

Perspectives on Law and Society

European University Institute
Department of Law
Researcher's Short Course
Spring 2017

Instructors

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Schedule

- 11:30 - 13:00—Friday, 3 March (Sala della Vite, Villa Salviati)
- 11:30 - 13:00—Friday, 10 March (Sala della Vite, Villa Salviati)
- 11:30 - 13:00—Friday, 17 March (Sala della Vite, Villa Salviati)
- 11:30 - 13:00—Monday, 27 March (*Saletta Mensa*, Villa Salviati)
- 11:30 - 13:00—Monday, 3 April (*Saletta Mensa*, Villa Salviati)
- 11:30 - 13:00—Friday, 7 April (Sala della Vite, Villa Salviati)

Course Overview

Law does not exist in a vacuum. The practices and artifacts identified with modern, Western law— the performances of the courtroom, the circulation of files, the strategic dance of litigation, the text of judicial decisions—draw on many of the same resources at play in other contexts. The values of law transcend the legal; law has its own vernacular but not its own language; law's subjects also have lives as colleagues, partners, lovers, friends. The corporation may be a legal fiction, but it is also a social fact. The legal and the non-legal influence one another, but they also borrow from each other, and are imbricated with one another. Law takes its meanings from beliefs and institutions which it does not control, but also gives sharpness and definition to otherwise vague ideas that organize our lives. It helps to allocate power, but can also be reshaped by the interests of the powerful.

Numerous traditions of research have wrestled with trying to describe and trace these interactions, dependencies, and connections. This course offers a partial introduction to one such tradition: the broad-tent, interdisciplinary, and primarily Anglo-American field of "law and society" or "socio-legal research." Rather than offering comprehensive coverage of the particular claims or findings associated with the history of the field, the object of this short course will be to sample from the various types of questions that the field has asked about law and its context, effect, meanings, uses, and consequences.

In addition to an introductory session to explain our overall goals, the course will be organized into five sessions, each devoted to a different problematic: i) How Law Thinks ii) How Law Acts iii) What Law Means iv) How Law Knows v) Who Law Serves. Drawing on a cross-section of scholarship that includes both seminal texts and more recent critiques, each session will

compare and contrast excerpts from three sources to reveal both the diversity of questions that can be asked “about law” and how ostensibly similar questions can lead to widely divergent forms of inquiry.

Participants should come away with:

- Basic familiarity with the canon of “law and society” research
- An expanded inventory of perspectives on the relationship between legal discourse, legal institutions, social practice and experiences of justice and injustice
- A heightened ability to think, speak and write about the stakes and consequences of legal rules, principles, concepts and decisions for social relations, outcomes, and values—and vice versa
- A deeper appreciation for the mediating role of law in broader social and economic practices;
- A more detailed critique of how non-legal knowledge can, has been and should be used in legal thought.

In light of these goals, the course is designed primarily with law researchers in mind and will be of particular interest to those researchers who intend to use non-doctrinal methods in their dissertation project. It will also be of interest however to researchers in other departments who want to deepen their understanding of the role of legal analysis, legal institutions, and legal issues in mediating political conflict, economic processes and social change. We note that, because this course is not available for credit, we have limited each session to 1.5 hours, and chosen readings that amount to less than 50 pages per session.

1. Introduction

- Holmes, Oliver Wendell. “The Path of the Law” (1997) 110:5 Harvard Law Review 991, **read 997-1002**
- Llewellyn, Karl N. “A Realistic Jurisprudence--The Next Step” (1930) 30 Colum L Rev 431, **443-462 only**
- Friedman, Lawrence M. “The Law and Society Movement.” Stanford Law Review (1986): 763-780.
- Silbey, Susan S & Austin Sarat. “Critical Traditions in Law and Society Research” (1987) 21:1 Law & Society Review 165.

Suggested Readings

- Darian-Smith, Eve. *Laws and Societies in Global Contexts: Contemporary Approaches* (New York: Cambridge University Press, 2013), Introduction
- Seron, Carroll, Susan Bibler Coutin & Pauline White Meeusen. “Is There a Canon of Law and Society?” (2013) 9:1 Annual Review of Law and Social Science 287.
- McCormick, Neil. “Four Quadrants of Jurisprudence” in Werner Krawietz, Neil McCormick & G H von Wright, eds, *Prescriptive Formality and Normative Rationality in Modern Legal Systems: Festschrift for Robert S Summers* (Berlin: Duncker & Humblot, 1994) 53.
- Calabresi, Guido. “An Introduction to Legal Thought: Four Approaches to Law and to the Allocation of Body Parts” (2003) 55:6 Stanford Law Review 211

- Posner, Richard A. "The Decline of Law as an Autonomous Discipline: 1962-1987." *Harv. L. Rev.* 100 (1986): 761
- Tomlins, Christopher. 2000. "Framing the Field of Law's Disciplinary Encounters: A Historical Narrative." *Law & Society Review* 34(4):911-972.
- Garth, Bryant and Joyce Sterling. 1998. "From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State." *Law and Society Review* 32:409-71.
- Simon, Jonathan. 1999. "Law After Society." *Law and Social Inquiry* 24:143-194.
- Seron, Carroll & Susan Silbey. 2004. "Rethinking the Classics of Socio-Legal Studies" in Sarat, Austin (ed.) *Blackwell Companion to Law and Society*. London: Blackwell Publishing.
- Hillyard, P. (2007). "Law's Empire: Socio-legal Empirical Research in the Twenty-first Century." *Journal of Law and Society*, 34(2): 266-279.
- Kennedy, Duncan. "Three Globalizations of Law and Legal Thought: 1850-2000" in David M Trubek & Alvaro Santos, eds, *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006) 19.

2. How Law Acts

- Macaulay, Stewart. "Non-Contractual Relations in Business: A Preliminary Study." *American Sociological Review* (1963): 55.
- Merry, Sally Engle. "New Legal Realism and the Ethnography of Transnational Law." *Law & Social Inquiry* 31:4 (2006): 975.
- Orford, Anne. "In Praise of Description" (2012) 25:3 *Leiden Journal of International Law* 609.

Suggested Readings

- Mark C. Suchman & Elizabeth Mertz, "Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism" (2010) 6 *Annual Review of Law and Social Science* 555. (26 pp)
- Tyler, Tom R. *Why People Obey the Law* (New Haven: Yale University Press, 1990).
- Felstiner, William LF, Richard L Abel & Austin Sarat. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . ." (1980) 15:3/4 *Law & Society Review* 631. (24 pp [+28 pp references])
- Silbey, Susan. 1980-81. "Case Processing in an Attorney General's Office." *Law & Society Review*. 21:165-174.
- Pound, Roscoe. "Law in Books and Law in Action" (1910) 44 *Am L Rev* 12. (25 pp)
- Mnookin, Robert H., and Lewis Kornhauser. "Bargaining in the Shadow of the Law: The Case of Divorce." *The Yale Law Journal* 88, no. 5 (1979): 950-997. (48 pp; ss. I-II 29 pp)
- Davis, Kevin E & Michael B Kruse. "Taking the Measure of Law: The Case of the Doing Business Project" (2007) 32 *Law & Soc Inquiry* 1095. (27 pp)
- Riles, Annelise. "Models and Documents: Artefacts of International Legal Knowledge" (1999) 48 *Int'l & Comp LQ* 805.

3. How law thinks

- Foucault, "Governmentality" in Burchell, Graham, Colin Gordon & Peter Miller, eds. *The Foucault Effect: Studies in Governmentality, with Two Lectures by and an Interview with Michel Foucault* (London: Harvester Wheatsheaf, 1991) 87.
- "Preface" & "Introduction: Law & Ideology" Shklar, Judith N. *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass: Harvard University Press, 1986) x-xiv, 1-28
- Teubner, Gunther. "How the Law Thinks: Toward a Constructivist Epistemology of Law" (1989) 23:5 *Law & Society Review* 727, **739-41 only**

Suggested Readings

- Rose, N., P. O'Malley, and M. Valverde. 2006. "Governmentality." *Annual Review of Law and Social Science* 2:83-104. (22 pp)
- Mertz, Elizabeth. "Teaching Lawyers the Language of Law: Legal and Anthropological Translations" (2000) 34 *J Marshall L Rev* 91.
- Perry, H W. *Deciding to Decide: Agenda Setting in the United States Supreme Court* (Cambridge, Mass: Harvard University Press, 1991).
- Kennedy, Duncan. *A Critique of Adjudication: Fin de Siècle* (Cambridge, Mass: Harvard University Press, 1997).
- Orford, Anne. "On International Legal Method" (2013) 1:1 *London Review of International Law* 166
- Nonet, Philippe. 1976. 'For Jurisprudential Sociology', *Law and Society Review* 10

4. Who law serves

- Kairys, David. "Legal Reasoning" in David Kairys, ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982) 11.
- "Rule of Law" in Thompson, E P. *Whigs and Hunters: The Origin of the Black Act* (London: Penguin Books, 1990), 258-69
- Grossman, Joel B, Herbert M Kritzer & Stewart Macaulay. "Do the 'Haves' Still Come out Ahead?" (1999) 33:4 *Law & Society Review* 803.
- Dezalay, Yves & Mikael Rask Madsen. "The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law" (2012) 8:1 *Annu Rev Law Soc Sci* 433.

See Also

- Danielsen, Dan. "How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance." *Harv. Int'l LJ* 46 (2005): 411. (16 pp)
- Pashukanis, Evgenii Bronislavovich. *Law and Marxism: A General Theory*, translated by C. J. Arthur (London: Pluto Press, 1983), ch 2
- Hale, Robert L. "Coercion and Distribution in a Supposedly Non-Coercive State" (1923) 38:3 *Political Science Quarterly* 470. (24 pp)
- Klare, Karl. "Law-making as praxis." *Telos* 1979, no. 40 (1979): 123-135. (13 pp)
- Bourdieu, Pierre. "The Force of law: Toward a Sociology of the Juridical Field" *Hastings LJ* 38 (1986): 805. (40 pp)
- Collier, Jane F, Bill Maurer & Liliana Suarez-Navaz. "Sanctioned Identities: Legal Constructions of Modern Personhood" (1995) 2:1-2 *Identities* 1. (28 pp)

- Galanter, Marc. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9, no. 1 (1974): 95-160. (65 pp)

5. What law means

- Cover, Robert M. "Violence and the Word." *Yale Law Journal* 95, no. 8 (1986): 1601-1629.
- Silbey, S S. "Legal Culture and Legal Consciousness" in Paul B Baltes, ed, *International Encyclopedia of the Social & Behavioral Sciences* (Oxford: Pergamon, 2001) 8623.
- Richland, Justin B. "Perpetuities Against Rules: Law, Ethnography and the Measuring of Lives" (2012) 8:3 *Law, Culture and the Humanities* 433.

Suggested Readings

- Cover, Robert M. "Foreword: Nomos and Narrative" (1983) 97 *Harvard Law Review* 4.
- Ewick, P. and Silbey, S. (1995). "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative." *Law and Society Review* 29: 197-226.
- McCann, Michael, William Haltom & Anne Bloom. "Java Jive: Genealogy of a Juridical Icon" (2001) 56 *U Miami L Rev* 113.
- Constable, Marianne. (2005) *Just Silences. The Limits and Possibilities of Modern Law*. New York: Princeton University Press
- White, J.B., 1985. "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life," *The University of Chicago Law Review*, 52(3), 684-702.
- White, James Boyd. "Law as Language: Reading Law and Reading Literature." *Tex. L. Rev.* 60 (1981): 415.
- Constable, Marianne. "On Not Leaving Law to the Lawyers" in Austin Sarat, ed, *Law in the Liberal Arts* (Ithaca: Cornell University Press, 2004).

6. How Law Knows

- Anker, Kirsten. "The Truth in Painting: Cultural Artifacts as Proof of Native Title" (2005) 9 *Law Text Culture* 91.
- Sanders, Joseph, Shari S Diamond & Neil Vidmar. "Legal Perceptions of Science and Expert Knowledge" (2002) 8:2 *Psychology, Public Policy, and Law* 139.
- "From a failed Lesson to a found object" Riles, Annelise. "Property as Legal Knowledge: Means and ends." *Journal of the Royal Anthropological Institute* 10, no. 4 (2004): 775-795, **778-784 only**

Suggested Readings

- Roberts, Simon. "Against Legal Pluralism - Some Reflections on the Contemporary Enlargement of the Legal Domain" (1998) 42 *J Legal Pluralism & Unofficial L* 95.
- Merry, Sally Engle, Kevin E. Davis, and Benedict Kingsbury, eds. *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*. Cambridge University Press, 2015.

- Geertz, Clifford. "Local Knowledge: Fact and Law in Comparative Perspective" in *Local Knowledge: Further Essays in Interpretive Anthropology*, 3rd ed (New York: Basic Books, 2000) 167.
- Valverde, Mariana. *Law's Dream of a Common Knowledge* (Princeton (N.J.): Princeton University Press, 2003).

Additional Suggested Readings

- Moore, Sally Falk. "Law and social change: the semi-autonomous social field as an appropriate subject of study," *Law & Society Review* 7, no. 4 (1973): 719-746.
- Darian-Smith, Eve. "Ethnographies of Law," *The Blackwell Companion to Law and Society* (2004): 545-568.
- Merry, Sally Engle. "Culture, power, and the discourse of law." *NYL Sch. L. Rev.* 37 (1992): 209.
- Sarat, Austin, and Susan Silbey. "The Pull of the Policy Audience." *Law & Policy* 10, no. 2-3 (1988): 97-166.
- Nielsen, Laura Beth. "The Work of Rights and the Work Rights Do: A Critical Empirical Approach" in Austin Sarat, ed, *The Blackwell Companion to Law and Society* (Blackwell Publishing Ltd, 2004) 63.
- Žižek, Slavoj. *The Sublime Object of Ideology*. London: Verso. ("ideology")