

# Law and Society

LWSOC - UA 1-001

SOC - UA 413-001

Mon, Tues, and Thurs 1:30-3:35pm

Meyer Hall, Room. 261

## Instructor: John Halushka

Office Hours: Tues and Thurs 4:00-5:00pm or by appointment

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## Course Description

This course is designed to introduce students to the social scientific study of law. Drawing on a variety of theoretical and methodological perspectives, the goal of this course is to teach students how to think and write critically about law, legal institutions, legal actors, and the reciprocal relationship between law and society. Some of the major themes addressed in the course are: What are the origins of law? Does law transcend human existence or is it a “social construction”? Whose interests does the law represent? Does law reflect societal consensus about what is right and wrong or does law reflect the interests of certain groups over others? How do political actors use law to further their interests? Does law remedy or reinforce social inequality? How does law operate in a global society?

The course covers five main areas of law and society research: (1) Theories of jurisprudence and the sociology of law; (2) Constitutional law and social change; (3) Criminal law and mass imprisonment; (4) Civil law and the politics of tort reform; and (5) International law and human rights. In each of these areas of study, our goal is to combine legal analysis with empirical social science research to better understand how law shapes social and political institutions, and in turn, how these institutions shape how laws are created, interpreted, and enforced.

## Grading and Requirements:

All reading assignments should be completed *before* class. You will be expected to come prepared to ask questions and critically discuss major issues and arguments. Students will be graded based on the following:

- **Attendance and Participation (20%):** Attendance and class participation are crucial for success in this class. Because this is an accelerated summer course, each class meeting is the equivalent of an entire week of class in a semester-long course. Moreover, your active participation in class discussions and other activities is essential not only for your own academic development, but also for that of your peers. As a result, you are expected to attend all classes unless you have spoken with the Instructor *before* class and have valid excuse. For every unexcused absence, you will lose 3 percentage points off your final grade.

- **Weekly Discussion Memos (6) (60%):** At the end of each week you will be required to write a discussion memo based on your reaction to the week's assigned readings.
  - Your memos should be a maximum of 750 words (about 3 pages, double spaced with 12 point font)
  - Memos should be posted to the NYU Classes website under the Forums tab by Sunday evening at 5pm. Please upload them as an attachment. Memos will not be accepted after Sunday at 5pm.
    - Note: The final memo will be due on Wednesday, July 1 by 5pm
  - Each memo will be worth 10 percentage points of your grade
  - Your essays will be graded on your ability to accurately summarize the main arguments and evidence presented in the readings, as well as your ability to critically evaluate the author's arguments
  - Some questions you should address in your memo are:
    - What is the author's research question(s)?
    - What are the author's major arguments?
    - What evidence does the author provide to substantiate her or his claims?
    - What is your reaction to the reading? What parts of the argument do you find convincing and what parts do you find unconvincing? What are other issues that the author leaves unaddressed? How does the author's argument relate to other ideas we have discussed in class? Can you think of examples from history or the news that either support or refute the author's argument?
  
- **Weekly Discussion Leadership (20%):** During the first half of class every Monday we will review and discuss the previous week's readings before moving on to the new material. The job of the Weekly Discussion Leader will to read her or his classmates' weekly discussion memos and lead a discussion based on the issue raised in the memos. You will be graded on your ability to provide a review of the previous week's material and incite a lively class discussion. How you do this is entirely up to you. You are encouraged to be creative: ask interesting and difficult questions; play devil's advocate; divide the class and have a debate; present visual aids. Whatever you choose to do, make things interesting for yourself and your classmates. The instructor will also read the weekly memos and will serve as the discussion moderator. However, these discussions depend heavily on student participation. If no one talks we will sit in an awkward silence for an hour.

### Required Books

You may purchase the required texts at the NYU Bookstore. They are also on reserve at Bobst Library. All other materials will be available on the course's NYU Classes website [CLASSES]

Scheingold, Stuart A. 1974 [2011]. *The Politics of Rights: Lawyers, Public Policy, and Political Change*, Second Edition. Ann Arbor, MI: University of Michigan Press

Rosenberg, Gerald N. 1991 [2008]. *The Hollow Hope: Can Courts Bring About Social Change?* Second Edition. Chicago, IL: University of Chicago Press.

Alexander, Michelle. 2010 [2012]. *The New Jim Crow: Mass Incarceration in an Age of Colorblindness*, Revised Edition. New York: The New Press

Haltom, William and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago, IL: University of Chicago Press

### **Community of the Mind**

“New York University is a community of scholars who value free and open inquiry...As scholars committed to the critical evaluation of ideas, free of personal prejudice, we also have an obligation to one another to create an educational atmosphere of mutual trust and respect in which differences of opinion can be subjected to deliberate and reasonable examination without animus.” - NYU Academic Integrity Policy

In this class we will discuss controversial topics such as racism, sexism, homophobia, and socioeconomic inequality. When discussing such topics, disagreement will be inevitable and this is okay. However, it is important to remember to respect the opinions of your fellow classmates. The following behaviors will NOT be tolerated: using raised voices or derogatory language; behaving in an intimidating way; dominating the conversation by not giving others fair opportunity to participate; or ridiculing another person for his or her ideas.

### **Academic Integrity**

Please be aware of NYU’s policy on academic integrity, which can be found here:

<http://cas.nyu.edu/page/academicintegrity>

Some important points to remember:

“Academic honesty means that the work you submit — in whatever form — is original. Obviously, bringing answers into an examination or copying all or part of a paper straight from a book, the Internet, or a fellow student is a violation of this principle. But there are other forms of cheating or plagiarizing which are just as serious — for example, presenting an oral report drawn without attribution from other sources (oral or written), writing a paragraph which, despite being in different words, expresses someone else’s idea without a reference to the source of the idea, or submitting essentially the same paper in two different courses (unless both instructors have given their permission in advance). Receiving help on a take-home examination or quiz is also cheating — and so is giving that help — unless expressly permitted by the instructor (as in collaborative projects). While all this looks like a lot to remember, all you need to do is to give credit where it is due, take credit only for your original ideas, and ask your instructor or advisor when in doubt.”

When quoting or paraphrasing from course materials please be sure to cite the author and page number (e.g. Banks and O’Brien, p. 31). You may cite lecture notes by making reference to the date (e.g. Lecture Notes 2/11/14) I will investigate any possible instances of plagiarism or academic dishonesty. If I conclude that you engaged in academic dishonesty on an assignment you will receive a zero on the assignment and possibly face further disciplinary action from the University.

### **Cell Phones, Laptops, and other Electronic Devices**

Please put your cell phones on “silent” during class and do not answer calls or respond to text messages during class. Responding to calls or texts not only distracts you from the discussion, it also distracts other students and the instructor.

If you use a laptop, you may only use it for note taking purposes. If I find that students are using their laptops for any other purposes besides note taking (e.g. checking email, chatting with friends, using social media) I will ban the use of laptops in class.

### **Email Policy**

I will only respond to student emails for two reasons: (1) notifying me of an absence ahead of time. Do not email me an excuse for your absence after the fact. Email me *before* your absence takes place. Please note that just because you email me ahead of time does not mean your absence is automatically excused. You must have a legitimate reason for being absent (e.g. illness, family emergency, a prior obligation planned well in advance that you cannot get out of); (2) Scheduling an office hours appointment outside of the normal times. Do not email questions about course materials. You should ask me before or after class or come to office hours and ask in person. Also, do not email me your memos; they should be posted to the Classes website under the Forum tab.

### **Course Outline:**

#### **Week 1 - Theoretical Foundations of Law and Society: Classical and Contemporary Perspectives**

*What is the relationship between morality, society, and law? Does law transcend human existence or is it an invention of human society? Is there an objectively “right” way to interpret the law or does the subjectivity of legal actors always bias legal interpretations? Is law a universal set of rules or does it systematically favor certain groups over others?*

#### **Tuesday, May 26**

Introduction and Course Overview

- Required Readings:
  - No assigned readings

#### **Thursday, May 28**

Classical and Contemporary Theories of Jurisprudence

- Required Readings:
  - Christopher Banks and David O’Brien – “The Politics of Law and Jurisprudence” [CLASSES]
  - David Kairys – Introduction to *The Politics of Law* [CLASSES]
- Optional Readings:
  - Derek Bell – “Who’s Afraid of Critical Race Theory?” [CLASSES]

- Martha Albertson Fineman – “Introduction: Feminist and Queer Legal Theory” [CLASSES]

### Sunday, May 31

- Memo #1 Due by 5pm

### **Week 2 - Law, Culture, and Politics: Consensus or Conflict?**

*Does law represent societal consensus about what is right and wrong, or does it represent the interests of certain groups at the expense of others? Why are “rights” such a powerful symbol in American political culture? How do political actors use “rights” as symbols to further their interests?*

### Monday, June 1

Review and Discussion of Jurisprudence; Introduction: Consensus vs. Conflict Perspectives in Law and Society Research

- Required Readings:
  - Scheingold - *The Politics of Rights* (Chapter 1)

### Tuesday, June 2

American Culture and the Myth of Rights

- Required Readings:
  - Scheingold - *The Politics of Rights* (Chapters 2-4)

### Thursday, June 4

American Culture and the Politics of Rights

- Required Readings:
  - Scheingold - *The Politics of Rights* (Chapters 6-9)

### Sunday, June 7

- Memo #2 Due by 5pm

### **Week 3 - Constitutional Law and Social Change: Does Supreme Court Litigation Cause Society to Change?**

*Does litigation bring about social change? Can law be used to remedy social inequality? Do Supreme Court rulings cause social change or do they simply validate social change that has already occurred?*

### Monday, June 8

Review and Discussion of Scheingold; Introduction to Constitutional law and social change

- Required Readings:
  - Alan Freeman – “Antidiscrimination Law From 1954-1989: Uncertainty, Contradiction, Rationalization, and Denial” [CLASSES]
  - *Plessy v. Ferguson* [CLASSES]
  - *Brown v. Board of Education* [CLASSES]

- Optional Reading
  - Anthony Walsh and Craig Hemmens – “Making Law” [CLASSES]

Tuesday, June 9

The Dynamic vs. The Constrained Court; Did *Brown v. Board of Education* cause social change?

- Required Readings:
  - Rosenberg - *The Hollow Hope* (Introduction and Chapters 1-2)

Thursday, June 11

Was *Brown* a catalyst for social change?; Is Rosenberg right about same-sex marriage?

- Required Readings:
  - Rosenberg - *The Hollow Hope* (Chapters 3, 5, 12)
- Optional Readings
  - Rosenberg - *The Hollow Hope* (Chapters 13)
  - Michael McCann – “Reform Litigation on Trial” [CLASSES]
  - Martha Nussbaum - “A Right to Marry? Same-Sex Marriage and Constitutional Law” [CLASSES]

Sunday, June 14

- Memo #3 Due by 5pm

**Week 4 - Criminal Law, the War on Drugs, and Racial Inequality: The New Jim Crow?**

*Why does the United States have the world’s highest incarceration rate? Are these high rates of incarceration simply a reflection high rates of crime and drug abuse, do other factors explain these trends? What effects has the War on Drugs had on society today? How does the United States continue to grapple with issues of crime control, civil rights, and racial inequality?*

Monday, June 15

Review and discussion of Rosenberg; Introduction to criminal law, the War on Drugs, and mass imprisonment

- Required Readings:
  - Michelle Alexander – *The New Jim Crow* (Introduction and Chapter 1)
  - David Garland – “The Meaning of Mass Imprisonment” [CLASSES]
- Optional Reading
  - Loic Wacquant – “From Slavery to Mass Incarceration” [CLASSES]

Tuesday, June 16

The War on Drugs, Civil Rights, and Racial Inequality

- Required Readings
  - Michelle Alexander – *The New Jim Crow* (Chapters 2-4)
- Video: “The Hunted and the Hated”

### Thursday, June 18

Critiques of *The New Jim Crow*; Making sense of Ferguson and Baltimore

- Required Readings
  - Michelle Alexander – *The New Jim Crow* (Chapters 5-6)
  - James Forman, Jr – “Racial Critiques of Mass Incarceration: Beyond the New Jim Crow” [CLASSES]
  - Video: “The House I Live In”

### Sunday, June 21

- Memo #4 Due by 5pm

### **Week 5 - Civil Law and the Politics of Tort Reform: Are Americans Overly Litigious?**

*Is it true that Americans sue each other too much? What do social scientists have to say about the matter? What role have corporations, lawyers, the media, and politicians played in “tort reform” movement in the United States?*

### Monday, June 22

Review and Discussion of Alexander; Introduction to tort reform

- Required Readings
  - William Haltom and Michael McCann – *Distorting the Law* (Chapters 1)

### Tuesday, June 23

The media, politics, and tort reform; empirical research on disputes and civil litigation

- Required Readings
  - William Haltom and Michael McCann – *Distorting the Law* (Chapters 2-3)

### Thursday, June 25

Case study: the McDonald’s hot coffee case

- Required Readings
  - William Haltom and Michael McCann – *Distorting the Law* (Chapters 6)
  - Video: *Hot Coffee*

### Sunday, June 28

Memo #5 Due

### **Week 6 - Human Rights, Genocide, and International Law**

*Are human rights universal or are they an invention of the West? How can we reconcile universal human rights in a global, multicultural society? How has the international community dealt with genocide and crimes against humanity? What legal mechanisms do post-genocide countries use to seek justice for those harmed? Why do societies vary in their use of transitional justice tools?*

### Monday, June 29

Review and Discussion of tort reform; Reconciling human rights and multiculturalism

- Required Readings:

- Thomas M. Franck – “Are Human Rights Universal” [CLASSES]
- Ellen Wiles – Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality” [CLASSES]
- Optional Reading:
  - Lisa Wade – “A Balanced Look at Female Genital ‘Mutilation’” [CLASSES] (<http://thesocietypages.org/socimages/2012/12/10/a-balanced-look-at-fgm/>)

Tuesday, June 30

Genocide and Transitional Justice

- Required Readings:
  - John Hagan, Wenona Rymond-Richmond, and Patricia Parker – “The Criminology of Genocide: The Death and Rape of Darfur”
  - International Center for Transitional Justice – “What is Transitional Justice?” [CLASSES]
  - Paul van Zyl – “Dilemmas of Transitional Justice: The Case of South Africa’s Truth and Reconciliation Commission” [CLASSES]

Wednesday, July 1

Memo #6 Due

Thursday, July 2

Review and Discussion of human rights, genocide, and international law

Have a great summer!