

2008 Course Syllabus

Law, Markets and Globalization

Professor Terence Halliday

International Institute for the Sociology of Law, Onati, Spain, February 20 – March 3, 2008

Graduate course

This course examines law in the context of recent economic and social trends (dubbed “globalization”) which have increasingly integrated the world’s social and economic systems. Globalization occurs as international flows of capital, goods, services, and people increase. These flows are sustained and regulated by an institutional foundation that typically centers on the legal system. As part of globalization, particular legal and institutional forms are also spreading throughout the world. Transactions, interactions and relationships that formerly occurred within national boundaries now occur across them. Because the legal and institutional frameworks that support and govern these transactions exist primarily at the level of the nation-state, a governance mismatch has emerged. Globalization means that more is going on between national jurisdictions than within them, and tensions arise between competing institutional models. Thus, globalization motivates both an extension of legal systems (into the international interstices), and a confrontation between different legal systems that can be resolved conflictually (one model replaces the other) or non-conflictually (e.g., legal harmonization). Either outcome increases the amount of institutional convergence. The course focuses on commercial law, most particularly insolvency law, and institution-building and market-making. It pays particular attention to legal developments in developing and transitional economies.

Preparation

All students are expected to have done all the assigned readings for every class, and be prepared to discuss them.

Requirements

Students will be required:

1. to participate in class discussion
2. to lead discussion in one class session (this will include a summary of the reading and leading the class in arguing for or against the debate question).
3. to sit a final exam which will comprise (a) two small essays whose topics will be announced at the beginning of Week Two; and (b) several smaller exercises.

Students may also choose for extra credit to do one exercise that requires research on the internet for class presentation.

Class format

We will have 9 classes of 2 ¼ hours with a 15 minute break in the middle.

Dr. Halliday will begin sessions with a short lecture.

A student will present the first reading for discussion. After the break, a student will present the second reading for discussion.

The readings will be divided between those for whom English is a first language (English 1st) and those for whom English is a second language (English 2nd). One student in each group will summarize and lead discussion around the debate question for each class session.

Basis for grading:

25% for class participation (includes preparation of summary of assigned reading, leading of one class discussion on the debate topic, participation in general discussion). Students may earn extra credit for the Web exercise.

75% for the exam: first hour, brief answers to several questions; second hour, select two of three longer questions. The three longer questions will be distributed to the class at the beginning of the second week.

February 20. Economic Globalization: What is it? How is it managed?

Debate Topic:

The costs of economic globalization outweigh the benefits.

English 1st: Robert Gilpin, The Challenge of Global Capitalism: The World Economy in the 21st Century. Introduction: The Fragile Global Economy (pp.3-14); Chapter 1: The Second Great Age of Capitalism (pp.15-51)

English 2nd: Joseph Stiglitz, Globalization and its Discontents. Preface. Chapter 1. The Promise of Global Institutions

February 21. Globalization of Law

Debate Topic:

Legal globalization is a separate process from economic globalization, with a distinctive history, scope, causes and consequences.

Required

English 1st:

Pistor, Katharina. 2002. "The Standardization of Law and its Effect on Developing Economies." American Journal of Comparative Law 50: 97-130

English 2nd:

Salacuse, Jeswald W. 2000. "From Developing Countries to Emerging Markets: The Legal Challenges of Economic Change," International and Comparative Corporate Law Journal 2(3): 277-295.

Optional:

Braithwaite and Drahos, Global Business Regulation, Ch 9 (Corporations and Securities). Pp. 143-174

February 22. Socio-Legal Theories of Globalization

Debate topic:

The successful diffusion of global norms owes more to attributes of global agents than to national contexts in which norms are adopted.

English 1st:

John Braithwaite and Peter Drahos. Global Business Regulation. Cambridge: Cambridge University Press. 2000. Chapter 4 ("Concepts: Mechanisms, Principles, Actors") pp. 24-26 only.

**Terence Halliday and Pavel Osinsky. 2006. "Globalization and Law." Annual Review of Sociology.

English 2nd:

Volkmar Gessner. 2003. "Legalization and the Varieties of Capitalism."

Additional reading:

David Nelken, "Towards a Sociology of Legal Adaption," in Adapting Legal Cultures. David Nelken and Johannes Feest eds. Oxford: Hart Publishing. 2001.

Yves Dezalay and Bryant Garth. The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States. Chicago: University of Chicago Press. 2002. Chapter 1.

February 23. Agents of Globalization

Debate Topic:

Powerful corporate actors are the dominant engines of global business regulation.

English 1st:

John Braithwaite and Peter Drahos. Global Business Regulation. Cambridge: Cambridge University Press. 2000. Ch 20 ("Contests of Actors.")

English 2nd:

**Sally Merry. "Globalization and International Law." Forthcoming, Annual Review of Anthropology

Paul J. DiMaggio, Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," American Sociological Review, 48(2): 147-160. On JSTOR.)

February 27. Mechanisms of Legal Globalization

Debate Topic:

While it may initially appear that coercion and hegemonic power account for the globalization of business regulation, in fact they account for relatively little of the diffusion of global business norms.

English 1st:

John Braithwaite and Peter Drahos. Global Business Regulation. Cambridge: Cambridge University Press. 2000. Chapter 22 ("Mechanisms of Globalization") and Chap 25 ("Modeling, Globalization and the Politics of Empowerment.")

English 2nd:

**Boa de Sousa Santos . 2000. "Law and Democracy: (Mis)trusting the Global Reform of Courts." In Globalizing Institutions: Case Studies in Regulation and Innovation. In J Jenson, B De Sousa Santos, pp. 253-84. Aldershot: Ashgate

Recommended reading:

John Braithwaite and Peter Drahos. Global Business Regulation. Cambridge: Cambridge University Press. 2000. Chapter 23 ("Regulatory Webs and Globalization Sequences.")

February 28. Law, Economic Development, and Legal Transplants

Debate Topic:

Law's social and political roots make it impossible for one nation effectively to adopt another nation's laws, or to model itself after another nation.

English 1st:

Tamanaha, Brian Z. 1995. "The Lessons of Law-and-Development Studies." The American Journal of International Law 89: 470-86.

Berkowitz, Daniel, Katharina Pistor, and Jean-Francois Richard. Forthcoming. "Économic Development, Legality, and the Transplant Effect." European Economic Review

English 2nd:

Andrew Harding. 2001. "Comparative Law and Legal Transplantation in South East Asia: Making Sense of the 'Nomic Din.'" In Adapting Legal Cultures. David Nelken and Johannes Feest eds. Oxford: Hart Publishing. Pp. 199-222.

March 1. Law and globalization in East Asia

Debate Topics:

Law drives economic development and legal harmonization.

English 1st:

Pistor, Katharina and Philip A. Wellons. 1999. The Role of Law and Legal Institutions in Asian Economic Development: 1960-1995. New York Oxford University Press. Chaps 1-3 (Pp. 1-61) and chap 8 (263-286).

English 2nd:

Ginsburg, Tom. 2000. "Does Law Matter for Economic Development? Evidence from East Asia". Law and Society Review, 34(3): 829-856.

March 2. Globalization of Insolvency Regimes

Debate Topics:

Rather than an imposition from "outside" or "above" nation-states, globalization of insolvency law is recursive, contested, and negotiated.

English 1st:

**Terence C. Halliday and Bruce G. Carruthers. 2006. "The Recursivity of Law: Global Norm-Making and National Law-Making in the Globalization of Corporate Bankruptcy Law." American Journal of Sociology

Terence C. Halliday and Bruce G. Carruthers. Forthcoming. "Foiling the Hegemons: Limits to the Globalization of Corporate Insolvency Regimes in Indonesia, Korea and China." Forthcoming, Globalisation and Resistance: Law Reform in Asia after the Financial Crisis. Oxford: Hart.

English 2nd:

**Bruce G. Carruthers and Terence C. Halliday. 2006. "Negotiating Globalization: Global Templates and the Construction of Insolvency Regimes in East Asia." Law and Social Inquiry.

March 3 Exam