

CRIM 720.1: Law and Social Science

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Spring 2019
Class meeting: Mason Global Center 1320A
Thursday 1:30 – 4:10 p.m.

COURSE DESCRIPTION AND PURPOSE

This seminar introduces students to theory and research in the law and society tradition. Broadly speaking, law and society scholars use social science to learn how the law operates in practice, rather than applying some prescriptive version of how the law *should* behave. The following claim that law and society scholarship rests upon is simultaneously simple and far-reaching: law, legal practices, and legal institutions can only be fully understood by examining and explaining them within social contexts. Thus unlike a jurisprudential approach to the law, law and society does not focus on the logical application of a set of abstract legal principles and precedents to the facts of a case in order to determine a legal outcome. Rather, law and society uses empirical data to describe and explain how broader social factors such as race, gender, and class influence how law is made, what it does, and how it changes over time. The contrast between traditional legal scholarship and law and society is sometimes described as law-on-the-books versus law-in-action.

Over the course of this semester, we shall look at how social theorists conceptualize and explain the relationship between law and society. For example, we shall examine how law shapes and is shaped by morality, rationality, and economic interests. We shall also consider how law achieves compliance and how it is applied by different legal actors, including police and judges. Other topics we will cover are law's potential to promote or limit social change and how law operates in different administrative contexts. We will also discuss how ordinary people think about and use the law in their everyday lives. A core theme throughout this course is the exploration of law's relationship to justice. By the end of the semester, you should have developed an understanding of the social processes that affect the behavior of legal actors.

This course places a strong emphasis on thinking critically about the topics it covers. This means that you will be expected to push beyond remembering or describing knowledge (although this is still important) to applying, analyzing, and evaluating it. Ultimately the goal is for you to develop and integrate ideas into a way of seeing things that is new to you. Knowledge creation is challenging, but its importance is demonstrated by its position atop Bloom's taxonomy of critical thinking (<https://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy/>).

A small class setting is as an ideal opportunity to raise and examine important questions, to explore and develop ideas, and to learn from one another. The focus of this course is not on me delivering information, but on all participants sharing responsibility for enriching the entire class's learning experience. The success of the course hinges on your collective participation and commitment to the goal of developing a trajectory of thinking critically and creatively. With practice and considerable effort this can become a habit of mind. For more on what critical thinking is, see: <https://stearnscenter.gmu.edu/teaching/developing-critical-thinkers>

Course Requirements and Grading

Your final course grade will be determined by the following weights:

10%	Class participation
20%	Class presentation
30%	Book review
40%	Final take-home exam

Class Participation

Class participation is essential. Your grade for class participation will be based on how much and how well you consistently:

- Contribute to the class's understanding of the material
- Relate the material to other course readings and topics
- Offer constructive criticism of the material
- Raise interesting questions about the readings and the session topic
- Promote a positive, healthy learning environment

How to approach the readings

It is extremely important that you come to class having read and thought about the readings assigned for that week. You should be familiar with (1) the reading's purpose; (2) key concepts and theories used; (3) the line of argument made; (4) and major findings and conclusions. You are encouraged to write summaries of these ideas in your own words, so you can recall them more easily during discussion. These will also make good study notes, especially for the take-home final.

A good understanding of the readings provides the foundation or "jumping off" point for an in-depth discussion. In our discussions, we shall want to go beyond merely summarizing material and toward identifying interesting issues that are worthy of further development. Some examples are:

- Assessing the strengths and weaknesses of the reading(s)
- Discussing the theoretical implications of a work
- Discussing the policy or practical implications of a theory or findings
- Comparing and contrasting different theoretical perspectives
- Suggesting a way to synthesize or integrate the different readings
- Relating the readings to current events or trends

As you read, I suggest you write down your discussion points and consider raising them in class.

Please bear in mind that all of you share responsibility for the quality of class discussion. Good class citizenship means being well prepared and making meaningful and constructive contributions throughout the entire semester.

Last, two or more excused/unexcused absences can result in you receiving a C grade for class participation.

Class presentation

For the last two classes you will have the opportunity to present on an issue related to the course. You are free to choose a topic that interests you, but you will need to articulate why it is relevant to this course and why we should care. I also encourage you to present your issue in the form of a question or questions. For example, for the first week you might ask, “What is law and society? How has it been described and what are some of the key related concepts and theories?” Note that you have to build the case you are making piece by piece (it cannot be found anywhere else, as it is a product of your own thought and industry). This process often includes identifying and explaining key concepts, integrating different perspectives, querying assumptions, marshalling evidence, and drawing logical conclusions. You will want to avoid a series of loosely connected ideas dealt with superficially. Presentations that identify and explore interesting ideas and reveal effortful deliberation (the criteria of depth and quality) are likely to fare best.

Grading will be based on the level of critical thinking demonstrated in the substance of the presentation, and on the quality of its delivery, including its organization.

This assignment has several purposes: (1) to give you an opportunity to demonstrate your critical thinking skills; (2) to give me a sense of your understanding of the material; and (3) most importantly, to foster an intellectual exchange of ideas that is insightful and rewarding. I encourage you to take an approach that enhances your class members’ learning experience.

The presentation should be 20 minutes with 10 minutes for questions.

Book Review

Students are required to write a book review of Chuck Epp et al.’s book, *Pulled Over: How Police Stops Define Race and Citizenship*. The book review should be in Word format, in the 2,500-4,000 word range (approximately 10-15 pages double-spaced), with 12-point font and 1-inch margins, exclusive of the reference section.

The book reviews are due electronically to me by NOON on March 7, 2018.

Useful guidance for writing a book review can be found at the following web site:
<http://writingcenter.unc.edu/handouts/book-reviews/>

Book reviews will be evaluated based on:

1. The extent to which the review provides a clear and succinct summary of the book
2. The organization and quality of the writing
3. The thoughtfulness of the critique

Very helpful examples of book reviews can be found at the *New York Review of Books* and in quality academic journals, such as *Law and Society Review*. Students are encouraged to examine them.

Final Take-Home Exam

The final exam will be a take-home exam based on course material. You are invited to submit one or two suggested exam questions by 6 p.m. on **Thursday, April 18**. I will consider all questions submitted before devising the final examination.

The final take-home exam will be distributed in class on **Thursday, May 2** and is due electronically to the instructor on **Thursday, May 9 by 5 p.m.** Students will be provided with several essay questions and will select one to answer. The exam essay should be in Word format, in the 2,500-4,000 word range (approximately 10-15 pages double-spaced), with 12-point font and 1-inch margins, exclusive of the reference section. Students should use the same citation method as that employed by a social science journal.

Grades

The overall grade for each of the course requirements will be weighted by the percentage indicated in the course requirements section. A final grade point average for the course will be calculated. Final grades will be determined by assigning the highest of the following grade categories the student's score meets or exceeds: A, A-, B+, B, B-, C, or F.

Students with Disabilities

If you have a disability and you need academic accommodations, please consult the Office of Disability Services at 703-993-2474 (<http://ods.gmu.edu/>) and see me. All academic accommodations must be arranged through that office.

Academic Integrity

All graded course work must be done independently. You are bound by the George Mason University Honor Code. Violations will be referred to the University Honor Committee. You may collaborate with other students in studying and discussing course topics, but your written course work must be entirely your own.

Special Note on Plagiarism

There are no excuses for plagiarism—deliberately handing in another person's material as your own—and none will be accepted. Without honest effort, a learning community has no substance or validity. For more on plagiarism, including sanctions for violations of the Honor Code, go to <https://oai.gmu.edu/mason-honor-code/>

Civility

Regarding electronic devices (such as laptops, cell phones, etc.), please be respectful of your peers and your instructor and do not engage in activities that are unrelated to class. Such disruptions show a lack of professionalism and may affect your participation grade.

Readings

Readings can be found on Blackboard (under "Course Content"). In addition you will need to acquire the following book on your own:

- Ewick, Patricia and Susan Silbey (1998). *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Epp, Chuck, Steven Maynard-Moody, and Donald Haider-Markel (2014). *Pulled Over: How Police Stops Define Race and Citizenship*. Chicago: University of Chicago Press.

Seminar Topics and Assigned Readings (by class session – subject to change by instructor)

INTRODUCTION

Jan. 24 What is Law and Society?

Silbey, Susan. (2002). “Law and Society Movement,” in H. Kritzer, ed., pp. 860-63, *Legal Systems of the World: A Political, Social and Cultural Encyclopedia*. Volume 2: E-L. Santa Barbara, CA: ABC: CLI.

Seron, Carroll, Susan B. Coutin, and Pauline W. Meeusen. (2013). “Is there a Canon of Law and Society?” *Annual Review of the Law and Social Sciences* 9: 287-306.

Calavita, Kitty. (2016). “Introduction” in *Invitation to Law and Society: An Introduction to the Study of Real Law*, pp. 1-10. Chicago: University of Chicago Press (2nd edition).

Arterberry, Andrea. (2015). “Does Anyone Own the Cornrow?” *New York Times*, November 3.

Renee Rogers assignment

SOCIAL THEORIES OF LAW

Jan. 31 Law and Solidarity

Durkheim, Emile (1901/1983). “The Evolution of Punishment,” in S. Lukes and A. Scull, eds., pp. 102-130, *Durkheim and the Law*. Oxford: St. Martin Robertson.

Sutton, John (2001) “Evolutionary Theories of Legal Change,” in *Law/Society: Origins, Interactions, and Change*, pp. 25-60. Thousand Oaks, CA: Pine Forge Press.

Feb. 7 Law, Class, and Capitalism

Hay, Douglas (1975). “Property, Authority, and the Criminal Law,” in D. Hay, P. Linebaugh, J. G. Rule, E. P. Thompson, and C. Winslow, eds., pp. 17-63, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*. New York: Pantheon Books.

Natapoff, Alexandra (2015). “Misdemeanors.” *Annual Review of Law and Social Sciences* 15: 255-67.

Feb. 14 Law and Rationality

Klockars, Carl B. (1985). “Selective Enforcement,” in *The Idea of Police* (pp. 92-119). Newbury Park, CA: Sage.

Ulmer, Jeffery and John H. Kramer (1996). “Court Communities under Sentencing Guidelines: Dilemmas of Formal Rationality and Sentencing Disparity.” *Criminology* 34: 383-408.

Mastrofski, Stephen D., R. Richard Ritti, and Debra Hoffmaster (1987). “Organizational Determinants of Police Discretion: The Case of Drinking-Driving.” *Journal of Criminal Justice* 15: 387-402.

Feb. 21 **Black's Theory of Law**

Black, Donald (1971). "The Social Organization of Arrest." *Stanford Law Review* 23: 1087-1111.

Mastrofski, Stephen, et al. (2000). "The Helping Hand of the Law: Police Control of Citizens on Request." *Criminology* 38: 307-342.

OBEYING, INTEPRETING, and USING THE LAW

Feb. 28 **Compliance with the Law (Legitimacy and Procedural Justice)**

Tyler, Tom R. (2004). "Enhancing Police Legitimacy." *The Annals of the American Academy of Political and Social Science* 593: 84-99.

Berrey, Ellen, Steve G. Hoffman, and Laura Beth Nielsen (2012). "Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation." *Law and Society Review* 46: 1-36.

Tyler, Tom R. Jonathan Jackson, and Avital Mentovich (2015). "The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact." *Journal of Empirical Legal Studies* 12: 602-36.

Mar. 7 **Investigatory Stops and Race**

Epp, Chuck, Steven Maynard-Moody, and Donald Haider-Markel. (2014). *Pulled Over: How Police Stops Define Race and Citizenship*. Chicago: University of Chicago Press.

BOOK REVIEW PAPERS DUE BY NOON

SPRING BREAK (MARCH 11 - MARCH 17)

Mar. 21 **Interpreting the Rule of Law**

Gould, Jon B., and Stephen D. Mastrofski (2004). "Suspect Searches: Assessing Police Behavior Under the U.S. Constitution." *Criminology and Public Policy* 3: 315-62.

Frohmann, Lisa (1997). "Convictability and Discordant Locales: Reproducing Race, Class, and Gender in Prosecutorial Decisionmaking. *Law and Society Review* 31: 531-55.

PROSPECTS FOR CHANGE

Mar. 28 **Law and the Limits to Legal Change**

Galanter, Marc (1974). "Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review* 9: 95-160.

Lynch, Mona and Marisa Omori (2014). "Legal Change and Sentencing Norms in the Wake of *Booker*: The Impact of Time and Place on Drug Trafficking Cases in Federal Court." *Law and Society Review* 48: 411-445.

April 4 **Popular Interpretations of Law**

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

SPECIAL TOPICS

April 11 **Law and Technology**

Kahan, Dan, David Hoffman, and Donald Braman (2009). “Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism.” *Harvard Law Review* 122: 837-906.

LEGAL PLURALISM

April 18 **Many Laws and Many Orders (Visiting Speaker: Hillary Mellinger – American University)**

(Potential Final Exam Questions due This Date)

Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Philip G. Schrag (2007). “Refugee Roulette: Disparities in Asylum Adjudication.” *Stanford Law Review* 60: 295-411.

April 25 Presentations

May 2 Presentations (**Take-home questions distributed**)

May 9 Take-home due electronically by 5 p.m.