

Spring 2006

**State, Law and Politics in Society**  
L06.3565, G62.1102 and G53.2356  
Furman Hall, Rm 316  
Wednesday: 4:05-5:55

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Office Hours: Tues. 11:00-12:30 & by appointment

**Description**

This seminar is concerned with relationships between law and state power. One central theme is how law can usefully be viewed as autonomous from state political powers, even when it is enforced through state institutions and is an expression of state policies, as well as other interests in society. We examine a number of theoretical perspectives and methodological approaches to thinking about this large question. We also turn to literatures on American Political Development and Comparative and Global Perspectives to ground, and analyze, state theory and law questions. Specifically, we work through: historical and comparative studies of law and state formation and development; scholarship on the institutional autonomy of the legal profession, administrative agencies, and the judiciary; and research on the mobilization of law by social movement. In all these areas we examine the political economy of law, its jurisprudential tendencies, trends and regimes.

**Requirements:**

1. *Paper Requirements (70%)*

JD or LLM students registered for 2 credits in the Law School are required to write 2 critical essays (8-12 pages each) focused on a set of problems about legal autonomy you develop and discuss with Professor Harrington in advance. The time-table for when papers are due will be posted on Blackboard. Each essay will count for 35% of your course grade.

JD students register for 2 credits plus 1 writing credit in the Law School and who are writing an "A Credit Paper" must follow the Law School rules on "A Credit Papers". The production time-table that will be posted on Blackboard.

Graduate students registered for 4 credits in the Graduate School of Arts and Science may choose between:

1. Writing 2 critical essays (12-15 pages each) focused on either a set of questions about legal autonomy you develop and discuss with Professor Harrington in advance, OR an area of work we are studying in the seminar. Each essay will count for 35% of your course grade; or
2. Writing a research paper examining a problem concerning law's relationship to state power (30-35 pages). The time-table for when papers are due will be posted on Blackboard.

## 2. Seminar Participation (30%)

Your verbal and written contributions are very important for each seminar and will be a factor in evaluating your performance (30% of your course grade). Each week you are required to submit 1-3 questions or themes, drawn from the readings, to Professor Harrington via email, no later than 6:00pm the Monday before Wednesday's seminar.

### Assigned Readings

Issac Balbus (1977) *The Dialectics of Legal Repression: Black Rebels Before the American Criminal Courts*. Princeton: Princeton University Press.

Roberto Mangabeira Unger (1976) *Law and Modern Society*. NY: Free Press.

Bruno Latour (1993) *We Have Never Been Modern*. Cambridge: Harvard University Press.

Robin Paul Malloy (2000) *Law and Market Economy: Reinterpreting the Values of Law and Economics*. NY: Cambridge University Press.

Thomas M. Keck (2004) *The Most Activist Supreme Court in History*. University of Chicago Press.

Yves Dezalay and Bryant G. Garth (2002) *The Internationalization of Palace Wars*. Chicago: University of Chicago Press.

[BB] material is located on Blackboard

[C] material handed out in class

## Course Outline

**Introductions:** *Week 1, January 11th*

### I. The Modern State in Law and Society

*Week 2, January 18<sup>h</sup>*

- Martin Shapiro (1964) “Political Jurisprudence,” *52 Kentucky Law Journal* 294. [C]
- Alec Stone Sweet (2000) “Norms, Dispute Resolution, and Judicialization,” Chapter 1 in *Governing with Judges: Constitutional Politics in Europe*, (A. Stone Sweet). Oxford University Press. Chapter 2 recommended. [C]
- Tamir Moustafa (2003) “Law versus the State: The Judicialization of Politics in Egypt” *28 Law and Social Inquiry*, 883-930. [BB]

*Week 3, January 25<sup>th</sup>*

- Issac Balbus (1977) *The Dialectics of Legal Repression: Black Rebels Before the American Criminal Courts*. Princeton: Princeton University Press.
- Boaventura De Sousa Santos (1995) “Three Metaphors for a New Conception of Law: The Frontier, the Baroque, and the South,” *29 Law & Society Review* 569-84. [BB]

*Week 4, February 1<sup>st</sup>*

- Roberto Mangabeira Unger (1976) *Law and Modern Society*. NY: Free Press. Chapters 2 & 3.
- Latour, Bruno (1993) *We Have Never Been Modern*. Cambridge: Harvard University Press.

### II. Political Economy and the Capitalist State

*Week 5, February 8th*

- Yoram Barzel (2002) *A Theory of the State: Economic Rights, Legal Rights, and the Scope of the State*. NY: Cambridge University Press. pp. 157-185 and 267-281. [C]

- Robin Paul Malloy (2000) *Law and Market Economy: Reinterpreting the Values of Law and Economics*. NY: Cambridge University Press.

*Week 6, February 15th*

- James Scott (1998) “State Projects of Legibility and Simplification”, in *Seeing Like a State*. New Haven: Yale University Press. pp. 1-52. [C]
- Timothy Mitchell (1991) “The Limits of the State: Beyond Statist Approaches and Their Critics,” 85 *American Political Science Review* 77-96. [BB]

*Week 7, February 22<sup>nd</sup>*

- Kitty Calavita (1992) *Inside the State: The Bracero Program, Immigration, and the I.N.S.* NY: Routledge. pp. 1-17 and 73-112. [C]

### **III. Legal Ideology, Discourse and Narrative**

*Week 8, March 1<sup>st</sup>*

- Louis Althusser (2001) “Ideology and Ideological State Apparatuses: Some notes toward an investigation,” in *Lenin and Philosophy and Other Essays*. NY: Monthly Review Press. [C]
- Alan Hunt (1985) “The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law,” 19 *Law & Society Review* 11-37. [BB]

*Week 9, March 8<sup>th</sup>*

- Amherst Seminar (1988) “Introduction to the Special Issue on Law and Ideology,” 22 *Law & Society Review* 629-39. [BB]
- Michele L. Landis (1999) “Fate, Responsibility, and "Natural" Disaster Relief: Narrating the American Welfare State,” 33 *Law & Society Review* 257-318. [BB]

SPRING BREAK WEEK

### **IV. Legal Practices of Political Development**

*Week 10, March 22<sup>nd</sup>*

- Thomas M. Keck (2004) *The Most Activist Supreme Court in History*. University of Chicago Press.

*Week 11, March 29<sup>th</sup>*

- Alfred C. Aman (2003) “Globalization, Democracy and Domestic Law: Globalization, Democracy, and the Need for a New Administrative Law,” *Indiana Journal of Global Legal Studies*. [BB]
- Christine B. Harrington and Ziya Umut Turem (2006) “Accounting for Accountability in Neoliberal Regulatory Regimes” in *Public Accountability: Designs, Dilemma and Experiences*, M. Dowdle (ed.). New York: Cambridge University Press. [BB]

## **V. Plural Legalities and Circulating Legal Orders**

*Week 12, April 5<sup>th</sup>*

- Martin Shapiro (1998) “Globalization of Freedom of Contract,” in H. N. Scheiber (ed.), *The State and Freedom of Contract*. Stanford: Stanford University Press. pp. 269-298. [C]
- *Metalclad Corp. v. Mexico* (2000) NAFTA Tribunal [BB]

*Week 13, April 12<sup>th</sup>*

- Yves Dezalay and Bryant G. Garth (2002) *The Internationalization of Palace Wars*. Chicago: University of Chicago Press.

## **VI. Governing ‘Predicaments’** *Week 14, April 19<sup>th</sup>*

- Roberto Mangabeira Unger (1976) *Law and Modern Society*. NY: Free Press. Chapters 1 & 4.
- Lauren B. Edelman (2004) “The Centrality of the Economy to Law and Society Scholarship” and commentaries in 38 *Law & Society Review* 181-228. [BB]