

Sociology 114  
UC Berkeley  
SU 2018  
Office Hours: Before or after class

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## **The Sociology of Law**

The sociology of law studies law and legal institutions as social relationships. This course inquires into the ways through which ‘legality’ is constituted by a wide range of political, economic and cultural practices, and in turn the ways in which law is constitutive of social life in general. Everyday life both creates and incorporates legal meanings and practices. This course examines the ways that legal meanings and practices appear in conceptions of society, community and the individual. This course also examines the special role of legal professionals in the creation of legal meanings, and the social impacts of their practices.

Understanding the role of law in society is particularly important at a time of political polarization, in which the Administration openly threatens to ignore or dismantle established law and legal structures. The extent to which the ‘rule of law’ can withstand the current political regime may well determine the future of democracy in the United States. But what is the ‘rule of law’ and what makes ‘the law’ powerful? The power of legality depends on the ways in which different social groups engage with the law. As the history of the last hundred years has shown, engagement with legality is necessary for all serious efforts for social justice in modern societies. But, if not informed by an accurate understanding of social dynamics, engagement with law can also subvert such efforts. This course provides students with the opportunity to engage in in-depth inquiry into the uses of law both for domination and for social change with an extended examination of racism and civil rights law in the United States.

Topics to be covered this semester include: sociological theories of law and society, law and the constitution of society, legal rights and social change, and the profession of law.

Course requirements include class participation (20% of course grade), one midterm exam (20% of course grade), a cumulative final exam (30% of course grade) and a final paper (30% of course grade). The final paper will be on a topic of the student’s choosing, but must inquire into the role of law in the constitution of society and the role(s) of law in processes of social change. The paper will be expected to be approximately ten pages in length and to be thoroughly researched.

**Required Readings:**

- Rothstein, Richard, The Color of Law New York: W.W. Norton, 2016
- Bell, Derrick, And We Are Not Saved New York: Basic Books, 1987
- All other readings marked [PDF] can be found on the Soc. 114 bcourse site.

**Schedule of classes and readings**

May 21: Introduction to course

**UNIT I: Law in society**

**May 22:** Modes of engagement with law

Readings:

Ewick, Patricia and Susan Silbey from The Common Place of Law Chicago: University of Chicago Press, 1998 pp. 3-23; 43-49 [PDF]

Menjívar, Cecilia and Leisy J. Abrego “Legal Violence: Immigration Law and the Lives of Central American Immigrants” American J. of Sociology, v. 117, no. 5 (March 2012): Pp. 1380-1421 [PDF]

**May 23:** Social Justice and the Law

Reading:

Locke, John, excerpts from “The Second Treatise on Government” [PDF]

King, Martin Luther Jr., “Letter from Birmingham Jail” [PDF]

**UNIT II: Sociological Theories of Law**

**May 24:** The rule of law, the individual and society

Readings:

Richard Epstein, “All Quiet on the Eastern Front” University of Chicago Law Review 1991: 555-573 [PDF]

Critique: Roberts, Dorothy from Killing the Black Body New York: Pantheon Books, 1997, pp. 226-245 [PDF]

**May 28: HOLIDAY (NO CLASS)**

**May 29-May 30:** Law and social solidarity

Reading:

Durkheim, Emil “Types of Law in Relation to Types of Social Solidarity” from The Division of Labor in Society [PDF]

Critique: Reiman, Jeffery, “A Crime by Any Other Name” The Rich Get Richer and the Poor Get Prison, Boston: Beacon Press, 1990, pp. 12-46 [PDF]

**May 31:** Marxism: Capitalism, socialism and law

Reading:

Engels, Frederick, “Morality, Law and Equality” [PDF]

Cloke, Kenneth, “The Economic Basis of Law and the State” [PDF]

Hunt, Alan “Law, the State and Class Struggle” [PDF]

**June 4-June 5:** Social conflict, legal domination and legitimation

Reading:

Weber, Max, selections from Economy and Society [PDF]

Bourdieu, Pierre, “The Force of Law: Toward a Sociology of the Juridical Field.” Hastings Law Journal 38 (1987): 805-853 [PDF]

**Unit III: Law and the Constitution of Society**

## June 6-June 7: Tort law and the state

Reading:

Lieberman, Jethro “Right of Redress: Toward a Fiduciary Ethic,” from The Litigious Society [PDF]

Haltom and McCann Distorting the Law: Politics, the Media and the Litigation Crisis (2004) Ch. 3 [PDF]

Galanter, Mark, “Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change” Law and Society Review, 1.9 (Autumn, 1974): 95-160 [PDF]

**MIDTERM EXAM: JUNE 11****June 12:** Neo-Liberalism, Criminal Justice and Incarceration

Reading:

Foucault, Michel “The Carceral” from Discipline and Punish: The Birth of the Prison [PDF]

**June 13:** The Impact of Mass Incarceration on Society

Reading:

Comfort, Megan, “Punishment Beyond the Legal Offender” Annual Review

of Law and Social Science, 2007, 3:271-296 [PDF]

#### **Unit IV: Law and the Constitution of Society: Race and the Law**

**June 14:** Law and the Constitution of Society: The Myth of De Facto Segregation  
Creating the Ghetto

Readings:

Rothstein, The Color of Law, Preface, Chapters 2, 3

**June 18:** Law and the Constitution of Society: Creating the suburb

Readings:

Rothstein, The Color of Law Chapters 4, 5, 6

**June 19:** Legal Action and School Integration

Reading: Bell, And We are Not Saved, Chapter 4

**June 20:** Legal Action and Employment Equality

Reading: Bell, And We are Not Saved, Chapter 6

**June 21:** Legal Action and Voting Rights

Reading: Bell, And We are Not Saved, Chapter 3

#### **Unit IV: Professions of Law**

**June 25:** Professionalism as a form of legal practice

Readings:

Duncan Kennedy “Training for Hierarchy” [PDF]

Loya, Anamaria “Creating a New World: Transformative Lawyering for Social Change” in Barlow (ed.) Collaborations for Social Justice

Lanham, MD: Rowman and Littlefield, 2007 [PDF]

**June 26:** Lawyers and social change

Reading:

Levitsky, Sandra R., “To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements” in Sarat, Austin and Stuart A. Scheingold (eds.) Cause Lawyering and Social Movements  
Stanford: Stanford University Press, 2006, pp. 145-163 [PDF]

**June 27:** Catch up and review day

**FINAL PAPERS DUE ON JUNE 24 by 11:59PM. Submit your paper on the bcourse site.** Late papers will lose a grade for each calendar day late.

**FINAL EXAM: JUNE 28 in class.**