

DEPARTMENT OF SOCIOLOGY
www.ualberta.ca
SOC 429 – Winter 2022

Sociology of Law

Instructor: Dr Richard Mailey
(He/Him)

Synchronous Class Time: Wed, 14:00-16:00
Place: Online (Zoom)

Email: mailey@ualberta.ca

Office Hours: By Appointment (Online)

Course pre-requisite: SOC 225 or consent of the instructor.

Course description and objectives: This course is intended to give undergraduate students an introduction to the study of law as a social phenomenon and practice. It will address a range of critical questions, including questions about the nature of law, about the socio-political conditions under which legal change becomes possible, and about the role that dichotomous role that law can play in simultaneously curbing and sustaining systemic injustice. During the course, students will be required to lead a class discussion (as part of a team), prepare a class presentation, and write a final essay reflecting on course content. Upon successful completion of the course, students will: 1) have a general understanding of different ways of thinking about law, 2) be able to critically analyze legal and theoretical texts, and 3) be able to write short argumentative pieces that articulate and defend clear theoretical positions concerning law and its relationship to society.

Course Texts: There is no mandatory textbook for the course, and all mandatory and advanced/further readings will be available on eClass.

Territorial Statement: The University of Alberta acknowledges that we are located on Treaty 6 territory, and respects the histories, languages, and cultures of the First Nations, Métis, Inuit, and all First Peoples of Canada, whose presence continues to enrich our vibrant community.

Course Structure and Delivery:

Tutorials (Synchronous Sessions):

We will meet synchronously on Zoom once a week, on Wednesdays at 14:00-16:00.

Lectures (Asynchronous Sessions):

A pre-recorded lecture will be posted on e-class each Tuesday. These lectures will focus on explaining and/or supplementing the content of the assigned readings.

Evaluation and Grading:

Summary

- * Class Participation (15%): Attendance of tutorials is mandatory, and students will be downgraded for each unexcused absence (0.1 points on the 4-point scale per absence).
- * Discussion Leadership and Class Presentation (35%): See description below.
- * Final Essay (50%): Due Friday, April 1 at 23:59pm (Alberta time).

THERE IS NO EXAM

Discussion Leadership (15%) and Class Presentation (20%) – 35%

From Week 7 until the end of term, 3-4 students will be selected as “discussion leaders” for each synchronous session. Discussion leaders will be required to work together to lead a class discussion on the assigned readings. They are expected to pose questions for the rest of the group and to direct the ensuing discussion by responding to comments, asking follow-up questions, etc. They should meet/talk in advance to coordinate and plan their session effectively.

During these sessions, each discussion leader will also be required to give a short presentation of around 5 minutes on a specific aspect of the reading. Each discussion leader should select a different topic for their presentation and should end by posing 2 or 3 questions for discussion in breakout rooms.

Final Essay – 50%

The final essay is an opportunity to reflect on the course material and develop both analytical and writing skills. It should be 3,000 words in length, including citations, but can be 10% over or under. Strong essays will typically include: 1) an explicit and concise argumentative position that responds to the question; 2) engagement with the course reading(s) without relying too much on description and/or summary; and 3) careful consideration a reasonable objection to your position that stages an argumentative back and forth. The selection of essay questions will be posted on eClass shortly after the start of term so that you have ample time to reflect on how you might approach your chosen question. Some additional research and reading, outside of course materials, is expected.

Grading

Grading in this course will use a grade point value (out of 4) that correlates with standard letter grades. Below you can find the grading scale for undergraduate courses at the University of Alberta along with my percentage grade bands for all assignments and the rubric for written work in this course. You will receive a percentage score for each assignment, as well as an indication of the letter grade to which this score corresponds.

UNDERGRADUATE GRADING SCALE			
Quality	Letter Grade	Grade Point Value	Percentage Band
Excellent	A+	4.0	95%
	A	4.0	90%
	A-	3.7	85%
Good	B+	3.3	80%
	B	3.0	75%
	B-	2.7	70%
Satisfactory	C+	2.3	65%
	C	2.0	60%
	C-	1.7	55%
Poor	D+	1.3	50%
Minimal Pass	D	1.0	45%
Failure	F	0.0	< 45%

	Engagement with Text	Argumentation	Flow and Structure	Spelling, Grammar, and Citations
A+ A A-	Directly responds to the question and the text; engages with key points of the text(s); shows firm grasp of concepts and arguments	Very clear argumentative structure; addresses obvious rebuttals; space is solely dedicated to supporting overarching point	Very easy to read; effective transitions between paragraphs; comes to a well-supported conclusion	No spelling and/or grammar mistakes; citations used properly
B+ B B-	Directly responds to the question and the text(s); mostly engages with key points of the text(s); shows reasonable grasp of concepts and arguments	Mostly clear argumentative structure; does not address obvious rebuttals; space is mostly used for supporting overarching point	Mostly easy to read; mostly effective transitions between paragraphs; mostly comes to a well-supported conclusion	Barely any spelling and/or grammar mistakes; citations used properly
C+ C C-	Somewhat responds to the question and the text(s); barely engages with key points of the text(s); shows insufficient grasp of concepts and arguments	Unclear argumentative structure; does not address obvious rebuttals; space is sometimes used for descriptive and/or unrelated purposes	Somewhat difficult to read; somewhat effective transitions between paragraphs; somewhat comes to a well-supported conclusion	Some spelling and/or grammar mistakes; citations used properly
D+ D D-	Does not respond to the question and the text; barely engages with key points of the text(s); shows insufficient grasp of concepts and arguments	Very unclear argumentative structure; does not address obvious rebuttals; space is often used for descriptive and/or unrelated purposes	Difficult to read; ineffective transitions between paragraphs; does not come to a well-supported conclusion	Many spelling and/or grammar mistakes; citations absent or not used properly
F	Does not reference the text(s) and/or does not respond to the question	Little to no argumentation; all or vast majority of space is descriptive and/or unrelated	Very difficult to read and does not follow through with a recognizable argument or framework	Overwhelming spelling and/or grammar mistakes; citations absent or not used properly

Additional Information and Policy

Late Assignments

All graded assignments should be submitted on e-class, and you are responsible for communicating in a timely manner if you cannot, for any reason, submit work on time. Exceptions may be made in extenuating circumstances but if you do not get in touch with me well before the deadline — unless you are unable — a 0.3-point penalty will be applied for each day that passes between the official deadline and your submission (an initial 0.3-point penalty is applied immediately when the deadline passes). If you foresee anything that may impact your ability to submit your work on time — including illness, essential travel, religious observances, etc. — please get in touch with me as soon as possible to make arrangements.

Academic Honesty

The University of Alberta is committed to the highest standards of academic integrity and honesty. Students are expected to be familiar with these standards regarding academic honesty and to uphold the policies of the University in this respect. Students are particularly urged to familiarize themselves with the provisions of the [Code of Student Behaviour](#) and avoid any behaviour that could potentially result in suspicions of cheating, plagiarism, misrepresentation of facts and/or participation in an offence. Academic dishonesty is a serious offence and can result in suspension or expulsion from the University. All students should consult [the Academic Integrity website](#). If you have any questions, ask your instructor. An instructor or coordinator who is convinced that a student has handed in work that he or she could not possibly reproduce without outside assistance is obliged, out of consideration of fairness to other students, to report the case to the Associate Dean of the Faculty. See the [Academic Discipline Process](#).

Learning and Work Environment

The University, Faculty, and Department are committed to ensuring that all students, faculty, and staff are able to study and work in an environment that is safe and free from discrimination or harassment. The University does not tolerate behavior that undermines that environment, as laid out in its [Discrimination, Harassment, and Duty to Accommodate Policy](#) and [Sexual Violence Policy](#).

Recording of Lectures:

Audio or video recording, digital or otherwise, of lectures, labs, seminars or any other teaching environment by students is allowed only with the prior written consent of the content author(s) or as a part of an approved accommodation plan. Student or instructor content, digital or otherwise, created and/or used within the context of the course is to be used solely for personal study, and is not to be used or distributed for any other purpose without prior written consent from the content author(s).

Student Accessibility and Support:

Students with disabilities or any other accessibility issues should get in touch with me during the first week of classes to make necessary arrangements. If you are not already registered with Student Accessibility Services, please contact their office immediately (1-80 SUB, sasrec@ualberta.ca, 780-492-3381). If you are unsure about anything related to accommodations, please don't hesitate to contact me directly. The all-purpose website for student services on campus is <https://www.ualberta.ca/current-students>. The University of Alberta is committed to creating work and learning communities that inspire and enable all people to reach their full potential. [Accessibility Resources](#) (1-80 SUB) promotes an accessible, inclusive, and universally designed environment. For general information about how to register for services, visit the [Accessibility Resources](#) webpage. The [Academic Success Centre](#) (1-80 SUB) offers a variety of workshops on effective study and exam strategies. There are in-person and online sessions available for a modest fee. The Centre for Writers (1-42 Assiniboia Hall) offers free one-on-one writing support to students, faculty, and staff. Students can request consultation for a writing project at any stage of development. There are many health and community services available to current students. For more information, visit the [Health and Wellness Support](#) webpage. The [Office of the Student Ombuds](#) offers confidential interviews, advice and support to students facing academic, discipline, interpersonal and financial difficulties. For additional advice or assistance, contact the Office at 780-492-4689 or ombuds@ualberta.

Sexual Violence Policy:

The Sexual Violence Policy was approved by GFC in June 2017. It plays a vital role in ensuring a safe and respectful learning and working environment. As defined in the policy, sexual violence is any sexual act or act of a sexual nature, or act targeting sexuality, whether physical or psychological, committed without consent. Sexual violence is a complex and serious problem in society and on university campuses. Sexual violence can affect individuals of all gender identities, gender expressions, and sexual orientations, as well as those from all ages, abilities, racial, cultural and economic backgrounds. Through this policy, the University of Alberta recognizes its responsibility to reduce sexual violence in the University community. The university aims to do so by fostering a culture of consent and support through education, training and policy. The University recognizes the possible effects of trauma on those who have experienced sexual violence and supports the efforts of individuals to seek support and recover. To read the policy in more detail, please visit: <https://policiesonline.ualberta.ca/PoliciesProcedures/Policies/Sexual-Violence-Policy.pdf>

COURSE READING SCHEDULE:

Week 1: Jan 5 — Orientation

In this session we will review the course syllabus, and I'll provide a short introduction to some of the themes that we'll deal with over the course of the semester. There is no required reading for this session.

PART I: THEORETICAL PERSPECTIVES ON LAW AND SOCIETY

This initial section of the course focuses on the ways in which different legal and social theorists have framed law, its key functions, and its relationship to society. It provides students with an opportunity to reflect on and develop their own distinct understandings of law as a social phenomenon and practice.

Week 2: Jan 12 — American Legal Realism

Essential Readings

Lochner v New York (US Supreme Court case), **ONLY READ** pp. 45-65 (Justice Peckham) and pp. 74-76 (Justice Holmes) (24 pages)

Scott Veitch, Emiliios Christodoulidis & Lindsay Farmer, *Jurisprudence: Themes and Concepts*, pp. 123-131 (9 pages)

Robert Hale, "Coercion and Distribution in a Supposedly Non-Coercive State," pp. 101-108 (8 pages)

Advanced Readings

Joseph Singer, "Legal Realism Now," pp. 465-544 (79 pages)

Duncan Kennedy, "The Stakes of Law, or Hale and Foucault!" pp. 327-364 (37 pages)

Week 3: Jan 19 — Liberal Legal Theory

Essential Readings

Veitch et al, *Jurisprudence: Themes and Concepts*, pp. 137-141 (5 pages)

Ronald Dworkin, "Law as Interpretation," pp. 179-200 (22 pages)

Andrei Marmor, "Integrity in Law's Empire," pp. 1-17 (17 pages)

Advanced Readings

Drucilla Cornell, "Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation," pp. 1135-1229 (94 pages)

Griswold v Connecticut, **ONLY READ JUSTICE DOUGLAS OPINION.**

Week 4: Jan 26 — Weber's Sociology of Law

Essential Readings

Alan Hunt, *The Sociological Movement in Law*, **ONLY READ** pp. 91-133 (43 pages)
Max Weber, "The Types of Legitimate Domination" (in *Economy and Society*) (20 pages)
— **DON'T READ CROSSED OUT SECTIONS**)

Advanced Readings

Sally Ewing, "Formal Justice and the Spirit of Capitalism: Max Weber's Sociology of Law," pp. 487-512 (26 pages)
Andreas Kalyvas, "Charismatic Politics and the Symbolic Foundations of Power in Max Weber," pp. 67-103 (37 pages)
Max Weber, "Politics as a Vocation," pp. 77-128 (51 pages)

Week 5: Feb 2 — Foucault on Sovereignty and Governmentality

Essential Readings

Veitch et al, *Jurisprudence: Themes and Concepts*, pp. 264-270 (7 pages)
Michel Foucault, "Right of Death and Power over Life" (in *The History of Sexuality*), **ONLY READ** pp. 133-159 (27 pages)
Michel Foucault, "Governmentality," **ONLY READ** pp. 87-104 (18 pages)

Advanced Readings

Wendy Brown, "Power After Foucault," pp. 1-18 (18 pages)
Victor Tadros, "Between Governance and Discipline: The Law and Michel Foucault," pp. 75-103 (29 pages)

Week 6: Feb 9 — System's Theory

Essential Readings

Veitch et al, *Jurisprudence: Themes and Concepts*, pp. 278-289 (12 pages)
Gunther Teubner, "How the Law Thinks: Toward a Constructivist Epistemology of Law," pp. 727-752 (26 pages)

Advanced Readings

Niklas Luhmann, "Law as a Social System," pp. 180-199 (20 pages)
Chris Thornhill, "Towards a Historical Sociology of Constitutional Legitimacy," pp. 161-197 (37 pages)

PART II: CONSTITUTIONAL SOCIOLOGY

This second section of the course provides an opportunity for students to think about legal (and specifically, constitutional) change, and the social and political conditions that facilitate it. It contrasts three different theoretical approaches to constitutional change before asking students to consider the explanatory power of these approaches in relation to Canada's attempts to change its Constitution in the 1980s and 90s (patriation, Meech Lake, Charlottetown).

Week 7: Feb 16 — Bruce Ackerman: Popular Sovereignty and Constitutional Change

Essential Readings

Bruce Ackerman, *We the People, Volume III: The Civil Rights Revolution*, pp. 23-47 (25 pages)

Jennifer Nedelsky, "The Puzzle and Demands of Modern Constitutionalism," pp. 500-515 (16 pages)

Advanced Readings

Joel Cólón Ríos, "The Legitimacy of the Juridical: Constituent Power, Democracy, and the Limits of Constitutional Reform," pp. 199-245 (47 pages)

NO CLASS, FEB 23 & 25 (READING WEEK)

Week 8: Mar 2 — Ran Hirschl: The Hegemonic Preservation Thesis

Essential Readings

Ran Hirschl, "The Political Origins of Judicial Empowerment Through Constitutionalization: Lessons from Four Constitutional Revolutions," pp. 91-149 (59 pages)

Advanced Readings

Rosalind Dixon & Tom Ginsburg, "The Forms and Limits of Constitutions as Political Insurance," pp. 988-1012 (25 pages)

Stephen Gardbaum, "Separation of Powers and the Growth of Judicial Review in Established Democracies (or Why Has the Model of Legislative Supremacy Mostly Been Withdrawn From Sale?)," pp. 613-639 (27 pages)

Week 9: Mar 9 — Andrew Arato: Post Sovereign Constitution Making

Essential Readings

Andrew Arato, “Forms of Constitution Making and Theories of Democracy,” pp. 191-231 (41 pages)

Andrew Arato, “Redeeming the Still Redeemable: Post Sovereign Constitution Making,” pp. 427-443 (17 pages)

Advanced Readings

Johan van der Walt, “Vertical Sovereignty, Horizontal Constitutionalism, Subterranean Capitalism: A Case of Competing Retroactivities,” pp. 1-25 (25 pages)

Week 10: Mar 16 — The Canadian Experience

Essential Readings

Mary Dawson, “From the Backroom to the Front Line: Making Constitutional History or Encounters with the Constitution: Patriation, Meech Lake, and Charlottetown,” pp. 955-1000 (46 pages)

Michael Lusztig, “Constitutional Paralysis: Why Canadian Constitutional Initiatives Are Doomed to Fail,” pp. 747-771 (25 pages)

Advanced Readings

Mary Ellen Turpel-Lafond, “The Charlottetown Discord and Aboriginal Peoples’ Struggle for Fundamental Political Change,” pp. 117-146 (30 pages)

Ian Peach, “The Power of a Single Feather: Meech Lake, Indigenous Resistance and the Evolution of Indigenous Politics in Canada,” pp. 1-29 (29 pages)

PART III: RACIAL EQUALITY AND THE LAW

This section of the course is a case study of the different roles that law can play in relation to systemic injustice. Focusing on the United States, it examines the way that law has simultaneously been used to dismantle and perpetuate entrenched patterns and practices of racial inequality, using Michelle Alexander’s *The New Jim Crow* as a guide.

Week 11: Mar 23 — US Supreme Court Jurisprudence on Racial Equality

Essential Readings

Brown v Board of Education of Topeka, Kansas (excerpt, 3 pages)

Shelley v Kraemer (excerpt, 4 pages)

Washington v Davis (excerpt, 4 pages)

Shelby County v Holder — **ONLY READ JUSTICE ROBERTS OPINION (24 pages)**

AND JUSTICE GINSBURG DISSENT (37 pages)

Advanced Readings

TBD

Week 12: Mar 30 — Michelle Alexander: The New Jim Crow, Part I

Essential Readings

Michelle Alexander, *The New Jim Crow*, pp. 1-57 (57 pages)

Advanced Readings

TBD

Week 13: Apr 6 — Michelle Alexander: The New Jim Crow, Part II

Essential Readings

Michelle Alexander, *The New Jim Crow*, pp. 95-136 & 173-208 (76 pages)

Advanced Readings

TBD