
ARE COURTS GLOBALIZING?

INTERNATIONAL STUDIES PRIZE PROPOSAL

SHELDON BERNARD LYKE
sblyke@uchicago.edu

OVERVIEW

This seminar is for anyone interested in whether courts are part of an expansion of governmental power over society and culture, the rule of law, and the growing internationalization of politics. The class focuses on the legalization of international affairs and the politics of Western nations—but leaves room for student projects to explore the politics of any world region. The seminar provides students the forum to assess the answers to the following questions: Are we seeing the rise of a world wide rule of judges? How are courts involved in the globalization of law? Does the international diffusion of judicial review avoid the democratic process? This class is interdisciplinary and uses texts from law, globalization studies, sociology, political science, popular culture & news, and history.

OBJECTIVES

Students will leave this class not only with a better understanding of globalization and transnationalism, but also how global processes shape law. The course aim is to sharpen students' analytic frameworks so as to be able to identify different global processes. This course uses law to demonstrate that globalization is not neither solely an economic force nor a monolith that sweeps the world and affects all places in a homogenous fashion. Instead, students will be taught to unpack the concept of globalization and begin to discuss specificity—the particular global processes at work and their respective homogenous/heterogenous features.

This course works hard to fulfill the goals of the University's International Studies concentration—one of which is to approach the concept of international studies from a variety of perspectives. As a result, this course draws on a number of subjects of international relevance, particularly human rights and globalization.

CLASS SCHEDULE AND READINGS

PART 1 COURSE INTRODUCTION

WEEK 1

Amistad

This first session will serve as a basic overview of the course (aims, requirements, etc). We will begin the course surveying and discussing audio/visual presentations with global legal themes. Material will likely include excerpts of various films and literary pieces but will focus on the **international events** surrounding the famous US Supreme case concerning the slave rebellion on the Spanish slaveship "Amistad":

We will view the movie in its entirety.

Amistad. Director. Steven Spielberg. 2000. Film.

WEEK 2

Introduction to Globalization

Globalization: A Critical Introduction. Jan Scholte. NY: St. Martin's Press. Chs. 1-2. pp. 13-61.

Carl Baudenbacher. Globalization of the Judiciary. 38 Texas International Law Journal 397. 2003.

WEEK 3

Introduction to International Law and International Human Rights

Rhona K. M. Smith. International Human Rights. Chs. 4-9. Oxford University Press (2003).

PART 2 THE INTERNATIONALIZATION OF COURTS

WEEK 4

Conceptualizing Judicial Globalization

Lawrence Friedman. Borders: On the Emerging Sociology of Transnational Law. Stanford Journal of International Law. Winter 1996.

Anne-Marie Slaughter. Judicial Globalization. 40 Virginia Journal of International Law 1103. Summer 2000.

Sir David Williams. Courts and Globalization. Indiana Journal of Global Legal Studies. Volume 11, Issue 1 pp.57-69.

WEEK 5

Good or Bad? The International Expansion of Courts. A Normative Perspective

Robert H. Bork. Coercing Virtue: The Worldwide Rule of Judges. The AEI Press (2003).

WEEK 6

The International Expansion of Courts? An Analytic Perspective

Buergenthal, Thomas, "International Tribunals and National Courts: The Internationalization of Domestic Adjudication", in *Recht Zwischen Umbruch und Bewahrung* 687 (1995).

Claire L'Heureux-Dubé. The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court. 34 Tulsa Law Journal 15. Fall, 1998.

Anthony Lester. The Overseas Trade in the American Bill of Rights. 88 Columbia Law Review 537.

PART 3 **CASE EXAMPLES**

WEEK 7

Foreign and International Tribunals' Influence on the United States

Amar, Akhil Reed. ACT LOCALLY, THINK GLOBALLY, PART TWO: Why Evolving International Standards May Have Rendered the Death Penalty Unconstitutional. August 8, 2001.
http://writ.findlaw.com/commentary/20010808_amar.html

Biskupic, Joan. "Supreme Court Citing More Foreign Cases." USA Today.
http://www.usatoday.com/news/washington/2003-07-07-foreign-usat_x.htm (newspaper article)

Breyer, Stephen. Associate Justice of the Supreme Court of the United States. "The Supreme Court and the New International Law." *The American Society of International Law, 97th Annual Meeting, April 4, 2003.* (brief speech)
http://www.supremecourtus.gov/publicinfo/speeches/sp_04-04-03.html

Dorf, Michael C. THE HIDDEN INTERNATIONAL INFLUENCE IN THE SUPREME COURT DECISION BARRING EXECUTIONS OF THE MENTALLY RETARDED. June 26, 2002.
<http://writ.findlaw.com/dorf/20020626.html>.

Mary L. Dudziak. Brown as a Cold War Case. The Journal of American History. pp. 32-42. June 2004.

Sheldon Bernard Lyke
International Prize Lectureship Proposal
Page 4 of 4

Janet Koven Levit. Going Public With Transnational Law: The 2002-2003 Supreme Court Term. 39 Tulsa Law Review 155. Fall, 2003.

Mauro, Tony. "Foreign Matter." Legal Times. July 8, 2003. (newspaper article)

Supplemental Reading:

US Supreme Court decisions:

Trop v. Dulles,

Atkins v. Virginia, (2002).

WEEK 8

International/Domestic Tribunals and Sexual Orientation

Law and sexual orientation offers one of the greatest examples to study communications between regional tribunals, quasi-judicial UN treaty monitoring bodies, and national high courts.

Lawrence v. Texas

123 S. Ct. 2472 (2003) US Supreme Court decision
(read majority, concurrence and dissent)

Bowers v. Hardwick

478 U.S. 196 (1986)
read majority opinion only

Nicholas Toonen v. Australia

UN Human Rights Committee, U.N. Doc. CCPR/c/50/D/488/1992 (1994).

Dudgeon v. United Kingdom

45 European Court of Human Rights (1981)

PART 4
COURSE CONCLUSION

WEEK 9

Student Presentations

WEEK 10

Course Conclusion, Wrap-Up. Review of Course Themes. The Big Picture.

All too often courses do not take enough time to process the material presented. We will take the time to review the various themes of the class, finish unfinished conversations, and re-read pertinent texts—all in an effort to gain a better understanding of the big picture of courts in a global world.