

Political Science 263/263W
Comparative Law and Courts
Mondays 2-4:40
Harkness 329

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This course examines courts from a comparative perspective. By the end of the 20th century, the growing power of courts abroad has led to the so-called “judicialization of politics.” Yet, difficulties in establishing and maintaining independent judicial institutions continue to plague governments around the world. The overarching goal of this course is to understand why, when, how, and where courts function or fail to function as independent checks on government. To address these fundamental questions, the course is divided into two main parts. The first part is devoted to examining leading theories of why judicial independence emerges and endures. The second part of the course is primarily empirical, examining the role of courts in Western Europe, Eastern Europe, Russia, Latin America, Africa, Asia and the Middle East.

Organization and Course Requirements

For students registered to take the class without a writing credit, grades will be based on the following assignments:

Participation: 20%
Midterm Exam: 35%
Take-Home Final Exam: 45%

For students registered with a “W,” grades will be based on the following assignments:

Participation: 20%
Midterm Exam: 20%
Take-Home Final Exam: 30%
Research Paper 30%

Participation

Participation makes up a significant part of your grade for this course. This class is a discussion seminar, not a lecture course. It is essential that students be prepared to discuss all of the readings each and every class. Many of the works that we will read are intellectually demanding; be sure to leave yourself enough time to do all of the readings carefully.

Student responsibilities include presenting the readings by briefly summarizing in a 10-15 minute presentation the main points and raising important questions and criticisms. A one-two page handout of notes for the entire class should be provided. The number of readings each student is responsible for leading will depend on the size of the seminar. A sign-up sheet will be circulated the first week of class.

Exams

There will be one in-class midterm and a take-home final. Both exams will be based on the assigned readings and class discussion. The midterm will contain identification terms, short questions, and essays. A list of possible identification terms will be distributed prior to each exam. The final exam will be in an essay format.

Make-Up Policy

Make-up exams and assignments will be given only under the most exceptional circumstances. Exams will not be re-scheduled to accommodate other courses. Missed exams or assignments due to illness require a doctor's note.

Term Paper (Only for Students Taking the Course for "W")

Each student will choose a country and topic on which they will write a 10-12 page research paper. Students should be prepared to hand in a 1-2 paragraph description of their topic on February 18th. Annotated bibliographies are due no later than March 24th. A draft is required and can be turned in anytime on or before April 7th. **Final Papers are due at the beginning of class on Monday, April 21st. Late papers will not be accepted.**

Books

The following books are required and available for purchase at the Campus Bookstore:

Martin Shapiro. 1981. *Courts: A Comparative Political Analysis*. University of Chicago Press.

Lee Epstein and Jack Knight. 1998. *The Choices Judges Make*. CQ Press.

Jennifer Widner. 2001. *Building the Rule of Law: Francis Nyalai and the Road to Judicial Independence in Africa*. W.W. Norton & Company.

Articles

All articles are available on-line via Blackboard

Weekly Class Schedule

Week 1: No Class—MLK Day **1/21**

Week 2: Course Introduction: Judicial Independence in Comparative Perspective **1/28**

Martin Shapiro. 1981. *Courts: A Comparative Political Analysis*. University of Chicago Press. Chapter 1.

Christopher Larkins. 1996. “Judicial Independence and Democratization: A Theoretical and Conceptual Analysis,” *American Journal of Comparative Law*. pp.605-626.

John Ferejohn, Frances Rosenbluth, and Charles Shipan. 2007. “Comparative Judicial Politics” *Oxford Handbook of Comparative Politics*. Cambridge University Press.

Week 3: Explanations of Judicial Independence I: Information, Bargaining, and Competition **2/4**

William Landes and Richard Posner. 1975. “The Independent Judiciary in an Interest Group Perspective,” *Journal of Law and Economics* 18: 875-902.

Eli Salzberger. 1993. “A Positive Analysis of the Doctrine of the Separation of Powers, or: Why do We Have an Independent Judiciary?” *International Review of Law and Economics* 13:340-79.

Mark J. Ramseyer. 1994. “The Puzzling (In)dependence of Courts: A Comparative Approach,” *Journal of Legal Studies* 23:721-747.

Week 4: Explanations of Judicial Independence II: Delegation **2/11**

Keith Whittington (2005) “Interpose Your Friendly Hand” Political Supports for the Exercise of Judicial Review by the United States Supreme Court” *American Political Science Review* 99 (4).

Stephen Holmes. 2003. “Lineages of the Rule of Law,” in *Democracy and the Rule of Law* (edited by Adam Przeworski and José María Maravall). Cambridge University Press.

Beatriz Magaloni and Arianna Sanchez. 2006. “An Authoritarian Enclave? The Supreme Court in Mexico’s Emerging Democracy” ms.

Week 5: Judicial Independence and Institutional Design
2/18

Alexander Hamilton. 1787. No. 78, *Federalist Papers*.

Tom Ginsburg. 2002. "Economic Analysis and the Design of Constitutional Courts" *Theoretical Inquiries in Law* 3(1): 2-38.

Lee Epstein, Jack Knight, Olga Schvetsova. 2002. "Selecting Selection Systems" in *Judicial Independence at the Crossroads: An Interdisciplinary Approach*. Edited by Stephen Burbank and Barry Friedman. Sage Publications. pp. 191-226.

W Students: Paper Topics Due in Class

Week 6: Midterm
2/25

In-Class Midterm

Week 7: Theories of Judicial Decision-Making
3/3

Robert Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policymaker," *Journal of Public Law* 6:279-95.

Lee Epstein and Jack Knight. 1998. *The Choices Judges Make*. CQ Press.

Week 8: Spring Break No Class
3/10

Week 9: Common Law versus Civil Law Systems
3/17

Martin Shapiro. 1981. *Courts: A Comparative Political Analysis*. University of Chicago Press. Chapters 2-3.

Rafael La Porta, Florencio Lopez de-Silanes, Andrei Shleifer, and Robert Vinshny. 1998. "Law and Finance," *Journal of Political Economy*.

Week 10: Western Europe
3/24

Alec Stone Sweet. 2000. *Governing with Judges*. Oxford University Press (Chapters 2-4).

Pasquino Pasquale and John Ferejohn. 2004. "Constitutional Adjudication: Lessons From Europe" *University of Texas Law Review*, vol 82, 1671-1704.

Georg Vanberg. 2005. *The Politics of Constitutional Review in Germany*. Cambridge University Press (Chapter 4)

W Students: Annotated Bibliography Due in Class

Week 11: No Class

3/31

Week 12: Russia and Eastern Europe

4/7

Erik Herron and Kirk Randazzo. 2003. "The Relationship Between Independence and Judicial Review in Post-Communist Courts" *Journal of Politics* 65:422-38.

Vanessa Baird and Debra Javelin. 2007. "The Persuasive Power of Russian Courts" *Political Research Quarterly* 60(3)

Shannon Smithey and John Ishiyama. 2000. "Judicial Activism in Post-Communist Politics" *Law and Society Review* 36(4)

W Students: Last Day to Turn in Drafts

Week 13: Latin America

4/14

Gretchen Helmke. 2005. *Courts Under Constraints: Judges, Generals, and Politicians in Argentina*. Cambridge University Press (Chapters 2 & 6)

Jeffrey Staton. 2007. *Why Do Judges Go Public: Constitutional Review and Judicial Public Relations in Mexico* (ms, selections)

Lisa Hilbink. 2007. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. Cambridge University Press (selections)

Week 14: Africa

4/21

Jennifer Widner. 2001. *Building the Rule of Law: Francis Nyalai and the Road to Judicial Independence in Africa*. W.W. Norton & Company.

W Students: Final Papers Due in Class—No Exceptions

Week 15: Asia and the Middle East

4/28

Tom Ginsburg. 2003. *Judicial Review in New Democracies*. Cambridge University Press (Chapter 5)

Martin Shapiro. 1981. *Courts: A Comparative Political Analysis*. University of Chicago Press (Chapters 4-5).

Take-Home Final Hand-Out at the end of class on 4/28. Due at 5 pm May 1st.