

SOCI 140
Sociology of Law
Prof. Jeff Tirshfield

Winter 2024
Time: Tues/Thurs 2:00 pm – 3:20 pm
Location: WLH 2113

email: jtirshfi@ucsd.edu
Office Hours: Tues. 12:30 pm - 1:30 pm, Bird Rock
Coffee by the Epstein Family Theatre;
and by appt.

Course TA: Just Me

Course Information:

Presumably—and I write presumably only because I did not attend lectures with you and am not certain—one of the first things you learned in SOCI 50 (*Law and Society*) was that there is a difference between the ‘study of the law’ and the ‘study of law and society.’ That difference is no more manifest than what is taught in law schools and law and society programs. Whereas law school professors primarily teach legal rules and how to apply them, professors within the social science field of law and society explore the impacts of law-making, judicial decision-making, and the juridical complex on greater society(ies), communities, groups, and individuals. In other words, while the former tends to conceptualize the law as an autopoietic system, the latter recognizes that the law does not exist in a vacuum; it affects and is affected by other social systems.

Our goals—however grandiose they may be—are to better understand the meaning of “the law,” provide context to “the law,” examine how the law struggles under a weight of contradictions, incompatibilities, and structural failings, conceptualize (some of) the myriad connections between the law and the social institutions and processes that it informs and which inform it, and discuss how the law fits within the juridical process. In the end, we will reconcile how Durkheim understood the law—“a visible symbol of all that is essentially social” (Alan Hunt), with how I conceptualize the law—a reification of asymmetric power relations and instrumental inequalities (not sayin’ that the law *per se* is bad or doesn’t provide the necessary structure on which society(ies) are built, only that it is not created, enforced or adjudicated equally in any modern society—of which I am aware).

In this course, we will read research in the fields of law and law and society. We will review and analyze court cases to illuminate how court decisions are influenced by or rest upon arguments that go beyond legal rules and are rooted in or inspired by social logics—for example, the originalism/textualism/pragmatism argument. Finally, we will compare and contrast domestic (national/municipal/administrative) law with modern international law and discuss international law’s structural brilliance... and instrumental failings.

Classical socio-legal theories are introduced, discussed, and assessed during the first half of this course. Theory provides a foundation to address empirical issues; and just in case you’ve been living under a rock, there are a number of “thorny” socio-legal issues banging around the corridors of the academe these days. We will address two of these “thorny” issues, like the burgeoning scholars we are... more on this latter.

Please note that the readings are to be consumed in weekly chunks—see the attached schedule. I expect that you will have read the assigned material before that week’s lectures. **For example, please read Week 1 readings prior to the second lecture of the quarter.** I believe you will find the assigned material exceptionally interesting—as your generation says, ‘it’s curated’—so I implore you to read it. If you wish to explore some topics in greater depth, I am happy to suggest additional materials.

You are expected to attend lectures—yea, all of them. As you might ascertain by the tenor of this syllabus, I plan to seek your input and participation—a small victory for supporters of Socrates and Hegel everywhere. If you are not in attendance, you can’t share—and not sharing can have a negative impact on your grade. Participation—and attendance... (how else can you participate?) will account for 20% of your course grade.

There will be an in-class Midterm. The matching, fill-in-the-blank, and short answer essays will be based on the readings, lectures, and class discussions—another reason to grace us with your presence. The midterm will account for 30% of your course grade.



Finally, there will be a Final worth 50% of your course grade. Don't stress about it; it's eleven weeks away. You will do just fine if you attend class, do the readings, and participate. Seriously, you will.

Oh, one more thing: I am here for you. I teach because I view education as a calling and learn just as much from you as you learn from me. That learning feeds back into my research; it's sort of an autopoietic system, but as such, it requires both you and me to contribute. I am happy to meet with you during office hours, when I practice *jiu-jitsu* or yoga, or at some other mutually convenient time. I love to talk shop. Use me as a resource; I know stuff; that's why they pay me the big bucks.

Evaluation:

- Midterm exam (30% of course grade) - Matching, Fill-in-the-blank, Short Answer, Short Essay
- Final exam (50% of course grade) – Long-form responses to a series of prompts
- Participation and attendance (20% of course grade)

Required Materials:

-  The SOCI 140 Sociology of Law Reader is available at Cal Copy, 3211 Holiday Court, #201A, La Jolla, CA 92037 (Villa La Jolla Plaza--just off campus) – calcopyucsd@gmail.com. **To purchase an emailed digital version or mailed printed version (hard copy) of the reader, please click (or cut and paste) the following URL:** <https://calcopyucsd.com/products> (www.calcopyucsd.com)
-  Some supplementary readings can be accessed using hyperlinks within this syllabus; others have or will be posted on Canvas.

The syllabus may be updated throughout the course to address relevant social phenomena—or social facts, for you Durkheim fans.

Note on the (non)use of Electronics:

Please place all electronics in silent mode during lectures. Also, cool it with the fuzzy kitty videos, TikTok influencer talks, YouTube fail videos, phone calls, and yes, even texting. You may think you are able to multitask—research into the subject suggests otherwise. Additionally, I am easily distracted by all of the aforementioned.

Academic Integrity:

Students should be familiar with UCSD's regulations concerning plagiarism and the integrity of scholarship. Plagiarism is serious, and suspected cases will be referred to UCSD's Office of Academic Integrity. If you have any questions about what constitutes plagiarism or cheating, please ask me.

ChatGPT and the like:

Generative AI tools are just that: tools. Don't rely on them to write your papers, fact-check your work, or provide and verify sources. These tools work tremendously fast, yet they are tremendously buggy—hallucinations are but one issue. Remember, these tools use the information provided by their programmers and the Internet to inform their responses to your queries, and the Internet is riddled with—to quote the title of an excellent book by Harry Frankfurt—[On] *Bullshit*.

Use these tools to explore and experiment. Question their results...our brains are still infinitely better and more capable of addressing most things, including socially constructed ethical dilemmas.

Schedule

Week 1 Day 1: Course overview; review of the syllabus; A History of the Law; The Social Contract; Differentiating “the law” from “law and society”

Week 1, Day 2: A History of the “Modern” Common Law; Differentiating the ‘Law on the Books’ from the ‘Law in Action’

- Hobbes. 1674. *Leviathan*. 63-65
- Beccaria. 1764. *On Crimes and Punishment*. Introduction – Chap. VI-X (pgs 7-19), Chap XII (pg 20), Chaps. XX-XXII (pgs 30-32), Chaps XXVI-XXX (pgs 34-43), and Chaps XLII-XLV (pgs 55-58)
- Bentham. 1781. *The Principles of Morals and Legislation*. 14-18, 27-41, and 61-68
- Pound. 1923. *Law and Morals I: The Historical View*. 350-359
- Llewellyn. 1930. *A Realistic Jurisprudence – The Next Step*. 431-465

Week 2: The Law as a Reification of Inequality

- Marx. 2006. Marx-Engels Reader: *Law on the Theft of Woods*. 224-263
- Chambliss. 1964. *A Sociological Analysis on the Law of Vagrancy*. 67-77

Week 3: The Law... the Quintessential Social Fact; The Rational Legal Order

- Durkheim. 1984. *The Division of Labor in Society*.. 31-52; 68-83
- Lukes & Scull. 1983. *Durkheim and the Law*. 164-175
- Black. 1983. *Crime as Social Control*. 34-42
- Hunt. 1978. *The Sociological Movement in Law*. 102-133

Week 4: Adversarial Legalism – How We Practice Law

- Kagan. 2003. *Adversarial Legalism*. 3-58

Week 5: The Immutable—yet flexible—Constitution: Compromise? Balancing Act? Foundation for The Future?

- 1787. *United States Constitution*. I-XV
- Carey & McClellan eds. Hamilton, Jay & Madison. 2001. *The Federalist Papers*. xvii-xxxi; xxxiv-xxxix;
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 2 - Heterogeneity v. Homogeneity*. 5-9
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 9 - Separation of Powers*. 37-42
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 10 - Majoritarianism*. 42-49
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 14 - Republicanism*. 62-68
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 35 - Equitable Representation*. 167-172
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 37 - Power Sharing*. 179-186
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 39 - More Republicanism*. 193-199
- Hamilton, Jay & Madison. 2001. *The Federalist Papers No. 47 & 51 - Separation of Powers*. 249-256; 267-272

*****MIDTERM - Tuesday, February 11th (Week 6)*****

Week 6: Presidential Immunity

- 2024. *Trump v. United States*. 1-119
- 2024. *United States of America v. Donald J. Trump*. 1-36
- 2024. Tribe. *How the US Supreme Court shredded the Constitution and what can be done to repair it*
- 2024. Heritage Foundation. *SCOTUS Rightfully Protects Presidents from Politicized Prosecutions*
- 2024. French. *What Happened to the Originalism of the Originalists?*
- 2024. Nelson. *Justice Sotomayor was right for the wrong reasons*
- 1787. *United States Constitution*, Art. I, §3, Cl. 7 (re-read)
- 1787. *United States Constitution*, Art. II, §4 (re-read)
- **Hamilton**, Jay & Madison. 2001. *The Federalist No. 68*. 351-355
- **Hamilton**, Jay & Madison. 2001. *The Federalist No. 69*. 355-362
- **Hamilton**, Jay & Madison. 2001. *The Federalist No. 70*. 362-369
- **Hamilton**, Jay & Madison. 2001. *The Federalist No. 77*. 369-374

Week 7: The Foundations of International Law; Jurisdiction; Sovereignty

- Koh. 1997. *Why Do Nations Obey International Law?* 2599-2659
- Miyoshi. 2000. *Sovereignty and International Law*. 1-10

Week 8: Universal Jurisdiction

- Macedo. 2001. *Princeton Principles of Universal Jurisdiction*. 15-18, 23-36, 39-55
- Bassiouni. 2001. *Universal Jurisdiction for International Crimes*. 1-62
- **Case Study:** The abduction and trial of Adolph Eichmann by the State of Israel
 - https://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/Israel/Eichmann_Judgement_11-12-1961.pdf
 - <https://www.archives.gov.il/en/chapter/behind-scenes-eichmann-trial/>
 - <https://www.amnesty.org/download/Documents/24000/ior530132012en.pdf>

Week 9: The United Nations; Laws of War

- Shaw. 2008. *International Law*. 1204-1235, 1118-1147

Week 10: International Humanitarian Law; International Criminal Law

- Shaw. 2008. *International Law*. 1167-1203, 397-417
- International Courts:
 - International Court of Justice (ICJ): <https://www.icj-cij.org/en/history>
 - International Criminal Court (ICC): <https://www.icc-cpi.int/about/how-the-court-works>
- ICC. 2023/2024 *Applications and Responses*. TBD

*****Final Exam Thursday, March 20th, 3:00 pm*****