

History 395: Research Methods in Law and Society

Fall 2023

Dr. Teal Arcadi, Department of History/Law, Technology, and Culture Program. Office Hours: Tuesdays, 11:30-1pm, Cullimore 326.

Meeting Time and Location

Cullimore 110, Tuesdays and Thursdays 1pm-2:20pm

Course Description

Law is everywhere. Law threads through every aspect of society: it permits and prohibits human behaviors, it enables and invalidates official actions, and it protects and prosecutes citizens. Law shapes our daily lives in countless ways, and, circularly, is shaped in equally countless ways by organic behavior. This course will introduce you to a range of research methods—old and new, academic and public-facing—used to unveil law’s complexity and social entanglements. That is, you will gain a grounding in the field of academic study known as “Law and Society” in general, and called “Law, Technology, and Culture” here at NJIT.

This course requires rigorous, self-motivated reading, thinking, talking, and writing. Furthermore, we are unlikely to encounter any singular, defining characteristic of law or society, much less the tangled relationship between the two. Instead, you will need to grasp multiple areas of study and multiple strands of analysis simultaneously. Our task is to understand relationships between social, cultural, political, and economic forces on the one hand, and legal rules, practices, and outcomes, on the other—all of which, ultimately, adds up to the relationship between law and society.

While this course is intended primarily to provide a toolkit to those interested in legal, governmental, and nonprofit careers, all are welcome, and all will benefit. The course will enhance your skills in high-level reading comprehension, oral presentation, argumentation, writing, and discussion, among other things.

Reading

Two things you will have to do a lot of—and do well—in this course are read and discuss what you read. There will be assigned readings most weeks, averaging about 25 pages per class meeting. You must complete the readings for each class BEFORE class meets, and be ready to discuss thoroughly.

All materials for this course are available on Canvas under files, or via a hyperlink in many cases.

Grading

Syllabus quiz: pass/fail with unlimited attempts, 5% of final grade if passed. This quiz is on Canvas and aims to make sure you understand the course's organization and logistics.

Participation: 10 points per class/25% of final grade. This course focuses heavily on in-class discussion. You must complete all assigned reading before each class meeting, and be prepared to discuss 1) what the author(s)'s main arguments are, 2) what the author(s)'s main research methods are, and 3) what insights you believe they produced about the study of law and society. Additionally, be sure to listen actively and maintain a high level of curiosity. What does each reading make you think about? What problems does it identify and try to solve? What is confusing, and why? What parts do you not understand, and why? How should we think about future research after reading each assignment? Etc.

Discussion posts: pass/fail, twenty posts with one omission permitted, 20% of grade. You must submit a discussion post on Canvas the evening prior to every class meeting in which there is assigned reading. The discussion post should 1) identify the author(s)'s main arguments, 2) describe a part of the reading(s) you don't understand and 3) pose a question about the author(s)'s research methods. Each discussion post in total should therefore be 3-5 sentences, and must be posted on Canvas by no later than **5pm the day prior** to each class meeting in which there is assigned reading.

Discussion opener: 10 points, 10% of final grade. Once during the course, each student will be responsible for beginning a class meeting with a brief overview of the day's readings, followed by sharing 3-5 discussion questions to start our discussion. **See handout** on Canvas titled "Opening Discussion and Preparing Good Discussion Questions."

Three take-home evaluations. 20 points total/20% of final grade combined. Each will be a 1-2 page (double-spaced, 12-point type) essay requiring you to respond to a topic raised in class discussion.

Final paper. 20 points/20% of final grade. See handout.

Course Requirements

This is a discussion-based, seminar style course. Enrolling in it indicates an intellectual commitment on your part to the class subject, the class style, and to all of the learners in it. Please be respectful of each other's learning needs at all times. If you have learning needs of any kind, please feel free to bring them to the attention of Dr. Arcadi so that we can ensure a productive and fair learning environment for everyone.

Laptops are permitted **only** for taking notes or for other educational needs. Use of devices for non-class-related purposes will result in an overall grade reduction of one half-letter per instance. Additionally, please be mindful that some students learn better *without* electronics; if you need to use your device to learn effectively that is acceptable, but remember that others around you may find it distracting and their needs are equally important.

Use of cellphones in class is strictly prohibited; use will result in an overall grade reduction of one half-letter per instance. Late assignments **will not be graded**, unless you have official medical or academic dispensation. Finally, your decision to take this class includes a commitment to attend every class meeting; you may have **one unexcused absence**. Additional unexcused absences will result in an overall grade reduction of one half-letter per absence.

Academic Integrity and Plagiarism

Academic integrity is enforced in this course. Academic integrity is the cornerstone of higher education, and it is central to the ideals of this course and the university. Cheating is strictly prohibited and devalues the degree that you are working toward achieving. As a member of the NJIT community, it is your responsibility to protect your educational investment by knowing and following the academic code of integrity policy that is found here:

<https://www5.njit.edu/policies/sites/policies/files/NJIT-University-Policy-on-Academic-Integrity.pdf>.

It is the instructor's professional obligation and responsibility to report any academic misconduct to the Dean of Students Office. Any student found in violation of the code by cheating, plagiarizing, or using any online software inappropriately will result in disciplinary action. This may include a failing grade of F, and/or suspension or dismissal from the university. If you have any questions about the code of Academic Integrity, please contact the Dean of Students Office at dos@njit.edu.

Students will also be required to submit their original written work digitally. Student work submitted digitally will be subject to review by turnitin.com, an online service used by NJIT instructors to detect plagiarism, AI use, and irregularities in sourcing and citation of the written word and claims. Plagiarism, use of AI, and/or other irregularities may result in failure of the course.

Schedule

Week One: Foundations

Tuesday, September 5: Class Intro

Before Thursday, September 7:

- This syllabus.
- Read Orin Kerr, "How to Read a Legal Opinion: A Guide for New Law Students," *The Green Bag: An Entertaining Journal of Law* 2d 11 (2007): 51-63.
- Online syllabus quiz circulated.

Week Two: Origins of Law and Society Research

Online syllabus quiz due by start of class on Tuesday.

Before Tuesday, September 12:

Read Hendrik Hartog, "Pigs and Positivism," *University of Wisconsin Law Review*, 1985, **pages 1-9, stop at "IV: *People v. Harriet* as Episode."**

Before Thursday, September 14:

Read Hartog, "Pigs and Positivism," **start on page 9 at "IV: *People v. Harriet* as episode" and read until end of article.**

Week Three: Who are the people in the American legal system, and how should we study them?

Before Tuesday, September 19:

- Read Austin Sarat and William L. F. Felstiner, "Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction," *Law & Society Review* 22 (1988): 737-69.

Before Thursday, September 21:

- Richard A. Oppel Jr. & Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *New York Times* (Jan. 31, 2019), <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>
- *Padilla v. Kentucky* (2010), <https://supreme.justia.com/cases/federal/us/559/356/>

Take-Home Evaluation #1 Circulated. Due 1pm Thursday 9/28 on Canvas.

Week Four: How do people learn about the law in daily life, and why does that matter for the study of law and society?

Tuesday, September 26. **Evaluation #1 in class.**

Before Thursday, September 28:

Evaluation #1 due 1pm on Canvas.

- Read Colin Dickey, "The Elements of Bureaucratic Style," *Longreads.com*, April 12, 2017, <https://longreads.com/2017/04/12/the-elements-of-bureaucratic-style/>.
- Alyssa Rosenberg, "In Popular Culture, There Are No Bad Police Shootings," *Washington Post* (Oct. 26, 2016).
- Read Michael McCann, William Haltom, and Anne Bloom "Java Jive: Genealogy of a Juridical Icon," *University of Miami Law Review*, 2001. **Read pages 113-140, more if you have time.**

Week Five: How do we study social problems through law? How do we measure the impact of social movements on legal change?

Before Tuesday, October 3:

- Read Zeynep Tufekci, "Do Protests Even Work?" *The Atlantic*, June 24, 2020.
- Read Craig Reinerman, "The Social Construction of Drug Scares" (1994), 139-50.

Before Thursday, October 5:

- Read Elizabeth Hinton, “‘A War Within Our Own Boundaries’: Lyndon Johnson’s Great Society and the Rise of the Carceral State,” *Journal of American History*, 2015.

Week Six: Midterm Evaluations.

Tuesday, October 10: **Evaluation #2, part 1, in class.**

Thursday, October, 12: **Evaluation #2, part 2, in class.**

Week Seven: Why and why not do people obey the law? What kind of data can we use to evaluate such a question?

Before Tuesday, October 17

- Read Henry David Thoreau, “Civil Disobedience,” 1849, <https://xroads.virginia.edu/~Hyper2/thoreau/civil.html>
- Read Martin Luther King Jr., “The Negro Is Your Brother” (aka “Letter from a Birmingham Jail”), *The Atlantic* (1963).

Before Thursday, October 19:

- Read Ian MacDougall, “Empty Suits: Defamation Law and the Price of Dissent,” *Harpers*, 2018

Week Eight: How do we study the interaction between social pressure and criminal law?

Before Tuesday, October 24

- Look at the Bureau of Justice Statistics Criminal Justice System flowchart (click on any part of the flowchart to get more information) <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/images/2021-06/flowchart.jpg>
- Read Michelle Alexander, “The Color of Justice,” ch. 3 of *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), 95-136

Before Thursday, October 26:

- Read Amanda Ripley, “How America Outlawed Adolescence,” *The Atlantic*, 2016
- Read Jennifer Gonnerman, “Larry Krasner’s Campaign to End Mass Incarceration,” *The New Yorker* (Oct. 22, 2018)

Week Nine: How are criminal laws enforced? How can we research enforcement procedures and their disparate outcomes?

Before Tuesday, October 31:

- Listen to Life of the Law podcast, “Bail or Bust” (27 mins), <https://www.lifeofthelaw.org/2016/07/bail-or-bust/>
- Read Emily Yoffe, “Innocence is Irrelevant,” *The Atlantic* (Aug. 2017)

Thursday, November 2: Current legal developments, **Readings TBA.**

Take-Home Evaluation #3 Circulated. Evaluation #3 due Tuesday 11/7 at 1pm on Canvas.

Week Ten: Choice and discretion in the legal system: how do we see it and how do we study it?

Evaluation #3 due Tuesday at 1pm on Canvas.

Tuesday, November 7: Current legal developments, readings TBA.

Before Thursday, November 9:

- Read Emily Prifogle, "Winks, Whispers, and Prosecutorial Discretion in Rural Iowa," *The Annals of Iowa*, Vol. 79, No. 3 (2020): 247-283.

Week Eleven: What is the relationship between past legal behavior and present-day reform?

Before Tuesday, November 14:

- Read Neil York, "Natural Rights Dissected and Rejected: John Lind's Counter to the Declaration of Independence," *Law and History Review*, Vol. 35, No. 3 (2017): 563-593.

Before Thursday, November 16

-Deborah Archer, "White Men's Roads Through Black Men's Homes: Advancing Racial Equity Through Highway Reconstruction," *Vanderbilt Law Review*, Vol. 73, No. 5 (2020): 1259-1330.

Week Twelve: Current legal events, readings TBA.

Week Thirteen: How does scholarship change judicial outcomes?

Before Tuesday, November 28:

- Read Angela Condello, "Metaphor as Analogy: Reproduction and Production of Legal Concepts," *Journal of Law and Society*, Vol. 43, No. 1 (2016): 8-26.

Before Thursday, November 30:

- Read George Chauncey, "What Gay Studies Taught the Court," *GLQ*, Vol. 10, No. 3 (2004): 509-538.

- Read Historians' Brief in *Lawrence v. Texas* (2003)

- Read Expert Report of Nancy F. Cott, Ph.D., in *Perry v. Schwarzenegger* (2009)

- Read Historians' Brief in *Bostock v. Clayton County* (2019)

Week Fourteen: Final paper prep

Tuesday, December 5. Individual meetings.

Thursday, December 7. Individual meetings.

Week Fifteen: Final paper prep

Tuesday, December 12. Individual meetings.