Discretion
CRJ 768
Professor Robert Garot

"Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question, 'What is law?'"

H.L.A. Hart

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Perspectives and Overview

What does the law consist of, not as simply a set of words set down on a page, but as it is actually used in the course of human affairs? No law implements itself, and every law has *legs*, which don't always go in the desired directions. Law serves as a resource or tool for accomplishing strategic action. Laws may be avoided, overlooked, or used selectively, but no law is enforced entirely consistently in every case. A range of political contingencies go into the making of any law, but it may be argued that an even greater range of contingencies goes into its implementation. This course will address the question, what does a law mean in its *use*?

It is essential that you *wrestle* with the readings for each week, and *mull over* how they apply to your own experience. I hope to open new perspectives to you, and what transforms "information" into a "perspective" that opens up new ways of thinking is wrestling with what you encounter. For each reading, I hope that you work to understand not just *what* the author is saying, but *why*. What received wisdom is she or he trying to challenge? With what ideas might they be competing? What is their evidence? I hope that you will enhance for yourself the value of what you read through the paired (and perhaps literally opposed) habits of mind of skepticism ("Ought I really believe that?") and suspended disbelief ("What if it were true?").

The idea is to foster an intense, searching class discussion. A great deal of learning happens in discussion, when one's new ideas, guesses, hunches, ideological convictions, and moral persuasions rub unexpectedly up against others'. I will assist this process through my questioning in class, and want you to have challenged each reading so that you, in turn, can be challenged by others in class.

Please feel free to discuss topics further with me after class, before class or by appointment. Be sure to exchange phone numbers with two or three other students and form study groups.

Requirements

Q & Q

Each week, as indicated, you will be responsible for presenting quotes and questions for the readings, which we will use as our basis for discussion. You should provide at least one quote

from each reading and three questions, along with some commentary, to fill about one page with text. As opposed to the General Writing Guidelines (below), you may want to single-space your Q&Q, but still please use a 12-point font. Each of these will comprise 2% of your grade, and *they will not be accepted late nor through email.* I will drop the lowest Q & Q grade.

Papers

Written assignments for the class consist of one 3-5 page tutorial project and one 12-20 page term paper. For the tutorial project, you will write up the details of your actions in following a set of instructions, and the term paper will be based on an interview with a legal practitioner. Further details about the tutorial project and the term paper are presented below, and will be discussed as we proceed. Grading rubrics will be posted on the course website under Course Information. Papers handed in late will lose one course percentage point for each day they are late. *I do not accept papers sent electronically* except as noted below.

Exams

Two exams are required for this course, each worth 20% of your grade. The exams will consist of one 3-5 page paper based on a response to one of several exam questions. Exams will be based on lectures and readings. *I will make special accommodations regarding exams (rescheduling, etc.) only for those students who have discussed their concerns with me ahead of time, and have provided documentation of the necessity for accommodation.* Further details about exams will be discussed in class.

Grading Policy

You will not be graded on a competitive basis, so in theory everyone can do well in the class. However, in order to receive a top grade, students will be expected to achieve standards of excellence in their work. If you are dissatisfied with any grade you receive, you must submit a written request for a review of the grade, including a defense, no later than one week after the work is handed back to the class. By requesting a review of the grade you receive, you invite the possibility that the new grade will be lower than the original grade, as well as the possibility that it will be higher. Points will be distributed as follows:

Q & Q: 20%
Exams: 40%
Tutorial Project: 15%
Final Paper Evidence: 5%
Final Paper: 20%

A+ 98-100	B+ 88-89	C+ 78-79	D+ 65-69
A 93-97	B 83-87	C 73-77	D 55-64
A- 90-92	B- 80-82	C- 70-72	D- 50-54

Required Readings

The Law and Society Reader is available in the bookstore. I recommend purchasing Coutin's *Legalizing Moves* (for March 25th) and Ewick and Silbey's, *The Common Place of Law* (April 29th) from half.com. All other readings are available on the course website under Course Documents.

Be sure to complete each week's readings PRIOR TO coming to class. Additional background readings are available for students who wish to read further on the week's topic. Also, be sure to check the class website frequently for announcements.

Weekly Topics and Readings
Please note that the following schedule, including project and exam dates, is tentative, and may change based on how quickly we cover the material.

Introduction

Week 1: Preliminary Consideration of Substance and Method
January 29th
Garot, Robert. 1995. "Rules and Actions in Ethnomethodology and Other Contexts." Unpublished document.
To be completed prior to beginning course term paper:
Hoffman, Elizabeth. 2007. "Open-Ended Interviews, Power and Emotional Labor." *Journal of Contemporary Ethnography* 36(3):318-346.

Part I: What is Law?
Week 2: The Use of Rules
February 5th
Sharrock, Wes and Graham Button. 1999. "Do the Right Thing! Rule Finitism, Rule Scepticism and Rule Following." *Human Studies* 22:193-210.
Sidnell, Jack. 2002. "An Ethnographic Consideration of Rule-Following." *The Journal of the Royal Anthropological Institute* 9:429-445.
Week 1 Q & Q due 2-5.

No class February 12th
Tutorial Project Due by email to rgarot@yahoo.com Febrary 14th. *(Be sure to send as an attachment as well as embedding the paper in the message.)*

Week 4: Cases vs Biographies
February 19th
Heimer, Carol. 2001. "Cases and Biographies: An Essay on the Routinization of Comparison." *Annual Review of Sociology.* 27:47-76.
Week 4 Q & Q due

Week 5: For Rules and Against Rules
Febrary 26th
Calavita, Kitty. "Worker Safety, Law, and Social Change: The Italian Case." The Law and Society Reader #11.
Howard, Philip K. The Death of Common Sense. New York: Random House. Chapter 1.
Week 5 Q & Q due.
Exam #1 distributed.

Week 6: Rules in Action
March 4th

Blankenburg, Erhard. "The Selectivity of Legal Sanctions: An Empirical Investigation of Shoplifting." The Law and Society Reader #5.

Exam #1 due.

Term Paper: *Find interviewee by 3-11. Hand in one page of interview questions on 3-11. Make appointment to visit interviewee between 3-18 and 3-25.*

Part II: Macro Perspectives on Discretion

Week 7: Equality: Class, and Gender and Law

March 11th

Galanter, Marc. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." The Law and Society Reader #14.

Daly, Kathleen. "Structure and Practice of Familial-Based Justice in a Criminal Court." The Law and Society Reader #16.

Whyte, William Foote. 1997. "Interviewing in the Field," Chapter 3 in *Creative problem solving in the field: reflections on a career*. Walnut Creek: AltaMira Press.

Week 7 Q & Q due.

Week 8: Equality: Race in the Law

March 18th

Mertz, Elizabeth. "The Uses of History: Language, Ideology, and the Law in the United States and South Africa." The Law and Society Reader #17.

Radelet, Michael L. and Glenn L. Pierce. "Race and Prosecutorial Discretion in Homicide Cases." The Law and Society Reader #15.

Week 8 Q & Q due.

Week 9: Immigrants and the Law

March 25th

Coutin, Susan Bibler. 2000. *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press.

Week 9 Q & Q due.

Week 10: Norm Creation

April 1st

Scheerer, Sebastian. "The New Dutch and German Drug Laws: Social and Political Conditions for Criminalization and Decriminalization." The Law and Society Reader #10.

Calavita, Kitty. 2000. "The Paradoxes of Race, Class, Identity, and "Passing": Enforcing the Chinese Exclusion Acts, 1882-1910." *Law and Social Inquiry*. 25:1-40.

Week 10 Q & Q due.

Term Paper: *Complete transcribing interview.*

Week 11: Regulation

April 8th

Ekland-Olson, Sheldon and Steve J. Martin. "Organizational Compliance with Court-Ordered Reform." The Law and Society Reader #12.

Gilboy, Janet A. "Penetrability of Administrative Systems: Political 'Casework' and Immigration Inspections." The Law and Society Reader #13.

Charmaz, Kathy. 2001. "Grounded Theory." Pp. 335-352 in Robert M. Emerson (Ed.) Contemporary Field Research. Prospect Heights, Illinois: Waveland.

Week 11 Q & Q due.
Term Paper: **Bring interview transcript for *open coding*.**
Exam #2 distributed.

Week 12: The Law and Political Struggles
April 15th
Gabel, Peter and Paul Harris. "Building Power and Breaking Images: Critical Legal Theory and the Practice of Law." New York Review of Law and Social Change. 11: 369-411. 1982/1983.
Exam #2: due April 15th
Term Paper: **Bring interview transcript for *focused coding*.**

Week 13: Spring Break
Term Paper: *Complete one analytic memo. The deadline to email this to me for comments (optional, but highly recommended) is April 22nd.*

Part III: Micro Perspectives on Law and Society
Week 14: Legal Consciousness
April 29th
Ewick, P. and S. S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life.* Chicago: University Press.
Optional:
Sarat, Austin and William L.F. Felstiner. "Law and Social Relations: Vocabulary of Motive in Lawyer/Client Interaction. The Law and Society Reader #19.
Sarat, Austin and William L.F. Felstiner. 1995. Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process. New York: Oxford University Press. Chapters 1-4.
Week 14 Q & Q due.
Term Paper: *Complete one analytic section.*

Week 15: Disputes in Community
May 6th
Engel, David M. "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community." The Law and Society Reader #1.
Merry, Sally Engle. "Going to Court: Strategies for Dispute Management in an American Urban Neighborhood." The Law and Society Reader #2.
O'Barr, William M. and John M. Conley. "Lay Expectations of the Civil Justice System." The Law and Society Reader #18.
Week 15 Q & Q due.
Term Paper: *Complete a rough draft.*

Final Papers Due 5-13.
Roundtable discussion of Final Papers.

Paper Guidelines

Tutorial Project: The Lebenswelt Pair (Instructions and Instructed Actions)

In the first week of class, you will need to find a set of instructions, and then follow them, carefully keeping note of the ways in which you must elaborate on the instructions in order to make them sensible. Typically we mask this artful work of following instructions: you will need to make it evident. Be sure to analyze your write-up in terms of the ideas from Sharrock and Button and Sidnell, being clear on whether your perspective is one of rule skepticism or rule anti-skepticism.

Your tone may be informal in style and should be written in first person, but do not become sloppy, and be sure to abide by standard rules of spelling, grammar, etc. Include your name, student ID number and date in the upper right hand corner of the first page. Do not use a title page, or any sort of binder. Pages must be stapled, not paper-clipped. Be sure to number your pages, and include your name and ID number in a footer in the bottom center of each page, by the page number. Your grade will be based on how thoughtfully you complete the project, as reflected in the detail and skill of your write-up. If you are unhappy with your grade, you may complete the tutorial project again with a different set of instructions.

Final Paper: Interviewing a Provider of Law in Society

Writing a paper based on interview data may be different from papers you have written for other courses, in that the paper will be inductive. In other words, you will not be trying to test a hypothesis, or prove a theory, but you will develop your thesis based on the data. This is often called a "grounded" approach, meaning that your analysis will be grounded in your data, and you will work from data to theory, rather than working top down, from theory to data. This does not mean that your data collection will not be theoretically informed. It does mean that you will not quite know what your paper will be about until after you have conducted, transcribed and coded, and analyzed your interviews. Even then, your data may still present surprises.

Since so much work will be put into the *process* of writing this paper, you will need to follow a schedule, and document your progress. In fact, 5% of your course grade will be dependent on such progress, as documented on your interview progress sheet, and supported by attached evidence. You will turn in this material, neatly organized in a folder with the progress sheet attached on top, when you turn in your final paper. One-half of your paper grade will be based on your selection of and use of data, and one-half will be based on your use of readings and materials from the course.

1. Find an Interviewee (Deadline, 3/11)

For your term paper, you will interview a professional with practical experience in topics from the course. Possible occupations for interviewees may include a judge, a lawyer, a police officer, or a welfare eligibility officer. You may not choose pre-existing friends or family members, nor individuals with whom you maintain a business relationship, such as your family physician, or a current teacher. You may choose acquaintances with whom you have come in contact through community involvements, and others you have met briefly, and would like to get to know better. You may begin by asking friends or family members for contacts, by opening up a phone book, or by talking with people on your daily rounds.

Once you've found a potential respondent, tell them that you're a sociologist conducting a study on life in the modern metropolis, and you're wondering if they'd like to be interviewed. If they assent, make sure they are over the age of 18 (those under 18 need parental permission, so you would have to make up a form for that), and willing to be tape recorded. If they agree, arrange to

conduct the interview at a mutually agreeable quiet location where you are not likely to be disturbed or interrupted. Schedule at least three hours for the interview. Schedule your interview between March 18th and March 25th.

2. Write up an Interview Schedule (**Due**, 3/11)
Although your interview should proceed like an informal conversation, you should put considerable thought into the sorts of questions you would like to ask. Below are areas I focused on for my dissertation research.

- Where informant has lived over the life course
- Reasons for moving
- Family structure, siblings and place in birth order
- Neighborhoods lived in, how they liked them
- Experiences in schools attended
- Fights, what happened, reasons for, how felt about
- Revenge fantasies; regrets
- Fights avoided, why, how, how felt about
- Girlfriends, how feel about multiple partners, domestic abuse
- Hobbies
- Drug use
- Places avoided; fear of crime
- What it means to be a "man"
- If they alluded to the fact that they were involved in a gang, I asked what this involvement consists of, how they were recruited, how they got out, etc.
- If they alluded to the fact that they were not involved in a gang, I asked what they think about gangs, how they avoided gangs, their thoughts about gangs and others who are involved in them, etc.

Put time into developing questions that merge your own personal interests with the topics from this course. Once I have checked your questions, you may conduct your interview.

3. Conduct the Interviews (Deadline, 3/25)
Make sure to talk as little as possible during your interview. Begin by turning on the tape recorder (!), and reintroduce yourself and your reason for the interview. Assure your respondent that everything they say will be strictly confidential and anonymous and used only for this class. Then conduct your interview, maintaining eye contact throughout. Nod your head often, and use many continuers ("Mm, hm," "Tell me more about that," "Really? And then what happened," etc.). Try to follow the general pattern of the questions you laid out in advance, but do not hesitate to deviate from them. Think of the interview as a mental challenge, in which you are working to unearth the details of your informant's experiences. Stay attentive for any lapses, inconsistencies, or areas for further questions; it will be much more difficult to ask about such matters after the interview is over, than in the heat of the moment. Once you think you have run out of questions, then, and only then, look down at your "cheat sheet" of questions, and ask any that remain. At the close of the interview, thank your respondent effusively, ask them if it would be OK to call for a follow-up, and ask if they'd like to see the transcript and the final paper. *Bringing the transcript back is a great way to check the validity of their initial statements, and ask any additional questions.*

4. Transcribe Interviews (Deadline, 4/1)

Transcribing interviews is not easy work. A good rule of thumb is to set aside 3 hours of transcribing for each half-hour of interview. Make all margins one inch, except for your right margin, which should be about 3.5 inches. Try to transcribe as much of your interview as possible, but if you are short of time, you may limit your transciption to the most useful parts of the interview (though this is hard to know ahead of time). You may want to listen to your interview tapes a number of times before transcribing. However much you transcribe, remember that it will be turned in and used to compute your final grade.

5. Open Coding (Deadline, 4/8) and 6. Focused Coding (Deadline, 4/15)
In class, we will discuss and practice two types of coding: open coding and focused coding, as discussed in the reading by Kathy Charmaz. You will work with a partner to code and recode your papers, and highlight the data which is most relevant for building an argument.

7. Prepare One Analytical Memos (Deadline, 4/22)
After you have thoroughly coded your data, take an excerpt of your consultant's *most poignant* data and analyze it in detail as discussed by Kathy Charmaz. Once you receive feedback on this memo, feel free to continue writing memos based on your data excerpts.

8. Prepare One Analytic Section (Deadline, 4/29)
Find two more *poignant* data fragments which contrast with your first fragment, and write analytic memos for these. Now weave the three fragments together into an analysis in which you compare and contrast their analytic points. Your final paper should contain roughly three such analytic sections.

9. Write a Rough Draft of your Paper (Deadline, 5/6)
Begin with an introductory paragraph, bringing your reader into your essay with an intriguing "hook" or "lead." Be sure to include a thesis statement, telling your reader your conclusions, and what they should expect to find along the way. Then take about three pages to describe the theoretical foundations of your approach, based in the course readings. In the following section, methods, take about two pages to describe who you interviewed and why, how you felt it went, and what you would do differently next time. Next, proceed with your three (or more) analytical sections bringing in course readings where relevant. Finally, conclude by stating what you have learned, perhaps providing policy recommendations.

10. Turn in and Discuss your Final Paper (**Due** 5/13)
Clearly label the six sections of your paper: Introduction, Theory, Methods, Data Analysis, Conclusion, References. Be sure to carefully cite your sources, and proofread your work.

General Writing Guidelines*

Format and Presentation

Do not skip lines between paragraphs (like I'm doing here). Use an easily legible font, 12-point size works in most types. Papers should be typewritten, double-spaced with approximately 1" margins. Number all pages. Papers should be stapled. This means no plastic binders, no folding the edges together and no paper clips. The following information should appear in the upper right-hand corner of the first page: name, student ID#, date, paper topic number, and title. A bibliography is a necessary part of a research paper (see Citation, below), and should be attached at the end.

Citation
This is sometimes tricky, but it is essential that you do it correctly. It is expected that you will use material from the texts and lecture to analyze your subject. Thus, whether you use direct quotes or paraphrases, you must give credit to the authors of those words when they are not your own.

If you cite a lecture, do it this way: (Lecture, 3/9/08). However, relying solely on lecture citations for material that is also in the readings reveals to me that your familiarity with the readings is inadequate. So you should be sure to prioritize. Where appropriate, always cite the original source and not my delivery of it in lecture.

Directly quoted course materials from the reader should be cited in one of the following ways.

"Self-absorption is consistent with the emphasis on self-satisfaction fostered by capitalism in general and advertising in particular" (Karp, 1996:176).

Or alternately:

David A. Karp (1996:176) suggests that, "self-absorption is consistent with the emphasis on self-satisfaction fostered by capitalism in general and advertising in particular."

Also, be sure to cite any ideas that you borrow, not just quoted text. For instance:

Many analysts have noted how self-absorption may be fostered by capitalism (Karp, 1996:176).

Any direct quotation that is longer than three lines needs to be set off from the body of the paper by indenting and single-spacing. Since your papers will be double-spaced and indented only to begin paragraphs, you will see the contrast. Be careful to differentiate between what the authors from class are saying themselves, and the other authors that they may in turn quote. Cite accordingly. Do not string quotes together without putting them in context with your own prose. When you use a direct quote, place it in the context of a sentence that includes an explanation of what the quote means and why it is useful in service of the point you are making.

A full reference, including the author's name, book or article title, publishing information and page numbers will appear in a separate, alphabetically organized bibliography at the end of the paper, under the heading, "References." Refer the bibliographies of our articles as examples.

Style
In general, write as simply as possible. Never use a big word, when a little one will do. Big words don't necessarily convey intellectual prowess – especially when they are awkwardly used. Your word choice should be appropriate to formal writing: no slang, and no contractions ("can't", "don't"), unless you are quoting others or it somehow better helps you to make your point. Look up definitions and spellings if you are unsure. Spell check often misses words.

Avoid using the indefinite "you". You will notice that I am addressing these instructions to you; that is, I am using the second person. That is because I am giving these instructions to a definite person or set of persons. In your papers, unless you mean to address the reader directly, do not use "you" when you mean to use "one" or "we." Refer to yourself as "I" instead of the royal "we." It

is perfectly acceptable to use the first person singular in papers – it is not too informal. Use "we" for the author and the reader together: "We have seen how breaching experiments disturb our taken-for-granted notions about reality." Never refer to "society" as an active agent (that's my pet peeve), as in, "Society requires that people follow norms." My other pet peeve is avoid rhetorical questions, you know what I mean?

Avoid "a lot" (and by the way it's not spelled "alot"), and "very". Hemingway and Morrison do not need them, and neither do you. Don't confuse "their/there/they're" or "it's/its", or "to/two/too", or were/we're/where", etc. Also please differentiate between "suppose" and "supposed" – these are not interchangeable, and are almost always improperly applied. These are sets of words that give students trouble, so please be careful.

Try to avoid using "he", "his", or "mankind" to mean anyone or all in general. If for some reason you have a strong ideological commitment to using "he" as the generic, you may do so, but it is not accurate, and there are other options available.

Make sure that nouns and verbs agree in number. Avoid sentence fragments. Make sure that the sentences you write have subjects and predicates. Verbs are also necessary. Do not leave a clause hanging without these necessary components. Avoid run-on sentences. Make sure that if you link things together in a sentence that you do so by using the proper connective words or punctuation marks. These kinds of mistakes can often be caught by reading your paper aloud. If it sounds wrong, it probably is.

Always follow the parsimony principle. That is, use as few words as possible to make your point.

Process

One way to start is by saying your ideas out loud, and writing them down. Just get the words out of your head and onto the page where you will be able to work with them more easily. The best way to start is to just spew out a messy first draft, getting all of your ideas and facts down on paper (if you write long-hand) or your computer screen (if you prefer to word process). Then, a second draft will help you to organize the sections, focus your argument, and refine the content and style. I strongly suggest that you write more than one draft of your paper. Most successful papers are begun well in advance of the night before the assignment is due.

Although I will be unable to read entire drafts, I may be able to discuss with you specific parts of your thesis or analysis, and/or help you with difficulties in transitions between ideas or sections of your argument. A final draft is useful for correcting spelling and grammatical errors, and for formatting the paper. You must proofread your own paper. It is not acceptable to turn in a paper with typographical errors, misspellings, nouns and verbs that do not agree, misused words, run-on sentences, sentence fragments, etc. You may want to rewrite the beginning or end of your paper in the last draft. Often in composing your paper, you will have changed your focus or ideas somewhat by the time you finish. You will want to make sure that these changes are reflected in a new version of your introduction or conclusion.

Finally, re-read your own paper and imagine that someone else wrote it. Does it make sense? Fix it, if it doesn't. You may also want to get someone else to read your paper and give you comments. It is often hard to be objective when you are so close to the writing process. If you

have trouble with your writing, get help: see me during office hours, or seek assistance from the writing center on campus. For further suggestions on writing, I suggest:

Richlin-Klonsky, Judith and Ellen Strenski (Eds.). 2007. A Guide to Writing Sociology Papers. New York: St. Martin's Press.

Becker, Howard S. 2007. Writing for Social Scientists: How to Start and Finish Your Thesis, Book, or Article. Chicago: University of Chicago Press.

Also, please feel free to visit during office hours for personal assistance.

Good luck, and start writing now!

*This document adapted with thanks from Dr. Kerry Ferris' Case Study Essay Guidelines.