

法律社会学 2021 夏

上课时间：周二 7-8 节、周四 11-12 节

办公/答疑时间：周四下午 15:00 – 17:00

教师：贺巧玲（社会学）

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课程简介：

Broadly speaking, the course will explore sociological understanding of law, legal institutions, and “law in action”. The course will provide students with an overview of the role that law plays in modern society. We will examine how the law not only shapes society but is itself transformed by social factors. The first part of the course will explore major historical and theoretical traditions within sociolegal studies, with an emphasis on relevant theoretical statements by core social thinkers such as Durkheim, Marx, Weber, and Foucault. We will examine how these theories continue to influence our understanding of the law today. The second part of the course draws from both theoretical and empirical work to discuss specific topics, including law and social change, legal consciousness, law mobilization and dispute resolution, legal profession and the globalization of law, etc.

成绩构成：

1. 第 2-7 周的 12 次课中任选 3 次，在课前提交一篇阅读材料的报告（memo），需要有总结和自己提出的问题，字数 600 字左右，上课前一天晚上 10 点前提交为有效。（15%）
2. 所有阅读材料中任选一篇（带*除外），在当次课做 10-15 分钟的课堂展示（20%）。
3. 学期中提交 2000 字左右的记录片观影报告，6 月 2 日晚上 10 点截止（15%）。
4. 最后一星期汇报期末论文的研究题目（10%）。
5. 期末提交 4000-5000 字的小论文，7 月 4 号晚上 10 点截止（40%）。

说明：

- 如果用英文完成作业，字数要求为以上要求的一半。
- 所有作业格式要求：12 号字体，1.5 倍行距；符合规范学术格式，有规范的文献引用格式和文献列表。
- 观影报告至少应该包括（简短的）基本事实梳理和应用理论进行解读两个部分，需要体现自己的思考。
- 期末论文应该结合课程内容对现实案例做出自己的分析和批判性讨论，需符合常见论文规范。
- 所有作业晚交一天以内扣 20%，晚交一星期内扣 50%，晚交一星期以上则没有分数，没有例外，请大家提前做好安排。
- 作业提交途径：学在浙大

教材：

Vago, Steven and Steven Barkan (2018) Law and Society 11th Edition. Routledge.

教材和其他所有阅读材料可由学在浙大下载。

课程安排:

第一周: 介绍 Introduction

1. 课程介绍 Introduction to course

- * Vago and Nelson Ch1

2. 理论概览 Overview of theories

- * Vago and Nelson Ch2

第二周: 理论基础 Theoretical foundations I

3. 理论基础 I: Marxism on law

- William Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems* 12: 67-77 (1964)
- Graham J. M. 1972. "Amphetamine politics on Capitol Hill". *Society* 9(3):14-22.

4. 理论基础 II: Durkheim

- * Anthony Giddens edited. 1972. *Durkheim Selections* "5: forms of social solidarity" (p 123-140)
- Merton, Robert K. 1963. *Social Theory and Social Structure*. New York: The Free Press. Chapter 4: "Social Structure and Anomie." P131-160
- Malinowski 1926: *Crime and Custom in Savage Society*. New York: Harcourt, Brace & Co. Chapter V- IX (p.28-45), Chapter XI-XII (p. 55-62).
- Schwartz, R., & Miller, J. (1964). Legal Evolution and Societal Complexity. *American Journal of Sociology*, 70(2), 159-169.

第三周: 理论基础 (续) Theoretical foundations (cont.)

5. 理论基础 III: Weber and formal rational law

- * W.G. Runciman edited. 1978. *Weber Selections* 17 "the origins of industrial capitalism in Europe" (p 331-340); 18 "the development of bureaucracy and its relation to law" (p 341- 354)
- * Trubek, David. 1972. "Max Weber on Law and the Rise of Capitalism," 1972 *Wisconsin Law Review*: 720-53.
- Michels, Robert. 1970. "Oligarchy". In *The Sociology of Organizations: Basic Studies*. New York: Free Press, pp. 25-43
- Marsh, Robert M. 2000. "Weber's Misunderstanding of Traditional Chinese Law." *American Journal of Sociology* 106 (2): 281-302.

6. 理论基础 IV: Foucault and postmodernism

- * Foucault. 1977. *Discipline and Punish* "Panopticism" (p 195-228)
- Foucault. 1977. *Discipline and Punish* "Docile bodies" (p 135-169)

- Foucault. 1977. *Discipline and Punish* "The meaning of correct training" (p 170-194)
- Staples, William G. 2003. "Surveillance and Social Control in Postmodern Life." Pp. 191–211 in *Punishment and Social Control*, ed. T. Blomberg and S. Cohen. Hawthorne, NY: Aldine De Gruyter.

第四周：法律与社会变迁 Lawmaking and social change

7. 法律与社会变迁 Lawmaking and social change

- * Vago and Nelson Ch.4
- * Chambliss, William J. 1979. "On Lawmaking." *British Journal of Law and Society* 6:149-171
- Moore, S. F. 1973. Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7(4):719-746
- Frohmann L. and Mertz, E. 1994. "Legal Reform and Social Construction: Violence, Gender, and the Law". *Law & Social Inquiry*, 19(4), 829-851.
- Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press. "Chapter 10: Cleaning House? The Courts, The Environment, and Reapportionment" (pp 271-303)
- Rubin, A.T. 2019. Punishment's Legal Templates: A Theory of Formal Penal Change. *Law & Society Review*, 53 (2): 518-553. [you can start from page 534]

8. 法律与社会变迁案例 Law and social change: Documentary filming in class: PBS *Prohibition I*

- * Vago and Nelson Ch.7
- Documentary

第五周：法律形象与法律意识 The ideology of law

9. 社会性正义 Sociological justice

- * Black, Donald. 1993. *Sociological Justice*. Oxford University Press.
- Galanter, Marc. 1974. "Why the "haves" come out ahead: Speculations on the limits of legal change." *Law & Society Review* 9 (1): 95-160.
- Sutherland, Edwin H. "Is "white collar crime" crime?" *American Sociological Review* 10.2 (1945): 132-139.
- Scheppele, K. 1994. Manners of Imagining the Real. *Law & Social Inquiry* 19(4), 995-1022.
- Light, Michael T. 2014. "The new face of legal inequality: Noncitizens and the long-term trends in sentencing disparities across US district courts, 1992 – 2009." *Law & Society Review* 48(2): 447-478.

10. 法律的日常建构 Legal consciousness and legality

- * Susan S. Silbey. 2005. "After Legal Consciousness." *Annual Review of Law and Social Science* 1:323 - 368.

- * Halliday, Simon. 2019. "After Hegemony: The Varieties of Legal Consciousness Research." *Social & Legal Studies* 28(6): 859-78.
- Ewick, Patricia, and Susan Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press. Chapter 3 "The Social Construction of Legality". (pp. 57-86)
- Nielsen, Laura Beth (2000) "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment," *Law & Society Review* 34 (4) 1055-90.
- Young, Kathryn M. 2014. "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight." *Law & Society Review* 48: 499-530.
- Gallagher, Mary E. 2006 "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness" *Law & Society Review* 40(4)

第六周 法律动员与替代机制 Law mobilization and dispute resolution

11. 法律动员 Law mobilization and civil access

- * Felstiner et al. 1980. The emergence and transformation of disputes: naming, blaming, claiming... *Law and Society Review* 15 (3/4): 631-654
- * Pleasence, P., Genn, H., Balmer, N., Buck, A., & O'Grady, A. (2003). "Causes of Action: First Findings of the LSRC Periodic Survey". *Journal of Law and Society*, 30(1), 11-30.
- Sandefur, Rebecca L. 2007 "The importance of doing nothing: everyday problems and responses of inaction." In *Transforming Lives: Law and Social Process*. Stationery Office Books. P116-136
- Boittin ML. 2013. New perspectives from the oldest profession: abuse and the legal consciousness of sex workers in China. *Law & Society Review* 47(2):245-78
- Lempert, R., & Monsma, K. (1994). "Cultural Differences and Discrimination: Samoans Before a Public Housing Eviction Board." *American Sociological Review*, 59(6), 890-910.
- Lee, Ching Kwan. 2007. *Against the law: Labor protests in China's rustbelt and sunbelt*. University of California Press, C5 "The Making of New Labor in the Sunbelt" (p 157-203).

12. 替代性纠纷解决 Alternative dispute resolution

- * Vago and Nelson Ch.6 "Law and dispute resolution"
- * Edelman, L. B. and Suchman, M. C. (1999). When the "haves" hold court: Speculations on the organizational internalization of law. *Law & Society Review*, 33(4):941-991
- Ellickson RC. 1986. *Order Without Law: How Neighbors Settle Disputes*. Cambridge, MA: Harvard Univ. Press. "C3: The Resolution of Cattle-Trespass Disputes" (p. 40-64)
- Michelson, E. (2007). Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China. *American Sociological Review*, 72(3), 459-485.
- Mnookin, R. H. and Kornhauser, L. (1979). Bargaining in the shadow of the law: The case of divorce. *The Yale Law Journal*, 88(5):950-997.
- Marshall, A. 2005. Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies. *Law & Society Review*, 39(1), 83-124.

第七周 法律职业与法律全球化 Legal profession and globalization

13. 法律职业 Law and integration: the legal profession

- * Bourdieu P. 1987. "Force of law: toward a sociology of the juridical field". *Hastings Law J.* 38:805–53
- Kennedy, Duncan. "Legal education and the reproduction of hierarchy." *Journal of Legal Education* 32.4 (1982): 591-615.
- Liu, S. and Halliday, T. C. 2011. Political liberalism and political embeddedness: Understanding politics in the work of Chinese criminal defense lawyers. *Law & Society Review* 45(4):831-866
- Li K. 2016. Relational Embeddedness and Socially Motivated Case Screening in the Practice of Law in Rural China. *Law & Society Review* 50(4):920–52
- Hagan, J. and Kay, F. 1995. *Gender in practice: A study of lawyers' lives*. Oxford University Press. C2 "Ceiling Effects in Practice" (p.25-50)

14. 法律全球化 Globalization and transplantation of law

- * Halliday, Terence C., and Bruce G. Carruthers. 2007. "The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes." *American Journal of Sociology* 112(4): 1135-202.
- * Shaffer, Gregory. 2012. "Transnational Legal Process and State Change." *Law & Social Inquiry* 37 (2): 229-264.
- Sell, Susan. K. 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Cambridge University Press. C5 "The Intellectual Property Committee and transnational mobilization" (pp. 96-120)
- Boateng, Boatema. 2013. "The Hand of the Ancestors: Time, Cultural Production, and Intellectual Property Law." *Law & Society Review* 47.4: 943-973.
- Chorev, Nitsan. 2012. "Changing Global Norms through Reactive Diffusion: The Case of Intellectual Property Protection of Aids Drugs." *American Sociological Review* 77(5): 831-53.

第八周 期末论文选题汇报 Research proposal presentation and discussion