

Spring 2007

State, Law and Politics in Society

L06.3565, G53.2356 and G62.1102

Furman Hall, Rm 110

Tuesdays: 4:05-5:55

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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 in order to address 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 Professors Chevigny or 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 Professors Chevigny or 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 Professors Chevigny and Harrington via email, no later than 6:00pm the Monday before Tuesday'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.

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.

All other assigned readings are on Blackboard under "Course Documents".

Course Outline

Introductions: *Week 1, January 9th*

I. The Modern State in Law and Society

Week 2, January 16^h

- Martin Shapiro (1964) “Political Jurisprudence,” *52 Kentucky Law Journal* 294.
- 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.
- Tamir Moustafa (2003) “Law versus the State: The Judicialization of Politics in Egypt” *28 Law and Social Inquiry*, 883-930.

Week 3, January 23rd

- Kim Scheppelle (1996) “The History of Normalcy: Rethinking Legal Autonomy and the Relative Dependence of Law at the End of the Soviet Empire,” *30 Law & Society Review* 627–50.
- Issac Balbus (1977) *The Dialectics of Legal Repression: Black Rebels Before the American Criminal Courts*. Princeton: Princeton University Press.

Week 4, February 30th

- 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 6th

- 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.
- James Coleman (1990) *Foundations of Social Theory*. Cambridge, Harvard pp. 300-313; 503-520.

Week 6, February 13th

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

NO CLASS, Legislative Monday- February 20

Week 7, February 27th

- Kitty Calavita (1992) *Inside the State: The Bracero Program, Immigration, and the I.N.S.* NY: Routledge. pp. 1-17 and 73-112.
- Cristina Rodriguez (2007), **TBA**.

III. Legal Ideology, Discourse and Narrative

Week 8, March 6th

- Louis Althusser (2001) “Ideology and Ideological State Apparatuses: Some notes toward an investigation,” in *Lenin and Philosophy and Other Essays*. NY: Monthly Review Press.
- Douglas Hay (1975) “Property, Authority and the Criminal Law” in *Albion=s Fatal Tree*. NY: Pantheon.

NO CLASS, Spring Break Week - March 13

Week 9, March 20th

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

Recommended

Hunt and Klare

IV. Legal Practices of Political Development

Week 10, March 27th

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

Week 11, April 3rd

- Anne-Marie Slaughter (2004). “Global Government Networks, Global Information Agencies, and Disaggregated Democracy,” in *Public Governance in the Age of Globalization*, K-H Ladeur (ed.). Ashgate.
- 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.). Cambridge University Press.

V. Plural Legalities and Circulating Legal Orders

Week 12, April 10th

- 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.
- *Metalclad Corp. v. Mexico* (2000) NAFTA Tribunal
- Regulatory Takings article, **TBA**.

Week 13, April 17th

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

VI. Governing ‘Predicaments’ *Week 14, April 24th*

- 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.