POLS 660: Public Law and Judicial Systems (spring 2013)
Mondays 9:30 – noon in Saunders 624

Law, Equality and the Politics of Rights:
What Happens when Movements Mobilize the Law?

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Course Description:
This course examines the significance, application, and reach of the equality principle in American law and social movements and its extension into international human rights doctrine. 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 and equal treatment 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. Our focus is both national and global.

The course is divided into three parts. The first part examines the use of equal treatment analogy in American social movements, using race, sex, and sexual orientation as examples. We look at the political and legal development of the equal treatment mandate and antidiscrimination law and then investigate the ways identity-based social movements 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 of the 1950s? Where has the analogy to race-based equal treatment been effective, and where has it failed?

The second part analyzes movements that deploy equal rights while simultaneously pointing to the weaknesses of the civil rights analogies. Here we will focus on disability rights and animal rights; two movements that problematize the use of the equal rights frame and that point to the politics of vulnerability as alternative frames. This section also considers 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 follows the ways the equality doctrine is represented in international human rights law. How does international law conceptualize notions of equality and equal treatment that promise to transcend some of the limitations of the American application? We will examine the construction of global norms of equal treatment and substantial equality and then follow the ways that global norms become active in local contexts? We will look at gender violence, inclusive education rights, the sustainable food movement, and indigenous rights as case studies.

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 class *Laulima* website.

**Recommended Readings:** No books need purchased for this class. However, here is a list of recommended books based on the course topic from which many of the readings are taken that merit your attention in full.


David Engel and Frank Munger. *Rights of Inclusion: Law and Identity in the Life Stories of
Course Requirements:

1. Attendance and Participation (10%)

The success of this course depends on your timely attendance and participation in class discussion. Please read all assigned materials and come to class prepared to discuss them. You may have two free absences. Each additional absence will result in a 5-point deduction of your participation grade. More than five absences will mean that you will receive zero points for your participation grade. Please let me know in advance of any circumstances that may prevent you from coming to class on time.

2. Discussion Leader (15%)

Students will work in teams to “teach a class” and lead the discussion once over the course of the semester. 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.

3. Reading Reactions (20%)

Each student will write 10 one-page reaction papers on selected readings. These are to summarize the most important points of the readings and link it to the larger theme of the class. The papers need to address the following questions:

• (1) what is the research question?
• (2) why is the question important?
• (3) how has the literature grappled with this question?
• (4) how does the author seek to answer the question?
• (4) what have you learned?

I will grade these on a simple plus-minus system. To receive full credit, you must post the reaction papers on the class Laulima website by midnight of the day before that particular reading is assigned.

4. Memo of Intent (5%)

By September 9th you will write 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 15-20 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 others’ first drafts. You will revise your paper and present it at our mock conference. 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
b. Annotated Bibliography (10%): due
c. First Draft (20%): due
d. Peer Feedback in writing groups (5%): due
e. Conference Presentation (10%): due
f. Final Paper (50%): due

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: This class is open to all students. 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 at 956-7511. It is located on the ground floor of the Student Services Center.

Reading Schedule:

Week 1 (August 26): Introduction to the Course and to Each Other
• Between now and September 9\textsuperscript{th} you must decide who your partner will be in the class presentations, and submit three dates to me (in the order your choice), via email (along with the name of your partner). Presentations will begin on September 16. While I cannot guarantee that everyone will get their first choice in dates for the presentation, I will do my best to accommodate everyone.

• Over the next two weeks, you will write your Memo of Intent (see description above). It will be due at class time on September 9\textsuperscript{th}.

**Week 2 (September 2): Labor Day no class**

**Week 3 (September 9): Theorizing Equality: positive rights, the dilemma of difference, American exceptionalism, and the role of the state**

• Martha Minow. *Making All the Difference: Inclusion, Exclusion and American Law* Introduction and Chapters 1-2


• Somers and Roberts. “Towards a New Sociology of Rights: A Genealogy of Buried Bodies of Citizenship and Human Rights” 2998 *Annual Review of Law and Social Science*


• **Memo of Intent** is due today

**Week 4 (September 16): Rights Talk and Social Movements: how have sociolegal theorized the relationship between rights and social movements? What is the role of rights talk and rights consciousness in these movements?**


• Patricia J. Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights."


Suggested Readings:

• Marshall, Anna-Maria. "A Spectrum of Oppositional Consciousness: Sexual Harassment Plaintiffs and Their Lawyers." In Jane Mansbridge and Aldon


**Week 4 (September 16): Civil Rights in Context: Equal Treatment, Nondiscrimination, and the Civil Rights Movement.** We begin with the scholarly debate on the significance of *Brown v. Board of Education* (1954) and then trace the role of legal strategies in the civil rights movement.


**Week 5 (September 23): Sex Discrimination and the Race-Sex analogy: How have early attempts to frame a legal response to sex discrimination deployed analogies to the race-based civil rights, and how has this response evolved?**

- Serena Mayeri. “Reconstructing the race-sex analogy.” *2008 William and Mary Law Review*

Suggested Readings:
Week 6 (September 30) Gay Rights and Analogies to Race, Sex, and Religion

• David Meyer and Steven Boutcher. “Signals and Spillover: Brown v Board of Education and Other Social Movements.” 2007 Perspectives on Politics
• Jon Goldberg Hiller: “Do Civil Rights have a Face? Reading the Iconography of Special Rights” (in Queer Mobilizations)
• Nicholas Pedrina. “Intimate Equality: The Lesbian, Gay, Bisexual and Transgender Movement’s Legal Framing of Sodomy Laws in Lawrence v Texas” (in Queer Mobilizations)

Suggested Readings:
• David Richards. Identity and the Case for Gay Rights: Race, Gender, Religion as Analogies 1999 University of Chicago Press

PART TWO: Troubling the Analogy: Disability Rights, Animal Rights, and the Neoconservative Backlash

Week 7 (October 7): Disability Rights, Equality Frames, and the Power of Analogies to other social movements

• Robert D. Benford, David A. Snow. “Framing Processes and Social Movements: An Overview and Assessment” 26 Annual Review of Sociology, 2000
• Richard Scotch. From Good Will to Civil Rights, 2001 Temple U Press (Ch. 3 “The Genesis of Section 504”)

Suggested Readings:
• Michael Stein. “Same Struggle Different Difference: ADA Accommodations as
Antidiscrimination” 2004 University of Penn Law Review


Week 8 (October 14): Animal Rights and Vulnerable Subjects: How does the animal rights movement deploy legal analogies? What is gained and what is lost in the attempts to declare legal personhood for animals?

- Martha Fineman. The Vulnerable Subject: Anchoring Equality in the Human Condition. 2008 Yale Journal of Law and Feminism
- David MacDonald. “Pushing the Limits of Humanity? Reinterpreting Animal Rights and “Personhood” through the Prism of the Holocaust” 2006 Journal of Human Rights

- **Paper proposal due**

Suggested Readings:


Week 9 (October 21): The Neoconservative Turn to Rights: Rights and the Politics of Resentment

- Michael McCann and Stuart Scheingold. “Rights, Community and Democracy: a Sociolegal Critique of the Neoconservative Case Against Rights” 2012 Studies in Law, Politics and Society
• Charles Hersch, “Five Tellings of an Abortion Clinic Protest - Madsen v. Women’s Health Center and the Limits of Legal Narrative” 1995 Legal Studies Forum

Additional Readings (Pro-life Movement):


PART THREE: Applications of Equal Rights Doctrines in Comparative and International Law

Week 10 (October 28): Law, Culture and the Difficulties of Comparing

• http://www.law.harvard.edu/faculty/dkennedy/publications/humanrights.pdf
• Annotated Bibliography Due

Week 11 (November 4): Theorizing Human Rights: making rights work in global settings; using human rights frames in US activism:

• Claire Moon. “How One Files Seeing: Human Rights Reporting, Representation, and Action” 2012 Sociology
Heyer Merry, Mihaela Rosen, Peggy Levitt, and Diana Yoon. “Law From Below: Women’s Human Rights and Social Movements in New York City.” 2010 Law & Society Review

Suggested Readings:


**Week 12 (November 11): Veteran’s Day**

**Week 13 (November 18): Transnational Human Rights: Translating Global Norms into Local Settings**


Suggested Readings:

- Sally Merry. Human Rights and Gender Violence: Translating International Law into Local Justice.

**Week 14 (November 25): Transnational Human Rights: Case studies**


**First Draft due**

**Peer Review due**

**Weeks 15 and 16 (December 2 & December 9):**

**CONFERENCE PANEL PRESENTATIONS**

**Final paper due December 16, 2013, 4 pm**