

**Political Science 536
Comparative Law & Society
Spring Semester 2009**

Mondays, 5:00-7:30 p.m.

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Fridays, 8:00-10:00 a.m., and by appointment

Description

Law and Society scholarship (also known as sociolegal studies) takes as its starting point the seemingly simple, but ultimately highly complicated question, “What is the relationship between law and society?” What makes this question so difficult is that, first and foremost, the notion of “law” is itself already highly contested. Whether law is “mere politics”, elitism, or necessary to democratic processes are issues that have been debated, quite literally, for millennia. As political scientists, we bring to this interdisciplinary field a strong interest in the political processes, the flux and flow of power in society, and attention to the importance of empirically rich, detailed analyses.

Constitutionalism and democracy, of course, are key to the study of law and society. However, sociolegal scholars tend to be interested in many other facets of legal phenomenon. Indeed, we tend to see the nature of law as far more complicated than what judges say or what is written down in documents and more curious about how the power of law is brought into effect in everyday life. For us, law is “all over the place”, as one famous essay suggests. Law exists in the way we shape our homes, or lives, as well as the claims we make about our everyday existence. Some of this law is domestic, national law. Other law is international. And some law comes from closer to home – our churches, synagogues and mosques. It certainly matters in processes of democratization and transitioning societies, even as a constitution or a human rights treaty matters. But law, when understood in this textured and nuanced way, may matter more than most conventional legal scholarship suggests, while constitutions may matter in wholly misunderstood ways. After all, in many places written constitutions either do not exist or are weak, yet law is present. There, law and normative orderings take on different shapes. Their influence and power is no less important for not following a “liberal” (i.e., liberal political theory) notion of constitutionalism. In this class, we’ll pay attention to constitutions and their importance in both democratic and authoritarian regimes; but we’ll also pay attention to legal pluralism – i.e., the ways in which law and society in a variety of contexts interact and structure one another.

So, our three intellectual goals in this seminar can be put simply:

1. to step away from understanding law as only a constitutional matter, or one that is written down in codes and legislation, and to begin to see law as it lives in a society;
2. to cease taking for granted the nature of law in our own society(ies) and thereby bring to light tensions among the claims made about law in a variety of literatures, including that produced in law reviews by law schools, social science literatures, and of course, in many mainstream political science journals;
3. to develop a few professional skills to enable us to make assessments about claims made about law – or, be able to point out when a claim about law needs to be made.

In addition to these larger goals, we are also going to focus on a set of professional skills that all young scholars need, regardless of whether they go on to Ph.D. programs, become professors, or work in think tanks:

- the ability to read across fields and outside of their specializations
- to make assessments of literature that are not within their expertise
- to present materials in a seminar format intended to provoke scholarly conversations with colleagues who are not in their subfields
- to learn to develop curiosity about other people’s work, and thus become better scholars

The assignments for this seminar will provide the basis for me to determine how well you met the course goals as you progressed through the semester.

Assignments and Deadlines

Memo of Intent (10% of final grade)

By January 26th, you will write a one-page memo to me explaining what your goal for this semester is. This cannot be, “to learn something about comparative law”. Instead, I want you to think about how you might connect comparative law with your larger research agenda. Now, “connect” does not mean that you have to incorporate a comparative law angle into your agenda. Rather, ask yourself how learning about rule of law cross-nationally might inform the issues you are interested in without necessarily requiring you to change your current research project.

In order to do this, you need to briefly explain what your research interests are, and pose a question that you’d like to think about over the course of the semester. Take a look at the syllabus, thumb the textbooks, and do a little digging at the library – are there books you’d like to take a look at over the course of the semester? If so, tell me about them.

The aim of this memo is to set some goals for you that you and I agree upon. This means that we must begin a dialogue about your work as soon as possible. This dialogue will continue over the course of the semester. It is worth 10% of your final grade.

Presentation (15% of final grade)

Students will work in teams to “teach a class” once over the course of the term. You may use any technique you wish, but your goal for this assignment is to lead the class in a discussion of the reading materials while also bringing additional information (beyond the readings) into that discussion. This will be worth 15% of your grade.

Course Portfolio (75% of final grade)

As you begin the semester, think about how comparative law might be able to inform your other research work. “Inform”, here, means “help you think about in a new way” rather than “provide you with the final detail for publication”. During office hours, in class, and over email, ask questions and try to make connections with the various topics we discuss in class and those issues that are central to your research agenda.

Over the course of the semester, you will keep a course portfolio that contains the following:

1. At the beginning of the portfolio, you must include the Memo of Intent that you wrote at the beginning of the term. Immediately after the memo, you will write a second one-page memo assessing how well you achieved the goal you set out for yourself and how comparative law helped you in thinking through other facets of your research agenda.
2. After these memos, you will include a summary of the readings for each week. This need only be one page of typewritten text in length for each week, but there must be a summary for every week’s readings, beginning on January 26th.
3. During the course of the term, you must go the library twice and find a representative article among recently published (within the last two years) journal articles. The journals you may use will be given to you during class time. In your portfolio, you must include the abstract of each article along with its full citation, and a one-page (single spaced) explanation of why you believe the article is representative of work done on a particular substantive topic in comparative law and society. In the final paragraph, you must also discuss briefly how the article changed the way you were thinking about the topic it discusses, or about some other topic.
4. Book Reviews – two reviews of 5-7 (double spaced) pages each.

Over the course of the semester, you will be responsible for writing two book reviews. One of these may be among those listed in the “suggested” reading list. It may also be a book an excerpt of which we are reading in class (though it may not be one of the complete books we’re reading). The other must be a book you locate on your own. Before you write this review, you need to have me approve this book. Approval can occur via email or during office hours.

Your reviews will, of course, focus on the books you are writing about. However, you are also required to cite three other works (books or peer-reviewed journal articles) in your review. One of these citations can be from materials we’re reading in class. The other two, however, must

either be materials you find on your own or among those listed in the Suggested Reading List at the end of this syllabus.

Two very important caveats:

If your primary field is in American Politics or Public Law, one of your reviews must be of a book that substantively treats some part of the world outside of common law countries (the U.S., the U.K., Australia or Canada). Your second review may be a common law country, but it cannot be focused only on the U.S. It may, however, compare the U.S. with one or more other countries.

If you are a Comparativist, you must have at least one review that substantively treats a common law country. Your second review may be any type of legal system, but it cannot be focused only on the country where your research agenda is focused. It may, however, compare that country/area with one or more other country.

These reviews should be professional level and ready for submission to the *Law and Politics Book Review* (which you can find on-line). Each review will be 5 to 7 pages in length (double spaced). You will include a complete bibliography (that will not count toward your 5-7 pages) of any sources you cite.

5. A copy of any handouts, Powerpoint slides, etc. that you used during your presentation, along with your notes. This means that both you and your partner need to include a full copy of this material in your own portfolio. Along with these, you must include a memo that evaluates your presentation and includes a discussion of what you would do differently if you were to do the same presentation in the future.

These materials should be included in a tabbed notebook/folder. Be sure to include a table of contents at the front of your portfolio.

This portfolio is worth 75% of your grade.

Textbooks and Course Materials

Many of the materials used in this course will be available on-line using the Blackboard website set up for this course. There are, however, a few books for your to purchase at the University Bookstore:

Cichowski, Rachel A. 2007. *The European Court and Civil Society: Litigation, Mobilization and Governance*. Cambridge University Press.

Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. The University Press of Kansas.

Ginsburg, Tom and Tamir Moustafa. 2007. *Rule By Law: The Politics of Courts in Authoritarian Regimes*. Cambridge University Press.

Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press.

A fifth book will show up in a few weeks at the bookstore:

Merry, Sally Engle. 2000. *Colonizing Hawai'i: The Cultural Power of Law*. Princeton University Press.

Suggested Readings

Note: This is hardly an exhaustive list, but it can give you a place to start. See me if you have any questions. I have included some works of jurisprudence (Schmitt, Kelsen, etc.). These are writers of importance across the world, and well worth investigating at some point.

Abel, Richard L. 1995. *Politics by Other Means: Law in the Struggle Against Apartheid*. New York and London: Routledge University Press.

Alter, Karen. 2001. *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. Oxford University Press. (Alter has also been writing about international adjudication and intellectual property law – any of her law review and journal articles would also be of interest).

Benton, Lauren. 2002. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*. New York and London: Cambridge University Press.

Congleton, Roger D. and Birgitta Swedenborg. 2006. *Democratic Constitutional Design and Public Policy: Analysis and Evidence*. Cambridge and London: The MIT Press.

Davies, Margaret. 1996. *Delimiting the Law: 'Postmodernism' and the Politics of Law*. London and Chicago, IL: Pluto Press.

De Sousa Santos, Boaventura. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. London and New York: Routledge University Press.

Dworkin, Ronald. 1986. *Law's Empire*. Cambridge: Harvard University Press.

Ely, John Hart. 1980. *Democracy and Distrust: A Theory of Judicial Review*. Cambridge and London: Cambridge University Press.

Ewick, Patricia and Susan S. Silbey. *The Common Place of Law: Stories of Everyday Life*. Chicago and London: The University of Chicago Press.

Fitzpatrick, Peter. 2001. *Modernism and the Grounds of Law*. Cambridge: Cambridge University Press.

Fitzpatrick, Peter. 1992. *The Mythology of Modern Law*. London and New York: Routledge University Press.

Fuller, Lon. *The Morality of Law*. 1969. Yale University Press.

Galanter, Marc. 1974. "Why the Haves Come Out Ahead," 9(1) *Law and Society Review*.

Graber, Mark A. 2006. *Dred Scott and the Problem of Constitutional Evil*. Cambridge: Cambridge University Press.

- Halliday, Terence etc. Any of his work on political liberalism, co-edited with Lucian Karpik and Malcolm Feeley.
- Hart, H.L.A. 1961. *A Concept of Law*. Oxford University Press.
- Hardt, Michael and Antonio Negri. 2000. *Empire*. London and Cambridge: Harvard University Press.
- Hilbink, Lisa. 2007. *Judges Beyond Politics in Democracy and Dictatorship*. London and New York: Cambridge University Press.
- Hirschl, Ran. 2004. *Towards Juristocracy: The Origins and consequences of the New Constitutionalism*. Cambridge: Harvard University Press.
- Horwitz, Morton J. *The Transformation of American Law, 1780-1860*. Cambridge: Harvard University Press.
- Kagan, Robert A. 2001. *Adversarial Legalism: The American Way of Law*. Cambridge: Harvard University Press.
- Kelsen, Hans. 1945. *General Theory of Law and State*. Harvard University Press. (Any of his works in translation, however, may be of interest to you.)
- Klug, Heinz. *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction*. Cambridge, London and New York: Cambridge University Press.
- Malloy, Robin Paul. 2000. *Law and the Market Economy: Reinterpreting the Values of Law and Economics*. Cambridge: Cambridge University Press.
- Marvall, Jose Maria and Adam Przeworski. 2003. *Democracy and the Rule of Law*. Cambridge: Cambridge University Press.
- Merry, Sally Engle. 2000. *Colonizing Hawaii: The Cultural Power of Law*. Princeton: Princeton University Press.
- Merry, Sally Engle. 2006. *Human Rights & Gender Violence: Translating International Law into Local Justice*. Chicago: The University of Chicago Press.
- Merryman H. John and Rogelio Perez-Perdomo, 2007. *the civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, third edition. Oxford University Press.
- Moustafa, Tamir. 2007. *The Struggle for Constitutional Power: Law, Politics and Economic Development in Egypt*. Cambridge: Cambridge University Press.
- Sarat, Austin and Stuart Scheingold – any of the five volumes in the cause lawyering series.
- Scheingold, Stuart A. and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering*. Stanford: Stanford University Press.
- Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy and Political Change*. New Haven and London: Yale University Press.
- Scheingold, Stuart A. 1971. *The law in Political Integration: The Evolution and Integrative Implications of regional Legal Processes in the European Community* (with a foreword by Ernest B. Haas). Center for International Affairs, Harvard University.
- Shklar, Judith N. 1964. *Legalism*. Cambridge: Harvard University Press.
- Slaughter, Anne-Marie, Alec Stone Sweet and Joseph H.H. Weiler (eds.) 1997. *The European Courts and National Courts: Doctrine and Jurisprudence*. Northwestern University Press. Also, any other work by any of these three on courts and integration.
- Schmitt, Carl. 1927 (1996). *The Concept of the Political*. The University of Chicago Press. Any of his works may be of interest, however.
- Sweet, Alec Stone. 2004. *The Judicial Construction of Europe*. Oxford University Press. Any of his books or articles on courts and European integration.

Unger, Roberto Mangabeira. 1976. *Law in Modern Society: Toward a Criticism of Social Theory*. London: Collier Macmillan Publishers (The Free Press).

Weber, Max. 1967. *Max Weber on law and Economy and Society*. Simon and Schuster.

Whittington, Keith. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*. Princeton University Press.

Valverde, Mariana. 2003. *Law's Dream of a Common Knowledge*. Princeton and Oxford: Princeton University Press.

Course Outline & Schedule

Note: This is subject to change. It is your responsibility to keep up with any changes.

Materials followed by (el) are available on the course Blackboard Website.

Materials followed by (h) will be handouts.

January 12 Introduction – Law and Legal Orders and Some Basic Concepts

Assignments:

Between now and January 22nd, you must decide who your partner will be in the class presentations, and submit three dates to me (in the order your choice), via email (along with the name of your partner). Presentations will begin on February 2. While I cannot guarantee that everyone will get their first choice in dates for the presentation, I will do my best to accommodate everyone.

Over the next two weeks, you must write your Memo of Intent (see description above). It will be due at class time on January 26th.

January 19th **Dr. Martin Luther King Holiday**
No Class

January 22nd – Email Prof. Hatcher with name of partner and choice of dates for presentations.

January 26 Comparing Law, Legal Orders and Experience

NO PRESENTATIONS ON THIS EVENING.

Dates for presentations will be announced at class time.

Memos of Intent are due at class time.

Merry, "Legal Pluralism" 22(5) *Law and Society Review* (1988). (el)

Sarat, "Law Is All Over the Place," *Yale Journal of Law and the Humanities* (1990). (el)

February 2 Law, Culture and the Difficulties of Comparing

(In a sense, these readings will be an extension of last week's themes.)

Engel, "Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand," 30 *Law and Social Inquiry* (2005). (el)

Wagatsuma and Roset, "The Implication of Apology: Law and Culture in Japan and the United States," 20 *Law and Society Review* (1986). (el)

Lee, Ilyhung. 2005. "The Law and Culture of Apology in Korean Dispute Settlement," 27 *Michigan Journal of International Law*. (el)

February 9 Comparing Courts

Charles Epp, *The Rights Revolution* (book is available at the university bookstore)

Hirschl, "The Political Origins of Judicial Empowerment Through Constitutionalization: Lessons from Four Constitutional Revolutions," 25(1) *Law and Social Inquiry* 2001. (el)

February 16 Constitutionalism in New Democracies

Tom Ginsburg, *Constitutionalism in New Democracies* (book available at the university bookstore)

February 23 Constitutionalism in Authoritarian Regimes

Ginsburg and Moustafa, *The Rule of Law in Authoritarian Regimes* (book available at the university bookstore)

March 2 Constitutionalism and Courts – Constitutionalism in the U.S.

Whittington, Keith. "Presidential Challenges to Judicial Supremacy and the Politics of Constitutional Meaning," 33(3) *Polity* 2001.

Burgess, "Queer (Theory) Eye for the Straight (Legal) Guy: *Lawrence v. Texas*' Makeover of *Bowers v. Hardwick*," 59(3) *Political Research Quarterly* (2006) (el)
Dahl, *A Preface to Democratic Theory* (h)

Arendt, *On Revolution* (h)

March 9 **Spring Break**
 No Class

March 16 Taking a Step Back...

We'll be reviewing the readings on constitutionalism that you've done so far and discussing them at length.

NO PRESENTATIONS ON THIS EVENING.

Readings:

Van Hoecke and Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law," 47(3) *The International Journal of Comparative Law Quarterly* 1998. (el)

March 23 The Legal Profession I: Structures and Theories

Abel, Richard. 1985. "A Comparative Sociology of Legal Professions: An Exploratory Essay," *American Bar Foundation Research Journal*, Vol. 10, No. 1 (Winter, 1985), pp. 1-79. (el)

Other readings TBA

March 30 The Legal Profession II: Activities

Selected readings from the cause lawyering series (edited by Sarat and Scheingold) as well as the political lawyering books (edited by Halliday and Karpik, as well as Halliday, Karpik and Feeley).

April 6 International Courts and Normative Change

Cichowski, *The European Court and Civil Society*

Review Merry's essay on legal pluralism

April 13 Law and Culture

Merry, *Colonizing Hawai'i* (university bookstore)

Benton (handout)

April 20 Post-colonial legal orders and Human Rights

Hussein, Iza “Legal Hybridity” (el)

Muslim Societies and Family law readings – TBA these will likely be electronic resources.

April 27 Wrapping Up

May 4 Course Portfolios are due by 4:00 p.m., in my office.