

POL 385, Law and Society, Fall 2002

Brett Marston

MWF 3:00-3:55

Location: 202 Mahar Hall

Office Hours: MWF 1:45-2:45 and by appointment (438 Mahar Hall)

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This course is an introduction to the study of law and society. Law is one of the major institutions in modern life. Law is pervasive. On a small scale, anyone who has been stopped for a speeding ticket knows first hand the power that law can exercise in the most daily interactions. On a larger scale, Supreme Court cases such as *Brown v. Board of Education* are significant and contested landmarks in American political culture.

Although there is significant dispute in the field, one basic claim of many of those who study "law and society" is that law is *not* an autonomous and self-contained force: law and society affect and constitute each other. That said, the field called "law and society" is broad, and we cannot hope to cover all the possible approaches that one might find within its borders. Nonetheless, you should leave the class with an understanding of several prominent ways of approaching the subject matter. Questions that we will pursue in this course include: How do individuals experience law? How pervasive are legal "myths" and what are their characteristics? What is the relationship between social activism and rights protection? Can courts bring about social change? How has the American school desegregation effort from the 1950s onward affected both law and society?

This course will introduce you both to some important questions about the relationship between law and society, as well as to several different scholarly approaches to law and society, approaches that you may find attractive and persuasive. In the first half of the course we will examine several ways of looking at the relationship between law and society, including the legal anthropological approach of Ewick and Silbey, discussions of legal mobilization both in a national and comparative context (Epp and McCann), and the historical discussion of the political influences on American citizenship law by Rogers Smith. In the second half of the course, we will discuss one landmark Supreme Court case, *Brown v Board of Education*, and its significance for American law and society. The approaches that we will learn in the first part of the course will help to illuminate *Brown* and its significance.

Assignments and grade distribution

Short paper #1 (10%)

Midterm (30%)

Short paper #2 (15%)

Final exam or final paper (35%)

Class participation (10%)

You may write a final paper instead of the final exam if you give me seven (7) short reaction papers to the readings in the second half of the semester. A reaction paper will be graded as "approved" if you write at least two paragraphs and explore some aspect of the reading

that you find particularly interesting, troubling, enraging, perceptive, etc. If you choose to write a final paper, I will give you topics to write on; you may modify the suggested topic after consulting with me.

Expectations

This course is not a lecture course; extensive student participation is required. Participation constitutes 10% of your grade, so it is in your interest (as a grade-seeker) to participate, but I also hope that you will be both excited about the material and willing to ask questions when you do not understand something. Attendance will be taken; both absences and tardiness will count against your final grade.

Plagiarism will be dealt with according to university policies. Do not plagiarize. I will use plagiarism detection software in cases of uncertainty. In order to facilitate the use of this software, I require electronic versions of all written work (preferably by e-mail, but a floppy disk will do). You may discuss the midterm assignment with each other, but final answers that are substantially the same will be considered plagiarized.

Students who have a disabling condition that might interfere with their ability to complete this course successfully are encouraged to speak with me, confidentially, or to contact the Office of Disability Services (x3558, 210 Swetman).

Required texts (available at college bookstore)

- 1) Charles Epp. *The Rights Revolution*. Chicago: Univ. Chicago Press, 1998 (Epp)
- 2) Patricia Ewick and Susan S. Silbey. *The Common Place of Law*. Chicago: Univ. Chicago Press, 1998 (Ewick and Silbey)
- 3) Michael McCann. *Rights at Work*. Chicago: Univ. Chicago Press, 1994 (McCann)
- 4) Gerald Rosenberg. *The Hollow Hope*. Chicago: Univ. Chicago Press, 1991 (Rosenberg)
- 5) Austin Sarat, Ed. *Race, Law and Culture*. New York: Oxford Univ. Press, 1997 (Sarat)
- 6) Rogers Smith. *Civic Ideals*. New Haven: Yale Univ. Press, 1997(Smith)
- 7) Course Packet (CP)

Class Schedule

PART I: APPROACHES

Wed, 9/4: Introduction, Franz Kafka, "Before the Law" (Handout)

A. EXPERIENCES OF LAW: EWICK AND SILBEY

Fri, 9/6: Ewick and Silbey, 3-32 ("Introduction")

Mon, 9/9: Ewick and Silbey, 57-74("Before the Law")

Wed, 9/11: Ewick and Silbey, 75-107
Fri, 9/13: Ewick and Silbey, 108-128 ("With the Law")
Mon, 9/16: (No class)
Wed, 9/18: Ewick and Silbey, 129-164
Fri, 9/20: Ewick and Silbey, 165-189 ("Against the Law")
Mon, 9/23: Ewick and Silbey, 189-220
Wed, 9/25: Ewick and Silbey, 223-250 ("Conclusions")

B. LEGAL MOBILIZATION AND LEGAL CHANGE

1) EPP: RIGHTS AND MOBILIZATION IN COMPARATIVE PERSPECTIVE

Fri, 9/27: Epp, 1-25
Mon, 9/30: Epp, 25-43
Wed, 10/2: Epp, 44-70 **Short paper #1 due in class**
Fri, 10/4: Epp, 156-180
Mon, 10/7: Epp, 180-196, 197-205 (conclusion)

2) MCCANN'S STUDY OF PAY EQUITY REFORM

Wed, 10/9: McCann, 1-14, 23-35
Fri, 10/11: McCann, 35-47, 48-58
Mon, 10/14: McCann, 58-84
Wed, 10/16: McCann, 84-91, 91-108
Fri, 10/18: McCann, 108-137
Mon, 10/21: McCann, 150-164, 198-216
Wed, 10/23: McCann, 217-226, 226-238, 258-267

C. LAW AND POLITICAL FORCES: ROGERS SMITH AND THE CASE OF CITIZENSHIP LAWS

Fri, 10/25: Smith, 13-39 (Chapter 1) **Midterm Assignment Handed Out**
Mon, 10/28: Smith, 286-308
Wed, 10/30: Smith, 308-330
Fri, 11/1: 371-385, 396-402 **Midterm Assignment Due**

PART II: BROWN, SCHOOL DESEGREGATION, RACE, AND LAW IN POSTWAR AMERICAN POLITICS AND SOCIETY

A. CASES AND LITIGATION

1) PLESSY

Mon, 11/4: *Plessy v. Ferguson* (CP)

2) BROWN, BOLLING, BROWN II

Wed, 11/6: *Brown v. Board of Education*, *Bolling v. Sharpe* (CP)
Fri, 11/8: *Brown II*, *Cooper v. Aaron* (1958), (CP); Charles Mingus, "Fables of Faubus," *Mingus Ah Um* (1959) (in class).

3) SUBSEQUENT DEVELOPMENTS

Mon, 11/11: *Green v. County School Board of New Kent County* (1968), *Swann v. Charlotte-Mecklenburg County Board of Education* (1971), *Milliken v. Bradley* (1977) (CP)

B. COURTS AND SOCIAL CHANGE: ROSENBERG

Wed, 11/13: Rosenberg, 1-36
Fri, 11/15: Rosenberg, 39-57
Mon, 11/18: Rosenberg, 72-93
Wed, 11/20: Rosenberg, 94-117
Fri, 11/22: Rosenberg, 117-142
Mon, 11/25: Rosenberg, 142-169
Wed, 11/27: (no class)
Fri, 11/29: (no class)
Mon, 12/2: Rosenberg, 336-343 (Chapter 12, Conclusion), Friedman, "Brown in Context," *Sarat* 49-73; McCann, 288-293

C. THE MEANING OF BROWN

Wed, 12/4: Kateb, "*Brown* and the Harm of Legal Segregation," *Sarat* 91-109 **Short paper #2 due in class**
Fri, 12/6: Gewirtz, "The Triumph and Transformation of Antidiscrimination Law," *Sarat* 110-134
Mon, 12/9: Wilkins, "Social Engineers or Corporate Tools?" *Sarat* 137-169
Wed, 12/11: Peller, "Cultural Imperialism, White Anxiety, and the Ideological Realignment of *Brown*," *Sarat* 190-220

D. CONCLUSION

Fri, 12/13: No reading; bring your own final questions.

Final Exam: Wednesday, 12/18, 2:00 p.m. – 4:00 p.m.