

POLS/LSJ 367: Comparative Law and Courts

Instructor: Jonathan Beck
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Tuesdays and Thursdays 12:00-2:10 p.m.
 Summer Full Term | June 22, 2020 – August 21, 2020

Course Overview

Are you interested in why law and courts matter for politics and policy? This course will introduce you to comparative judicial politics: how law, courts, and politics interact in countries throughout the world. The class is a core course in the Law, Societies and Justice program.

We begin by critically examining the (ideal) functions of courts: to provide for “order,” resolve disputes, and to enforce legal norms. We then turn to constitutional politics in democracies, asking whether and how constitutional courts have changed national policies and empowered individuals with new rights. Next, we study the development of constitutional courts in countries that are undergoing transitions to democracy, transitioning to some as yet undefined system, as well as those in non-democracies. The final section of the course is devoted to law and courts in supranational and international contexts. In particular, students will explore an increasingly powerful supranational court, the European Court of Justice, which we will compare with the European Court of Human Rights. The course concludes with an examination of the International Criminal Court.

Required Reading: There are required readings posted on the course Canvas website.

Assessment:

Reading/Discussion Assignments (4 of 5)	15%
Discussant Assignment	15%
Essay 1	20%
Essay 2	25%
Essay 3	25%

Assessment in this course will be based on the above criteria. To receive credit for this course, you must complete at least the three essays (4-6 pages), and otherwise earn a passing grade (grading scale on Canvas course site). There will be five reading/discussion assignments, of which you must complete 4; and every student will once during the quarter present on a day’s reading or, for those who can’t present, provide a supplement to a day’s readings to be distributed to course colleagues no later than two evenings before the reading is due (Sunday for a Tuesday lecture, Tuesday for a Thursday lecture). I will post the assignments for each of the assessment components on Canvas. **Every student who completes this course will earn W credit.**

Assignments must be completed and turned in by their due times unless you have received an exception from the instructor. Please inform me as soon as possible of any such circumstances. I

am here to help. The syllabus marks clearly when each of the three papers are due, enabling all students to schedule their quarter accordingly. If you have conflicting commitments, such as military service or others, please come speak with me as soon as possible so accommodations can be made.

If you wish to have a grade on an assignment, test, or your paper reassessed, please follow the outlined procedure:

1. Wait 24 hours, carefully review your answers, and my comments on them.
2. Provide a typed statement to me (no more than one page) explaining why you believe the grade you received should be altered. This must be about the substance of your work, not the effort you put into it or this class.
3. Bring the work and your written concerns to my office hours within one week of receiving your exam for discussion.
5. I will reread and re-grade your assignment. Because I will be re-grading, your grade may be raised, lowered, or remain the same. I may also ask other instructors to look at your assignment.

Important Dates

Friday, June 26: Sign up for discussant date

Sunday, July 5: First reading/discussion assignment

Tuesday, July 7: Peer review assignment 1 (upload Essay 1 outline by 12 p.m. PST)

Sunday, July 12: Essay 1 due

Sunday, July 19: Second reading/discussion assignment

Sunday, July 26: Third reading/discussion assignment

Tuesday, July 28: Peer review assignment 2 (upload Essay 2 rough draft by 12 p.m. PST)

Sunday, August 2: Essay 2 due

Sunday, August 9: Fourth reading/discussion assignment

Sunday, August 16: Fifth reading/discussion assignment

Friday, August 21: Essay 3 due

Academic Honesty: You are assumed to be familiar with the university's policies on cheating and plagiarism and the potential penalties involved (a link to those policies is on the section website or you can find it at: <http://depts.washington.edu/grading/issue1/honesty.htm>). In the event that there is a question about your work, you may be asked to produce any notes and outlines you used, to identify your sources, and to provide an electronic copy of your paper. It is my policy to forward any incidents of probable academic misconduct to the College of Arts and Sciences' Committee on Academic Conduct for investigation and resolution. Remember: When in doubt, cite.

Access and Accommodations: Your experience in this class is important to us, and it is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law. If you experience barriers based on disability, please seek a meeting with DRS to discuss and address them. If you have already established accommodations with DRS, please communicate your approved accommodations to your instructor at your earliest convenience so we can discuss your needs in this course. Disability Resources for Students (DRS) offers resources and coordinates reasonable accommodations for students with disabilities. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. If you have not yet established services through DRS, but have a temporary or permanent disability that requires accommodations (this can include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924, Mary Gates Hall 011, uwdrs@uw.edu or disability.uw.edu.

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>). Accommodations must be requested within the first two weeks of this course using the [Religious Accommodations Request form](https://registrar.washington.edu/students/religious-accommodations-request/) (<https://registrar.washington.edu/students/religious-accommodations-request/>).”

Diversity Statement: Diversity creates opportunities for people to engage, understand and respect others whose perspectives, values, beliefs, traditions, and world views have been shaped by experiences and backgrounds that may be different from their own, particularly those from historically marginalized and underrepresented groups. This account of diversity includes, but is not limited to differences in gender, race, age, national origin, ethnicity, gender identity and expression, immigration status, intellectual and physical ability, sexual orientation, income, faith, socio-economic class, family status, primary language, military experience, political identification, cognitive style, and communication style. If any student has concerns, they should feel welcome and encouraged to express their concerns to me in person or via e-mail. Please see a breakdown of some campus resources at the end of this syllabus.

PART I: LAW, DISPUTE RESOLUTION AND COURTS**Week 1****Tuesday, June 23: Introduction to the Course; Norms, Rules, and Law**

Guiding Question: What are norms, and how are they different from law? Why does that difference matter?

Reading: No readings.

Thursday, June 25: Norms, Rules, and Law continued...

Guiding Question: Do norms and law complement each other, challenge each other, or exist completely separate from each other?

Reading: Katharina Heyer, "The ADA on the Road: Disability Rights in Germany"

Sign up for discussant date online by Friday!!

Week 2**Tuesday, June 30: The Logic of Courts. Dyadic and Triadic Conflict Resolution.**

Guiding Question: Are courts neutral arbiters of law, or political actors?

Reading: Thomas Jipping, "Is a Judge a Player or an Umpire?"; Matt Ford, "Justice Sotomayor's Ringing Dissent"; Mike Carter, "Judge bars Seattle police from using tear gas, excessive force against nonviolent protesters"

Thursday, July 2: The American Legal System in Comparative Perspective

Guiding Question: How does the American legal system compare to systems elsewhere, and what are the effects of these institutional differences?

Reading: Martin Shapiro, "Judicial Independence: New Challenges in Established Nations"

First Reading/Discussion Assignment due by Sunday, July 5 at midnight.

Week 3**Tuesday, July 7: Peer Review Assignment****Thursday, July 9: Are the courts a source of social change?**

Guiding Question: Do courts (and law) reinforce unequal power distributions, or can people use them to challenge those power distributions?

Reading: Crenshaw, Kimberle Williams (2011). "Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law." *German Law Journal*, vol. 12, no. 1: 247-284.

Essay 1 is due Sunday, July 12 by midnight.

PART II: CONSTITUTIONAL COURTS IN DEMOCRACIES**Week 4**

Tuesday, July 14: Case Study: The Politics of Judicial Review

Guiding Question: Why do democracies so often empower unelected courts to review legislation produced through ‘democratic’ processes?

Reading: Stone Sweet, “Constitutional Courts and Parliamentary Democracy.”

Thursday, July 16: France

Guiding Question: In a democracy, how should we arbitrate between individual and collective rights?

Reading: SAS decision BBC article; Tourkochoriti, “The Burka Ban Before the European Court of Human Rights...”; SAS v. France

Second Reading/Discussion Assignment due Sunday, July 19 by midnight.

Week 5**Tuesday, July 21: Constitutional Politics and Rights Protection.**

Guiding Question: How do courts resolve disputes between different types of rights, more generally?

Reading: Sang Kyung Lee, “A Comparative Analysis of a Pregnant Woman’s Right to Abortion: Notes on Constitutional Courts Decisions of Abortion Laws in Germany and the United States, and their Implications for Korean Abortion Laws”

Thursday, July 23: Case Study: Japan and Comparative Conclusions

Guiding Question: Why do similar institutional arrangements often produce different outcomes?

Reading: Upham, “Stealth Activism: Norm Formation by Japanese Courts.” (Podcast option available)

Third Reading/Discussion Assignment due Sunday, July 26 by midnight.

Week 6**Tuesday, July 28: Peer Review Assignment****PART III: CONSTITUTIONAL COURTS IN TRANSITION SOCIETIES****Thursday, July 30: Judicial Power in New Democracies/Courts in New Democracies**

Guiding Question: Can courts provide justice in transitions to democracy?

Reading: O’Regan, Kate (2014). “Justice & Memory: South Africa’s Constitutional Court.” *Daedalus*, vol. 143, no. 3: 168-178; Gardbaum, *Are Strong Constitutional Courts Always a Good Thing for New Democracies?*

Essay 2 is due Sunday, August 2 by midnight.

Week 7**Tuesday, August 4: Case Study: Democratic Backsliding in Poland, Democratic Advances in South Korea**

Guiding Question: What role do courts play in facilitating transitions to democracy?

Reading: Kelemen & Orenstein, “Europe’s Autocracy Problem; Polish Democracy’s Final Days?”; Tom Ginsburg, “The Constitutional Court and judicialization of Korean politics”

Thursday, August 6: Plural Legal Systems

Guiding Question: How do legal systems balance between different types of law, and how do people on the ground navigate these distinctions?

Reading: Felipe Gómez Isa, “Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective.”

Fourth Reading/Discussion Assignment due Sunday, August 9 by midnight.

PART IV: INTERNATIONAL COURTS

Week 8

Tuesday, August 11: European Court of Justice and Theories of Legal Integration

Guiding Question: Why would states empower supranational courts to rule against them and their domestic laws?

Reading: Davies, “Activism Relocated: The Self-restraint of the European Court of Justice in its National Context.”

Thursday, August 13: Judicial Rulemaking and the European Court of Justice

Guiding Question: Can supra- and international courts provide a new venue for democratic activism?

Case Study: Women’s Rights

Reading: Cichowski, “Women’s Rights, the European Court and Supranational Constitutionalism”

Fifth Reading/Discussion Assignment due Sunday, August 16 by midnight.

Week 9

Tuesday, August 18: The European Court of Human Rights & The African Court on Human and Peoples’ Rights

Guiding Question: Do states take international courts seriously, and why?

Reading: Helfer & Voeten, “International Courts as Agents of Legal Change”; Daly & Weibusch, “The African Court on Human and Peoples’ Rights: mapping resistance against a young court”

Thursday, August 20: The International Criminal Court

Guiding Question: Can an international court help us to solve the problem of addressing crimes against humanity?

Reading: Mayerfeld, “Who Shall be Judge?”; Human Rights Watch, “The International Criminal Court and the United States”

Essay 3 due Friday, August 21 by midnight.

Campus Resources:

Reporting Incidents of Bias:

If you or someone you know experiences or witnesses bias at the individual, institutional, or systemic level, the University has created a report form that may be used to document and report these experiences: <https://report.bias.washington.edu/>

Counseling & Mental Health:

The Counseling Center offers short-term, problem-focused counseling to students who may feel overwhelmed by the responsibilities of college, work, family, and relationships. Counselors are available to help students cope with stresses and personal issues that may interfere with their ability to perform in school. The service is provided confidentially and without additional charge to currently enrolled undergraduate and graduate students.

If you are experiencing a psychological crisis and cannot wait until the Counseling Center open, please call the Crisis Clinic at 866-427-4747 or the King County Crisis Line at 206-461-3222.

Hall Health Center also offers mental health care, including individual counseling and therapy, crisis counseling and intervention, medication evaluation and management, group therapy and support groups, campus outreach services, mindfulness meditation, and after-hours care. You can make an appointment at Hall Health by calling 206-543-5030.

The Q Center:

The University of Washington Q Center is a primarily student run resource center dedicated to serving anyone with or without a gender or sexuality – UW students, staff, faculty, alum, and community members. Resources include one-on-one advising, support for student groups, regular events, a lending library, and student blog. You can visit the Q Center in the Husky Union Building, Room 315 or online at: <http://depts.washington.edu/qcenter/wordpress/>

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If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

University Ombud:

The University Ombud Office is available to assist students with any conflicts or issues, including learning environment mistreatment, RA/TA appointments, disability accommodations, grade concerns, financial aid, academic misconduct, sexual harassment, or access to courses. You may make an appointment by contacting the Ombud Office at 206-543-6028.

University Complaint Investigation & Resolution Office:

The University Complaint Investigation and Resolution Office (UCIRO) investigates complaints that an employee has violated the University's non-discrimination and/or non-retaliation policies. UCIRO is also responsible for investigating and responding to most Charges of Discrimination filed with external agencies, such as the Equal Employment Opportunity Commission (EEOC) and the Washington State Human Rights Commission (WSHRC).

If you would like to make a complaint or obtain additional information about these processes, you may contact the UCIRO at (206) 616-2028 or by email at uciro@u.washington.edu.