

POLS/LSJ 367: Comparative Law and Courts

Instructor: Jonathan C. Beck
Office: Gowen 025
Office hours: Tuesdays 9:00-10:00 a.m. and 1:45-2:45 p.m.
E-mail: jcbeck@uw.edu

MWF 12:30-1:20 in SIG 134

Teaching Team:

Jihyeon Bae
Nela Mrchkovska

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 and the African Court on Human and Peoples’ Rights. The course concludes with an examination of the International Criminal Court.

Required Reading: All required readings will be posted for free on Canvas. There are no required textbooks. There will be about 30 pages of reading per class session, and I will always provide reading questions to help guide you through the readings. These questions are not required for credit but should be considered a useful resource.

Assessment:

Participation/Engagement	20%
Short Assignments	15%
Take-Home Midterm	20%
Research Proposal	25%
Take-Home Final	20%

Assessment in this course will be based on the above criteria. To receive credit for this course, you must complete all assessment components, 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.

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 all assignments 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.

Due Dates:

Week 1: no assignments

Week 2: Introductory Assignment due Wednesday, October 5 @ midnight

Week 3: no assignments

Week 4: (Take-Home Midterm available Friday, October 21)

Week 5: Take-Home Midterm due Tuesday, October 25 @ midnight

Week 6: Research Proposal Country Assignment due Wednesday, November 2 @ midnight

Week 7: Research Proposal Update due Sunday, November 13 @ midnight

Week 8: no assignments

Week 9: Research Proposal due Tuesday, November 22 @ midnight

Week 10: no assignments

Week 11: no assignments

Final Exam Week: Take-Home Final due Thursday, December 15 @ midnight

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. Remember: When in doubt, cite.

Access and Accommodations: Your experience in this class is important to me, 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/)

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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/>).

Basic Needs Policy: Your safety, health and well-being are far more important than anything going on in class. Please feel free to reach out to me if you need to talk. Any student who faces challenges securing their food, housing, or personal safety should feel welcome to come to the instructor so that we can connect you with any resources available through the university.

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.

Course Schedule

Part I: Law, Dispute Resolution and Courts

Week 1

Wednesday, September 28, 2022: Introduction to the Course

Friday, September 30, 2022: Norms, Rules, and Law

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"

Week 2

Monday, October 3, 2022: Dyadic and Triadic Conflict Resolution.

Guiding Question: What different forms of conflict resolution are there, and how do judges get involved?

Reading: Listen: ["The Political Thicket" on More Perfect](#) by Radiolab

Wednesday, October 5, 2022: The Logic of Courts

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

Reading: Lino Graglia, "Do Judges have a Policy-making Role in the American system of government?"; Martin Shapiro, "Judges as Liars"; Merrill, "A Modest Proposal for a Political Court"

Introductory Assignment due Wednesday, October 5 @ midnight

Friday, October 7, 2022: Politics and Courts

Guiding Question: Why might we be concerned about the "third-interest" and policymaking roles of courts?

Reading: Jane Mayer, ["Legal Scholars are Shocked by Ginni Thomas' 'Stop the Steal' Texts"](#); Bokor-Lindell, ["Is the Supreme Court Facing a Legitimacy Crisis?"](#)

Part II: Constitutional Courts in Democracies

Week 3

Monday, October 10, 2022: 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"; Jack Nicas, "Brazil Blocks Telegram Over Disinformation Concerns"

Wednesday, October 12, 2022: 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."

Friday, October 14, 2022: Case Study: France

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

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

Week 4**Monday, October 17: 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”; Choe Sang-Hun, “South Korea Rules Anti-Abortion Law Unconstitutional”

Wednesday, October 19: 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)

Friday, October 21: Comparative Conclusions

No readings

Week 5**Monday, October 24: No class, work on take-home midterm**

Take-Home Midterm Due Tuesday, October 25 @ midnight

Part III: Constitutional Courts in Transition Societies**Wednesday, October 26: Are 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: Kimberle Williams Crenshaw (2011). “Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law.” *German Law Journal*, vol. 12, no. 1: 247-284; Bloomberg, “China Wants More Climate Court Cases, But Only the Right Ones”

Friday, October 28: 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?”

Week 6

Monday, October 31, 2022: Case Study: Taiwan

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

Reading: Taiwan Council of Grand Justices, "Interpretation #748"; Lin, "Analysis of Taiwan CGJ Interpretation #748"

Wednesday, November 2: Case Study: South Korea

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

Reading: Tom Ginsburg, "The Constitutional Court and the Judicialization of Korean Politics"

Research Proposal Country Assignment due Wednesday, November 2 @ midnight

Friday, November 4: Case Study: Post-Cold War Constitutional Courts

Guiding Question: Why did most post-soviet republics adopt constitutional courts, and with what effect?

Reading: Agnieszka Bień-Kacała, "Illiberal Judicialization of Politics in Poland"

Week 7**Monday, November 7: Constitutional Courts in Non-Democracies II**

Guiding Question: Can courts play an important role in non-democracies, or are they just "window dressing"?

Reading: Tamir Moustafa, "Law versus the State: The Judicialization of Politics in Egypt"

Wednesday, November 9: Constitutional Courts in Non-Democracies II

Guiding Question: In what ways can everyday people take advantage of courts in non-democracies to advance their needs?

Reading: Arzoo Osanloo, "Courting Rights: Rights Talk in Islamico-Civil Family Court"

Friday, November 11: Veterans Day, no class

Research Proposal Update due Sunday, November 13 @ midnight

Part IV: International Courts**Week 8****Monday, November 14: 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"; Stevis-Gridneff, Pronczuk and Novak, "Top European Court Rules E.U. Can Freeze Aid to Poland and Hungary"

Wednesday, November 16: Judicial Rulemaking and the European Court of Justice

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

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

Week 9 – Thanksgiving Holiday, no class

Research Proposal due Tuesday, November 22 @ midnight

Week 10

Monday, November 28: The European Court of Human Rights I

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

Reading: Helfer & Voeten, “International Courts as Agents of Legal Change”

Wednesday, November 30: The European Court of Human Rights II

Guiding Question:

Reading: TBD

Friday, December 2: The African Court on Human and Peoples’ Rights

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

Reading: Daly & Weibusch, “The African Court on Human and Peoples’ Rights: mapping resistance against a young court”

Week 11

Monday, December 5: 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”

Wednesday, December 7: Comparative Conclusions

Guiding Question:

Reading: TBD

Friday, December 9: Concluding Thoughts

Take-Home Final Exam due Thursday, December 15 @ midnight