Enacting the Law (Rev. 9/2)   Greggor Mattson
SOCI 275 • Fall 2009   King 343 MWF 1:30-2:20pm

Course description
The sociology of law studies how our everyday understandings both underpin and conflict with legal professionals and institutions. You need no previous legal knowledge—we use the legal knowledge you already possess to examine why claims of justice and equality often fail in practice and how legal reforms frequently have unintended consequences. Assignments include reading legal documents, conducting interviews, and observing legal proceedings—the formal and informal ways law gets enacted every day.

This course also counts as a core intermediate course for the Law & Society major.

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Office hours: M 2:30pm-4; W 10am-11:30; or by appointment

Required books

Assessment
Dedication to the readings
Participation in discussions 15% of your grade
Pop quizzes / in-class writes 20%
3 assignments 45% (15% each)
Final Exam 20%
Respect for each other

Participation
• come to class on time
• without distracting others (including with phones or laptops)
• having done the readings and brought them to class
• bring your reading notes
• share your thoughts and questions in class
• volunteer answers to others’ questions

Attendance & low-stakes writing
Low-stakes writing is not accepted late. The first two low-stakes writing assignments you miss are freebees. If you will be missing class events for approved College events, please provide documentation two weeks before your absence. If you miss, it is your responsibility to get notes from a colleague and come to office hours to discuss what you missed.
**Reading notes**
It’s better to skim each text than get stuck on a difficult page. Try skimming the whole selection in 5 minutes. Notice section headings, bold words, or highlighted quotations to get a sense of the story the author is telling. Then when you read the entire piece, you’ll already know where the argument is going. To ensure your comprehension, answer the following questions:

- what are the main concepts this author is using?
- what is the point of this article—what is the author trying to explain?
- how convincing is the argument?
- how does it relate to the others we have covered?

**Honor Code:** [http://www.oberlin.edu/students/links-life/honorcode.html](http://www.oberlin.edu/students/links-life/honorcode.html)
Remember to sign each assignment—it is your reminder to know the boundaries of cheating (not doing your own work) plagiarism (taking credit for someone else’s work) and fabrication (making up sources, quotations or observations). All quotations should be attributed properly. Refer to the honor code and/or talk to me if you have concerns or are feeling so pressed that cheating seems attractive.

**Disability Accommodations**
If you are a student with a disability, make sure you’ve registered with the Office of Disability Services (Peters G-27/28 x55588) to develop a plan to meet your academic needs. Bring their recommendations to me at least two weeks before any due date or exam.

**Grading rubric**

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<th>Category</th>
<th>Points</th>
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<tr>
<td>Thesis sentence</td>
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<td>Follows directions</td>
<td>10</td>
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<td>Organization</td>
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<td>Sources</td>
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<td>Conventions</td>
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(UNDERLINED, answers how & why question)  
(did you follow the directions?)  
(ideas grouped in paragraphs, evidence for main points)  
(synthesizes and cites appropriate texts a variety of texts)  
(printed copy hand-delivered by beginning of class, all or nothing)  
(creativity, connections between texts, use of language, sparkle)  
(stapled, grammar, 1” margins, spelling, punctuated, 12-pt. font)

**Sources & Citations (APA format)**
You need not make a works cited for course readings but you must cite them properly in the text in APA format. *Wikipedia is not an academic source, but may lead you to primary sources.*

Paraphrasing primary sources (preferred):

> Media in the 1950s catered to the rising middle class, giving a misleading impression of America’s families (Coontz 1990, p. 31).

Direct quotations (use sparingly) must be introduced:

> Stephanie Coontz cites the enduring power of the media for creating a new American tradition during the baby boom: “The happy, homogenous families that we ‘remember’ from the 1950s were... a result of the media’s denial of diversity” (1990, p. 31).

**Off-campus Assignments**
Assignments may invite you to make observations or attend events off campus. Off-campus assignments are done at your own discretion; alternate assignments are available if you prefer.
Assignments
Assignments are evidence of your comprehension of the course materials, your ability to synthesize them with our discussions, and your contribution to the intellectual discussion. Do not mistake the length of these assignments for their importance. Each is worth 15% of your grade and deserves attention over several days, not a last-minute dash on the night before they are due. Use the writing center or friends to develop your ideas, hone your writing, and edit your final draft.

1. Legal experience (5 pages) Due ______

Interview a friend or family member about an encounter with the law: civil or criminal, personal or public. This could include serving on a jury, a police stop, drawing up a will, landlord/tenant disputes, or small claims court, etc. Find out how they knew what to do, how to act, and what feelings they had at different stages of their encounter. Analyze your interviewee’s experience using Ewick & Silbey’s framework (Before, Against, With the law). Be sure to justify your analysis by linking your interviewees’ words to the authors’ concepts.

2. Observing institutions (5 pages) Due ______

Visit a courtroom and observe legal proceedings. Take note of the participants and their varying degrees of formal legal knowledge and the ritual practices of the court. How would the authors we have read characterize the encounters you observed? Use at least four concepts to interpret and contextualize your observations.

3. Legal Reading (8 pages) Due ______

Select one of the Supreme Court cases discussed in Nancy Cott’s book on marriage and analyze it in terms of the Rosenberg’s analysis of same-sex marriage. Briefly summarize the arguments of the majority and dissenting opinions. On what precedents do they rely? On what everyday interpretations of love, marriage, and state involvement do they rely? Does the case provide an argument for courts to recognize same-sex relationships or not?

Final Exam
I will distribute a list of essay questions on the last day of class. From those I will choose the ones that will appear on the exam. They will be broad questions that will require you to draw on the breadth of the course and reflect on what you know about sociology.
Whaddya call 100 lawyers at the bottom of the sea? A good start (to the sociology of law)
“The Law” treats itself as a serious game with rules and players. Sociologists look at who sets the rules, who follows them and why, which folks get to play—and who wins or loses. Sociologists examine how other social institutions interact with the law (or not), but especially the cultural meanings about legality that people use in their everyday interactions.

Aug 31 Law & Sociology
First Day of Class: The cultural life of the law

Sept 2: The common place of law
How did this book come about, and on what evidence is it based? What do the authors want you to learn from their data? Who is Millie Simpson and what can we learn about her relationship to the law? How does cultural knowledge come into play in her story?
   Ewick & Silbey: Preface xi-xiii§2; skim both Appendices; Chapter 1 “Millie Simpson” and Chapter 2 “The common place of law

Sept. 4: The social construction of law
Ewick & Silbey: Chapter 3, “The social construction of law”

What do we mean when we say that law is socially constructed? How does this sociological conception of law conflict with the legal professional’s understanding? What three forms of legal consciousness do Ewick & Silbey identify? How did they identify them?

Sept. 7 * * * LABOR DAY * * *

Sept. 9: Before the law
Ewick & Silbey: Chapter 4 “Before the Law”
Ewick & Silbey: Chapter 5 “With the Law”

What does it mean to reify the law in “before the law”? What else do we reify in social life? In this form of legal consciousness, what power does law have and from where does it get this power? Acting “With the law,” on the other hand, means law is experienced as a tool or game. What kinds of people experience this form of consciousness, and what does it do for them?

Sept. 11: Against the law
Ewick & Silbey: Chapter 5 “Against the Law”

How do (structurally) weak people cope against powerful legal systems? What aspects of law do people feel compelled to resist, and how do they justify this resistance? Can people trick the law?

SONG: “I fought the Law...”; FILM: Crash
Sept. 14: Social Class: More than Money

Ewick & Silbey assume the reader understands what sociologists mean by social class. Lareau’s groundbreaking research shows how class cultures are reproduced through childrearing practices. How do her findings shed light on the three dispositions toward the law in Ewick & Silbey?

Sept. 15: ** FILM NIGHT ** People Like Us DVD-5295

Sept. 16: Culture and law
Ewick & Silbey: Chapters 7 “Mystery and Resolution” and 8 “Consciousness & Contradiction”

What is the sociological definition of legality? How can the law work when we have so many different ideas about it? Whose definition wins or loses? How is law like storytelling? With so many different understandings and stories, what is common about American legality anyways?

Law of the Jungle? Order without law for Americans and Azande
Even though small-scale societies do not have the kind of institutions that we recognize as legal (judges, juries, written constitutions, or parliamentary bodies), they nevertheless have elaborate cultural codes to solve disputes, adapt to social change, and maintain social harmony and political legitimacy. In this unit we learn that there is more to law than legality, forcing us to look at the cultural “magic” that underpins contemporary American law.

Sept. 18: Azande legality in north-central Africa
Chase: Chapter 2 “The Lesson of the Azande,” Chapter 7 “Ritual” and Chapter 1 “Introduction”

What does Chase mean by the terms “dispute” and “culture?” What is the lesson of the Azande benge oracle? What are the similarities between the Azande and the everyday Americans in the Ewick & Silbey book?

Sept. 21: American exceptionalism and the law
Chase: Chapter 3 “Modern Dispute-Ways” & Chapter 4 “American Exceptionalism”

What does it mean to say that the rule of law is “constructed” by culture? How has the relationship between evidence and truth changed over time? In what ways is America “exceptional” compared to other cultural understandings of legality?

Sept. 23: Discretion vs. formality
Chase: Chapters 5 “Discretionary Power”
What is the tension between discretion and formalism in administering justice? Who benefits or loses under each (or, why do we love to hate bureaucracy)?

Sept. 25: Disputing cultures
Chase: Chapters 8 “How Disputing Influences Culture,” 9 “Conclusion,” and “Afterword”

What can we learn about a culture by knowing how they handle disputes?
Sept. 28: Order without law

Most disputes, in fact, never come before the law, and of those suits that are filed only a very small percentage actually go to trial. How do contemporary Americans manage their “legal” problems without recourse to legal institutions? What does this tell us about culture and the law?

How do laws cause social change?
Last year Gerald Rosenberg issued the 2nd edition of The Hollow Hope, one of the most-read and controversial books on the American legal system. He argues that courts, particularly the Supreme Court, do not create meaningful social change, in part because they do not have the power to enforce their decisions. This rests with the executive branch of government, which has to be authorized by the legislative. Why does Rosenberg believe as he does, and when can laws enact social change?

Sept. 30: Is the Supreme Court dynamic or constrained?
Rosenberg: Prefaces, Introduction, and Chapter 1, pp. xi-36

What are the two major theories of how the court works? How does the Constitutional history of the court help us understand these theories? In what ways are courts the “least dangerous” institutions?

Oct. 2: Civil rights and Brown v. Board of Education
Rosenberg: Chapters 2 “Bound for Glory?” and 3 “Constraints, Conditions & the Court”

Why was Brown v. Board of Education hailed at the time of its passage Why does Rosenberg argue that it had little effect? What does the Brown decision tell us about the power of the Supreme Court?

Oct. 5: Civil rights and change in America
Rosenberg address this question, and what evidence does he use?
Rosenberg: Chapter 4 “Planting the Seeds of Progress?”

Did Brown lay the foundation or more far-reaching successes of the Civil Rights Movement? How does

* * * MOVIE NIGHT * * * Flag Wars (DVD-952)

Oct. 7: From civil rights to gay rights
Rosenberg: Chapter 5 “The Current of History”
Rosenberg: Chapter 12 You’ve Got that Loving Feeling?

From what branch(es) of government does Rosenberg believe changes springs? What evidence does he provide to support his argument?

Oct. 9: NO CLASS (because we had it on Monday night)

Oct. 12: Rights versus reality
Rosenberg: Chapter 13 Confusing Rights with Reality: Litigation for Same-Sex Marriage...
What does Rosenberg mean by the title to this chapter? What are the similarities and differences between Brown v. Board of Education and the legal process for gay marriage?

**Oct. 14: The “fly-paper” court**

What do legal fights over gay marriage tell us about the U.S. court system? About American legality? How would Rosenberg interpret the poll results in Contexts?

**Oct. 16: Guest Speaker Gretchen Purser**

Legal changes designed to help renters end up hurting the people they were designed to protect. Meet the researcher who discovered these findings and ask her questions.

*** FALL BREAK ***

**Oct. 26: Gay marriage, gay life and the American public**

Before we learn about how the history of marriage shapes the debate on gay marriage, we turn to an argument against gay marriage by a leader in the gay rights movement. What is wrong with marriage, from his view? What is the relationship between marriage and sex anyways?

**Oct. 28: The endogeneity of law**

The law thinks of itself as exogenous: existing outside the material and cultural world. But law & society scholars show that law is endogenous: its form and meaning spring from institutional contexts, including legal professionals. How does Short demonstrate the endogeneity of law? What would Rosenberg say about her findings?

**Oct. 30: The bar exam**

What does the bar exam say about the social basis of law? Which of Silbey & Ewick’s legal consciousness does the legal profession present for itself? What would some of our other authors (like Rosenberg, or Rosenbury) have to say about this legal realism?
How do laws affect intimate life? The state as mediator between private lives and public opinion
What can the history of marriage in America tell us about contemporary marriage? In what ways does the campaign for gay marriage challenge or reinforce the legal institution of marriage? In this unit we will learn to set aside our personal views on gay marriage and examine it in the context of the historically evolving meanings of marriage in American society.

Nov. 2: Marriage and government
Cott: “Introduction” and Chapter 1 “An Archaeology of American Monogamy”

What is unique about the cultural view that marriage is a contract? What is coverture? What was the relationship between marital governance and political governance in the early days of the American Republic? In what ways did cultural views about gender justify legal views about marriage?

Nov 3 *** ELECTION DAY ***

Nov. 4: Trick, or treat? A public institution or a private contract made by consent?
Cott: Chapter 2 “Perfecting Community Rules,” and “Domestic Relations on the National Agenda”

What was the relationship between community and state in the early republic? What were natal alienation and self-divorce? What did the “domestic relations” of marriage signify to African-Americans, slave-owners, abolitionists, feminists, free lovers, and proponents of Utah statehood?

Nov 6: Marital "contracts" & "relations" & "institutions" and...
Cott: Chapter 4 “Toward a single standard”
http://www.protectmarriage.com/
http://noonprop8.com/home

What impact did the Civil War have on marriage in the South? In American culture? What was discriminatory in official concern over “taking up?” How did marriage laws attempt to enforce norms of race and gender? In what ways do contemporary marriage campaigns also urge a single standard?

EXTRA: visit the Soldiers & Sailors Monument in downtown Cleveland

Nov. 9: Bigamy is having one wife too many. Monogamy is the same (O. Wilde).
Cott: Chapter 5 “Monogamy as the law of social life” and “Consent, the American Way”
“Consent” http://www.glumbert.com/media/consent

How were divorce, polygamy and race linked in Post-Bellum law and imagination? What was the reaction by Mormon wives and free-lovers? How did immigration re-link marriage to citizenship and race? How was marriage supposed to “domesticate” immigrant men and save “white slaves”? 
EXTRA: Documentary March of the Penguins and its political uses

Nov. 11: The welfare of the parties
Cott: Chapter 7: “The modern architecture of marriage”
The first sexual revolution occurred while the U.S. government was becoming more bureaucratically powerful. What was new about American marriage regulations after 1933? How did race and gender interact with these changes? What does social security have to do with marriage anyways?

Nov. 13: A More Loving marriage
Cott: Chapter 8 “Public sanctity for a private realm”

What is companionate marriage, and how did it change the legal purposes of institution? How did World War II change the marriage relationship? Who were Andrea Perez, Estelle Griswold, Richard & Mildred Loving, William Baird, and Jane Roe?

Nov. 16: The morals of modern marriage
Cott: Chapter 9 "Marriage Revised and revived"

How did marriage change in the last half of the 20th century due to the sexual revolution, the Civil Rights movement, feminism, and gay liberation?

Nov. 18: Friends and family

Cott tells us about the evolution of the cultural meanings of marriage. Rosenbury shows us how family law affects friends—often the people we spend the majority of our lives with.

Why do we make laws? The case of modern criminal law
What drives the creation of law in contemporary America? Jonathan Simon’s award-winning book explores the disconnect between heightened fear of crime despite declining crime rates. He uses the theoretical insights provided by Michel Foucault to explore how crime has become the dominant logic for government and the primary way that citizens understand the purpose of law.

Nov. 20: Governing through crime
Simon: Introduction esp. 2-7; 10-12. Chapter 1, entire

What is the difference between governing crime and governing through crime? What is the relationship between crime and security? Why isn’t governing through crime (GTC) just about repression or “hard power” against the weak?

Nov. 23: Victimology
Simon: Chapter 3 entire.

What is new about the symbolic meaning of the victim, according to Simon? What were previous conceptions of vulnerability that motivated government intervention, and what kinds of laws did they generate? What is different today?

Nov. 25: The rise of the prosecutor (the Law & Order effect?)
Simon: Chapter 2, 33-46¶2; 53¶3-60¶2; 70¶3-74. Chapter 4, entire.

Prosecutors and judges: What changes have occurred in the power granted the prosecutor? What evidence does Simon provide for this? What is the model of law that justifies this expansion? What is
Prosecutorial discretion, and why is it important? What have judges lost in the contemporary era? How does Simon’s argument square with what we know from Rosenberg?

**Nov 27: *** HAPPY THANKSGIVING ***

**Nov. 30: Fear of crime and prisons**

*How has the role of the prison changed in American history? What is new about its role today? Do you agree with Simon’s conclusion about the inevitability of mass incarceration—why or why not?*

**Dec 2: Crime in social institutions**
Simon: Family, Schools and Workplaces. Choose two of Chapters 6, 7 or 8.

*On the two topics that you chose, compare and contrast the impact of “governing through crime” on everyday lives. Has Simon made his case that there is indeed something called “GTC?” Why/why not?*

**Dec 4: The war on crime**
Simon: “Wars of Governance,” Chapter 9, entire.

*On what non-political entity did the U.S. government first declare war? What are the limits of “war” as a metaphor for governing? Do you feel Simon’s analysis is biased and, if so, in what ways?*

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**Don’t let your babies grow up to be cowboys: How the institution makes lawyers**
How does the institution of law shape the people who become its practitioners? To answer this question we look at some of the institutions of law and their effects on lawyers, including law school, public esteem, different kinds of legal practice, and the ways race and gender interact with them. This short unit highlights ways that law students within law schools can change the law.

**Dec 7: Students in law school**

*Most students enter law school with goals of enacting social change, but by the time they graduate they have become the lawyers disdained by the public. What happens to idealism in law school?*

**Dec 9: Gender & Diversity in the Legal Profession**

*Many legal initiatives over the last 30 years have addressed racial and ethnic inequalities in society. How have such programs affected the structure of the legal profession? What would Rosenberg say about these results? What about Chase?*
Dec 11: Last Class
Wrap-up before final projects are due

Dec 17: *** FINAL EXAM 7-9pm ***