THE RULE OF LAW:
Societies and the Social Sciences

SYLLABUS

Lectures:
Main Bldg. Silver Center Rm. 206
Tuesdays and Thursdays 2:00-3:15 PM

Recitations:
Section 009 Friday 9:30-10:45 PM 25 W. 4 St. Rm. C-3
Section 010 Friday 11:00-12:15 PM 48 Cooper Square Rm.118
Section 011 Monday 2:00-3:15 PM Silver Center Rm.405
Section 005 Friday 3:30:00-4:45 AM Silver Center 518

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This course is a survey course in social science approaches to law. It offers an overview of the theories that social scientists have developed to understand law, and the research they have carried out to test those theories. The course takes up such questions as: How have social scientists conceptualized law? How do social science perspectives on law contrast with those of philosophy and jurisprudence? What social processes shape the formulation of law, and its application to particular cases? What roles does law play in the functioning of society? How is it implicated in social change? What problems arise when law is used to overcome disadvantages associated with class, race, sex, and sexual orientation? The thread that runs through these different topics is the notion of ruling or governing a society through law. What implications follow from ruling by and through law rather than in other ways? What strains and tensions arise from this enterprise? What social processes stand in the way of ruling with law? We examine these issues through the writings and ideas of historians, sociologists, anthropologists, political scientists, psychologists, economists and legal scholars, and through a range of empirical studies of law in past and contemporary
societies. The empirical studies are chosen to exhibit the range of methodologies used in the social sciences (fieldwork, surveys, historical and comparative studies). Court opinions are included among the readings to introduce the discourses and argumentative strategies used in judicial opinions, as well as the legal philosophies they embody.


*The Rule of Law* course packet

**Course Requirements**

There will be three short papers during the semester, and a final take-home essay exam. There will also be several extremely short writing assignments (one or two pages) that will not be graded, but that are required. Your grades on the papers and exam will be used to compute a base grade, in which 20% will come from the first paper, 25% each from the second and third papers, and 30% will come from the final exam. The base grade will be lowered if you do not do the ungraded short writing assignments.

Classroom discussion is a collective good. You are expected to read assigned readings in advance of class, and to come prepared to contribute to classroom discussion, for the benefit of all. Your contribution to the discussion will be graded. Your course grade can be raised or lowered on the basis of your contributions to class discussion in both lecture and recitation section. Attendance will be taken at the recitation sections.

Assignments should be handed in on the date on which they are due. Under exceptional circumstances, late papers will be accepted, at the discretion of the instructor, up to the point where the papers are discussed in class or recitation section. Grades of work submitted after the due date may be lowered. Unless you have been kidnapped or are in a hospital through no fault of your own (suicide attempts do not count), you should obtain permission to hand in a paper late from the professor at the earliest possible date. No one has an automatic right to have a late paper accepted. Medical excuses are not granted automatically. Wherever possible, they should be documented with a doctor’s note or a copy of a death certificate (in case of a death in the family). Preceptors do not have the authority to allow late submissions. Only the professor can do this.

You should keep a copy of all papers you submit.

Only under exceptional circumstances will a grade of Incomplete be given at the end of the semester. It will be given only if the instructor is satisfied as to the reasons course work has not been completed on a timely basis, and if the instructor anticipates that the student will pass the course.

If you must miss a class because of illness, religious holiday, or other reason, it is your responsibility to obtain lecture notes from another student.

**PLAGIARISM**
Plagiarism is taking credit for someone else’s work or ideas. It is considered unacceptable in an academic setting, and is contrary to the rules at NYU. When you use someone else’s words, you should put quotations around them, and cite the source. When you use someone else’s ideas, you should identify the source, giving credit where credit is due, even if you paraphrase. If you fail to do this and are caught, you will receive an F on the plagiarized assignment, and may be subject to further disciplinary action. If you are in doubt about whether and how to cite a source while you are writing a paper, you should consult the instructor or your preceptor.

Unless instructed otherwise, you should do all of your writing assignments alone, without assistance from anyone else, whether a fellow student or someone else. You should also not provide assistance to someone else who is working on an assignment. If you give your paper to someone else, and that person plagiarizes it, you are guilty of aiding and abetting plagiarism. In that circumstance, you may be liable for the same penalties as the person who plagiarizes.

Unless you are explicitly instructed otherwise, web sites should not be used in writing papers for this course.

If you are unclear about an assignment, or have any questions about it, you should seek clarification from the instructor.

LECTURE TOPICS AND READINGS
(Dates are approximate)

I. Introduction: Law in the Social Sciences

A. In this unit of the course we contrast social-scientific thinking about law to the approach taken in philosophical jurisprudence. When social scientists speak of law, what do they mean? What sorts of questions about law do they ask? What sorts of problems do they address? Where do they look for answers?

Readings:
  Definitions of Law; Issues in the Definition of Law
  Cicero, De republica (On the Commonwealth) (excerpt)
  Gustav Radbruch, "Five Minutes of Legal Philosophy," in Rechtsphilosophie Pater Schneider, 8th ed.
II. Creating and Maintaining the Rule of Law  

Why would one want to govern a society through law? Assuming that one  
 wants to do so, how can it be done? We begin by reading an extract from  
 one of the seminal documents of social contract theory, and then some  
 short essays by two figures who tried to come to terms with the  
 practicalities of setting up a new type of government. We then look  
 further at two central issues raised by these documents, the division of  
 powers of government, and controversies surrounding the role of judges in  
 interpreting the law.

Readings:

John Locke, Second Treatise on Civil Government [chs. 1-5 (through  
 para. 34), 9, 11, 12 (through para. 144)]
James Madison and Alexander Hamilton, Federalist Nos. 51, 78.
Robert H. Bork, "Judicial Review and Democracy"
William J. Brennan, Jr. "Interpreting the Constitution"
H. Richard Uviller, "Citizens Have No Right to Private Arms"
Linda Greenhouse, “Court Counts the Ways Guns Can Be Used”
"Interpreting a Statute: Holmes Dissenting" (Northern Securities  
 v. U.S., 1904)  
"Interpreting a Statute: Kaiser v. Weber" (excerpts from opinions  
 of Justices Brennan, Burger and Rehnquist)

"Interpreting a Statute: A Congressman Reacts" (Hon. John M.  
 Ashbrook)  
Opinions of Justices Frankfurter, Brennan, Douglas and Harlan in  
 Poe v. Ullman; opinions of Justices Douglas  
 Goldberg, White, Black and Stewart in Estelle T. Griswold et  
 al. v. Connecticut.
Sandra Day O’Connor, concurring opinion in Rosenberger v.Rector  
 and Visitors of the University of Pennsylvania

III. The Effects of Law  
Thurs. Feb. 3

What does law do? How does it shape individual attitudes and behavior?  
 What larger impact does it have on society? What are the limitations in  
 the capacity of law to change behavior? What implications do these  
 limitations have on the use of law to bring about social change?  

Readings:

Tom Tyler, "Normative Issues and Compliance," pp. 22-27 in Why  
 People Obey the Law (Yale University Press, 1990)  
 graphs dealing with motorcycle fatalities; tables dealing with the  
 deterrent effect of the death penalty on homicides,  
 the supply and demand of marijuana, the pace of school
desegregation in the U.S. South, and trends in lawful abortions
David Caplowitz, "The Merchant and the Low-Income Consumer" 
Andrew Sinclair, _Prohibition: The Era of Excess_ (excerpt).
Newspaper articles bearing on legal effectiveness:
(a) Jane Brody, "N.J. Bike Helmet Law Is Found to Save Lives"
(b) Anthony Ramirez, "Lower Cigarette Sales Linked To Tax Rise"
(c) Eric Peters, "Highways Are Safe at Any Speed"
(d) Rose Gutfeld, "Surprise Inspections of 90 Meat Plants Across U.S. Find Numerous Infractions"
(e) Kenneth Noble, "Farm Workers Fault Lack of Enforcement of Sanitation Rules"
(f) Alan Finder, "Despite Tough Laws, Sweatshops Flourish"
(g) David Firestone, "Inquiry Finds Housing Violations Are Unchecked"
(h) Irvin Molotsky, "Laws Cost Car Buyers, Study Finds"
(i) Alan Finder, "New York Builders Flouting Wage Law to Increase Profits"
(j) Peter Kilborn, "Law Failed to Stem Illegal Immigration, Panel Says"
(k) Robert Pear, "U.S. to Reconsider Denial of Benefits to Many Disabled"
(l) Peter Kilborn, "Backlog of Cases Is Overwhelming Job-Bias Agency"

IV. Law and Social Organization

Here we examine social science perspectives on the ways law is implicated in long-term social change. Each perspective, in different ways, is concerned with the qualities that distinguish law in modern times. We study in depth three classical social thinkers: Emile Durkheim, Karl Marx and Max Weber. For each of these three we read extracts from their writings, writings by subsequent social scientists who either work within the tradition established by these three, or call it into question; and empirical studies that bear on their ideas.

A. Evolutionary/Functionalist Theories
   Tues, Feb. 8, Thurs, Feb. 10

Readings:

John R. Sutton, _Law/Society_, ch. 2.
Emile Durkheim, _The Division of Law in Society_ (excerpts).

Key Features of Tribal/Modern Paradigm
Videos (to be shown in recitation sections): "The Meat Fight," "Argument about a Marriage," "The Axe Fight." [these videos deal with dispute processing among band and tribal peoples of Africa and South America]

B. Marxian Theories
   Tues. Feb. 15, Thurs. Feb. 17

Prior to reading Marx we read the following items bearing on the implications of state formation for law:

Hebrew Law (excerpts from Exodus, Deuteronomy, Leviticus)
Babylonian Law (Prologue and Epilogue [Greenberg translation] and excerpts from the Laws of Hammurabi)

Readings:
   Sutton, Law/Society, ch. 3
   Karl Marx, A Contribution to the Critique of Political Economy (excerpt from Introduction)
   Friedrich Engels, The Origin of the Family, Private Property, and the State (excerpt)
   Friedrich Engels, Letters to Joseph Bloch and Conrad Schmidt
   Friedrich Engels, "The English Ten Hours Bill," from Articles on Britain (excerpt)
   Florence Graves and Lee Norrgard, "Money to Burn: How Chicago's Commodity Traders Get Their Way on Capitol Hill"
   Jonathan Dahl, "Congress Passes a Law Likely to Force Many Hotels to Install Room Sprinklers"
   Mark Green, "When Money Talks, Is It Democracy?"
   William Domhoff, The Higher Circles (excerpt).

C. Weberian Theory

Prior to reading Weber we read descriptions of legal decision-making processes in different societies that illustrate "ideal types" in his analysis of law.

Readings:


Exhibit 5. Declaration of the Rights of Man and of the Citizen (1789) (Greenberg translation).

Sutton, Law/Society, ch. 4

Weber’s Ideal Types of Law,” “Branches of Civil-Law Tradition Law” and “Law and the Rise of Capitalism (Weber’s Model)”

Max Weber, “The Three Types of Legitimate Authority,” “Legal Authority with a Bureaucratic Administrative Staff,” “On Law in Economy and Society”


V. Divergences in the Evolution of Capitalist Law

We examine the capacity of classical and contemporary social theory to illuminate legal developments in two industrial capitalist societies: Germany between 1920 and 1945, and the United States since it became independent. How can one account for the divergent political trajectories of these two industrial nations? Given their political differences, what similarities and what differences developed in their legal systems? Attention is given to law's engagement with issues associated with individual rights and to government-economy relations. How does law cope with growth in the scale of the economy? With problems associated with industrialization? How extensively should government regulate the economy? What problems arise from regulation?

1. Germany: from the Weimar Republic to Nazi Law

Readings:


2. Liberal Democracy: United States, 18-20th century

Readings:

"Law and Economy: Developments in 19th and 20th Century American Legal History"
Sutton, Law/Society, ch. 5.
Walter Gellhorn, Individual Freedom and Governmental Restraints (excerpts)
Nebbia v. New York (1934)
Newspaper articles on regulation and deregulation:
(a) Marian Burros, "Congress Moving to Revamp Rules on Food Safety"
(b) Bob Herbert, "Bad Meat and Politics"
(c) Bob Herbert, "Contract on the Consumer"
(d) Albert Shanker, "The Hamlet, N.C., Fire"
(e) "Residents Oppose Proposal To Build Student Mosque"
(f) Robert Bleiberg, "FDR Was Right: Federal Insurance of Bank Deposits Leads to Disaster"

Video: "The Regulators: Our Invisible Government" VCC 0039

VI. The Possibilities and Limitations of Law in Overcoming Social Inequality

American reformers of the twentieth century have debated the use of law to help overcome disadvantages originating in civil society or in earlier acts of government. We examine such efforts in relation to social class, race, sex and sexual orientation. What sorts of legal efforts have been made, and with what effects? What controversies have arisen over such efforts? How do law-makers and citizens come to grips with tensions between formal equality and efforts to advance particular groups?

1. Class
   Thurs. Mar. 24

Readings:

graphs and tables on distribution of wealth and income in packet on recent trends in stratification, from Statistical Abstract of the United States and U.S. Department of Labor
Alan Finder, "Some of the Rich Pay Less Tax Than the Other Homeowners"
Robert Pear, "As Welfare Overhaul Looms, Legal Aid for Poor Dwindles," New York Times

2. Race
Tues. Mar. 29, Thurs. March 31, Tues. Apr. 5

Video: "The Road to Brown: The Untold Story of the Man Who Killed Jim Crow. VCA 2033

Readings:
Haywood Burns, "Racism and American Law."
Excerpts from Supreme Court decision in Wygant v. Jackson Board of Education.
Excerpts from Supreme Court decision in Loving v. Virginia
Sutton, Law/Society chs. 6 and 7.
Newspaper clippings on affirmative action:
(a) Mark Green, "How Minorities Are Sold Short"
(b) Thomas Sowell, "Affirmative Action: From Bad To Worse"
(c) Neil A. Lewis, "Court Ruling Encourages Affirmative Action"
(d) Robert Pear, "Courts Are Undoing Efforts To Aid Minority Contractors"
(e) Russell Nieli, "Majority Rejects Race Preference"
(f) "Set Set-Asides Aside," The New Republic May 5, 1986

3. Sex
Tues. Apr. 12

Readings:

Time Table of Women’s Rights Cases
Excerpts from Supreme Court decisions in: Muller v. Oregon, Weinberger v. Wiesenfeld, Stanton v. Stanton, United States v. Virginia
4. Sexual Orientation Thurs. Apr. 14

Readings:
Testimony of Retired General Norman Schwarzkopf, Marine Colonel Frederick Peck and Major Kathleen Bergeron, "Policy Concerning Homosexuality in the Armed Forces," Hearings before the Senate Committee on Armed Services.
Baehr v. Lewin decision (Supreme Court of Hawaii, on gay marriage).
Elizabeth Birch, "Testimony Against DOMA before the House Judiciary Committee" (www.hercusa.org/issues/leg/doma/hearings.html).
Charles Colson and Nancy Pearcey, "Why Not Gay Marriage?" (www.christianity.net/ct/6TC104.html)
Robert H. Knight, "Why We Need the Defense of Marriage Act" (www.frc.org/frc/podium/pd96g2hs.html)

VII. Law as Social Process

Modern law is applied to individual cases in courtrooms. Here we examine the court as an organization that processes cases. How do organizational processes shape outcomes in the lower criminal courts and in civil suits? What implications do these processes have for the structural theories of law examined earlier in the course? Are the differences between modern and "primitive" law as sharp as some scholars have suggested? We also examine alleged problems of overcrowding in the courts, the so-called "litigation crisis," and proposed "alternatives" to litigation.

1. The Lower Criminal Courts
   Tues. April 19, Thurs. Apr. 21
   Readings:

2. Private Disputes and the Law
   Tues. Apr. 26, Thurs. Apr. 28
   Video: "Little Injustices: Laura Nader Looks at the Law." VCA 1050.
   Readings:
   Howard Erlanger, Elizabeth Chambliss and Marygold Melli,"Partici-

Newspaper clippings on civil litigation:
(b) Richard Mahoney, "The Courts Are Curbing Creativity"
(c) Tom Goldstein, "Smoker’s Death Turns Eyes to Court"
(d) "The American Litigation Mess Expands"
(e) Milo Geyelin, "Product Suits Yield Few Punitive Awards"
(f) Stephen Labaton, "Judges Struggle To Control a Caseload Crisis"
(g) Stephen Labaton, "Courts Rethinking Rule Intended to Slow Frivolous Lawsuits"
(h) Kevin Sack, "More Malpractice Than Lawsuits, New York Medical Study Suggests"
(i) Jane Brody, "Personal Health"
(j) Deborah L. Jacobs, "Controlling Litigation Costs with a Neutral Third Party"
(k) "'Lemon Law' Methods Upheld in New York"

The take-home final will be distributed in class on the last lecture of the semester (April 28), and will be due on the day and time that the University has scheduled the in-class exam (which will not be held). This day has not yet been announced. It will be in the week of May 4-11. Students should make vacation plans on the assumption that they will be spending that week on exams, and should not schedule vacation trips in that time period.