

Labor, Inequality and Human Rights

The University of Texas School of Law

Fall 2017

Unique 29830 LAW 397S

Unique 60837 PA 388K

Mondays, 4:00-6:00 pm

Meetings will be held in JON 6.206 on days with no speakers.
Outside speakers will present in the Sheffield-Massey Room (TNH 2.111).

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Course Description

Organized around visits by leading scholars of labor, human rights, and migration, this seminar will consider possibilities for the achievement of workers' rights in today's globalized economy marked by glaring inequalities and numerous human rights violations. Over the course of the past few decades, workers' rights—especially rights to association and collective bargaining, non-discrimination, and freedom from forced and child labor—have come to be recognized as human rights. Yet the challenges of realizing and enforcing such rights in the context of global supply chains and increased precarity are immense, especially for vulnerable individuals such as informal, domestic, migrant, and undocumented workers. This seminar will critically assess the extent to which human rights and other legal and political means might effectively combat those challenges.

Students are expected to participate actively in class discussions, write short critical responses to assigned reading by visiting scholars, and write a longer essay on a topic related to the themes that arise during the semester. Readings for the seminar will come from a variety of disciplines, and the course is open to law students as well as to non-law graduate and professional students with relevant background.

Course Structure

Following the first two introductory classes (Sept. 11 & Sept. 18), we will spend two weeks considering written work by each scholar who will be visiting, as well as related readings. In the first of those weeks (“in-class discussion”), we will meet in a traditional seminar format to discuss the assigned material. In the second week (“public lecture”), our guest speakers will present their work in a public forum, and will engage in dialogue with a respondent drawn from UT-Austin faculty, seminar students, and others who choose to attend the talk. Seminar students will thus have the opportunity both to participate in critical discussion of the work in a small setting, and to observe and contribute to a conversation with the authors in a broader audience.

Schedule

September 11: *Labor, Inequality and Human Rights: An Introduction (I)*

In this first class of the seminar, we will begin our discussion of labor, inequality and human rights. We will survey international legal regimes on labor, particularly human rights law and the International Labor Organization (ILO), with an eye toward the relationship between human rights and labor rights. We will also consider the extent to which human rights provide a response to inequality.

Reading:

Susan Marks and Andrew Clapham, “Work” *International Human Rights Lexicon* (Oxford University Press, 2005)

Kevin Kolben, “Labor Rights as Human Rights,” *Virginia Journal of International Law* 449, no. 50 (2009-2010)

Samuel Moyn, "Do Human Rights Increase Inequality?" *The Chronicle of Higher Education* (26 May 2015) <http://www.chronicle.com/article/Do-Human-Rights-Increase/230297>

Joel R. Pruce, “Floors, Ceilings, and Beams: What's Missing in Moyn's Account of Inequality,” *Humanity Journal Blog* (23 June 2015) <http://humanityjournal.org/blog/floors-ceilings-and-beams-whats-missing-in-moyns-account-of-inequality/>

Students who have no background in international human rights law are strongly advised to read the following material:

Sir Nigel Rodley, “International Human Rights Law” *International Law*, ed. Malcolm D Evans, 4th edition (Oxford University Press, 2014) (excerpts on canvas).

September 18: *Labor, Inequality and Human Rights: An Introduction (II)*

In this second introductory class, we will begin to consider the dynamics and distributive effects of modern forms of global production and regulation, particularly through the lens of global value chains.

Reading:

Richard Locke, “Can Global Brands Create Just Supply Chains?” *Boston Review* (2013)
<http://bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke>

Nelson Lichtenstein, “The Demise of Tripartite Governance and the Rise of the Corporate Social Responsibility Regime,” *Achieving Workers’ Rights in the Global Economy*, eds. Richard Appelbaum and Nelson Lichtenstein (Cornell University Press, 2016)

IGLP Law and Global Production Working Group “The Role of Law in Global Value Chains: A Research Manifesto” *London Review of International Law* Vol. 4(1) (2016)

September 25 (in-class discussion) “*Rethinking the Future of Work: Law, Technology, and Economic Citizenship*”

Reading:

Brishen Rogers, Memorandum to Students (2017) (posted on Canvas)

Brishen Rogers, “Law and the Global Sweatshop Problem” in Appelbaum, Richard and Nelson Lichtenstein (eds), *Achieving Workers’ Rights in the Global Economy*, (Cornell University Press, 2016).

Brishen Rogers, “Basic Income in a Just Society” *Boston Review* (2017)
<http://bostonreview.net/forum/brishen-rogers-basic-income-just-society>

UN Report of the Special Rapporteur on Extreme Poverty and Human Rights, *Universal Basic Income* UN Doc A/HRC/35/26 (2017)

October 2 (public lecture) “*Rethinking the Future of Work: Law, Technology, and Economic Citizenship*”

Speaker:

Brishen Rogers, Associate Professor, Temple University Beasley School of Law

Respondent:

Joseph R. Fishkin, Professor of Law, UT-Austin School of Law

October 9 (in-class discussion) “*Modern Slavery, Unfree Labor and Migrants’ Rights*”

Reading:

Judy Fudge, "Illegal Working, Migrants and Labour Exploitation in the UK: The Immigration Act 2016" (draft paper, 2017)

Judy Fudge, “Modern Slavery, Unfree Labour and the Labour Market: The Social Dynamics of Legal Characterization” (draft paper, 2017)

Janet Halley, "Anti-trafficking and the New Indenture," *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press, 2017)

October 16 (public lecture) “*Modern Slavery, Unfree Labor and Migrants’ Rights*”

Speaker:

Judy Fudge, Professor, Kent Law School, UK

Respondent:

Sharmila Rudrappa, Professor of Sociology & Director of the Center for Asian American Studies, UT-Austin

October 19: Optional but highly recommended opportunity:

Ai-jen Poo, director of the [National Domestic Workers Alliance](#) and co-director of the [Caring Across Generations Campaign](#), will deliver the Frances Tarlton “Sissy” Farenthold Endowed Lecture in Peace, Social Justice and Human Rights. The presentation, entitled “Immigration & the Future of American Families,” will focus on the role of immigrant women in the American care economy. The talk will begin with Poo’s personal story, and weave in the stories and solutions of immigrant women, partly through labor organizing. Poo has received numerous accolades, including being named a 2014 MacArthur Foundation “genius” fellow.

5:30-7:30 p.m. (with reception), Eidman Courtroom University of Texas School of Law
<https://law.utexas.edu/humanrights/events/2017-farenthold-endowed-lecture/>

Suggested reading:

- Ai-jen Poo, *The Age of Dignity: Preparing for the Elder Boom in a Changing America* (2015, The New Press) pp. 107-168
- Ai-jen Poo, Out from the Shadows: Domestic Workers Speak in the United States, in *Domestic Workers Speak: A Global Fight for Rights and Recognition* (Guilia Garofalo Germonat, Sabrina Marchetti and Penelope Kyritsis (eds.) (2017) pp.20-26

October 23 (in-class discussion) “*Dying for a Living: Economic and Moral Restructuring in a French Factory*”

Reading:

Pascal Marichalar, “*Dying for a Living: Economic and Moral Restructuring in a French Factory*” (Draft to be posted on Canvas)

Jeffrey Hilgert, "Human Rights and the Struggle to Define Hazards" *Crafting Global Norms on the Right to Refuse Unsafe Work* (Cornell University Press, 2013)

James Meek, “From Somerdale to Skarbimierz” *London Review of Books* (2017)
<https://www.lrb.co.uk/v39/n08/james-meek/somerdale-to-skarbimierz>

October 30 (public lecture) “*Dying for a Living: Economic and Moral Restructuring in a French Factory*”

Speaker:

Pascal Marichalar, Research Fellow, French National Center for Scientific Research (NCRS) Paris, France

Respondent:

Julius G. Getman, Earl E. Sheffield Regents Chair Emeritus, UT-Austin School of Law

November 6 (in-class discussion) *“Labor Migration, Degrees of Privilege, and the Politics of Hope in Turkey”*

Reading:

Ayşe Parla, *“Labor Migration, Degrees of Privilege, and the Politics of Hope in Turkey”* (draft to be posted on Canvas).

Anne McNevin, “Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers” *Citizenship Studies* 10(2) (2006)

Judy Fudge, “Making Claims for Migrant Workers: Human Rights and Citizenship” *Citizenship Studies* 18(1) (2014)

November 13 (public lecture) *“Labor Migration, Degrees of Privilege, and the Politics of Hope in Turkey”*

Speaker:

Ayşe Parla, Associate Professor of Anthropology, Sabanci University, Istanbul, Turkey

Respondent:

Heather Hindman, Associate Professor, UT-Austin Department of Asian Studies

November 20 (in-class discussion) *“The Future of Labor Rights in Trade Agreements”*

Reading:

Alvaro Santos, *“Lessons from the TPP and The Future of Labor Rights in Trade Agreements”* (draft to be posted on Canvas)

Lance Compa, “Enforcing Worker Rights under NAFTA Labor Side Accord,” *American Society of International Law Proceedings* 88 (1994) 535-540

Lance Compa, “NAFTA’s Labor Side Agreement and International Labor Solidarity,” *Place, Space and the New Labour Internationalisms*, eds. Peter Waterman & Jane Wills (Blackwell Publishers, 2001)

November 27 (public lecture) “The Future of Labor Rights in Trade Agreements”

Speaker:

Alvaro Santos, Professor of Law at Georgetown University Law Center

Respondent:

William E. Forbath, Lloyd M. Bentsen Chair in Law, Associate Dean for Research, UT-Austin School of Law

December 4

Mini-conference: student paper presentations

December 11

Mini-conference: student paper presentations

Speaker Biographies

Judy Fudge

Judy Fudge is Professor of Law at Kent Law School, United Kingdom. Professor Fudge's research interests span labor and employment law, immigration and work, precarious work and human rights and citizenship at work. Professor Fudge's recent scholarship includes *"The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory"* in *Journal of Industrial Relations* (2017), *"Constitutionalising Labour Rights In Canada and Europe: Freedom of Association, Collective Bargaining, and Strikes"* in *Current Legal Problems* (2015) and *"Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction and Jurisdiction"* in *Feminist Legal Studies* (2014). She has also authored and co-authored a number of seminal texts in labor law, including *"Labour Before the Law: The Regulation of Workers? Collective Action in Canada, 1900 to 1948"* (2001), *"Temporary Work, Agencies, and Unfree Labour: Insecurity in the New World of Work"* (2013), and *"Precarious Work, Women, and the New Economy: The Challenge to Legal Norms."* In 2015, Fudge co-authored *"Unacceptable Forms of Work: Global and Comparative Study,"* a comprehensive study published by the ILO. In 2013, Fudge was elected as a fellow of the Royal Society of Canada for her contribution to labor law scholarship. She also established a collaborative research project entitled "Gendering Labour Law", to advance conversations about the gendered and racialized dimensions of labor regulation. Professor Fudge holds a BA (Hons) in philosophy from McGill University, an MA in philosophy from York University (Canada), an LLB from Osgoode Hall Law School, and a DPhil in law from the University of Oxford.

Pascal Marichalar

Pascal Marichalar is a Research Fellow at the French National Center for Scientific Research (CNRS) in Paris. His research focuses on labor, occupational health, social justice, pollution and the environment. Marichalar has published extensive academic works in French, including book chapters and academic articles on issues related to occupational medicine, occupational health reform, industrial disasters, and health conditions for mine workers. In 2016, Marichalar wrote a paper on the relationship between workers who suffer illness due to occupational hazards and their doctors, using the case study of glassmakers in Givors, France. Additionally, Marichalar recently co-authored a Reference Guide to Occupational Health (2015), and published "*Considering Industrial Disasters as Crimes: A Specificity of Turin*" in *Industrial Pollution and Mediterranean Spaces* (2015), and "*Between Science and Industry: Dangerous Liasons*" in *Health and Labor* (2014). In 2016-2017, Marichalar served as a visiting scholar at the Institute for Advanced Study in Princeton, a visiting fellow at the Center for International Research in the Humanities and Social Sciences (a mixed laboratory between CNRS-NYU) and a Fulbright Fellow at the Center for History and Ethics of Public Health at Columbia University. While in the US, Marichalar undertook research for a research project entitled "*Managing Toxic Hazards in an Industrial Community (Linden, NJ): A Moral Sociology of Avoidable Disease*". Marichalar wrote his doctoral thesis on autonomy and subordination in occupational medicine at the School for Advanced Studies in Social Sciences (École des Hautes Études en Sciences Sociales) in France.

Ayşe Parla

Ayşe Parla is Associate Professor of Anthropology at Sabanci University in Istanbul, Turkey. Her research interests include migration, citizenship, labor, ethnicity, globalization and transnational processes. Parla is currently completing a book entitled "*Precarious Hope: Migrants, Law and Relative Privilege*." Parla's recent publications include "*Property, Dispossession, and Citizenship in Turkey*" in *Public Culture* (2016, with C. Ozgul); "*For Us, Migration is Ordinary: Post-1989 Labour Migration from Bulgaria to Turkey*" in *Migration in the Southern Balkans* (2015); and "*Labor Migration, Ethnic Kinship, and the Conundrum of Citizenship in Turkey*" in *Citizenship Studies* (2011). Parla was a visiting research scholar at the Peter Wall Institute for Advanced Study at the University of British Columbia in 2014. Parla was a member at the Institute for Advanced Studies (IAS) in Princeton in 2016-2017 and will continue her stay there as a visiting scholar in 2017-2018. She holds a B.A. from Harvard University, and an M.A. and Ph.D. in sociocultural anthropology from New York University.

Brishen Rogers

Brishen Rogers is Associate Professor of Law at Temple University Beasley School of Law. His research interests include international and transnational labor law, technology and the future of work, race citizenship and labor regimes, and law and economic inequality. Professor Rogers' recent publications include a forthcoming book, "*Rethinking the Future of Work*", as well as a book chapter entitled "*Law and the Global Sweatshop Problem*" in *Achieving Workers' Rights in the Global Economy* (2016). Rogers has authored a number of academic articles which address current issues in labor law, including "*Employment Rights in the Platform Economy: Getting Back to Basics*" in the *Harvard Law and Policy Review* (2016), "*Three Concepts of Workplace Freedom of Association*" in the *Berkeley Journal of Employment and Labor Law* (2016) and "*Justice at Work: Minimum Wage Laws and Social Equality*" in the *Texas Law Review* (2014).

Rogers has served as a Climenko Fellow and Lecturer at Harvard Law School, a Braudel Senior Fellow at the European University Institute in Florence, and a Visiting Professor at Washington University in St. Louis. He frequently appears in the media on issues surrounding labor rights in the sharing economy. Rogers holds a B.A. from the University of Virginia and a J.D. from Harvard Law School.

Alvaro Santos

Alvaro Santos is Professor of Law at Georgetown University Law Center. He teaches and writes in the areas of international trade, law and economic development, drug policy, transnational labor law and the future of NAFTA. Santos is co-editor of *Law and the New Developmental State: The Brazilian Experience in Latin America* (2013) and *The New Law and Economic Development: A Critical Appraisal* (2006). He is also the author of a number of articles and book chapters, including “*The Trouble with Identity and Progressive Origins in Defending Labour Law*” in *Critical Legal Perspectives on Global Governance* (2014), “*Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil and Mexico*,” *Virginia Journal of International Law* (2012) and “*Three Transnational Discourses of Labor Law in Domestic Reforms*” *University of Pennsylvania Journal of International Law* (2010). Professor Santos serves on the editorial boards of the *American Journal of Comparative Law*, the *Journal of International Economic Law*, the *Law and Development Review*, and the *Latin American Journal of International Trade Law*. In 2016, Santos contributed to a research manifesto authored by working group at the Institute for Global Law and Policy, examining the role of law in global value chains. Santos received a JD with high honors from Universidad Nacional Autónoma de México and an LLM and SJD from Harvard Law School.