

Syllabus
The Social Inquiry of Law
(MLAW 304 – Fall 2017)

Instructor: Robert Koulish
University of Maryland
MLAW's Law and Society Minor
Fall, 2016
Tuesday/ Thursday 9:30-10:45
Class Room: Tydings 2109

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Introduction

In this course, students will examine law and society, which is a social scientific approach to the study of law. First, students will examine multiple approaches to the study of law, which will provide skills for critically examining law. They will examine formal approaches to law, legal process and trials. Such are the images we have of law from an early age, mostly from popular culture. Students will then deconstruct the myth of law using a variety of legal theories and law and society studies. Along the way students will be introduced to the law's relationship with: culture, morality, class, race, politics and power.

Second, students will examine disputing, which is a fundamental aspect of law. In this section, students will examine law and society literature, which includes research from a variety of academic perspectives. Next students will investigate the impact of law on society, followed by the impact of society on law. Finally students will briefly investigate the current state of legal education and law.

During the semester students will get a taste of authentic law and society practice. They will spend much of the semester investigating one or more law and society topics, through a variety of law and society methods. They will interview professionals, write an op-ed and a final research paper formatted on the template used for publication in a top-shelf law and society journal.

Specifically, this course is designed to introduce students to several aspects of law and society: Students will be introduced to law and legal reasoning, a variety of different kinds of law: criminal law, civil law, administrative law, and approaches to law: legal formalism, positivism, natural law, and legal realism. Thus students will learn how to analyze law and society literature with an emphasis on such concepts as critical race and gender, legal pluralism, consciousness and power.

Most readings will be found on ELMS or in 2 texts:

During this class we will also experiment with Twitter. Students will be expected to post questions and comments at #MLAW304

Learning Outcomes

By the end of the class, students will be able to use critical oral presentation and writing skills to:

- Articulate the processes in law and society scholarship required to bring about a successful outcome from planning, modeling, and preparing, to critiquing, revising and perfecting
- Demonstrate an ability to critique existing applications of law and society scholarship, in order to learn from past successes and failures
- Recognize how an application of law and society scholarship affects or is affected by political, social, cultural, economic, or ethical dimensions
- Demonstrate an understanding of civil law and criminal law processes and systems in context of law and society scholarship
- Produce an original analysis, creative work, or other scholarly work that reflects a body of knowledge that applies law and society literature to a legal topic or case (current case or controversy)

Honor code/Academic integrity

The University of Maryland, College Park has a nationally recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for this course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation, and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, please visit <http://www.studenthonorcouncil.umd.edu/whatis.html>.

Medically necessitated absences

The University of Maryland has a policy regarding medically necessitated absences from class. I do not take attendance in lectures, but discussion section participation is mandatory. Under university policy, we will accept a self-signed note from the student attesting to the date of the illness as an excused absence from a single discussion section. A student is allowed only ONE self-signed note per class per semester.

A student who experiences a prolonged absence or an illness preventing attendance at a major scheduled grading event (see above) is required to provide written documentation of the illness from the Health Center or an outside health care provider, verifying the dates of the treatment and the time period during which the student was unable to meet academic responsibilities.

Students with disabilities

I will make every effort to accommodate students with disabilities. If you need accommodation, please see me as early as possible; I will need written documentation from the Disability Support Service Office.

Religious observances

Please let me know in advance if a religious observance will cause you to miss a grading event. Please let your TA know in advance if a religious observance will cause you to miss a section. Provided you give advance notice, you will not be penalized for any discussion sections missed for this reason, and you will be given the opportunity to make up exams or other assignments.

Required Texts

- Readings to be posted on ELMS
- Kitty Calavita, *Invitation to Law & Society*
- Erik Larson, Patrick Schmidt, (L&S) The Law & Society Reader

Assignments, Activities, & Grading

Grading & Assignments

1. Attendance & Participation—20%

Twitter—5%

Engagement—5%

Discussion Question Posts—10%

2. Mid semester Reflection of Law and Society Literature (15%)

3. Briefing a case—5%

4. Interview & Questions—10%

5. Policy brief—10% (3-4 pages)

6. Final Project—40%

The final Project will consist of research and a normative argument (based on the skills learned from legal and policy memos). You will select a topic of contemporary importance and conduct research that consists of

1) law and society literature; 2) law cases; 3) policies. Your paper will integrate a thorough understanding of these three components.

Part 1: 15%

Annotated bibliography—5%

Presentation: Delivery, content, synthesis—15%

Part 2: The Final Paper—(8 to 10 pages)—25%

EXTRA CREDIT: 5 points – As you can see in the rubric below—every point makes a difference in the calculation of your final grade! To get extra credit you will be required to attend an MLAW event a write a 1 page reflection on the event. You may count 2 events worth 2.5 points each to count towards extra credit! This is the space you have to bump up your grade, use this opportunity!

Letter Grade	Description
98 – 100 = A+ 93 – 97 = A 90 – 92 = A-	“Denotes excellent mastery of the subject and outstanding scholarship.”
88 – 89 = B+ 83 – 87 = B 80 – 82 = B-	“Denotes good mastery of the subject and good scholarship.”
78 – 79 = C+ 73 – 77 = C 70 – 72 = C-	“Denotes acceptable mastery of the subject and the usual achievement expected.”
68 – 69 = D+ 63 – 67 = D 62 – 60 = D-	“Denotes borderline understanding of the subject. These grades denote marginal performance, and they do not represent satisfactory progress toward a degree.”
59 & below =F	“Denotes failure to understand the subject and unsatisfactory performance.”

A note on late assignments: Late assignments will **not** be accepted. You will be required to be present for all activities, exams, and to turn in written assignments by their due date and time. If you are unable to attend class or complete an assignment you are expected to alert Dr. Koulish or Allison Patch as soon as possible.

1. Attendance & Participation— 20%

You will be graded and assessed based upon your active participation in class, your ability to engage course materials, your classmates, and the application of the larger overarching themes of the course during lecture and in online discussions.

Twitter 5%: For this course utilize the hashtag - #MLAW30417

Engage your classmates online to further your engagement with each other, the material, and the course materials. Student posts *will be discussed in lecture* to enhance our discussion. Engaged participation is key to successful understanding and application of Law and Society key scholars, practitioners, methods and concepts. During lecture you will be asked to utilize the classroom technology to ‘voice’ your opinion and growing understanding of Law and Society to your instructors and to each other. You will be required to access and use twitter.

Engagement 5%

Course materials for MLAW304 will also include video, audio, visual art and expression, and other online sources. The application of Law and Society can be seen everywhere in our daily lives. Each week’s course material will also include a clearly labeled ‘*module*’ on ELMS that will relate that week’s themes to current events and popular culture.

Discussion Question posts 10%

Each week, students will be required to post responses to discussion topics, which will be based on the readings and lectures from the week. These posts are due by **11:59 PM Thursday**.

Discussions can be accessed through the “Discussion” tab on the MLAW304 ELMS home page. In these discussions students will engage with questions based upon course material and demonstrate their overall understanding of scholars and cases covered. These discussion posts will allow us to engage one another, to challenge students to learn and apply new concepts, and create scholarly community.

Each post *must* be at least **100** words and *no more* than **200** words. Further, each post **must** directly engage **and** correctly cite the week’s course materials.

Remember: This assignment **does not** ask that you summarize everything in a given week, but **rather**—gauges that you can critically assess your ability to learn, read, apply, and synthesize the course materials

2. Mid-term Literature Synthesis—15%—Due October 5, 11:59 PM through ELMS

Please write 3-5 page paper that reflects upon the literature for weeks 1-6. What are main themes? For each paragraph, discuss a theme of interest and then ask a question related to how it applies to a contemporary issue and what you would like to learn more about?

3. Briefing a Case—5%—Due October 19, 11:59 PM through ELMS

4. Interview—10%—Due November 2, 11:59 PM through ELMS

A major part of this course requires an in-depth understanding of the real world settings and applications of law, society, and the Law & Society movement. To this end you will interview a legal or policy professional (or other w/ permission by instructor). Following the interview, you will be required to write a brief 3 page paper the updates Blumberg's thesis.

4. Policy Brief—10%—Due November 16, 11:59 PM through ELMS

5. Stages of the Final Project—40%

Part 1

The final project for MLAW304 is an in-depth research paper. In order to allow you the time, focus, and energy necessary to tackling this assignment the final paper has been divided into three parts. Each of these sections is further subdivided.

Initial annotated bibliography 5%--Due November 21st, 11:59 PM through ELMS

The production of an in-depth and precise annotated bibliography is a necessary skill within and outside of the academy. This portion of Part1 asks that you identify **5 academic** sources from **outside of the course** that you will utilize in your final paper and that you can briefly summarize the text, discuss its importance to your project, and how it addresses the major themes of the course. Each text should be accompanied by an annotation that is no longer than **100 words**.

Presentation 10%--Due in class Weeks 14 & 15

Each student will give a 5 minute presentation on their final project topic. Within this presentation students should cover their main thesis, address concerns of alternative arguments, and any important supporting details that help shape your argument. Be sure to focus on the Law and Society perspective on the issue of your project—this means you need to apply the literature of the course to your project. Presentations will be graded on three qualities: delivery, content, and synthesis.

Part 2

Final Paper 25%--Due December 19, 11:59 PM through ELMS

The final paper will be the culmination of the work you have done during the semester. For the final project, you will select a real-world issue to analyze from the perspective of the law and society literature, case law and with additional legal and policy research. 8-10 pages

A rubric for this assignment is in the appendix and a more detailed description will be forthcoming. The goal of this assignment holds that each student will be prepared to draft a document that is formatted for submission to a law and society journal or academic press.

Course Outline Topics and Readings*

You should be sure to complete the readings for the day **BEFORE** class as understanding lecture will be dependent on your completion of the readings.

Module 1 (weeks 1-4)

Week 1—August 29 & 31

Tuesday

- **Overview of Law and Society syllabus & Introduction to Law and Civil Society**
 - *Introducing the Law and Society Movement; How to understand law from a social science and humanities perspective. Law and Society studies law in social, political and cultural context.*
- **Readings**
 - No readings
- **Discussion**
 - A reflection on law in the real world (Describe law. What are the main themes? Walk around campus and find as many references to law as you can).

Thursday

- **Introducing Law and Society:**
 - How to Read Society: Themes, History and Analytical Template
- **Readings**
 - Seron, Coutin, Meeusen, Is There a Canon of Law and Society
 - Friedman, The Law and Society Movement
 - Calavita, Chapter 1

Week 2—September 5 & 7

Tuesday

- **Introduction to Law**
 - What is law—customs, civil, common
- **Readings**

- Vago, Law and Society, pp1-14
- Barkan, pp55-64.
- **Discussion**
- How would you compare and contrast norms and law?

Thursday

- ***Rule of Law***
- Understandings of Laws not people
- Office vs. person holding office & authority
- ***Readings***
- Brian Tamanaha, A Concise Guide to the Rule of Law
- Savage, Newly Disclosed Clinton-era Memo says Presidents Can Be Indicted.

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<https://www.nytimes.com/interactive/2017/07/22/us/document-Savage-NYT-FOIA-Starr-memo-p-residential.html?mcubz=0>

- Liptak, Why Trump's Pardon of Arpaio follows Law, yet Challenges it
- <https://www.nytimes.com/2017/08/26/us/politics/trump-pardon-joe-arpaio-constitution.html?mcubz=0>

Guest visit by Thiru Vignarajah: former SCOTUS Law Clerk, Former Deputy Attorney General, State of Maryland

Week 3—September 12 & 14

Tuesday

- ***How Law Affects Society***
- How law affects how and what we think, our attitudes, habits and how we view each other and the world around us.
- ***Readings***
- Calavita, Chapter 5, "Many Law, Many Orders"
- Sally Merry, *Legal Pluralism* (Law & Society Review, 1988)
- Garth and Sterling, "The Talk versus the Walk of Law", Chapter 42
- Seron et al, "Impact of Legal Counsel on Outcomes for the Poor...", Chapter 17
- Hajjar, "Cause Lawyering in Transnational Perspective...", Chapter 18
- **Discussion**
 - Discuss how ordinary people can generally tell what kind of 'law' they are following (federal, state, local, university, formal or informal).

Thursday

- ***How Society Affects Law***

- Society can outpace the law, let's say through technological discoveries, or slow it down, for example, on enforcement anti discrimination law in the South. Society thus provides meaning to law in every day life

- ***Readings***

- Calavita Chapter 3, Law in the Everyday, Everywhere

Week 4 September 19 & 21

Tuesday

- ***Obeying the Law and Resistance***

- Most people obey the law but not every way and always. It has been said that we lead misdemeanor lives. This week we will explore this idea.

- ***Readings***

- Milgram, S. (1974). *The Impact of Law on Society Chapter 35 Obedience to Authority: an Experiment View*. Harper & Row Publishers, Inc.

- Schultz, Fear and Norms and Rock and Roll: What Jambands Can Teach Us About

- Persuading People to Obey Copyright Law

- Pharell: Marvin Gaye

- <http://www.theverge.com/2015/3/20/8262343/blurred-lines-copyright-verdict-williams-creativity>

- King, Jr., Letter from Birmingham Jail

- ***Discussion***

- Milgram's study has been subjected to critique but its general lesson is important: that good people can do bad things if the right circumstances. Discuss this general rule as it applies to today's political environment.

Thursday

- ***Risk Assessments and Law (Mitigating obligations to obey)***

- Risk provides a method for understanding law in terms of abstractions not people, probabilities, not actual guilt or fault.

- ***Readings***

- Smith & O'Malley (2017). Driving Politics: Data-Driven Governance and Resistance

- Guest lecturer will discuss risk assessments in the national security setting

Week 5: September 26 & 28

Tuesday

- ***Relationship between Law and Society***

For members of society, law can be an important tool for social change. This week will focus on rights and legal consciousness as ways to connect law and society.

- ***Readings***

- Nielsen, "Situating Legal Consciousness..." in Larson, Schmidt, The Law & Society Reader
- Marshall, Idle Rights, Chapter 26 in Larsen & Schmidt
- Gallagher, Mobilizing the Law, in Larsen & Schmidt

- **Discussion**

Please discuss specific example of how social awareness of legal rights make them real.

Thursday

- ***Whose Interests are served by Law?***

- Calavita, Chapter 4, "The Color of Law"
- Sohoni, Unsuitable Suitors, Larsen & Schmidt, Chpt 37
- Obasogie, "Do Blind People See Race?" Chapt 41, Larsen & Schmidt
- Galanter, Why the Haves Come out Ahead

Assignment: Please write 3-5 page paper that reflects upon the literature for weeks 1-6. What are main themes? For each paragraph, discuss a theme of interest and then ask a question related to how it applies to a contemporary issue and what you would like to learn more about?

Week 6: October 3 & 5

Tuesday

- ***Law & Social Change***

○ Law can be an effective vehicle for inspiring, even commanding social change. But its most effective when law and society are in sync.

- ***Readings***

- Calavita, Law and Social Justice, Chapter 7

- **Discussion**

- Please discuss how you have or plan to use law to create change, with specific examples.

Thursday

- Review, catch up and sum up first half semester

Module 2 (weeks 7-8) What is Civil Law & How social scientists understand it?

Week 7— October 10 & 12

Tuesday

- **Introducing Civil Law**
 - Introducing basics to Civil law & Criminal Law
 - Dual court structure
- **Readings**
 - Vago: 83-122
 - Torts: Friedman, 193-197, 203-206, 403-416
 - Contracts: Friedman, 193-197, 203-206, 403-416
- **Discussion**
 - Please discuss tort law as a way of resolving disputes.

Thursday

- **Workshop—Brief a civil law case**
 - A guest speaker will introduce the structure of law cases and provide a step by step guide to brief a case.
- **Readings**
 - Torts: US v Carroll Towing Co. 159 F.2d 169 (2d. Cir 1947)
 - Contract C&J Fertilizer, Inc. v. Allied Mutual Ins. Co., 227 N.W.2d 169 (Iowa 1975)

*******Mid-Semester Reflection Due—Thursday, October 5th, 11:59 PM*******

Week 8—October 17 & 19

Tuesday

- **Civil Law in Action**

○ This week features civil law—contracts and torts through the lens of law and society literature. By understanding how scholars study civil law, students will learn about how civil law depends on social context, and how its practice is distinguishable from civil law in the books.

· **Readings**

- David Engel, *Oven Bird's Song*
- Sally Merry. 1990. Getting Justice and Getting Even: Legal Consciousness among Working Class Americans (pp 110-133)
- Stewart Macaulay, *Non-Contractual Relations in Business*
- Mark Galanter, Why the Haves Come Out Ahead
 - *Recommended:* Jean Braucher, William Whitford, *Preface, Revisiting the Contracts Scholarship of Stewart Macaulay*; Michael McCann, *Reflections on Engel, Expanding the Horizons of Horizontal Inquiry Into Rights Consciousness*

· **Discussion**

- Please discuss the gap between formal torts and contracts and civil law in action. Include why it is that informal approaches are more relied on than formal legal processes and procedures.

Thursday

· **Workshop Surveys and Interviews**

- The art of asking questions

Criminal Law

Week 9—October 24 & 26

Tuesday

· **Criminal Law/Courts and Process**

○ The criminal law process attaches constitutional rights to the accused. Criminal law focuses on questions of intent/fault and responsibility. This week will focus on the connection between rights, and responsibilities in the criminal law context.

· **Readings**

- **Basics in Criminal Procedure:** https://www.law.cornell.edu/wex/Criminal_procedure

· **Discussion**

- Please discuss the important of rights and responsibilities in criminal law. Please be as specific as possible. Use concrete examples.

Thursday

· **Criminal Law and Society**

- In reality criminal law practitioners rarely make use of formal legal processes/trials, and lawyers tend to act in ways that differ from formal understandings. Why is it that most people rely on plea-bargaining rather than a trial? What are the costs and benefits of plea bargaining?

· **Readings**

- Abraham Blumberg, *The Practice of Law as a Confidence Game*
- Tom Tyler and Robert Boeck-Mann, *Three Strikes and You're Out, but why? The Psychology of Public Support for Punishing Rule Breakers*
- Michael Radelet and Glenn L. Pierce. Race and Prosecutorial Discretion in Homicide Cases in Law & Society Reader
- Milton Heumann and Colin Loftin, Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute, in Law & Society Reader

○ **Recommended:**

§ Gilbert Geis, Revisiting Blumberg's "The Practice of Law as a Confidence Game"

§ Erhard Blankenburg. Holistic Effects in Social Control Decision-Making, in Law and Society Reader

*****Case Brief Due October 19, 11:59 PM through ELMS*****

Week 10—October 31 & Nov 2

Tuesday

· ***Implicit Bias***

- Social science has recently made remarkable breakthroughs in approaches to understanding discrimination. No longer does discrimination need to be overt, explicit and intentional. Scholars can now detect implicit bias, which we will discuss in relation to law.

Readings

- Kang, Bennett et al, Implicit Bias and the Courtroom,
 - ***Discussion***
 - Submit a Final Paper Topic

Thursday

· ***Workshop—Implicit Bias Training***

- In this class students will take and discuss an implicit bias test. One of the likely findings is that prejudice is more pervasive than we think.

Week 11—November 7 & 9

Tuesday

· ***Statutes and Policy***

- Much of law involves public policy. Public policies can be challenged in the courts, which lead judges to interpret statutes per the constitution and the statutes' own words, meaning and context.

- ***Readings***

- David Mayhew: Congress: the Electoral Connection
- How a Bill Becomes a Law
- Ismaili, Contextualizing the Criminal Justice Policy-Making Process
<http://cjp.sagepub.com/content/17/3/255.full.pdf+html>
- Vago, pp122-129, 129-147
- US v Texas (2016)

- ***Discussion***

- Briefly discuss the difference between law and policy. This is an important distinction and yet is also blurry in part.

Thursday

- ***Workshop Policy Memo***

- Learning how to research and organize policy memos

*****Interview Paper Due November 2, 11:59 PM through ELMS*****

Week 12, Nov 14 & 16

Tuesday

- ***Constitutional Law***

- How judges interpret the constitution highlights the role of social context and politics in terms of understanding law in action. Additionally, Supreme Court cases play an important role in terms of pushing society forward or holding it back. These themes will be discussed during this week.

- ***Readings***

- Hall, M. (2009). The Hollow Hope: Can Courts Bring About Social Change? 2d ed. By
- Gerald Rosenberg. *Law & Society Review*, 43(4), 941-943.
- Keck, Thomas (2009), "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights"
- Ginsburg, R. B. (1992). Speaking in a Judicial Voice: Reflections on Roe v. Wade.
- *New York University Law Review* 1185.
- Cases:

§ *Roe v. Wade*, 410 U.S. 113 (1973).

§ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

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http://www.nytimes.com/2014/10/15/us/supreme-court-allows-texas-abortion-clinics-to-stay-open.html?_r=0

§ *Obergefell v. Hodges*. 14-556 (2015)

- **Discussion**

- Please read and discuss the Obergefell decision in terms of social context. Does the law lead or follow social consciousness and attitudes?

Thursday

- ***Constitutional Law***

- The constitution is the framework for governing. How judges make decisions and how law relates to society is informed by what the Supreme Court has to say.

- Readings

- Clarence Thomas, Judging
- David Souter, On Constitutional Interpretation
- Stephen Breyer, Our Democratic Constitution

Week 13—November 21

Tuesday

- As much as the constitution is the head of the legal system, law meets every day reality through government regulations. Regulations represent where the rubber hits the road, where front line officers make decisions in the name of law that affect us all, every day.

- ***Introducing administrative law / Regulating Society***

- ***Readings***

- Calavita, Chapter 5, “Many Laws, Many Orders”

- **Discussion**

Thursday

- **Administrative Law: Regulating Society**

- **Readings**

- Kagan, Thornton and Gunningham, “Explaining Corporate...”, Chapter 8
- Edelman, Erlanger, and Lande, “Internal Dispute Resolution...” Chapter 11
- Conti, “The Good Case...” Chapter 3.

*****Policy Brief Due November 16, 11:59 PM through ELMS*****

- **Presentations**
 - **5 minutes each: focus is on synthesizing your argument and research**

Appendices

Final Paper Evaluation Sheet

Course			
Student			
Title/topic			
Instructor		Date	

[illegible]

Balance of quantity and quality													
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General Comments / Suggestions for Improvement

Penalties incurred :		Overall mark:	
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