

Sociology 249
Law, Inequality, and Mobilization
Wed. 2-4:50, SSPB 4206

Francesca Polletta
SSPA 4183
Office hours: Wed. 10-12 and
by appt.

This course investigates the role of law in combating and perpetuating inequality. There are at least two dimensions to such an investigation. First, how have organized groups used law as a resource to combat institutionalized inequalities? Has litigation served them better than an electoral strategy, mass protest, or self-help? Second, are legal categories themselves sex-, race-, and class-biased? Both dimensions will come into play as we discuss mobilization, litigation, and legal theorizing around desegregation, employment discrimination, immigrants' rights, and comparable worth.

Readings and discussion will join theoretical perspectives with substantive topics. For example, we will move from theories of legal hegemony to ethnographic work on working class Americans' encounters with the law, combine feminist theorizing about identity and difference with an analysis of employment discrimination litigation, and probe the conditions in which rights claims gain credibility. Our discussions will draw from a range of fields, including anthropology, law, social theory, feminist theory, the sociology of social movements, and the sociology of law. Recently, several of these fields have shown signs of convergence around several issues. These questions will come up again and again our discussion: is law better understood as resource or constraint? As culture or ideology? Can legal equality acknowledge difference?

Course requirements include 1-2 page weekly memos on the assigned readings, to be posted on the class website noteboard by 5 p.m the day before the class meets, a response to one week's memos, and class participation.

The following books are required and may be purchased from the bookstore:

Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (Vintage, 1977)
Michael McCann, *Rights At Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago, 1994)
Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans* (Chicago, 1990)

Readings marked by an asterisk are located in a folder in the sociology department Xerox room. All other articles are available online, via either JSTOR or LEXIS. Recommended readings are listed for those with a special interest in a topic.

Week one, January 11. Law and American exceptionalism

Peter Just, [Dead Goats and Broken Betrothals: Liability and Equity in Dou Donggo Law](#), *American Ethnologist* 17 (1990): 75-90

*Philip K. Howard, *The Lost Art of Drawing the Line* (Random House, 2001), ch. 1

Valerie Hans and William Lofquist, [Jurors' Judgments of Business Liability in Tort Cases: Implications for the Litigation Explosion Debate](#), *Law and Society Review* 26 (1992).

Recommended (on Americans' arguable propensity to litigate):

Carl Bogus, *Why Lawsuits are Good for America: Disciplined Democracy, Big Business, and the Common Law* (NYU, 2001)

Robert Kagan, "Adversarial Legalism and American Government," *Journal of Policy Analysis and Management* 10 (1991); and "Do Lawyers Cause Adversarial Legalism? A Preliminary Inquiry," *Law and Social Inquiry* 19 (1994).

Marc Galanter, "An Oil Strike in Hell: Contemporary Legends about the Civil Justice System," *Arizona Law Review* 40 (1998): 717ff.

David M. Engel, *The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Town*, 18 *Law & Soc'y Rev.* 551 (1984).

Lawrence Friedman, "Are We a Litigious People?," in Friedman, *Legal Culture and the Legal Profession* (Westview, 1996)

Michael McCann, William Haltom, and Anne Bloom, "Java Jive: Genealogy of a Juridical Icon." *Univ. Miami Law Review* 56 (2001), 113.

Paula Mergenbagen, "Product Liability: Who Sues?" *American Demographics*, June 1995

Week two, January 18. Classical perspectives on law

*Lowi and Ginsberg, *American Government* (Norton, 1996), excerpt

*Herbert Jacob, *Courts, Law, and Politics in Comparative Perspective* (Yale, 1996), excerpt.

*Emile Durkheim, excerpts from *The Division of Labor in Society* and *The Rules of Sociological Method*

*Karl Marx, "On the Jewish Question," in Tucker, ed. *Marx-Engels Reader*

*Max Weber, from *Economy and Society*, in Wolf Heydebrand, ed. *Max Weber: Sociological Writings* (1994)

Recommended (on U.S. law in comparative and historical perspective):

Morton Horwitz, *The Transformation of American Law, 1780-1860* (Harvard 1977); and *The Transformation of American Law, 1870-1960* (Oxford, 1992)

(on social theory): Kim Lane Scheppele, "Legal Theory and Social Theory," *Annual Rev. of Sociology* 20 (1994): 383-406.

Week three, January 25. Law in action

Sally Engle Merry, *Getting Justice and Getting Even*, chs. 1-3, 6-8 (skim 4 and 5).

Recommended (on law as negotiated in everyday settings)
Patty Ewick and Susan Silbey, *The Common Place of Law* (Chicago, 1998)
Carol Greenhouse, Barbara Yngvesson, and David M. Engel, *Law and Community in Three American Towns* (Cornell, 1994).
Barbara Yngvesson, *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court* (Routledge, 1993)

Week four, February 1. Liberalism and rights talk: The NAACP desegregation campaign

*Documents relating to Dred Scott case, Jim Crow laws, and Plessy v. Ferguson.
Richard Kluger, *Simple Justice*, chapters 1, 3, 5, 6, 8, 9, 12, 13, 14, 16, 17, 22, 26.

Recommended:
Mark Tushnet, *Making Civil Rights Law* (Oxford, 1994)
Charles Epp, *The Rights Revolution* (Chicago, 1993)
Laura Kalman, *The Strange Career of Legal Liberalism* (Yale, 1996)

Week five, February 8. Brown and Back? Equality and strategy

Gary Orfield and Susan E. Eaton, "Back to Segregation?" *The Nation*, March 3, 2003.
*Gerald N. Rosenberg, excerpt from *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago, 1991)
*Jonathan Kozol, excerpt from *Savage Inequalities* (Crown, 1991)
Mark Tushnet, "An Essay on Rights" *Texas Law Review* 62 (1984), 1363ff.
Patricia Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights," orig. published in *Harvard Civil Rights Civil Liberties Review* (1987)

Recommended:
Gary Orfield and Susan E. Eaton, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board* (New Press, 1996)
Alan Freeman, "Racism, Rights, and the Quest for Equality of Opportunity: A Critical Legal Essay," *Harvard Civil Rights-Civil Liberties Law Rev.* 23 (1988): 295-392.
Mark Kelman, *A Guide to Critical Legal Studies* (Harvard, 1987)
Peter Gabel, "The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves," *Texas Law Review* 62 (May 1984), 1563ff.

Week six, February 15. Equality and difference: Employment discrimination

**EEOC v. Sears, Roebuck & Co.*, excerpts
Ruth Milkman, [Women's History and the Sears Case](#), *Feminist Studies* 12 (1986): 375-400.

- *Alice Kessler-Harris, "Equal Employment Opportunity Commission v. Sears, Roebuck and Company: A Personal Account," in D. Kelly Weisberg, *Applications of Feminist Legal Theory to Women's Lives* (Temple, 1996)
- *Rosalind Rosenberg and Thomas Haskell, Letters to the Editor, from *The Nation*.
- **DeGraffenreid v. General Motors, Moore v. Hughes Helicopters, Payne v. Travenol Laboratories*, excerpts
- *Kimberle Crenshaw, "A Black Feminist Critique of Antidiscrimination Law and Politics," in David Kairys, ed., *The Politics of Law: A Progressive Critique*, 2nd ed. (Pantheon, 1990).

Recommended:

- Joan Scott, "Deconstructing Equality vs. Difference," *Feminist Studies* 14 (1988) 33-50.
- Vicki Schultz, "Women 'Before' the Law: Judicial Stories about Women, Work and Sex Segregation on the Job," in *Feminists Theorize the Political*, Judith Butler and Joan W. Scott, eds. (Routledge, 1992)

Week seven, February 22. Rights-consciousness and the power of legal uncertainty: The campaign for comparable worth

Michael McCann, *Rights at Work*, chapters 1, 2, 3, 6, 7, 8.

Recommended (on legal mobilization):

- Elizabeth Schneider, *Battered Women and Feminist Lawmaking* (Yale, 2000)
- Joel Handler, *Social Movements and the Legal System*. (Academic Press, 1978)
- Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (Yale Univ. Press, 1974)
- Francesca Polletta, "The Structural Context of Novel Rights Claims: Rights Innovation in the Southern Civil Rights Movement, 1961-1966." *Law and Society Review*, 34(2), 2000.
- Wayne Santoro and Gail M. McGuire, "Social Movement Insiders: The Impact of Institutional Activists on Affirmative Action and Comparable Worth Policies," *Social Problems* 44 (1997).

Week eight, March 1. Is storytelling the solution?

- *Martha Minow, "Ways Out," in *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell, 1990)
- Richard Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative," *Mich. Law Review* 87 (1989): 2411-41.
- Jane C. Murphy, "Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform," *Hofstra Law Review* 21 (Summer 1993):1243ff.

*Francesca Polletta, "Ways of Knowing and Stories Worth Telling," excerpt from *It Was Like a Fever: Storytelling in Protest and Politics* (U. Chicago, 2006)

Recommended (on narrative and the law):

Patricia Ewick and Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," *Law and Society Review*, 29 (1995): 197-226.

Anthony G. Amsterdam and Jerome Bruner, *Minding The Law* (Harvard, 2000).

John M. Conley and William M. O'Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (Chicago, 1990)

Toni M. Massaro, "Empathy, Legal Storytelling, and the Rule of Law," *Michigan Law Rev.* 87 (1989): 2099-2127.

Week nine, March 8 and week ten, March 15. Topics to be determined by seminar members.

Possibilities include: Alternatives to Rights-Talk (restorative justice, alternative dispute resolution, deliberative democracy); Human Rights; Rights, Identity, and Emotions; and Immigrant Workers' Rights.