Enacting the Law  SOCI 275 REVISED 9/5/08  Greggor Mattson
Mon/Wed/Fri 1:30-2:20pm  AJ Lewis Center 102

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

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Office hours: Mon 2:30-4pm; Wed 9-10:45am; by appointment

Required books

Course requirements
Dedication to the readings
Participation in discussions  15% of your grade
Pop quizzes / in-class writes  15%
4 assignments  50% (12.25% each)
Final Project  20%
Respect for each other

Participation (in 3 easy steps)
Participation begins with attendance but doesn’t stop there. Lectures are only a small part of this course. We will spend most of our time discussing the readings and linking them to the main concepts and themes of the course. Read the materials before class and bring them with you so we have a common vocabulary to discuss your personal reactions and experiences. My job is to guide discussions and make sure everyone’s questions get answered—though not necessarily by me. Come prepared to ask and answer questions. Here are some to start you off:

• 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?

Bring reading notes to class with passages that you like, that capture a main idea, or puzzle you.
**Reading Tips**
We are tackling challenging materials. Don’t give up—better to skim through each of the texts than to get hung up on a difficult page. Try skimming the whole selection in 5 minutes. Notice section headings, bold words, or highlighted quotations just to get a sense of the story the author is telling. When you sit down to read the whole thing, you’ll already know where the argument is going.

**Attendance**
Your on-time attendance is essential to your ability to participate. Besides, fun stuff happens at the start of class. If you miss, it is your responsibility to get notes from a colleague and to come to office hours to discuss what you missed. Our time together is short—missing even one class may indirectly affect your grade if you miss assignment advice.

The first two absences are freebees; unexcused absences beyond two will affect your participation grade. Make up in-class work or quizzes during office hours at a penalty of one letter grade. If you will be missing class events for approved College events, please provide documentation at least two weeks before your absence so we can keep you up to speed.

**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**
Assignments will be graded as follows:

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<th>Component</th>
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<tr>
<td>Thesis</td>
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<td>Organization</td>
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<td>Sources</td>
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<td>On time</td>
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- Thesis: (argument suitable for essay length, recapitulated in conclusion)
- Organization: (ideas grouped in paragraphs, evidence for main points)
- Sources: (synthesizes a variety of sources, in-text citations in APA format)
- On time: (PRINTOUT hand-delivered at beginning of class, all or nothing)
- Insight: (creativity, connections between texts, use of language, sparkle)
- Conventions: (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: 3 pages max.
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. The Reality of TV Court Shows Due September 15:
Write an essay following the guidelines on the syllabus based on your notes from watching 1 half-hour episode of a reality-based TV court show (usually 2 cases). Answer the following questions using the readings and your observations:

   Thesis answers this question: What model of law is deployed by the judge? (it doesn’t have to be one of Kohn’s but you must support your choice). Example “Judge Larry Joe’s Texas justice might best be described as rough justice [my words]—it is homespun, relies on the “common sense” of law with little attention to evidence, and must be punctuated with funny Southern sayings. Rough justice fits the legal consciousness of ZZZ as described by Ewick & Silbey. Judge Larry Joe’s model is different from...

   Body: How do you know that your thesis sentence is correct (provide specific observations that support your thesis). The first case was about X. Judge Larry Joe showed his common touch by saying, “XXX.” This showed he sympathized with the defendant’s problem while still entertaining the audience. He showed this same touch with the plaintiff when he did YYY.

   Conclusion: How does this exercise reveal the common place of law (describe what Ewick & Silbey mean by this term with proper citation, give evidence for your conclusion connecting their book to your thesis/observations): Judge Larry Joe’s invocation of common sense exemplifies the contrast identified by E & S between the “magisterial, remote” law and the “serious and playful” (Ewick & Silbey 1998, p 15). (You may also speculate about why we as an audience enjoy watching).

CW 53 WBNX: constant court shows M-F from 11am-1pm, 4-5am
FOX 8 WJW TV: constant court shows M-F from 1:30pm-5pm
... or go to tvguide.com or the listings of your local cable company

2. Legal experience Due October 8th

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.
3. Observing institutions Due November 3

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

4. Legal Reading Due November 24

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 project: Due Tuesday, December 17th by 9pm to my office.

Extend one of your three assignments into an 8-page paper. Incorporate discussions from the rest of the course into your arguments and add one more empirical component (another legal case, another interview, another set of observations). Ensure that you are making one single argument using your two sources of data. Synthesize relevant course readings and use them to analyze and contextualize your data. Compare and contrast the different theories of culture and how they help explain the legality you analyzed. A checklist for how to expand your initial assignment:

- incorporate relevant discussions from the entire course
- conduct new empirical component
- one thesis sentence unifies the paper
- cite relevant texts from the entire course
- compare and contrast different versions of culture from the class
**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, why, and which people 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.

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**Sept 3: Law & Sociology**
First Day of Class: The cultural life of the law

**Sept 5: 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; skim both Appendices; Chapter 1 “Millie Simpson” and Chapter 2 “The common place of law”

**Sept 8: The everyday (TV) reality of law**

*In what ways do the media affect our experience and expectations of law? What do we know about the unreality of TV law vs. the reality of everyday law? How does Kohm find “models” of law in TV shows? What evidence does he give? What do Ewick & Silbey mean by “commonplace law?”*


+ Assignment #1: 2-page memo on one episode (usually 2 cases) of a reality TV court show

**Sept 10: 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?*

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

**Sept 12: Before the law**

*What does it mean to reify 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?*


Ewick & Silbey: Chapter 4 “Before the Law”

**Sept 15: *** ASSIGNMENT 1 DUE *** With the Law**

*What does it mean for legal consciousness to be experienced as a tool? As a game? What kinds of people experience this form of consciousness, and what does it do for them?*

Ewick & Silbey: Chapter 5 “With the Law”

**Sept 17: Against the law**

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

Ewick & Silbey: Chapter 5 “Against the Law”

SONG: “I fought the Law...”
Sept 19 Culture and law
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?

Ewick & Silbey: Chapters 7 “Mystery and Resolution” and 8 “Consciousness & Contradiction”

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 20: EXTRA SYMPOSIUM Constitutional Revision in Japan: Security in East Asia/U.S.
Hallock Auditorium 1-5pm http://www.oberlin.edu/eas/events/JapanSym/japansym.pdf

Sept 22: Azande legality in north-central Africa
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?

Chase: Chapter 2 “The Lesson of the Azande,” Chapter 7 “Ritual” and Chapter 1 “Introduction”

Sept 24: American exceptionalism and the law
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?

Chase: Chapter 3 “Modern Dispute-Ways” & Chapter 4 “American Exceptionalism”

Sept 26: Discretion vs. formality
What is the tension between discretion and formalism in administering justice? Who benefits or loses under each?

Chase: Chapters 5 “Discretionary Power”

Sept 29: Disputing culture
What can we learn about a culture by knowing how they handle disputes?

Chase: Chapters 8 “How Disputing Influences Culture,” 9 “Conclusion,” and “Afterword”

Oct 1: 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 can laws cause social change?
This 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?

Oct 3: The dynamic and the constrained court
What are the two major theories of how the court works? How does the Constitutional history of the court help us understand these theories?
   Rosenberg: Prefaces, Introduction, and Chapter 1, pp. xi-36

Oct 6: Civil rights and Brown v. Board of Education
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?
   Rosenberg: Chapters 2 “Bound for Glory?” and 3 “Constraints, Conditions & the Court”

Oct 8: *** ASSIGNMENT #2 DUE *** Civil rights and change in America
Did Brown lay the foundation or more far-reaching successes of the Civil Rights Movement? How does Rosenberg address this question, and what evidence does he use?
   Rosenberg: Chapter 4 “Planting the Seeds of Progress?”

Oct 10: From civil rights to gay rights
From what branch(es) of government does Rosenberg believe changes springs? What evidence does he provide to support his argument?
   Rosenberg: Chapter 5 “The Current of History”
   Rosenberg: Chapter 12 You’ve Got that Loving Feeling?

Oct 13: Rights versus reality
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?
   Rosenberg: Chapter 13 Confusing Rights with Reality: Litigation for Same-Sex Marriage...

Oct 15: 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?
   Rosenberg: Chapter 14 “The Fly-Paper Court”
   http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_United_States

Oct 17: 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?
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.

Oct 27: Breaking news: the architecture of gay marriage
What did Michael Hardwick, John Lawrence, and Tyron Garner have in common? What did Roy Romer, Richard Evans and Martina Navratilova have in common? By what legal standards did the California Supreme Court recognize gay marriage? What conflict exists between the California Attorney General’s definition of Proposition 8 and its proponents? What were Warner have to say about the decision from the Supreme Court of California?
Supreme Court of California in re: Marriage Cases
ProtectMarriage.com CA Constitutional Amendment, Initiative 07-0068
California Attorney General, Title and summary of Initiative 07-0068
http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/08/08/BAE5127O2F.DTL&type=politics

Oct 29: Marriage and government
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?
Cott: “Introduction” and Chapter 1 “An Archaeology of American Monogamy”

Oct 31: Trick, or treat? A public institution or a private contract made by consent?
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?
Cott: Chapter 2 “Perfecting Community Rules,” and “Domestic Relations on the National Agenda”

Nov 3: *** ASSIGNMENT #3*** Marital “contracts” & “relations” & “institutions” and...
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?
Cott: Chapter 4 “Toward a single standard”
http://www.protectmarriage.com/
http://noonprop8.com/home

EXTRA: visit the Soldiers & Sailors Monument in downtown Cleveland

Nov 4 *** ELECTION DAY ***
Nov 5: Bigamy is having one wife too many. Monogamy is the same (O. Wilde).
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”?
Cott: Chapter 5 “Monogamy as the law of social life” and “Consent, the American Way”
EXTRA: “Consent” http://www.glumbert.com/media/consent
Documentary March of the Penguins and its political uses

Nov 6: *** EVENING DOCUMENTARY SCREENINGS *** King 306 Kresge Auditorium

Nov 7: The welfare of the parties
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?
Cott: Chapter 7 “The modern architecture of marriage”

Nov 10: A More Loving marriage
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?
Cott: Chapter 8 “Public sanctity for a private realm”

Nov 12: The morals of modern marriage
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?
Cott: Chapter 9 “Marriage Revised and revived”

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

Nov 17: Victimology
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?
Simon: Chapter 3 entire.
Nov 19: The rise of the prosecutor (the Law & Order effect?)
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?
Simon: Chapter 2, 33-46¶2; 53¶3-60¶2; 70¶3-74. Chapter 4, entire.

Nov 21: 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?

Nov 24: *** ASSIGNMENT #4 DUE *** Crime in social institutions
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?
Simon: Family, Schools and Workplaces. Choose two of Chapters 6, 7 or 8.

Nov 26: The war on crime
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?
Simon: “Wars of Governance,” Chapter 9, entire.

Nov 27: *** HAPPY THANKSGIVING ***

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.


Dec 1: 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 3: 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?
Dec 5: 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) have to say about this legal realism?

Dec 8: How (many) lawyers work
These articles contrast two very different models of being a lawyer. How does stratification within the legal profession affect the kind of work lawyers do?

Dec 10: Where there's a will, there's a happy lawyer
Are lawyers more unhappy than other professionals? What factors provide job satisfaction, and how do these differ by gender? What evidence do the authors provide for their explanation? How well do the blog comments square with the authors' conclusions?

Dec 12: Last Class
Wrap-up before final projects are due

Dec 18: *** FINAL PROJECT DUE to MY OFFICE by 9pm ***