

RPOS 428z – COMPARATIVE LEGAL SYSTEMS

AUTUMN SEMESTER 2011

Location: Earth Sciences 140 Time: MWF 11:30-12:25

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COURSE DESCRIPTION

The aim of this course is to familiarize you with various legal traditions and institutions around the world, as well as to educate you about the ways in which culture and society can affect the functioning of legal systems (and vice versa). At the end of the course, you should be able to discuss analytically and creatively the complex relationship between law, politics, and society. Theoretical texts introduce core concepts that are exemplified in related case study readings that take us back in time (Norman England, the French Revolution, early Islam) and around the globe (Egypt, France, Japan, South Africa, and Guatemala).

This is a writing intensive course. A significant portion of class time is devoted to improving student writing. Most college students do not write at the level they ought to, and this course is designed to rectify that. If you do not want to take this task seriously, or if you feel you are such an excellent writer that you cannot patiently endure a class session on sentence structure, *drop this class now*. It is expected that your final paper will meet the composition level of a university junior or senior. While students will be rewarded for improvement in their writing, final grades in the class will reflect how well students meet the composition level goal.

PEDAGOGY

This course has seven pedagogical components: lecture, reading, participating in class discussion, leading class discussion, weekly quizzes, writing exercises, and a final paper.

1: Not all of the material you will be assessed on comes from the readings. You cannot succeed in this class without **regular attendance of lecture**. The professor is not responsible for getting students “caught up” when they miss class, so make friends with your fellow students.

2: The readings are complex. You are expected to read them all, and to read them analytically – for the central argument and for connections to the course’s broader themes.

3 & 4: **Participating in discussion** involves thoughtful reflection on the course material, which means challenging the authors, relating the readings to your own observations of the political world, and making connections between readings and other courses you may have had. Students are also required to **lead one discussion** (instructions will be provided). Out of respect for your fellow students who are leading discussion, *do not come to class if you have not read*.

5: **Weekly quizzes** will be given in order to test reading comprehension and composition skills (grammar and argumentation). These are opportunities for you to make sure you understand the material (if you do not, come to office hours). **There are no quiz make-ups** (excluding prolonged University-approved absences, explained below), so to adjust for absences, the lowest 3 quiz scores are dropped. Perfect attenders consequently enjoy a little grade boost.

6 & 7: This course culminates in an **8-page research paper**. Ample class time is devoted to helping students learn how to conduct quality research and write and argue effectively. Opportunity for improvement through **drafts** and **writing exercises** is built into the course.

COURSE REQUIREMENTS, POLICIES, AND PROCEDURES

- **Late work:** All assignments are due in my hands at the end of class. NO LATE WORK will be accepted, save for the final research paper. *You will fail this course if you do not submit drafts when they are due.* You have been warned, so I will be unapologetic about this. As for the final paper, each day of tardiness decreases your paper score by half a grade. Extensions, which eliminate or mitigate the tardy penalty, will only be given if a) requested in advance and/or b) in conformity with University-approved reasons.¹
- **Timely collection of work:** You are responsible to pick up your papers in class. If you do not pick them up the day they are returned, you must come to my office hours to get them.
- **Make-Up Quizzes:** Only for University-approved absences² of two weeks and longer.
- **Absences:** *Do not* contact me for any absence unless there is a paper draft due for that day, or it is a prolonged absence. Three absences without a university-approved reason are acceptable. After three, they depress your attendance grade.
- **Grades are your responsibility.** Your grades will be constantly updated on the Blackboard site. Do not ask me about your grade before going to Blackboard. There should be no surprises with your final grade, unless you haven't been paying attention. *I do not discuss grades over email. If you have a question about your performance, see me in office hours.*
- **Grading Disputes:** If you wish to dispute a grade, request a copy of the re-grading policy. Your grade may stay as it is, increase, or decrease. Grade complaints will not be accepted two weeks after the quiz date/paper submission date.
- **Email:** I check email once a day M-F. I do not check my email during weekends. *I do not accept assignments, or tolerate rudeness or informality, over email.*
- **Cheating and plagiarism:** Outcomes will be a failing grade and University sanctions.
- Students needing academic accommodations for a disability should contact the Disability Resource Center, Campus Center 137, (518) 442-5490. Please present to me any DRC letters.
- I reserve the right to amend this syllabus and administer unannounced quizzes.

GRADE BREAKDOWN

| | |
|---|-----------------------------------|
| Quizzes: 15% | Research paper, synopsis: 10% |
| Research paper, first draft: 10% | Research paper, second draft: 20% |
| Research paper, final draft: 25% | Attendance: 10% |
| <u>Strunk & White</u> activity: 10% | |

MATERIALS

There is one book and one “course pack” (collection of articles). Both are available at *Mary Jane Books*. Neither is optional, both are reasonably priced, and public transportation between campus and Mary Jane Books is plentiful.

You will always bring both texts *and the syllabus* to class. A class quiz might consist of me seeing who has their course materials (A+) and who does not (F-).

The book is: Strunk, E. B. and White, W. (1979). *The elements of style*. New York: Macmillan.

¹ University-approved reasons: “documented hospitalization, a death in the immediate family, a personal emergency, or a religious observance, the instructor must administer a makeup exam or offer an alternative mutually agreeable to the instructor and student” (Undergraduate Academic Policy Reminders, available on the University’s website.)

² *ibid.*

COURSE SCHEDULE AT A GLANCE

| Week | Dates | Theme | Monday | Wednesday | Friday |
|------|--------------|---|------------------------------------|-------------|-------------------|
| 1 | Aug 29-Sep 2 | Norms, law, and politics in courts | Intro | No Class | No Class |
| 2 | Sep 5-9 | | No Class | | Quiz |
| 3 | Sep 12-16 | Grammar | | Group 1 & 2 | Group 3, 4, and 5 |
| 4 | Sep 19-23 | Legal traditions | Quiz | | |
| 5 | Sep 26-30 | | Quiz | No Class | No Class |
| 6 | Oct 3-7 | | | | Quiz |
| 7 | Oct 10-14 | | Paper expectations | | |
| 8 | Oct 17-21 | Argumentation | | | Synopsis Quiz |
| 9 | Oct 24-28 | Judicialization of politics: case studies | | | Quiz |
| 10 | Oct 31-Nov 5 | | | | 1st draft Quiz |
| 11 | Nov 7-11 | Writing tutorials | 1 on 1 meetings all week, no class | | |
| 12 | Nov 14-18 | Supernational courts | | | 2nd draft Quiz |
| 13 | Nov 21-25 | Common paper errors | Return drafts | No Class | No Class |
| 14 | Nov 28-Dec 2 | Supernational courts (cont.) | | | Quiz |
| Last | Dec 5-7 | and intl courts | | Paper due | No Class |

There is no final for this course.

Sept 12 – last day to add, last day to drop without a W

Nov 7 – last day to drop (will get a W)

HONORS TUTORIALS: Mandatory meetings every 2nd Friday of the Month, 10:30-11:20

ASSIGNED READINGS AND DUE DATES

*Complete the assigned reading (marked with a *) prior to the lecture for which it is assigned.*

WEEK ONE

August 29 Monday: Introduction; Discussion of the basis for courts, law

Introduction to course and review of policies and expectations. What are norms? What is law, and how is it made? How are norms and law related? How are they important in our lives?

August 31 Wednesday: No Class

Professor Fredette is attending the annual meeting of the American Political Science Association. (*Why? All professors in Political Science at the Rockefeller College of Public Affairs and Policy are expected to attend at least two conferences per year.*)

September 2 Friday: No Class

Professor Fredette is attending the annual meeting of the American Political Science Association.

WEEK TWO

September 5 Monday: No Class

Labor Day

September 7 Wednesday: Law in Society

- * Shapiro, M. (1981). *Courts: A comparative and political analysis*. Chicago: University of Chicago Press. Chapter one, select pages: p. 1-28.
- * Ojito, M. (1997, May 15). Danish mother is reunited with her baby. *New York Times*. Retrieved July 28, 2009 from <http://nytimes.com>.

What are courts? How do they work? What is the basic logic behind courts – why do they exist, and continue to exist when these new challenges keep cropping up? What happens when norms and law differ? How might the expansion of law over multiple countries and regions, and the movement of people through different systems of law, make applying the law to persons challenging?

September 9 Friday: Courts are Political [Quiz]

- * Shapiro, M. (1981). *Courts: A comparative and political analysis*. Chicago: University of Chicago Press. Chapter one, select pages: p. 28-37
- * Jacob, H. (1996). Introduction. In Jacob, H. et al (eds.), *Courts, law & politics in comparative perspective*. New Haven: Yale University Press. p. 1-14.

Contrary to everything you may have heard during the hearings surrounding Judge Sotomayor's or Elena Kagan's nomination to the Supreme Court, courts *are* political. It is in their very nature to be so. This reading shows how it is impossible for courts to not be political agents – and why judges must constantly lie about this role they inevitably play. Jacob adds some additional considerations for why courts are political.

WEEK THREE

September 12 Monday: Parts of a sentence

We cannot begin to make any serious headway on your composition skills until we have a common language in which to communicate errors. Miss today's class at your final grade's peril.

September 14 Wednesday: Strunk and White presentations, Grammar Group 1 & 2

- * Strunk, E. B. and White, W. (1979). *The elements of style*. New York: Macmillan. Select pages: p. 1-85. Read at your own pace over the course of three sessions.

To improve your writing skills, I am requiring you to memorize twenty-five of the most common mistakes in college papers. You will be responsible for helping your fellow students learn them.

September 16 Friday: Strunk and White presentations, Grammar Groups 3, 4 & 5

- * Strunk, E. B. and White, W. (1979). *The elements of style*. New York: Macmillan. Select pages: p. 1-85. Read at your own pace over the course of three sessions.

WEEK FOUR

September 19 Monday: What are legal traditions? [Quiz]

- * Glenn, H. P. (2000). *Legal traditions of the world: Sustainable diversity in law*. New York: Oxford University Press. Chapter 7, select pages: p. 14-15

What does it mean when we say "legal tradition"? Why bother studying them? "Tradition" sounds so old - what can tradition tell us about legal systems and courts today?

September 21 Wednesday: Norman England and the advent of Common Law

* Shapiro, M. (1981). *Courts: A comparative and political analysis*. Chicago: University of Chicago Press. Chapter 2, select pages: p. 65-101.

What is the common law legal tradition? We'll be looking at an example of common law, British common law, to understand this tradition and its development. As you read these passages in Shapiro, keep in mind how the political and social context of England at the time of the Norman invasion, and even later, shaped the development of common law as a legal tradition.

September 23 Friday: Norman England and the advent of Common Law, cont.

* Shapiro, M. (1986). *Courts: A comparative and political analysis*. Chicago: University of Chicago Press. Chapter 2, select pages: p. 101-125.

WEEK FIVE

September 26 Monday: Civil law [Quiz]

Next Monday, we will read about the most widespread legal tradition in the world, civil law (yep, our legal system in the US is something of an odd duck). Today in class, we will preview this system by watching part of a film entitled "The 10th District Court," a documentary about a French district court in Paris.

September 28 Wednesday: No Class

Professor Fredette is at a conference at York University.

September 30 Friday: No Class

Rosh Hashanah (Jewish New Year)

WEEK SIX

October 3 Monday: Civil law (cont.)

* Merryman, J. H. (1969). *The Civil Law Tradition: An introduction to the legal systems of Europe and Latin America*. Palo Alto: Stanford University Press. Pp. 1-49.

What is the Civil Law legal tradition? How does it differ from Common Law?

October 5 Wednesday: Sharia law

* An-Na'im, A. A. (1990). Sources and development of Sharia. In *Toward an Islamic reformation*. Syracuse NY: Syracuse University Press. Pp. 11-33.

* Vikor, Knut. (2000) "The sharia and the nation state: Who can codify the divine law?" in Utvik, B. O. and Vikor, K. (eds.), *The Middle East in a globalized world: Papers from the fourth Nordic conference on Middle Eastern studies, Oslo, 1998*. Bergen: Nordic society for Middle Eastern Studies. Pp. 220-250.

What is the Islamic legal tradition? What does Sharia look like today, and what are contemporary debates concerning its form and structure?

October 7 Friday: Sharia law (cont.) [Quiz]

Today in class, we will watch part of a film entitled "Inside a Shariah Court," a documentary by a British Muslim woman about Sharia in Nigeria. We will then discuss what we see in the film in relationship to what we've read about Sharia and its development, as well as explore the potential difficulties and benefits of two different legal systems coexisting.

WEEK SEVEN

October 10 Monday: Introduction to final paper assignment

If you miss class today, you will struggle with the final paper for sure.

October 12 Wednesday: Case study – Egypt

* Moustafa, T. (2003). Law versus the state: The judicialization of politics in Egypt. *Law and Social Inquiry* 28 (4), pp. 883-930.

After learning about what is expected for the final paper, you may wonder what a finished product would look like. Here is our first case study about the connection between law and politics: an article about the Supreme Constitutional Court of Egypt. You are not expected to have as much research here as Prof. Moustafa does, clearly, but this article provides a good example of the kind of paper you will be writing. He asks, why would an authoritarian regime establish a constitutional court that could check its power? And can the Supreme Constitutional Court of Egypt really stand up to the state and influence state policy? Think of this paper as a very, very high bar you want to aim for.

October 14 Friday: Conducting smart online research [Quiz]

Today's session focuses on how to search for law journal articles, news articles, and credible online sources. You'll be introduced to some websites that are very helpful for this final paper, and given some tips to think about what makes a website credible or not. *Note that you will lose points on your final paper for sources that are not credible.*

WEEK EIGHT

October 17 Monday: Argumentation

Intelligent papers begin with solid argumentation. Furthermore, the ability to make a logical argument and assess other arguments for their soundness is a task that will serve you long after your paper-writing days of college. Unfortunately, despite its importance as a fundamental building block of knowledge, argumentation is a skill that continues to elude many students. We will address that intellectual lacuna during this week of class.

October 19 Wednesday: Argumentation

October 21 Friday: Argumentation [Synopsis due] [Quiz]

WEEK NINE

October 24 Monday: Case study – France

* Beller, E. T. (2004). The headscarf affair: The Conseil d'État on the role of religion and culture in French society. *Texas International Law Journal* 39 (4), p. 581-623.

This compelling article looks at a heated political debate in France, and the role that nation's high administrative court has played in that discussion.

October 26 Wednesday: Case study – Japan

* Sanders, J. (1994). Courts and law in Japan. In Jacob, et al (eds.), *Courts, law, and politics in comparative perspective*. Pp. 315-328, 347-365, 384-388

What explains the contentious relationship between courts and politics in Japan? How has the state sought to contain the law-making of courts?

October 28 Friday: Writing workshop: Thesis statements [Quiz]

WEEK TEN

October 31 Monday: Case study – Guatemala || Writing Workshop: Intro paragraphs

* Sieder, R. (2007). The judiciary and indigenous rights in Guatemala. *International Journal of Constitutional Law* 5 (2), p. 211-241.

The same courts that some indigenous Guatemalans hope will protect their rights are also protecting the trade agreements and property ownership that endanger these indigenous Guatemalans. What can be expected of a court in such a situation?

We will also be reviewing what makes for a strong introductory paragraph today. This will be helpful for your first draft, which is due Friday! You will also be expected to sign up for a date and time to discuss your paper with me in my office next week. *These meeting times are important, do not forget!*

November 2 Wednesday: Case study – South Africa [Quiz]

* Keep, H. and Midgley, R. (2007). The emerging role of ubuntu-botho in developing a consensual South African legal culture. In Bruinsma, F. and Nelken, D., *Explorations in legal cultures*. The Hague: Elsevier.

We often look at examples of how politics affects legal systems (and vice-versa). This article reminds us that culture can influence the development of a legal system as well.

November 4 Friday: [1st draft of paper due]

There is no class scheduled for today. Submit your paper to Ms. Moran in the Political Science Contact Office (Humanities B16) by 12:30pm (“noon-thirty”). It MUST be a hard copy, and it MUST be received on time. Ms. Moran has strict instructions to not accept any paper after this time. I will not be kind to anyone who inconveniences Ms. Moran with “pleas for mercy” and the like. Your problems are not hers.

WEEK ELEVEN

November 7 Monday through November 11 Friday: One on one meetings

I will have read the paper, and will go over my first impressions with you, asking questions about things that are not clear and giving you advice to help you improve the paper for the next draft. *DO NOT lose the paper after I give it back to you, as you are required to submit all drafts together so I can track your progress.*

WEEK TWELVE

November 14 Monday: ECHR Video

What is the history of this institution, why does it have such a “moral mandate,” if you will, and where is the court going today?

November 16 Wednesday: Introduction to the ECHR

* Shelton, D. (2003). The boundaries of human rights jurisdiction in Europe. *Duke Journal of Comparative and International Law* 13 (1), selected pages on the ECHR.

What is the ECHR, how did it develop, and what is its goal? How does this supranational court balance its role as a supranational judiciary with the need to respect Member States and the democratic process?

November 18 Friday: The ECHR in action [2nd draft of paper due] [Quiz]

* ECHR (2005). *Leyla Sahin v. Turkey*. Application Number 44774/98.

This case is both interesting to read, and a great example of the tough challenges and decisions the ECHR must face as a supranational court. Look for connections between this case and the Beller article, as Turkey's secularist tradition largely comes from France – but its concerns with Islam are unique to Turkey.

WEEK THIRTEEN

November 21 Monday: Drafts returned; common paper problems

Your second drafts will be returned today. We will go over the most common problems I see in the class' papers. Again, do not lose the drafts that I return to you, as you are expected to submit all three versions together at the end of the course.

November 23 Wednesday - November 25 Friday: No class

Thanksgiving Holiday

WEEK FOURTEEN

November 28 Monday: The ECJ

* Shelton, D. (2003). The boundaries of human rights jurisdiction in Europe. *Duke Journal of Comparative and International Law* 13 (1), selected pages on the ECJ.

What is the ECJ, how did it develop, and what is its goal? How has its mandate stretched beyond its more modest, original goals? How does this supranational court balance its role as a supranational judiciary with the need to respect Member States and the democratic process?

November 30 Wednesday: The ECJ and human rights

* Cichowski, R. (2004). Women's rights, the European Court, and supranational constitutionalism. *Law and Society Review* 38 (3), p. 489-512.

How is the ECJ being used by human rights activists, and what effect does this have on both the ECJ, and the Member States of the European Union? What are the limitations of using the ECJ for pursuing human rights agendas? The potential benefits?

December 2 Friday: The ICC [Quiz]

We will be watching a film (*The Reckoning: The battle for the International Criminal Court*) as a way of introducing ourselves to the ICC. It covers a couple of the ICC's cases, and the difficulties the ICC has had in bringing the US on board.

WEEK FIFTEEN

December 5 Monday: Debate – should the US join the ICC?

* Mayerfeld, J. (2003). Who shall be judge? The United States, the International Criminal Court and the global enforcement of human rights. *Human Rights Quarterly* 25: p. 93-129.

This article examines the institutional makeup of the ICC, as well as the reasons for its existence and the challenges it faces. We will hold a class debate on whether or not the US should join the ICC.

December 7 Wednesday: Last day of class [Final draft of paper due]