

Soc. 667
Fall, 2008
Mon: 4-6:30
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Office: W/4/024, 287-6253
Hours: M 2-4, W 11-12
& by appointment

SOCIOLOGY OF LAW (Graduate)

The law touches all areas of modern social life. Judicial decisions and legal statutes are at the center of debates over educational policy, family life, race relations and other social issues, so it is no surprise that sociological theorists and researchers since the founding of the discipline have been interested in the law. Anyone who seeks to understand how our society functions must study how law is created and applied.

Law, which affects so many social processes, is itself a product of social processes. Social relations in the community, in police precinct stations, in governmental agencies and legislatures, in courtrooms and their hallways and chambers all shape the “law in action.” At the same time and in the same places, the law influences social processes. Indeed, how can anyone understand law without sociology?

In this course, you will learn about the social processes that affect and are affected by the legal system and about the way that sociologists have explained the interrelations between law and society. You will also develop an appreciation for case law—both how to investigate it and the ways that it can both reflect and distort social processes.

TEXTS

Abel, Richard L. (ed.) 1995. The Law & Society Reader. New York: New York University Press.

Altschuler, Bruce E. and Celia A. Sgroi. 1992. Understanding Law in a Changing Society. Englewood Cliffs, NJ: Prentice Hall.

McIntyre, Lisa J. 1994. Law in the Sociological Enterprise: A Reconstruction. Boulder, CO: Westview Press.

Sutton, John R. 2001. Law/Society: Origins, Interactions, and Change. Thousand Oaks, CA: Pine Forge Press/Sage Publications.

The four required books each make a unique contribution to understanding law and society. Sutton’s Law/Society is our primary text. It provides a theoretical grounding in the sociology of law and then shows how these theories can be applied to understanding the development and application of the case law and the operation of the legal profession. Altschuler and Sgroi’s case book introduces both the structure and function of the legal system and the way that published judicial decisions (case law) develop law. McIntyre’s “reconstruction” will help us to think deeply about the role that law has and should play in sociological theory, as well as its

impact on the family and the workplace. We will turn to Abel's Law & Society Reader throughout the course for examples of the best theoretically guided contemporary research about law and society in the last 30 years. Plan to keep up in the readings from these books throughout the course.

The course content is organized into four sections. The first section, theories of law, will provide us with a conceptual framework that we will use to understand the operations of different aspects of law and the major alternative positions about these operations. We will then study law from the perspective of the general population, from the perspective of trial court operations and legal personnel, and from the perspective of appellate court processes. At each of these different structural levels, we will use the theories we studied in the first section to help us understand why the law works as it does.

WEEK/DATES/TOPICS/READING

1 9/8 LAW, SOCIETY, AND SOCIOLOGY
Types of law, Legal systems, Legal functions, Theoretical models

Readings: Sutton, Chapter 1
Abel, "What We Talk About"

SECTION I: THEORIES OF LAW

2 9/15 LEGAL AND SOCIETAL EVOLUTION
Legal system evolution, Classic theories, Law as civil contract

Readings: Sutton, Chapters 2 & 3: Maine, Durkheim and Marx
McIntyre, Chapters 1-4
Abel, #1, Personal Injuries

Film: Little Injustices

3 9/22 CREATING LAW
Sociological jurisprudence, Norms & law, Court organization

Readings: Sutton, Chapters 4 & 5: Weber, Holmes, Pound
McIntyre, Chapters 5-6
Abel, #10, Drug Laws

DEBATE I: DURKHEIM V. WEBER

SECTION II: LAW IN ACTION

4 9/29 COURT STRUCTURE, PROCESS AND OUTCOME
Court roles, Charging, Discretion, Plea bargaining, Sentencing

Readings: Abel, #5, Shoplifting
#6, Criminal Sanctions
#7, Plea Bargaining
#8, Holistic Effects
#9 Mandatory Sentencing
A&S, Court System (pp. 1-24)

5 10/6 COURTS IN CONFLICT
Conflict and law, Bases of social structure

Readings: Abel, #12, Organizational Compliance
#14, Why the “Haves” Come Out Ahead
#15, Race & Prosecutorial Discretion
#17, Language, Ideology

DEBATE II: MARX V. SOCIOLOGICAL JURISPRUDES

6 10/13 HOLIDAY

7 10/20 DISPUTES AND ALTERNATIVES TO LAW
Law and culture, Torts, Equity, Dispute management

Readings: Abel, #2, Dispute Management
#3, Automobile Accident Compensation
#4, Collective Law in the Cooperative
#18, Lay Expectations of Civil Justice
A&S, Chapter 1 (Arbitration)
Chapter 8, Torts
Chapter 9, Equity

Guest speaker: David Matz, JD, Alternative Dispute Resolution

DEBATE III: TRIAL V. MEDIATION

SECTION III: THE PRACTICE OF LAW

8 10/27 THE LEGAL PROFESSION
History, Definition, Professionalization

Readings: Sutton, Chapters 8, 9
Abel, #19, Lawyer/Client Interaction

Guest speaker: Practicing attorney

Midterm (takehome)

SECTION IV: THE LAW AND SOCIAL CHANGE

9 11/3 APPELLATE COURTS AND CASE LAW
Appellate court processes, *Stare decisis*, Precedent

A&S, Chapter 1 (Jurisdiction, Supreme Court)
Chapter 2, Courts & Legislatures
Chapter 3, Due Process of Law
Chapter 4, Precedent
Chapter 5, Limits on Courts
Sutton, Chapter ,: Voting Rights and School Desegregation

10 11/10 LAW AT HOME
History of family law, forms of solidarity

Readings: McIntyre, Chapter 7, Civil Contract and Family Life
Abel, #16, Familial-Based Justice

Film: The Road to Brown

11 11/17 LAW AT WORK
Employee rights, Affirmative action, Labor relations

Readings: Sutton, Chapter 7, Equal Employment Opportunity
McIntyre, Chapter 8, Working Life
Abel, #11, Worker Safety
#13, Political "Casework"

12 11/24 PROPERTY, CONTRACTS, REMEDIES
Social class and legal protection, legal impact

A&S, Chapter 6, Property
Chapter 7, Contracts
Chapter 10, Remedies

13 12/1 STUDENT PRESENTATIONS I

14 12/8 STUDENT PRESENTATIONS II

Final Papers Due 12/17.

THE DEBATE AND PAPER

Everyone in the class will participate in one of three debates, during weeks 3-7. The debates will provide an opportunity to review and critique alternative positions about the role of law in society and to evaluate these positions in light of the assigned readings through week 7. You will choose a debate in class and then meet with your group outside of class to plan your debate. At least one member of each group should meet with me to review your plans well in advance of the scheduled debate. The goal of each group is to highlight a theoretical perspective on law, critique an alternative perspective, and provide some supporting evidence for your position. Evidence in support of your position can include personal experience, news stories, legal sources and research articles, but it must build explicitly on the assigned readings. Other class members will be encouraged to ask questions and should be given an opportunity to make comments. Your grade will be based on your presentations as well as on typed up and referenced notes (with a bibliography) that you use for that presentation. A key focus in grading will be how well you show that you understand some relevant portion of the assigned readings.

The final paper and presentation can be on any sociological topic concerning the law that is related to materials included in sections III or IV. Your paper (and presentation) must build on the assigned readings and also include additional readings from the sociological literature. It must also include an analysis of case law. The primary focus of your paper could range from legal practice to the impact of law on voting rights, employment discrimination, or the family or the development case law about property or contracts. In any case, your paper must include references to the readings and some case records (appellate decisions), as well as references to some (5 or more) peer-reviewed journal articles beyond those assigned in class. You should plan to write about 20 pages. The presentation should be about 20 minutes in length, including time for discussion. Your presentation grade will take into account how well organized your presentation is and the quality of the supplementary materials you use (PowerPoint slides, web sites, handouts, or etc.).

There are considerable online resources that should help with the final paper. On the Healey Library web site, under "Databases and Indexes," you can find the Lexis/Nexis collection of court decisions and the Westlaw collection of legal documents. On the web, you can find the Massachusetts Social Law Library's extensive holdings.

Further information about both the debates and the papers will be distributed in class. Final papers are due 10 days after the last class.

CLASS PARTICIPATION AND ATTENDANCE

You must attend class regularly. Class discussion is an important part of the learning experience and important material that is not covered in the texts will be presented in class. I will try to help any student who must miss a class to review material presented in it, but I cannot take the time to do this if you do not attend class regularly or let me know that you need help.

Plan to participate in class. Listen to what is said, think about what you have read for class (in advance), and then ask questions and make comments, as appropriate.

GRADING

The basic grading scheme for the course is as follows:

Debate & notes	30%
Presentation	15%
Final Paper	45%
Participation	<u>10%</u>
	100%

Needless to say, plagiarism is never acceptable and the penalties for submitting work that is not your own are very severe. UMass Boston's policies on academic honesty are detailed in the Code of Student Conduct, at: http://www.umb.edu/student_affairs/programs/judicial/csc.html.

Law and society is a fascinating topic; we should have fun studying it together. Just keep up in the readings, attend class, and organize your work so that you are prepared for class discussion and other work. Speak to me whenever you have questions that are not resolved in class.

SUPPLEMENTARY READING

Abel, Richard. 1991. *American Lawyers*. Oxford University Press.

Baum, Lawrence. 2001. American Courts: Process and Policy, 5th ed. Boston: Houghton Mifflin.

Bortner, M.A. 1985. Inside a Juvenile Court: The Tarnished Ideal of Individualized Justice. New York: New York University.

Bonsignore, John J., Ethan Katsh, Peter d'Errico, Ronald M. Pipkin, Stephen Arons and Janet Rifkin. 1993. Before the Law: An Introduction to the Legal Process, 5th ed. Boston: Houghton Mifflin.

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

Gottfredson, Michael R. and Don M. Gottfredson. 1988. Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion, 2nd ed. New York: Plenum Press.

Harr, Jonathan. 1996. *A Civil Action*. New York: Vintage.

Spiro, George W. and James L. Houghteling, Jr. 1992. The Dynamics of Law, 3rd ed. New York: Harcourt Brace Jovanovich.

Vago, Stephen. 2006. *Law and Society*, 8th ed. Upper Saddle River, N.J.: Pearson/Prentice Hall.