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# **LAW AND SOCIAL CHANGE**

## **Special Topic: Courts**

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**Proposed Course: Department of Sociology  
University of Chicago**

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### **COURSE DESCRIPTION**

What is the relationship between law, social justice, and judicial institutions? This course will study the interaction of legal and social change variables with the ultimate goal of gaining an understanding of the role that courts play in society with respect to social justice. This course examines the processes of social change and the institution of courts with a focus on the law and legal processes as either the force behind the change or the force responding to the change. Some of the questions we will ask include: (1) Are courts & tribunals effective engines of social change? or (2) Does social change occur independently of judicial systems?

This course departs from the traditional law and social change course as it not only looks at social change both in the US and abroad, but also examines a popularly discussed social change trend—globalization—in great detail. This course is unique in that it does not draw on one particular field of scholarship. This is a class that will examine literature from the legal academy, political science, and sociology— as well as primary legal texts from US courts and international tribunals.

### **OBJECTIVES**

Students who finish this course should be able:

- to locate legal arguments and changes within a wider social context
- to understand basic sociological approaches to the concept of law to identify basic theoretical issues in the sociology of law
- to define globalization
- to analyze the key debates surrounding globalization
- to evaluate the strengths and weaknesses of law and judicial systems as a means of regulating social change
- to develop a critical appreciation of how law has developed in the context of global and transnational change

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- General: Students will become familiar with a representative amount of theoretical and empirical studies directed towards explaining the relationship between law, courts, and social change.

## COURSE READINGS

### **Week 1 Introduction to the course**

*The book Separate, but Equal describes the events leading up to the famous 1954 Brown v. Board of Education school desegregation case argued before the US Supreme Court. This is an excellent opportunity to learn about the US judiciary, and possibly the world's most famous social change case to ever go before a judicial tribunal. A brief overview of the course, the field of sociology, and the domestic and international judicial system will be given before the film.*

Read the book and watch the film (in class) called *Separate but Equal*.

### **Week 2 Toward a Sociology of Law and Social Change**

*The sociology of law is the study of the social context, development, and operation of law. Sociology is inherently interested in understanding the change of the social. Law is a means of maintaining social control and order. Pursuing a sociology of law is another means of tracking social change.*

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

Dror, Yehezkel "Law and Social Change" in Vilhelm Aubert (ed.) Sociology of Law Penguin, Harmondsworth, 1969, pp.90-99

Santos, Boaventura de Sousa "On Modes of Production of Law and Social Power" 13 Int. Jnl. Sociology of Law 299-336 (1985)

### **Week 3 Social Movements**

*Morris's pathbreaking book on the civil rights movement details the resources and organization necessary to mobilize black community organization behind the civil rights movement. Take note of the mobilization characteristics. In our discussions in Weeks 8 & 9 we will discuss whether courts could have indirectly impacted these movements.*

Morris, Aldon. *The Origins of the Civil Rights Movement*. 1984,

Further Reading:

McAdam, Doug. *Political Process and the Development of Black Insurgency 1930-1970*. Chicago: University of Chicago Press, 1982. Chs. 3, 6, 9.

#### **Week 4 What is globalization?**

*This week makes an abrupt switch to another form of social change—globalization. This phenomenon is attributed by popular press and some scholars to changing the economic, political and social world order. But what exactly is globalization? Is it the spread of ideas and information across the world? Scholte calls for specificity in definition, and tells the reader what globalization is and isn't.*

Hoogvelt, Ankie. *Globalization and the Postcolonial World: The New Political Economy of Development*. Second Edition. Johns Hopkins University Press. 2001.

Scholte, Jan Aart. 2000. *Globalization: A Critical Introduction*. NY: St. Martin's Chapters 1-2 pp. 13-61.

*Further Reading:*

Steger, Manfred B. *Globalization: A Very Short Introduction*. Oxford Press. (2003).

#### **Week 5 Emerging Sociology of Law & Globalization**

*The readings of week 5 look at the globalization of law, and call for an understanding of the mechanisms that globalize law. At the center of all readings—especially Silbey—is power and the vital social justice role that sociology has in producing knowledge that can track power.*

Gibney, Matthew J. (ed). *Globalizing Rights*. Oxford University Press. 2003.

- Susan George, “Globalizing Rights?” p. 15

Silbey, Susan S. 1997. “Let Them Eat Cake: Globalization, Postmodern Colonialism, and the Possibilities of Justice.” *Law & Society Review* 31: 207-235.

Friedman, Lawrence. “Borders: On The Emerging Sociology Of Transnational Law.” *Stanford Journal of International Law* 32: 65

#### **Week 6 Globalization of Law and a New World Order**

*This week focuses on the processes that create transnational laws, and how transnational legal processes simultaneously shape and are shaped by domestic legal processes. Koh describes this phenomenon, while Shapiro writes about law and how it diffuses through the globe.*

Koh, Harold Hongju. “Transnational Legal Process.” *Nebraska Law Review* 75: 181 (1996).

Shapiro, M. “The Globalization of Law.” *Indiana Journal of Global Legal Studies* 1993; 1:37-64.

Friedman, LM. "One world: notes on the merging legal order." in *Transnational Legal Processes: Globalisation and Power Disparities*. Edited by Michael Likosky. pp. 23-40.

### **Week 7 What is impact? Measuring Social Change**

*Briefly stepping away from global issues, Week 7 looks at sociological literature that measures the impact of domestic law on social change. In order to assess whether a law has created social change, we must be able to measure its impact. These tools will come in handy next week when evaluating Rosenberg's "Hollow Hope" argument.*

Lempert, Richard and Joseph Sanders. Chapters 9-13. in *An Invitation to Law and Social Science*. University of Pennsylvania. 1990.

Wasby, Stephen. "Impact and Compliance: What Do We Mean?" in Wasby, *The Impact of the United States Supreme Court*, pp. 27-56.

*Further Reading:*

Becker, Theodore L. and Malcom M. Feeley. *The Impact of Supreme Court Decisions*, 2<sup>nd</sup> ed. Pp. 100-149, 155-185, 66-88, 214-229.

### **Week 8 Do Courts Produce Domestic Social Change? Part I**

*Rosenberg dishes out the controversial argument that US courts rulings do nothing for the advancement of social change. A book with a compelling argument and a lot of empirical evidence, it is difficult to dispute his claims. But wait till next week...*

Rosenberg, Gerald N. *The Hollow Hope: Can Courts Bring About Social Change*. Chicago, 1991.

- *Brown v. Board of Education I*, 347 U.S. 483 (1954)
- *Brown v. Board of Education II*, 349 U.S. 294 (1955)

### **Week 9 Do Courts Produce Domestic Social Change? Part II**

*This week we read Rosenberg's critics. They argue that court rulings do indeed advance social justice in the US.*

*Symposium Issue, Can Courts Bring About Social Change? Law & Social Inquiry* 1992, 17, 4, fall.

Garrow, David J. Hopelessly Hollow History: Revisionist Devaluing of *Brown v. Board of Education*. 80 Va. L. Rev. 151. February 1994.

**Week 10 Transnational Law, National Courts, and Social Change**

*The final week uses all of the tools learned throughout the course. L'Heureux-Dubé's article attempts to measure the transnational impact of the US Supreme Court's social change rulings.. Other readings raise the question of globalization's impact on the court.*

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

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>.

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.  
[http://www.supremecourtus.gov/publicinfo/speeches/sp\\_04-04-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_04-04-03.html)

- o *Atkins v. Virginia*, 536 U.S. 304 (2002).
- o *Lawrence v. Texas*, 539 U.S. \_\_ slip opinion. (2003).
- o *Dudgeon v. United Kingdom*, 45 Eur. Ct. H. R. (1981).