

SOC 318 Sociology of Law :
Law in a Global Perspective
Grégoire Mallard

Course Description: This course focuses on the sociological understanding of law in a global perspective. We will consider law as a historical product of juridical fields, structured by the creation and consolidation of legal professions, normative ideals and meaningful legal concepts over long periods of time. We will study classical readings on the process of autonomization of the field of Law (from Max Weber to Pierre Bourdieu), and then explore more recent approaches which address questions of global legal pluralism. To that end, we will examine several aspects of the relationship between law and larger political forces driving the process of globalization. We will ask: How does the globalization of law affect its legitimacy? How is this process of globalization of law different from the traditional making of international law? Does it affect the training of lawyers and judges? Or the creation of legal norms in different fields, like constitutional law, bankruptcy law or family law? We will also ask: Is international law used by law professionals to pursue progressive strategies of social, political, and constitutional reforms? Or is it used to strengthen national, class, gender, and racial forms of domination? Students will be encouraged to develop an original approach to the topic and to illustrate their approach by researching cases of interest to them.

Assessment: This course is a seminar and requires active participation from all members during class and every week. The assessment of students' performance will be broken down into four criteria: participation in class (20% of the grade), four short exercises (15%), mid-term paper (30%), final paper (35%). The various assessments used during the class are not only meant to test students' skills, they are also meant to help students work toward the achievement of their final paper and make some progress along the way.

The four short exercises will consist in the following pair of exercises. 1) *Twice during the quarter* and during two different weeks, students will choose *one* of the required readings of the week, and they will analyze its analytic structure: they will break down its argument into a maximum of twenty bullet points; then, they will show where the text's logic is faulty, or where evidence for the bullet point are missing (max. 2 pages). 2) In addition, *once during the quarter*, students will be asked to *pair with another student*, and to present how *two articles/book chapters* among the week's readings help them understand a contemporary issue that is relevant to the texts, although not discussed by the readings. They will present their results *during* class (max. 5 minutes).

In the middle of the quarter, and after consultation with the students, students will be asked to write a mid-term paper, which consists in two short answers to two questions (max 6 pages in total, 3 pages per answer). Students will prepare their response at home for 48 hours (consultation of the texts is allowed). I will send them two questions by email, and students will have to send me back their response electronically 48 hours later. Students will be asked to illustrate their response to the two questions with an analysis of the issue that they want to analyze in their final paper.

The final paper will consist in the analysis of an issue related to the field of international law, which the readings in class help illuminate. It will involve some research with primary and/or second-hand documents: archives, interviews, observations, press analysis, academic works. It will not be longer than 10 pages.

Students who plagiarize will fail the class. Students will not be allowed to use laptops in class.

SCHEDULE OF READINGS

INTRODUCTION

WEEK 1: Is Law Autonomous from Politics?

Max Weber. 1978. "Emergence and Creation of Legal Norms." Pp.743-756 in *Economy and Society: An Outline of Interpretive Sociology*, v.2. Berkeley: University of California Press.

Bourdieu, Pierre. 1987. "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal* 38:805-53.

Morgenthau, Hans J. 1960. Chapter 18, "The Main Problems of International Law," Pp. 275-311 in *Politics Among Nations (third edition)*. New York: Alfred A. Knopf.

THE ORIGINS OF INTERNATIONAL LAW

WEEK 2: Interstate Law or Cosmopolitan Law: Competing Visions of International Law

Carl Schmitt. 2003 [1950]. Part of the "Translator's Introduction" (pp. 9-30); Part IV, chapter 2: "The Dissolution of the *Jus Publicum Europeum*." (pp. 227-240) "The Last Pan-European Land-Appropriation: The Congo Conference of 1885" (pp. 214-226), Part IV, Chapter 3, "The League of Nations and the Problem of the Spatial Order of the Earth" (pp. 240-258); in *The Nomos of the Earth in the International Law of the Jus Publicum Europeum*. New York: Telos Press.

Habermas, Jürgen. 2004. "Does the Constitutionalization of International Law Still Have a Chance?" Pp.115-150 and Pp.179-203 in *The Divided West*. New York: Polity.

Recommended :

Thomas Risse and Kathryn Sikkink.1999.Chapter 1 "The Socialization of Human Rights Norms into Domestic Practices: An Introduction." Pp. 1-38 in *The power of human rights : international norms and domestic change*, edited by Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink. Cambridge, UK: Cambridge University Press.

WEEK 3: The Debate over the Legitimacy v. Efficiency in Interstate Law

Keohane, Robert, Macedo, Stephen and Andrew Moravcsik. 2009. "Democracy-Enhancing Multilateralism. *International Organization*. 63(4):1-31.

Koskeniemi, Martti. "Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization." *Theoretical Inquiries into Law*. 8(1):9-36.

David Kennedy. 4 March 2006. "One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream." Paper delivered at the International Law Association, British Branch University College London and School of Oriental and African Studies

INTERNATIONAL LAW AND (NON-)CITIZENS' RIGHTS

WEEK 4: Can Human Rights Protect those without a State to Protect them?

Hannah Arendt. 1951. Chapter 9. "Decline of the Nation-State and the End of the Rights of Man. Pp.266-302 in *The Origins of Totalitarianism: Imperialism (vol. 2)*. New York: HBJ Books.

Eric Weitz. 2008. "From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions." *The American Historical Review*. 113:1313–1343.

Recommended :

Carol Anderson. 2003. "Introduction" (pp.1-7), Chapter 1 "Beyond Civil Rights: The NAACP, the UN, and Redefining the Struggle for Black Equality" (Pp8-58), part of Chapter 2, "The Struggle for Human Rights: African Americans Petition the UN." (pp58-77). *Eyes Off the Prize. The United Nations and the African American Struggle for Human Rights 1944-55*. Cambridge University Press.

WEEK 5: Can International Courts Force States to Give More Rights to their Citizens?

Benjamin D. Bleiberg. 2005. "Unveiling the Real Issue: Evaluating the European Court of Human Right's Decision to Enforce the Turkish Headscarf Ban in Leyla Sahin vs. Turkey." *Cornell Law Review*. 91: 129-169.

Kathrin Zippel. 2004. "Transnational Advocacy Networks and Policy Cycles in the European Union: The Case of Sexual Harassment." *Social Politics*. 11(1):57-85.

INTERNATIONAL LAW AS A PROFESSION

WEEK 6: Immoral Laws, Moral Lawyers? The Case of Colonial Law

Movie: "The Terror's Advocate"

Martti Koskeniemi. 2001. Chapter 2, "Sovereignty, a gift of civilization: international lawyers and imperialism 1870-1914." Pp. 98-179 in *The Gentle Civilizer of Nations: The Rise and Fall of International Law*. Cambridge, UK: Cambridge University Press.

Elisabeth Povineli. 2002. Part of Chapter 1: Introduction." Pp.1-8, and pp. 22-29, and Chapter 4, "Shamed States", P.153-185. In *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*. Durham and London: Duke University Press.

WEEK 7: Is International Law Just Another Professional Business Language?

Hagan, John and Ron Levi. 2005. "Crimes of War and the Force of Law." *Social Forces*. 83:1499-1534.

Dezalay, Yves, and Bryant Garth. 2002. "Chapter 1: Introduction" Pp. 3-16, "Chapter 2: Retooling Statesmen to Restructure the State: From *Héritiers* of European Culture to the Technopols Made in the USA." Pp. 17-32, Chapter 3, "The Internationalization of Palace Wars." Pp.32-60 In *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago: University of Chicago Press.

INTERNATIONAL LAW IN THE AGE OF GLOBALIZATION

WEEK 8: Can International Law Regulate Global Markets?

Fligstein, Niel and Alec Stone Sweet. 2002. "Constructing Politics and Markets: An Institutionalist Account of European Integration." *American Journal of Sociology*. 5(2):1206-43.

Halliday, Terrence 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):1135-1202.

WEEK 9: Regimes of Exception and the Global Protection of Rights after 9/11

Scheppele, Kim Lane. 2006. "The Migration of Anti-Constitutional Ideas: The Post-9/11 Globalization of Public Law and the International State of Emergency." In *The Migration of Constitutional Ideas*, edited by Sujit Choudhry. Cambridge: Cambridge University Press.

Andrew Arato. 2003 "Sistani v. Bush: Constitutional Politics in Iraq." *Constellations*. 11(2)
<http://www.constellationsjournal.org/Arato-Sistani.pdf>