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 is a core intermediate course for the Law & Society major and will count towards GSFS. We are participating course in Year of the Queer: http://www.oberlin.edu/yoqueer

Contact me (in order of usefulness)
1) Catch me after class
2) Office hours: King 305c: M 10-11:50am; W 3:30-5pm
3) greggor.mattson@oberlin.edu; put SOCI 275 in the subject line

Required books

Assessment
- Participation 10%
- Speaker reviews 10%
- Quizzes 10%
- 3 papers 45%
- Final exam 25%

Participation
- come to class on time
- be engaged (NO phones, laptops, knitting, grooming)
- do the readings, take reading notes, and brought them to class
- volunteer answers to others’ questions
- come to office hours to discuss thoughts and ideas

Attendance & homework
If you miss, it is your responsibility to first get notes from a colleague and then come to office hours to discuss what you missed. Homework is not accepted late. If you will be missing class events for approved College events, provide documentation two weeks before your absence.

Reading notes
You should be taking reading notes every day. 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. 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

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 must be cited properly. Talk to me if you have concerns or are feeling so pressed that cheating seems attractive.

**Disability Accommodations**

Register with the Office of Disability Services (Peters G-27 x55588) to develop a plan to meet your academic needs. Bring their recommendations to me 2 weeks before any due date or exam.

**Grading rubric**

**Assignment grading rubric**

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thesis</td>
<td>30</td>
<td>(argument suitable for essay length, recapitulated in conclusion, formulated in one pithy thesis sentence in first paragraph)</td>
</tr>
<tr>
<td>Concepts</td>
<td>30</td>
<td>(synthesize theories from a variety of sources, in-text citations in APA format)</td>
</tr>
<tr>
<td>Organization</td>
<td>20</td>
<td>(ideas grouped in paragraphs around topic sentences backed by evidence)</td>
</tr>
<tr>
<td>Insight</td>
<td>10</td>
<td>(creativity, connections between texts, use of language, title, sparkle)</td>
</tr>
<tr>
<td>Conventions</td>
<td>10</td>
<td>(hard copy stapled, grammar, 1” margins, spelling, punctuated, 12-pt. font)</td>
</tr>
</tbody>
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**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 (4 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 (4 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. **Gay Marriage ballot initiatives predictions DUE NOV 5. (2 pages)**
   Using Rosenberg and Cott, make predictions about the ballot initiatives in WA, ME and MI this year. Clearly describe what you think the outcome will be in each state and use concepts from the readings to justify your predictions.

**Final Exam: Dec 21 2-4pm**
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. It will have a short answer section of definitions, questions asking you to analyze recent news articles, and one essay question. I will distribute a list of essay questions on the last day of class, from which I will choose the one that appears on the exam.
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.

Week 1: Sept 3-7

◆ Labor Day: No Class

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

◆ The common place of law
BOOK: Ewick & Silbey: Preface xi-xiii¶2; skim both Appendices; Chapter 1 “Millie Simpson” Chapter 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 and their analytical methods? 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?

Week 2: Sept 10-14

◆ The social construction of law
BOOK: Ewick & Silbey: Chapters 3-4, “The social construction of legality” and “Before the 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? 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?

◆ Before the law
BOOK: Ewick & Silbey: Chapters 5-6 “With the Law” and “Against the Law”

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? 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?

EXTRA: SONG: Johnny Cash: “I fought the Law...”; FILM: Crash

◆ Culture and law
BOOK: 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?
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.

Governing through crime and Victimology

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? 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 similar or different today?

Gays against gay marriage
YOUTUBE: Fran Liebowitz on Homosexuality

Now 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? Is Warner before, with and/or against the law? What about Halberstam? What is socially constructed in their accounts?


YEAR OF THE QUEER THURS: Judith Jack Halberstam. Sept. 20, 7:30pm, Craig Lecture Hall in the Center.

W: Rise of the Prosecutor
BOOK: 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?

Week 4: Sept 24-Sept 28

Dean Spade: Trans rights and wrongs
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? In what ways is Simon’s analysis similar or different from Spade or Halberstam’s in terms of the family and workplace?

◆ **YOM KIPPUR – NO CLASSES**

YEAR OF THE QUEER WEDNESDAY: Dean Spade. Sept 26, 7:30pm, Craig Lecture Hall in Science Center.

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**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.

◆ **Azande legality in north-central Africa**

BOOK: 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?

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**Week 5: Oct 1-5**

◆ **American exceptionalism and the law**

BOOK: 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?

◆ **Discretion vs. formality**

BOOK: 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)?

◆ **NO CLASS**

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**Week 6: Oct 8-12**

◆ **Disputing cultures**

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

What can we learn about a culture by knowing how they handle disputes?

◆ **Queer (In)Justice: Joey Mogul and Andrea Ritchie**

Read Queering Prison Abolition, Now? + Selections from Queer (in)Justice
YEAR OF THE QUEER WEDNESDAY: Joey Mogul and Andrea Ritchie of Queer Injustice. Oct 10, 7:30pm, Craig Lecture Hall in the Science Center.

◆ Order without law: “Don’t fence me in.”

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?

Week 7: Oct 15-19
◆ Foucault and Gay Rights

Why is it surprising that Foucault became a hero for gay rights campaigners? How does Foucault’s theory of power fit in with what we read in Simon’s book? What is discourse, and how does Halperin suggest gay rights campaigners have used it? To what purpose(s)?

YEAR OF THE QUEER TUESDAY: David Halperin. Oct 16, 7:30pm, Craig Lecture Hall in the Science Center.

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?

◆ Is the Supreme Court dynamic or constrained?
BOOK: 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? How does Rosenberg’s argument square with what we know from Simon?

◆ Civil rights and Brown v. Board of Education
BOOK: 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?

Week 8: Oct 29-Nov 2

◆ Civil rights and change in America
BOOK: 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 Rosenberg address this question, and what evidence does he use?
◆ From civil rights to gay rights
BOOK: Rosenberg: Chapters 5 “The Current of History” and “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?

◆ FRIDAY NOV 2 NO CLASS

Week 9: Nov 5-9

◆ Rights versus reality
BOOK: 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?

* * * ELECTION DAY Tuesday, Nov 6 * * *

◆ The “fly-paper” court
BOOK: Rosenberg: Chapter 14 “The Fly-Paper Court”
WEB: http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_United_States

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?

◆ 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?

Week 10: Nov 12-16

How do laws affect intimate life? The state mediates 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.

◆ Marriage and government
BOOK: 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?

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

◆ Marital “contracts” & “relations” & “institutions” and…  
BOOK: Cott: Chapter 4 “Toward a single standard”  
WEB: http://www.protectmarriage.com/  
WEB: 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

Week 11: Nov 19-23

◆ Bigamy is having one wife too many. Monogamy is the same (O. Wilde).  
BOOK: Cott: Chapters 5-6 “Monogamy as the law of social life” and “Consent, the American Way”  
WEB: “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”?

EXTRAS: Documentary March of the Penguins and its politics  

◆ The welfare of the parties  
BOOK: 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?

◆ Th: Thanksgiving, Friday no class

Week 12: Nov 26- 30

◆ A More Loving marriage
BOOK: 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?

◆ The morals of modern marriage
BOOK: 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?

◆ Freedom of association: Kith vs. kin?

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. What would the guest speakers say about her argument? In what ways is/is it not queer? What would Foucault say?

Week 13: Dec 3-7

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.

◆ 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?

◆ 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? What happens when they finally get jobs?

Week 14: Dec 10-14

◆ 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?

◆ Diversity and multiculturalism

◆ Last Class
The sociology of law. Last chance to ask questions for the final exam.

*** FINAL EXAM 2-4pm Dec 21***