

## **Legal Decision Making**

Psy 607  
Winter 2007  
W 1:00-3:30  
143 Straub

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Office Hours: UH 1:00-2:00 and by appointment

Course Description: The goal of this seminar is to deepen the participants' understanding of legal decision making in preparation for further independent work in this area. In service of this quest, we will read literature from a number of different perspectives, not just psychology (though that will be our primary concentration). The syllabus includes theoretical papers, philosophical treatises, literature reviews, and empirical studies. We will focus on the decisions made by lawyers, judges, and juries -- although, many important legal decisions are made by other actors (e.g., administrative agencies, police, parole boards, probation officers, defendants).

Course Requirements: All participants are expected to come to class prepared to discuss the assigned readings. Students taking this course for a grade, must lead or co-lead one session of the seminar and write a term paper on a topic in legal decision making of their choice. The instructor must approve the paper topic. You may use this opportunity to delve more deeply into a topic covered in the material assigned in the course or to integrate this material with other sources. The paper can take the form of a literature review, research proposal, or theoretical statement. In every case, be sure that you cover your topic well and integrate it with the material covered in the course.

### **Syllabus**

Note that there are more "special topics" than we have time to cover. At our first meeting, we will determine which "special topics" will actually be covered in the seminar.

Week 1          Overview & Introduction (Mauro)

Week 2          Comparative Legal Systems

Glendon, M., Gordon, M., & Osakwe, C. (1985). Comparative Legal Traditions. St. Paul, MN: West Group.  
Civil Law pp 40-61, 108-117  
Common Law pp 268-283, 313-367  
Socialist Law pp 672-714, 747-792

### Week 3      Philosophical Approaches

Hayman, R., Levit, N. & Delgado, R. (2002). Jurisprudence classical and contemporary: From natural law to postmodernism, 2<sup>nd</sup> Ed. St. Paul, MN: West Group.

Natural law: 1-10, 18-25 (from J. Rawls, A Theory of Justice)

Positivism: 74-80, 88-96 (from HLA Hart, Positivism and the separation of law and morals).

Legal realism: 156-162

Sociological jurisprudence: 172-178 (from R. Pound, The scope and purpose of sociological jurisprudence)

Brooks, R. (2002). "Legal formalism" in Structures of Judicial decision-making from Legal Formalism to Critical Theory. Durham, NC: Carolina Academic Press, pp37-60.

Brooks, R. (2002). "Legal realism" in Structures of Judicial decision-making from Legal Formalism to Critical Theory. Durham, NC: Carolina Academic Press, pp 89-110.

Brooks, R. (2002). "Sociological jurisprudence" in Structures of Judicial decision-making from Legal Formalism to Critical Theory. Durham, NC: Carolina Academic Press, pp 111-132.

Brooks, R. (2002). "Critical theory" in Structures of Judicial decision-making from Legal Formalism to Critical Theory. Durham, NC: Carolina Academic Press, pp 193-216.

Haney, C. (2002). Making law modern: Toward a contextual model of justice. Psychology, Public Policy, & Law, 8, 3-63.

### Week 4      Jury Decision-making

Levett, L., Danielsen, E., Kovera, M., & Cutler, B. (2005). The psychology of jury and juror decision-making. In N. Brewer & K. Willisams (Eds.) Psychology & Law: An Empirical Perspective. New York: Guilford.

Devine, D., Clayton, L., Dunford, B., Seying, R. & Pryce, J. (2001). Jury decision making: 45 years of empirical research on deliberating groups. Psychology, Public Policy, & Law, 7, 622-727.

Feigenson, N. (2000). The social psychology of juror judgments I: Cognitive frameworks and heuristics. In N. Feigenson, Legal Blame: How Jurors Think and Talk About Accidents. Washington, D.C.: APA.

### Week 5      Jury Decision-making

Hastie, R. (1993). Algebraic models of juror decision processes. In R. Hastie (Ed) Inside the Juror: The Psychology of Juror Decision-making. New York: Cambridge.

Kerr, N. (1993). Stochastic models of juror decision making. In R. Hastie (Ed) *Inside the Juror: The Psychology of Juror Decision-making*. New York: Cambridge.

Schum, D. & Martin, A. (1993). Formal and empirical research on cascaded inference in jurisprudence. In R. Hastie (Ed) *Inside the Juror: The Psychology of Juror Decision-making*. New York: Cambridge.

Pennington, N. & Hastie, R. (1993). The story model of juror decision making. In R. Hastie (Ed) *Inside the Juror: The Psychology of Juror Decision-making*. New York: Cambridge.

Arndt, J., Lieberman, J., Cook, A. & Solomon, S. (2005). Terror management in the courtroom: Exploring the effects of mortality salience on legal decision making. *Psychology, Public Policy, & Law*, 11, 407-438.

#### Week 6      Judicial Decision-making

Frankel, M. (2004). The adversary judge: The experience of the trial judge. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 68-75. Washington, D.C.: Congressional Quarterly Press.

Powell, L. (2004). What really goes on at the Supreme Court. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 88-91. Washington, D.C.: Congressional Quarterly Press.

Stevens, J. (2004). Deciding what to decide: The docket and the rule of four. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 96-103. Washington, D.C.: Congressional Quarterly Press.

Harlan, J. (2004). The role of oral argument. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 104-107. Washington, D.C.: Congressional Quarterly Press.

Schaefer, W. (2004). Precedent and policy: Judicial opinions and decision-making. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 108-118. Washington, D.C.: Congressional Quarterly Press.

Frankfurter, F. (2004) Some reflections on the reading of statutes. In O'Brien, D. (Ed). *Judges on Judging: Views from the Bench*, pp 247-255. Washington, D.C.: Congressional Quarterly Press.

Baum, L. (1997). *The Puzzle of Judicial Behavior*, pp 1-22, 89-124. Ann Arbor, MI: University of Michigan Press.

Englich, B. & Mussweiler, T. (2001) Sentencing under uncertainty: Anchoring effects in the courtroom. *Journal of Applied Social Psychology*. 31, 1535-1551.

## Week 7      Judicial Decision-making

Landsman, S. & Rakos, R. (1994). A preliminary study into the effect of potentially biasing information on judges and jurors in civil litigation. *Behavioral Sciences and the Law*, 12, 113-126.

Heuer, L. & Penrod, S. (1994). Trial complexity: A field experiment of its meaning and effects. *Law and Human Behavior*, 18, 29-51.

Robbennolt, J. (2002). Punitive damage decision making: The decisions of citizens and trial court judges. *Law and Human Behavior*, 26, 315-341.

Vidmar, N. & Rice, J. (1993). Assessments of non-economic damage awards in medical negligence: A comparison of jurors and legal professionals. *Iowa Law Review*, 78, 883-911.

Wissler, R., Hart, A., Saks, M. (1999). Decision-making about general damages: A comparison of jurors, judges, and lawyers. *Michigan Law Review*, 98, 751-826.

Dhami, M. (2005). From discretion to disagreement: Explaining disparities in judges' pretrial decisions. *Behavioral Sciences and the Law*, 23, 367-386.

Meernik, J., King, K., Dancy, G. (2005). Judicial decision making and international tribunals: Assessing the impact of individual, national, and international factors. *Social science quarterly*, 86, 683-703.

\* Diamond, S. (2001). Convergence and complementarity between professional judges and lay adjudicators. In P. Van Koppen & S. Penrod (Eds), *Adversarial versus inquisitorial Justice*. New York: Plenum.

\* Guthrie, C., Rachlinski, J., & Wistrich, A. (2001). Inside the judicial mind: *Cornell Law Review*, 86, 777-830.

\* Lempert, R. (1993). Civil juries and complex cases: Taking stock after twelve years. In R. E. Litan (Ed), *Verdict: Assessing the civil jury system*, 181-247. Washington, DC: The Brookings Institution.

\* Optional

## Week 8      Lawyers

Williams, K. & Jones, A. (2005). Trial strategy and tactics. In N. Brewer & K. Willisams (Eds.) *Psychology & Law: An Empirical Perspective*. New York: Guilford.

Feigenson, N. (2000). The rhetoric of accidents: How advocates help jurors think about liability and damages. In N. Feigenson, *Legal Blame: How Jurors Think and Talk About Accidents*. Washington, D.C.: APA.

Constanzo, M. & Peterson, J. (1994). Attorney persuasion in the capital penalty phase: A content analysis of closing arguments. *Journal of Social Issues*, 50, 125-47.

#### Week 9      Special Topics: Role of emotion

Maroney, T. (2006). Law and emotion: A proposed taxonomy of an emerging field. *Law & Human Behavior*, 30, 119-142.

Wiener, R., Bornstein, B., & Voss, A. (2006). Emotion and the law: A framework for inquiry. *Law & Human Behavior*, 30, 231-248.

Feigenson, N. & Park, J. (2006). Emotions and attributions of legal responsibility and blame: A research review. *Law & Human Behavior*, 30, 143-162.

Bright, D., & Goodman-Delahunty, J. (2006). Gruesome evidence and emotion: Anger, blame, and jury decision-making. *Law & Human Behavior*, 30, 183-202.

Rose, M., Nadler, J., & Clark, J. (2006). Appropriately upset? Emotion norms and perceptions of crime victims. *Law & Human Behavior*, 30, 203-220.

Wessel, E., Drevland, G., Eilertsen, D., & Magnussen, S. (2006). Credibility of the emotional witness: A study of ratings by court judges. *Law & Human Behavior*, 30, 221-230.

#### Week 10      Special Topics: Neuroscience & Law

Chorvat, T. & McCabe, K. (2004). The brain and the law. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1727-1736.

Fugelsang, J. & Dunbar, K. (2004). A cognitive neuroscience framework for understanding causal reasoning and the law. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1749 -1754.

Goodenough, O. & Prehn, K. (2004). A neuroscientific approach to normative judgment in law and justice. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1709-1726.

Greene, J. & Cohen, J. (2004). For the law, neuroscience changes nothing and everything. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1775-1785.

Hinde, R. (2004). Law and the sources of morality. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1685-1695.

Hoffman, M. (2004). The neuroeconomic path of the law. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1667-1676.

Jones, O. (2004). Law, evolution and the brain: applications and open questions. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1727-1736.

O'Hara, E. (2004). How neuroscience might advance the law. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1697-1707.

Stake, J. (2004). The property 'instinct'. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1763-1774.

Zak, P. (2004). Neuroeconomics. *Philosophical Transactions of the Royal Society of London – Biological*, 359, 1737-1748.

Week 10      Special Topics: Capital sentencing

Lanier, C. & Acker, J. (2004). Capital punishment, the moratorium movement, and empirical questions: Looking beyond innocence, race, and bad lawyering in death penalty cases. *Psychology, Public Policy, & Law*, 10, 577-617.

Haney, C. & Wiener, R., Eds. (2004). Capital punishment in the United States – Special Issue. *Psychology, Public Policy, & Law*, 10, 373-621.

Week 10      Special Topics: Judicial Instructions

Steblay, N., Hosch, H., Culhane, S., & McWethy, A. (2006). The impact on juror verdicts of judicial instruction to disregard inadmissible evidence: A meta-analysis. *Law & Human Behavior*, 30, 469-492.

Rose, V. & Ogloff, J. (2001). Evaluating the comprehensibility of jury instructions: A method and an example. *Law & Human Behavior*, 25, 409-431.

Lieberman, J. & Sales, B., Eds. (2000). The Jury Instruction Process – Special Issue. *Psychology, Public Policy, & Law*, 6.