

POLS 660 (Spring 2018): “Rights and Social Movements”

Wednesdays 2:30-5:00 pm, in MOORE 253

Professor: Katharina Heyer
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Office: Saunders 615
Office hours: Mondays 1:00 – 3:00 p.m. and by appointment

Course Description:

This course is an introduction to law and society research, focusing on the relationship between law and social movement. We will ask: how do social movements use the law as a tool for social change and how does the law change social movements? What is gained and what is lost when movements deploy notions of rights in their legal and political work? We will read the work of central scholars the law and society field that investigate the role of the law in either promoting or hindering social change; and the ways that power relations shape and are shaped by legal institutions, processes and meanings.

We will examine a variety of movements, deploying both national and international law. We begin with the contemporary moment of the rule of law under the Trump presidency, and the role of law students defending immigration rights at the nation’s airports. This will lead us into the literature of cause lawyering, and the role that legal expertise plays in the politics of social movements.

Our next section will explore the pivotal role of the civil rights movement’s mobilization of equal rights during the 1950s and 1960s and then follow the ways other movements used have used legal analogies in their legal and political activism. How do these movements appropriate and modify legal frames of equal treatment and equal opportunities first shaped by the civil rights movement? Where has the analogy to race-based equal treatment been effective, and where has it failed? We also look at the neoconservative turn to rights talk as a way to respond to the perceived threat of the proliferation of rights discourse. This politics of rights and resentment closely monitors the legitimate and illegitimate uses of the civil rights frame.

The final section of the course focuses on the role of law outside of the United States context, as well as the role of international human rights discourse in social movement activism. We will look at the ways movements deploy human rights and seek ways to make global norms work in local contexts.

The course will contribute to your professionalization in two ways. First, you will learn some of the basics of legal research and legal interpretation. This is a useful analytical and research tool even for those students who may not consider their work as based in law. Second, we will use different forms of writing assignments to practice submitting abstracts, peer reviewing drafts, and presenting papers at professional conferences. Our final project as a class will be a “mock conference” in which you will act as presenters, panel chairs, and discussants.

This course counts as an elective for the International Cultural Studies Graduate Certificate (<http://manoa.hawaii.edu/internationalculture/>)

Required Readings: All required readings are posted on the “Resources” tab on the course Laulima website. We read an average of 4 articles or book chapters per meeting. Most of the readings are Law Review articles that use a lot of citations, so think twice before you hit the “print” button. I list the articles in the order I recommend you read them.

Course Requirements:

1. Attendance and Participation (10%)

The success of this course depends on your timely attendance and participation in our discussions of the readings. You are expected to read all assigned materials and come to class prepared to discuss them. Please let me know in advance of any circumstances that may prevent you from coming to class on time.

2. Discussion launch (15%)

Each of you will sign up to launch the discussion for one class. You may use any technique you wish, but your goal for this assignment is to lead the class in a discussion of the reading materials. This includes information about the authors, their research agenda, and a summary of the central arguments of the readings. Please consult with me by Monday of the week you are presenting to go over your plans for your presentation.

3. Reading Reactions (20%)

Each student will write 10 one-or-two page reaction papers that summarize your assessment of the readings most important points. Consider these an exercise in note taking that will allow you to contribute to class discussions and link the readings to the larger theme of the class. Write a summary of ALL the readings and address the following questions for each article:

- what is the reading’s central question and why is it important?
- how does the author seek to answer the question?
- what have you learned?

I will grade these on a simple plus-minus system. To receive full credit, you must bring a printed copy of your reaction paper to class.

4. Memo of Intent (5%)

By January 24 you will compose a one-page memo to me explaining what your goal for this semester is. This cannot just be, “to learn something about law and politics”. Instead, I want you to think about how you might connect law, legal research, and an attention to the politics of right with your larger research agenda. Ask yourself how learning about the law might inform the issues you are interested in without necessarily requiring you to change your current research project. In order to do this, you need to briefly explain what your research interests are, and pose a question that you’d like to think about over the course of the semester. Take a look at the syllabus, look through some of the assigned readings, and do a little digging at the library – are there books or articles you’d like to take a look at over the course of the semester? If so, tell me about them. The aim of this memo is to set some goals for you that you and I agree upon. This means that we must begin a dialogue about your work as soon as possible. This dialogue will continue over the course of the semester.

5. Final Paper and Mock Conference (50%)

You will write a 20-30 page analytic paper on a topic of your choice, based on the readings and discussions we have had in class, and focused around your memo of intent. We will simulate the process you would go through to if you were to present a paper at an academic conference: you will first submit a paper proposal, outlining your question and ways you seek to answer it. Then you will compile a list of sources used for your thesis, with a brief description of each source. I will place you in writing groups in which you will comment on each other's first drafts. You will revise your paper and present it at our mock conference at the end of the semester. After your discussant's feedback you have the option to revise the paper again before you hand in your final copy.

- a. Paper Proposal (5%): due February 28
- b. Annotated Bibliography (10%): due March 21
- c. First Draft (20%): due April 18
- d. Peer Feedback in writing groups (5%): due April 25
- e. Conference Presentation (10%): May 2
- f. Final Paper (50%): due May 14

Plagiarism Policy: Plagiarism is taking another person's words or ideas without crediting them. Anything cut and pasted from a website without quotation marks and proper citation is plagiarism. Copying anything from a book or journal without quotation marks and proper citation is plagiarism. Submitting a paper (or significant parts of a paper) to two different courses is considered plagiarism as well. Plagiarism is cheating, the equivalent of academic theft. Because trust and attribution are central to the current nature of the academic profession, there is no excuse for plagiarism. Turning in a paper with plagiarized parts will result in a failing grade for the course.

Disability Access: If you are a student with a documented disability, please talk to me about ways to make the class accessible to you. You should also contact the KOKUA office that coordinates disability-related accommodations on campus (956-7511), located on the ground floor of the Student Services Center.

Reading Schedule

Week 1 (January 10): Introduction to the Course and to Each Other

Week 2 (January 17): The Rule of Law (under Trump)

- For background: Jonah Engel Bromwich, Lawyers Mobilize at Nation's Airports After Trump's Order, N.Y. TIMES (Jan. 29, 2017), <https://nyti.ms/2jGwZuh>. Also: Alexander Burns, How Attorneys General Became Democrats' Bulwark Against Trump, N.Y. TIMES (Feb. 6, 2017), <https://nyti.ms/2jVDnLc>.
- Koh, Harold Hongju. "The Trump Administration and International Law." Washburn LJ 56 (2017): 413.
- Cade, Jason A. "Immigration Equity's Last Stand: Sanctuaries & Legitimacy in an Era of Mass Immigration Enforcement." (2017).

- Koh, Jennifer Lee. "Anticipating Expansion, Committing to Resistance: Removal in the Shadows of Immigration Court under Trump." *Ohio NUL Rev.* 43 (2017): 459.
- Redford, Katie. "Attention, Law Students: Our Country and Our Planet Need You to Lead." *Stanford Law Rev.* 69 (2017): 1831

Week 3 (January 24): Public Interest Lawyers and Cause Lawyering

- Marshall,, Anna-Maria and Daniel Crocker Hale.. 2014.. *Cause Lawyering.. Annual Review of Law and Social Science*
- Shah, Jeena. "Rebellious Lawyering in Big Case Clinics." *Clinical L. Rev.* 23 (2016): 775.
- Chacón, Jennifer M. "Immigration and the Bully Pulpit." *Harv. L. Rev. F.* 130 (2016): 243.
- Agarwal, Nisha, and Jocelyn Simonson. "Thinking Like a Public Interest Lawyer: Theory, Practice, and Pedagogy." *NYU Rev. L. & Soc. Change* 34 (2010): 455.
- Memo of intent due

Week 4 (January 31): Rights-based Social Movements: the power of Brown v BOE and the Civil Rights Movement

- Meyer, David S. and Steven A. Boutcher (2007). "Signals and spillover: Brown v. Board of Education and other social movements." *Perspectives on Politics* 5: 81–93.
- Francesca Poletta (2000). "The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961-1966." 34 *Law and Society Review*, 367-406
- Christopher Coleman, Laurence D. Nee, and Leonard S. Rubinowitz,. *Social Movements and Social-Change Litigation: Synergy in the. Montgomery Bus Protest*, 30 *Law and Social Inquiry* 663 (2005)
- Michelle Alexander. "The Fire this Time" in: *The New Jim Crow* Ch 6 (2010)

Week 5 (February 7): The Power of Rights Talk

- Mary Glendon. *Rights talk: The impoverishment of political discourse.* Simon and Schuster, 2008. (Ch 1)
- Peter Gabel, "The Phenomenology of Right-Consciousness and the Pact of the Withdrawn Selves," *Texas Law Review* 62(1984): 1563-1599
- Patricia J. Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights." [or: Patricia Williams. *The Pains of Word Bondage. The Alchemy of Race and Rights* (1991). 146-165]
- Wendy Brown, "Suffering the Paradoxes of Rights" in Wendy Brown & Janet Halley, Eds. *Left Legalism/Left Critique* (Durham: Duke University Press, 2002), 420-34.

Week 6 (February 14): Intersectionality

- Crenshaw, Kimberle. “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color.” *Stanford Law Review* 43 (1991 1990): 1241–1300.
- Lawrence, Charles R. III. “Acting Our Color: Racial Re-Construction and Identity as Acts of Resistance.” *Asian Pacific American Law Journal* 18 (2013 2012): 21–34.
- Obasogie, Osagie. (2010), Do Blind People See Race? Social, Legal, and Theoretical Considerations. *Law & Society Review*, 44: 585–616.
- Spade, Dean. “Intersectional Resistance and Law Reform.” *Signs: Journal of Women in Culture and Society* 38, no. 4 (June 1, 2013): 1031–55

Week 7 (February 21): The Power of Analogy: Framing Demands

- Nicholas Pedriana. “From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women’s Movement in the 1960s.” 2006 *Am. Journal of Sociology*
- Serena Mayeri. “Reconstructing the race-sex analogy.” 2008 *William and Mary Law Review*
- Tina Grillo. “Obscuring the Importance of Race: the Implication of Making Comparisons Between Racism and Sexism (or other –isms).” 1991 *Duke Law Journal*
- David Richards. *Identity and the Case for Gay Rights: Race, Gender, Religion as Analogies* (Chapters 1-3)
- Michael Stein. “Same Struggle Different Difference: ADA Accommodations as Antidiscrimination” 2004 *University of Penn Law Review*

Week 8 (February 28): How Rights Work: marriage equality

- NeJaime, Douglas. 2011. “Winning through Losing.” *Iowa Law Review* 96: 941-1012.
- Lenhardt, R. A., 2015. Race, Dignity, and the Right to Marry (October 27, 2015). *Fordham Law Review*, Vol. 84, No. 53,
- Hadar Aviram and Gwendolyn Leachman. “The Future of Polyamorous Marriage: Lessons from the Marriage Equality Struggle” 38 *Harvard Women's L.J.* 269 (2015)
- Michael Dorf and Sidney Tarrow. “Strange Bedfellows: How an Anticipatory Countermovement Brought Same-Sex Marriage into the Public Arena 39 *Law & Social Inquiry* (2014)
- Dean Spade. *Normal Life* Ch. 5 “Law Reform and Movement Building” (2011)

Paper proposal due

Week 9 (March 7): Conservative Political Movements

- Jeffrey Dudas. (2016) “All the Rage: Clarence Thomas, Paternal Authority, and Conservative Desire.” 12 *Law, Culture, and the Humanities* 70.

- Jon Goldberg Hiller: “Do Civil Rights have a Face? Reading the Iconography of Special Rights” (in *Queer Mobilizations*)
- Dietrich, David R. "Racially Charged Cookies and White Scholarships: Anti-Affirmative Action Protests on American College Campuses." *Sociological Focus* 48.2 (2015): 105-125.
- “Post-Traumatic Whiteness: How Vietnam Veterans Became the Basis for a New White Identity Politics” <https://lareviewofbooks.org/article/post-traumatic-whiteness-how-vietnam-veterans-became-the-basis-for-a-new-white-identity-politics#!>

Week 10 (March 14): Law and Harm: Torts and Reparations

- Matsuda, Mari. “On Causation.” *Columbia Law Review* 100, no. 8 (2000): 2195–2220.
- Wenger, Kaimipono David. "Forty Acres and a Lawsuit: Legal Claims for Reparations." *Race, Ethnicity and Law*. Emerald Publishing Limited, 2017. 79-91.
- Tsosie, Rebecca, Robert T. Coulter, and Elizabeth A. Kronk Warner. "Indigenous Human Rights and the Ethics of" Remediation": Redressing the Legacy of Uranium Contamination for Native Peoples and Native Lands." (2014).
- Riley, Angela and Carpenter, Kristen A., Owing Red: A Theory of Indian (Cultural) Appropriation (September 3, 2015). *Texas Law Review*, Vol. 94, p. 859, 2016. Available at SSRN: <https://ssrn.com/abstract=2655694>

Week 11 (March 21): Comparative Law – Law in non-US Contexts

- David Engel, “Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand,” 30 *Law and Social Inquiry* (2005).
- Mullally, Siobhan. (2011), Civic Integration, Migrant Women and the Veil: at the Limits of Rights?. *The Modern Law Review*, 74: 27–56.
- Fredette, Jennifer (2015), Becoming a Threat: The *Burqa* and the Contestation Over Public Morality Law in France. *Law and Social Inquiry*.
- Chua, Lynette J. (2012) “Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore,” 46 *Law & Society Rev.* 713–48.
- **Annotated Bibliography Due**

Week 12 (March 28): SPRING BREAK

Week 13 (April 4): Theorizing Human Rights

- Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink, eds. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge, UK: Cambridge University Press, 1999, chapters 1, and 8
- David Kennedy, “The International Human Rights Movement: Part of the Problem?” (2002) *Harvard Human Rights Journal* 101-25.
<http://www.law.harvard.edu/faculty/dkennedy/publications/humanrights.pdf>

- Hertel, Shareen, 'It's Not All About You: Alternative Routes to Norms Change' (August 11, 2014). APSA 2014 Annual Meeting Paper. Available at SSRN: <https://ssrn.com/abstract=2453916>

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Week 14 (April 11): Human Rights Deployed by NGOs

- Costanza, Jennifer N. "Indigenous Peoples' Right to Prior Consultation: Transforming Human Rights From the Grassroots in Guatemala." *Journal of Human Rights* 14.2 (2015): 260-285.
- Merry, Sally Engle, et al. "Law from below: Women's human rights and social movements in New York City." *Law & Society Review* 44.1 (2010): 101-128.
- Tagliarina, Daniel. "Power, privilege and rights: how the powerful and powerless create a vernacular of rights." *Third World Quarterly* 36.6 (2015): 1191-1206.
- Alexandra Bonazoli. "Human Rights Frames in Grassroots Organizing: CADRE and the Effort to Stop School Pushout." 2012 *Northeastern University Law Journal*

Week 15 (April 18): Transnational Human Rights: Translating Global Norms into Local Settings

- Sally Engle Merry, (2006) "Transnational Human Rights and Local Activism: Mapping the Middle" *American Anthropologist* Vol. 108, Issue 1, pp. 38-51
- Katharina Heyer. "Disability Rights Going Global: The UN Convention on the Rights of Disabled Persons and the Right to Inclusive Education" (in *Rights Enabled: The Disability Revolution*)
- Van der Vet, Freek. "Holding on to legalism: The politics of Russian litigation on torture and discrimination before the European Court of Human Rights." *Social & Legal Studies* 23.3 (2014): 361-381.
- Kumarakulasingam, Narendran. "Bloody translations: the politics of international compassion and horror." *Journal of Narrative Politics* 1.1 (2014).

First Draft due /disseminate to reviewers

Weeks 16 (April 25): TBA

Peer Review due

Week 17 (May 2): CONFERENCE PANEL PRESENTATIONS