacity to accomplish social change. One asks what part legal mobilization and campaigns of strategic litigation may play; the impact of discretionary practices such as mediation and plea

bargaining; and whether the “haves” always come out ahead under law? To what extent, we ask, have laws contributed to mushrooming mass incarceration in America? Perhaps most important, can law provide an effective means of sustaining our democracy today? We will keep things concrete with rich case studies including: corporations, the internet, the civil rights movement, slavery in the American south, gang culture and rap music, abortion, mandatory sentences and the death penalty. Our aim is to help each student draw on these ideas to create his or her own unique viewpoint as a basis for analyzing our social world.

Class Meetings

This course will be taught as a fourteen-week series of two 1.5 hour meetings per week. As the material is new for most of you, I will present some material at each class. Active learning and a workshop atmosphere, however, are hallmarks of this class. No question is too small to ask. If you wonder, others surely do too. For this reason, it is essential that everyone come prepared having read and reflected on the material for the day and ready to participate in any discussion that arises.

Remember that the class is to a large extent what you put into it. So, everyone is encouraged to remember that your views matter and we really want to hear your voice. We will have class discussions, small group activities, and tasks where we will briefly break into teams and report back to the group. These are aimed to be stimulating and to help you meet other students in the class. We will also have some guest speakers and short film clips.

As you will have heard, the course is currently planned to be presented in person. Classes will take place on Tu and Th from 12-1:30 (Pacific Time) in Northgate 105.

Should we have to revert to Zoom briefly at any point our link for this class will be:

<https://berkeley.zoom.us/j/929045867?pwd=ZXIzVUdzcTJXRFNlcU9pRWMrc1tNUT09>

(Links to an external site.)

Meeting ID: 929 0458 6747

Passcode: LS190009

Office Hours

Office hours will be held Tu 3-4:30 and Th 3:30-5. For in-person meetings, please come to Social Science Building Rm 444. Zoom meetings can also be arranged by appointment.

Contact

Please address any enquiries or problems related to the course to me, Dr. Mary Vogel
(mary.vogel@berkeley.edu)

Readings

Materials for the course will be available through CANVAS, known locally at Berkeley as bcourses. Our website is up and you will be finding a module for each week of the course with a link to each of the assigned readings. Effort has been made to keep readings under an average of 75 pages per week, though some weeks may be slightly under and other slightly over. Optional works are very occasionally listed but are not required for the course or the exams.

A paper reader (probably in two volumes) will also be available week of 29 August for anyone wishing to buy a copy at Central Copy on Telegraph Avenue in Berkeley. No price has been provided yet. Remember that all readings will also be available at no cost to download and print at home from bcourses.

Assessment of Student Work

Work for the course is designed to help you build some specialized knowledge on topics that really interest you. We hope this will give you something special in terms of intellectual capital to take with you to your subsequent studies and, later, to the workplace.

Requirements for the course are as follows:

- Short response papers (3) of 2 pages on weekly readings (8% each for total of 24%)
- Attendance with Sign-Up Sheet at Each Class (6%)
- Midterm In-Class examination (30%)
- Final Take-Home examination (40%)

Due to the size of the class, we alas cannot have a participation component but will look forward to your active engagement and faithful attendance nonetheless. It is our hope that the response papers will encourage everyone to keep current on the readings and make examinations simply a chance to shine without stress. The response paper topics will be presented on bcourses one week in advance and must be submitted there by the time due as the portal will close. Remember that it is crucial to cite any ideas or words of another person that are used in your work. It is easy to forget so really focus on citation even in the short papers.

The midterm examination will be held in-class during the regular 1.5 hour class meeting time. The final examination will be a take-home paper due on the date listed for this class on the University exam schedule. The final exam must be submitted on bcourses by the end of the listed exam time. Though study groups are encouraged in preparing for the exam, it is vital to work independently in writing this paper and all work will be checked for individuality through Turnitin.

The examinations will consist of short answer and essay questions. For each, a review sheet of essay questions will be distributed one week in advance for the Midterm and last day of class meetings for the Final. For each exam, three essay questions will be taken from that review sheet to present on the examination paper and, from those three, you can choose two to answer. So it is important to prepare. For the short answer questions, there will be no review sheet and they will rely on the readings.

Mental Health and Wellness: All students — regardless of background or identity — may experience a range of issues that can become barriers to learning. These issues include, but are not limited to, strained relationships, anxiety, depression, alcohol and other drug problems, difficulties with concentration, sleep, and eating, and/or lack of motivation. Such mental health concerns can diminish both academic performance and the capacity to participate in daily activities. In the event that you need mental health support, or are concerned about a friend, UC Berkeley offers many services, such as free short-term counseling at University Health Services.

An excellent campus website having links to many resources is: <http://recalibrate.berkeley.edu/>

Another campus website addressing mental health services in specific reference to this time of the coronavirus pandemic is: <https://uhs.berkeley.edu/coronavirus/student-mental-health>

Remember that seeking help is a good and courageous thing to do — both for yourself and for those who care about you.

Disability Accommodations

If you have a disability that may require accommodations please speak to us early in the semester (i.e., first two weeks) to make arrangements. Please also have the office on campus contact us.

Mobile Phones

Please turn off cell phones during class. This includes text messaging. Cell phones may not be used in any way during the midterm examination, including as a watch or timekeeper, so please plan ahead.

Attendance

Attendance is required in the sense that exams will be based on both lectures and assigned readings. You are responsible for all lecture materials and for any announcements made in class. Videos presented in class will not be rescreened due to absence. If you must miss a class, please contact a classmate to review their notes from that day.

READING LIST

Weeks 1-15

Assignments Schedule

Midterm is an In-Class Examination on Tu 25 October and covers Wks 1-9. Midterm study review essay questions will be distributed at class and on bcourses on Tu 18 October. The midterm will also include some short answer questions on readings. (Essays are a maximum of 3 sides of a blue book page. Short answers are a maximum of 5-7 sentences.)

Final will be a Take-home Examination and covers the entire course. Final study review essay questions will be distributed at last class meeting W and on bcourses Th December 1. You will be asked to upload your Final Exam paper on bcourses. Typed essays are a maximum of 3 typed pages (1.5 or 2 space). Short answers are a maximum of 5-7 sentences.

Short papers are due in Weeks 4, 7 and 12 on Tu 13 Sept., Tu 4 Oct. and Tu 8 Nov., respectively. Topics will be posted on bcourses one week in advance. Papers will be submitted on bcourses. Short papers are a maximum of 2 pages in length (1.5 or 2 space).

COURSE READINGS

Aug.25 Th **Introduction to the Course (1)**

A. NATURE OF LAW

Karl Llewellyn, "The Bramble Bush (I and II)" in John Bonignore, ed., *Before the Law*, pp. 5-6 and 15-17.

Charles Payne, "Greenwood," *I've Got the Light of Freedom: The Organizing Tradition and the Mississippi Freedom Struggle*. Los Angeles, CA: University of California Press, pp. 139-159

Matthew Lippman, *Law and Society* [second edition], pp. 1-11 and 23-25.

30 Tu **What Is Law and Why Obey It? (2)**

Tom Tyler (1994) "Governing Amidst Diversity," *Law and Society Review*, 28(4): 809-19 and 827-9.

Max Weber (1978) "Power and Domination" and "The Types of Legitimate Domination" in *Economy and Society*. Los Angeles, CA: University of California Press, Vol. I, pp. 53-4 and 212-6.

Martin Luther King, "Letter from the Birmingham Jail" in *Why We Can't Wait*, pp. 77-8, 82-8, 90-2 and 98-100.

Optional: Jerome Frank, "The Fight Theory and the Truth Theory" in J. Bonignore, *Before the Law*, 3 pp., and Robert Kagan, "Adversarial Legalism" in Macaulay, et al., eds., *Law in Action*, pp. 127-9 and 132-4.

B. HISTORICAL PERSPECTIVES

Sept. 1 Th **Law in History: How Is Globalization Shaping the Task of Law (3)**

Sinclair, Upton, "The Jungle" in Macaulay, et al., *Law and Society*, pp. 233-235 and "NOTE: Upton Sinclair, The Jungle, and the Background of the First Food and Drug Act (1906)" in Macaulay, et al., *Law in Action*, 213-216.

Guenther Teubner, "Global Bukowina: Legal Pluralism in the World Society," *Global Law Without a State*, pp. 1-16.

Robert Kidder, "Justice and Power in Studies of Legal Pluralism" in B. Garth and A. Sarat, eds., *Justice and Power in Sociological Studies*, pp. 200-207.

C. RIGHTS AND RESPONSIBILITIES: THE LIBERAL-COMMUNITARIAN DEBATE

6 Tu Conceptions of Justice, Rights and Responsibilities (4)

Michael Sandel, *Liberalism and the Limits of Justice*, pp. 1-14.

Jurgen Habermas, *The Structural Transformation of the Public Sphere*, Ch. 2 (pp. 27-31) and Ch. 3 (pp. 79-86).

Mary Ann Glendon, *Rights Talk*, pp. 76-81 and 98-105.

D. FAMILIES OF LAW

8 Th Constitutions: Limiting State Power and Protecting Rights (5)

Vernon Bogdanor, *Constitutions in Democratic Politics*, pp. 1-13.

Frank Michelman, "Law's Republic," *Yale Law Journal*, pp. 1-8 and 18-22.

Nicholas Iacono, "Stare (In)Decsis: The Elusive Role of Precedent in Originalist Theory and Practice," *Georgetown Law Journal* 20(1), pp. 392-403 and 408-416.

SHORT FILM: Isaiah Berlin, *Two Concepts of Liberty* [You Tube 15 mins]

13 Tu Retrospective Justice: Are Truth Commissions Enough? (Argentina's "Dirty War," South Africa's movement from Apartheid to Democracy and the January 6th Insurrection) (6)

FIRST SHORT PAPER DUE

A.J. McAdams, *Transitional Justice and the Rule of Law in New Democracies*, pp. 269-286 (South Africa) and pp. 93-113 and 116-118 (Argentina)

Marguerite Feitlowitz, *A Lexicon of Terror*, pp. 63-66.

Offe, Claus, *Varieties of Transition*, pp. 82-88 (German Democratic Republic).

VIDEO: January 6th Committee Hearings, Transcript on Role of Militias, Hearing 7 (start with minute 90).

15 Th **European Integration: Does Supranational Law Threaten National Sovereignty and Accountability? (7)**

Ralph Folsom, *European Union Law*, pp. 31-42 and 65-75.

Neil MacCormick, "On Sovereignty and Post-Sovereignty" in *Questioning Sovereignty: Law, State and Nation in the European Commonwealth*, pp. 123-136.

Boaventura de Sousa Santos, "A Map of Misreading" *Journal of Law and Society*, pp. 281-291

E. HUMAN RIGHTS AND INTERNATIONAL INTERVENTION

20 Tu **Human Rights: Empowerment or Capture? (8)**

Spencer Zifcak, "Globalism or Imperialism: An Analysis of the ICJ's Human Rights Mission to Indonesia," pp. 1-9 and 12-17.

Thomas Risse and Kathryn Sikkink, *The Power of Human Rights*, pp. 1, 5-6, 8-9 and 11-17.

Hannah Arendt, *Totalitarianism*, pp. 135-153 and 158-162.

The Diary of Anne Frank, dramatized by Frances Goodrich and Albert Hackett, pp. 163-167 and 170-171.

F. THEORIES OF LAW, POWER AND AUTHORITY

22 Th **Capitalism, Ruling Class Interests and Hegemonic Power: Marx and Gramsci (9)**

Karl Marx and Friedrich Engels, *Communist Manifesto*, pp. 78-105.

Antonio Gramsci, *Selections from the Prison Notebooks*, pp. 147, 210-11, 229, 246-7 and 265-8.

Eugene Genovese, "The Hegemonic Function of Law," *Roll, Jordan, Roll: The World the Slaves Made*, pp. 25-43.

27 Tu **Legitimation, Crisis and a Formative Role for the State: Weber and Habermas (10)**

Jurgen Habermas, *Legitimation Crisis*, pp. vii-ix, 33-37 and 45-48.

Robert Putnam, "Bowling Alone," *Journal of Democracy*, 6:65-78.

Robin Kelley, *Race Rebels*, Ch. 8, pp. 183-194.

29 Th **Solidarity and Social Reproduction: Durkheim and Bourdieu (11)**

Emile Durkheim, *The Rules of the Sociological Method*, pp. 31-33 and 85-104 AND *The Division of Labor in Society*, pp. 61-5 and 68-69.

Kai Erikson, *Wayward Puritans*, pp. 3-5 and 137-159.

Pierre Bourdieu, "Structures, Habitus, Practices" Charles Lemert, ed., *Social Theory*, pp. 277-289 AND "Marriage Strategies as Strategies of Social Reproduction" in R. Forster and O. Ranum, eds., *Family and Society*, pp. 117-119.

Oct. 4 Tu **From Power to Performativity: Foucault and Feminism (12)**

SECOND SHORT PAPER DUE

Alan Hunt and G. Wickham, *Foucault and the Law*, pp. 39-40 and 46-56.

Catherine A. MacKinnon, "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence" in *Signs* 8(4) pp. 635-639, 644-645 and 648-649.

Michel Foucault, "The Body of the Condemned" [from *Discipline and Punish*, Ch. 1] in R. Garner, ed., *Social Theory*, Vol. II, pp. 410-418.

Optional: Lucie White, "Subordination, Rhetorical Survival Skills, and Sunday Shoes" in A. Sarat, ed., *The Social Organization of Law*, pp. 222-242.

6 Th **Critical Race Theory, Critical Legal Theory, Queer Theory and Intersectionality (13)**

Delgado and Stefanic, *Critical Race Theory: An Introduction*, pp. 1-15.

Carl Stychin, "Towards a Queer Legal Theory," *Law's Desire*, Ch. 8, pp. 140-156.

Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex," *University of Chicago Legal Forum* 1(8), pp. 139-143 and 150-152.

H. LAW AND ECONOMY

11 Tu **Regulation, Antitrust and Markets: What Is Our Model of Competition? (14)**

Richard Posner, *Antitrust Law*, pp. 3-7 and 23-35.

Greg Ruggiero, *MicroRadio and Democracy*, pp. 1-17.

Shoshana Zuboff, *Surveillance Capitalism*, pp. 3-14, 480-492 and 516-519.

Optional:

<http://www.seattletimes.com/business/microsoft/long-antitrust-saga-ends-for-microsoft/> (Microsoft Antitrust)

Lauren Feiner, “Lawmakers are Racing to Pass Tech Antitrust Reforms Before the Midterms,” CNBC

13 Th **Property, Economic Growth and Risk: Old Forms and New (15)**

Virginia Dominguez, *White by Definition*, pp. 23-29, 54-55, 62-69 and 89.

James Boyle, *Shamans, Software and Spleens*, pp. ix-xiii and 1-13.

Peter Huber, “Liability: The Legal Revolution and Its Consequences” in A. Sarat, ed., *The Social Organization of Law*, pp. 105-112.

18 Tu **Governing Through Crime or Social Welfare? (Does the Death Penalty Deter?) (16)**

MIDTERM STUDY REVIEW QUESTIONS DISTRIBUTED

James de Fronzo, “Welfare and Burglary,” *Crime and Delinquency*, pp. 223-229.

Dane Archer and Rosemary Gartner, “Homicide and the Death Penalty” in Macaulay, et al., *Law and Society*, pp. 422-439.

Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption*, “Introduction,” pp. 13-18, and “The Old Rugged Cross,” pp. 67-72, 74-80, 82-83 and 88-91.

I. LAW AND INEQUALITY

20 Th **Voting Rights, Civil Rights Movement and Suppression (17)**

Gilda R. Daniels, *Uncounted: The Crisis of Voter Suppression in America*, pp. 20-21, 23-28 and 33.

Doug McAdam, *Freedom Summer* [on the Civil Rights Voter Registration movement in Mississippi], pp. 68-71 and 75-83.

Carol Anderson, *One Person, No Vote*, p. 1-16, 19-22 and 25-30.

SHORT FILM (in-class): Testimony of Fanny Lou Hamer to the U.S. Congress on her effort to register to vote in Mississippi

Optional: *Shelby County v Holder*

25 Tu **MIDTERM EXAMINATION IN-CLASS (18)**

27 Th **Electoral Crisis, Dark Money and American Democracy: Reshaping**

Consciousness and the Nature of Play (19)

Nancy MacLean, *Democracy in Chains*, pp. xvii-xix, xxi-xxii, xxiv-xxv, xxvii-xxviii, xxix-xxx, 151-153 and 225-231.

Jason Stanley, *How Fascism Works: The Politics of Us and Them*, pp. xxv-xxxiii and 71-77.

Carl Schmitt, *The Concept of the Political*, pp. 26-33 34-35, 37-38, 46-47 and 51-52.

Optional: *Citizens United vs. Federal Election Commission*

Nov. 1 Tu **Immigration, Citizenship and the Law (20)**

Irene H.I. Bloemraad, *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada*, pp. 1-11.

Angela S. Garcia (2019) *Legal Passing: Navigating Undocumented Life and Local Immigration Law*, pp. 1-11.

Ian Haney-Lopez, *White By Law*, pp. 1-19.

3 Th **Discrimination and Special Rights: Is Legally Equal Treatment Enough? (21)**

Iris Marion Young, "Polity and Group Difference" in R. Beiner, *Theorizing Citizenship*, p. 175-179, 184-185, 188-199.

Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass*, pp. 1-2, 7-9, 32-42 and 57-59.

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*, pp. 1-3 and 230-249.

8 Tu **Abortion, Contraception and Same-Sex Marriage: Is Privacy Protected? (22)**

THIRD SHORT PAPER DUE

Michelle Goodwin, *Policing the Womb: Invisible Women and the Criminalization of Motherhood*, 46-53, 57-58 and 61-63.

Laurence Tribe, *Abortion: The Clash of Absolutes*, Ch. 5, pp. 77-79 and 82-99.

Mary Ann Glendon, *Abortion and Divorce in Western Law*, pp. 10-15.

Optional: *Dobbs, et al., vs Jackson Women's Health, et al.*

J. CIVIL DISPUTING AND LITIGATING

10 Th **Dispute as a Social Construct: To Litigate or Not? (23)**

William Felstiner, Richard Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming" in A. Sarat, ed., *The Social Organization of Law*, pp. 99-103.

Michael McCann, William Haltom and Anne Bloom, "Java Jive: Genealogy of a Juridical Icon" in Macaulay, et al., eds., *Law in Action*, pp. 216-224. (McDonald's coffee case)

Gilliam Hadfield, "Framing the Choice Between Case and the Courthouse Experience: Experiences with the 9/11 Victim Compensation Fund, 42(3) *Law and Society Review*, 645-649 and 673-676.

15 Tu **Obstacles to Implementation of Law and the Resolution of Disputes (24)**

Lauren Edelman, Howard Erlanger and John Lande, "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace," 27 *Law and Society Review*, pp. 497-507.

Lauren Edelman, Sally Fuller and Iona Mara-Drita, "Diversity Rhetoric and the Managerialization of Law, 106 *American Journal of Sociology* 1589 (2001) pp. 270-285.

Mark Galanter, "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change" in R. Abel, ed., *Law and Society Reader*, pp. 297-313.

K. CRIMINAL LITIGATION AND BARGAINING

17 Th Plea Bargaining and Its Global Expansion (25)

Mary E. Vogel, "The Social Origins of Plea Bargaining: Conflict and the Law in the Process of State Formation, 1820-1860," *Law and Society Review*, 1999, pp. 162-170 and 231-235.

Blumberg, "The Practice of Law as a Confidence Game" in Austin Sarat, ed., *The Social Organization of Law*, pp. 312-317.

John Langbein, "Torture and Plea Bargaining" in Austin Sarat, *The Social Organization of Law*, pp. 275-282.

Optional: Vogel, "Plea Bargaining Under the Common Law" in Darryl K. Brown, et al., eds., *Oxford Handbook of Criminal Process*, pp. 729-760.

22 Tu Prosecutors and Judges: Mass Incarceration and Mandatory Penalties (26)

Richard Posner, "The Case Against Strict Constructionism: What Am I, a Potted Plant?" in Macaulay, et al., eds., *Law in Action*, pp. 777-788.

John Pfaff, "Decarceration's Blind Spots" 16 *Ohio State Journal of Criminal Law*, pp. 253-263 and 277-278.

Michael Tonry, "Mandatory Penalties" in Tonry, ed., *Crime and Justice*, pp. 243-257 and 269-270.

24 Th THANKSGIVING HOLIDAY

L. SOCIAL CHANGE

29 Tu Legal Mobilization, Rights and Politics (27)

Frances Zemans, "Legal Mobilization," 77 *American Political Science Review*, pp. 690-701.

Charles Epp, "External Pressure and the Supreme Court's Agenda," pp. 255-77.

Gerald Rosenberg, "Hollow Hope" in Macaulay, et al., eds., *Law in Action*, pp. 574-589.

Dec. 1 Th **Law and Social Movements (28)**

REVIEW SHEET FOR FINAL ESSAYS DISTRIBUTED

Michael McCann, "Law and Social Movements" in *Annual Review of Law and Social Science* 2:17-32 and 34-35.

Kenneth Andrews, "Introduction" and "Conclusion: The Legacy of the Civil Rights Movement" in *Freedom Is a Constant Struggle*, pp. 1-6 and 191-200.

Optional: Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change*, pp. 83-96.