

The University of Chicago
SOCI 28071: Sociology of Law
Autumn Quarter 2016

Location: Cobb 202

Time: TTh 12pm–1.20pm

Instructor: Robert Owens (Robert Park Lecturer, Dept. of Sociology)

Office hours: immediately after class *or* by appointment (email me with a few suggested times—browens@uchicago.edu)

Course description

This course will investigate **what different kinds of social actors know about the law, how they interpret, use and respond to the law and with what consequences for the social order.** We will investigate how judges, lawyers, politicians, law enforcement, bureaucrats, citizens, aliens and activists all claim and act on different understandings of the law and how their activities collectively make up a legal “system.” Our empirical foci will be criminal and immigration law in the U.S. We will be reading sociology and related social science writing as well as a wide array of primary sources (judicial decisions, legislation, activist manifestos, policy platforms, etc.). One goal of the course is for us to understand where claims made about the law depend on implicit normative assumptions and perspectival or incomplete information. Another goal is for us to understand how the competing interests and different perspectives of different actors in the legal system bear on the success or failure of legal functioning and legal reform.

Our focus will be on positive and not normative analysis. In other words, we will try to understand how and why people act the way they do in relation to the law, rather than to decide who is right and who is wrong about what the law is or ought to be. However, the course should equip students with tools to sharpen their own normative viewpoints and to better understand competing perspectives.

The course will touch on some difficult topics that often elicit strong reactions, including policing in poor neighborhoods, race discrimination in law enforcement, refugee rights and the death penalty. Students who wish to take the class should be prepared to read challenging materials on these topics and should come with a firm commitment to engage one another in respectful, open and rigorous discourse. The University’s recent “Report of the Committee on the Freedom of Expression” will be our guide on this point. The Report guarantees to members of this community the “*broadest possible latitude to speak, write, listen, challenge, and learn.*” It continues, “*except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”*” Please **contact the instructor by the second week of the quarter with any questions or concerns about assigned materials or expectations for classroom norms.**

Find the full Committee Report here:

<https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

Readings

There is a **coursepack for purchase at the University Bookstore (Barnes and Nobles on Ellis Ave.).** There will be a few additional assignments (including websites and other media) accessible online through Chalk. In week 9, a documentary film is assigned, and it is on reserve in the Regenstein.

If you prefer to read in electronic format, the course readings from the coursepack will also be posted to Chalk (articles) or on reserve at the Regenstein (books), but you should **either purchase the coursepack or print and bring to class copies of all assigned readings.** I will ask you to **keep laptops and tablets off the seminar table.** If the cost of the coursepack or printing is a burden, please let me know and we will work something out. If you have a documented need to work with a computer in class, please let me know and you will be able to use one.

Assignments, expectations and grading

The class will be discussion based, and participation will be factored into your final grade (15%). Additional graded assignments will be two short response papers (3–5pp. each; 20% of final grade each) and a short final term paper submitted in an initial and a final draft (12–15pp.; 45% of final grade). The final paper may be on an assigned topic or a topic of the student’s own choice (subject to approval).

Late papers will be downgraded one grade per day (A to A-, etc.) for each day they are late. Papers more than 8 days late will not be accepted and will receive a failing mark. Extensions are unlikely. Your best bet for getting an extension if you need one is to approach me professionally and as early as possible. If you submit papers electronically, it is **your** responsibility to make sure that I have received them by the deadline.

If you plagiarize any part of any paper, you will fail the course. Your basic rules of thumb should be, do not put any text that you did not write yourself into your paper except for clearly referenced quotations, and cite all your sources such that any reader could locate them without difficulty. If you have any doubts about what this means, talk to me. Carelessness and misunderstanding are not excuses.

Schedule

Week 1a. Introduction: Social knowledge and the social order

Syllabus (this document)

Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (pp. 1–3, 72–79)

Week 1b. Social knowledge and the legal order

Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (pp. 1–3, 72–79)

Tom Tyler, *Why People Obey the Law* (pp. 19–39, 62–68, 166–169)

Week 2a. How systematic is the legal system?

Bronislaw Malinowski, *Crime and Custom in Savage Society* (pp. 50–62)

Donald Black, *The Behavior of Law* (pp. 2–10)

Week 2b. Criminal law: enforcement and processing

Michelle Alexander, *The New Jim Crow* (pp. 59–96)

Issa Kohler-Hausmann, “Misdemeanor Justice: Control Without Conviction” (*American Journal of Sociology*) (entire)

Week 3a. Criminal law: citizens under surveillance

Alice Goffman, *On the Run* (pp. vii–ix, 1–8, 107–139)

Forrest Stuart, “Becoming ‘Copwise’” (*Law and Society Review*) (entire)

Week 3b. Criminal law: consequences of incarceration

Title VII of the Civil Rights Act of 1964

Devah Pager, *Marked: Race, Crime and Finding Work in an Era of Mass Incarceration* (pp. 28–40, 58–85)

Week 4a. Litigation and power

Marc Galanter, “Why the ‘Haves’ Come Out Ahead” (*Law and Society Review*) (entire; footnotes optional)

RESPONSE PAPER 1 DUE IN CLASS WEEK 4a

Week 4b. Criminal law: judges interpreting standards—“reasonable person”

Max Gluckman, *Judicial Process Among the Barotse of Northern Rhodesia* (pp. 82–83, 94–97, 124–129, 138–140)

Scott v. Harris (S.Ct. 2007) (entire, majority and dissent)

Scott v. Harris chase video (<https://www.youtube.com/watch?v=qrVKSgRZ2GY>)

OPTIONAL: Today we are reading our first case. There is a helpful primer on how to read legal cases posted on Chalk, from the journal *The Green Bag*. I recommend reading it before you tackle *Scott v. Harris*. Whether you read the optional article or not, give yourself plenty of time with *Scott v. Harris* and the other cases moving forward. As you read, make note of what you don't understand. Legal cases are hard to read and often assume a lot of technical knowledge (which in this context, you are *not* expected to have).

Week 5a. Criminal law: judges balancing rights and interests—“cruel and unusual” punishment, public safety and institutional reform

Brown v. Plata (S.Ct. 2010) (excerpt)

Week 5b. Criminal law: proposals for reform

Black Lives Matter policy platforms (<http://www.joincampaignzero.org/#vision>) (read policy proposal #6 (body cams) and browse the rest of the website)

ACLU Model Act for Regulating the Use of Wearable Body Cameras

International Association of Chiefs of Police, Model Policy on Body-Worn Cameras

International Association of Chiefs of Police, Model Policy on Social Media

President Obama address to the International Association of Chiefs of Police (video or transcript)

“Fighting the ‘Code of Silence,’” *Chicago Daily Law Bulletin*

ASSIGNMENT: find an opinion/editorial commentary on the 2014 Laquan McDonald shooting and/or aftermath from a source you regularly consult for news (or a source aggregator, like Facebook’s news feed or Twitter). Read and bring to class.

Week 6a. The death penalty: debate and advocacy in the academy and the public sphere

David Baldus et al., “Comparative Review of Death Sentences” (*Journal of Criminal Law and Criminology*) (read closely pp. 663–668, 670–672, 679–692, 706–712; skim the remainder)

Austin Sarat, *Gruesome Spectacles* (pp. 146–175)

Week 6b. The death penalty: empirical evidence in the courts

David Baldus et al., “Comparative Review of Death Sentences” (*Journal of Criminal Law and Criminology*) (read closely pp. 661–668, 670–672, 679–692, 706–712; skim the remainder)

McCleskey v. Kemp (S.Ct. 1987) (excerpt)

OPTIONAL: *McCleskey* is now a thirty-year-old case. The Supreme Court’s most recent major death penalty case is *Glossip v. Gross* (2015), which raises the same core issues we are discussing with *McCleskey*: (1) uncertain scientific knowledge bearing on legal determinations and (2) scholarly and public advocacy shaping the context for decision making in the courts. The *Glossip* opinion, oral arguments and coverage from SCOTUSBlog are posted on Chalk.

Week 7a. Criminal law: what do social scientists know?

Goffman-Lubet exchange (*New Rambler* and *New Republic*)

Robert Weisberg, “The Death Penalty Meets Social Science” (*Annual Review of Law and Social Science*) (entire)

RESPONSE PAPER 2 DUE IN CLASS WEEK 7a FINAL PAPER PROPOSED TOPICS DISTRIBUTED

Week 7b. Immigration law: inter-governmental communication and the problem of enforcement

USCIS DAPA fact sheet

USCIS DACA fact sheet

DHS DAPA memo

Texas v. United States (5th Cir. 2015) (excerpt)

In *United States v. Texas*, Solicitor General’s petition for a writ of certiorari (skim)

United States v. Texas (S.Ct. 2016)

Week 8a. Immigration law: inter-governmental communication and the problem of enforcement

Arizona v. United States summary and commentary from SCOTUSBlog (<http://www.scotusblog.com/case-files/cases/arizona-v-united-states/>) (please read the summary and click through to read at least two of the Symposium contributions)

Arizona v. United States, brief for the State of Arizona (skim)

Arizona v. United States, brief for the United States (skim)

In *Arizona v. United States*, Brief of Amici Curiae Members of Congress (skim)

In *Arizona v. United States*, Brief of Amici Curiae Argentina et al. (skim)

Week 8b. Immigration law: asylum processing and the experience of refugees

Andrew Schoenholtz et al., *Lives in the Balance* (pp. 7–39, 121–142)

“Well-Founded Fear” (movie) (on reserve in Regenstein)

FINAL PAPER OPTIONAL FIRST DRAFTS DUE IN CLASS WEEK 8b

Week 9a. Immigration law: proposals for reform

Readings TBA.

Week 9b. NO CLASS—THANKSGIVING

Week 10a. Immigration law and race relations

Cybelle Fox, *Three Worlds of Relief* (selections TBA)

Week 10b. Conclusion: how systematic is the legal system?

Lawrence Friedman, *A History of American Law* (pp. xi–xx, 567–575, 583–584)

FINAL PAPERS DUE DEC. 9