

**Comparative Law and Courts**  
**Wednesdays 2-4:40**  
**LCHAS 104**

Professor Gretchen Helmke  
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Office Hours: Thursday: 2-4  
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This course examines courts from a comparative perspective. By the end of the 20<sup>th</sup> 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, Asia, Africa 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 I: 40%
- Midterm II: 40%

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

- Participation: 20%
- Midterm I: 25%
- Midterm II: 25%
- Research Paper 30%

**Participation**

Participation makes up a significant part of your grade for this course. This class is a discussion 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.

In addition, all of the students will be divided alphabetically into three groups, each of which will be responsible for presenting one of the three readings for that week. Specifically, students whose last names are A-C will present the first reading listed on the syllabus for that week, students whose last names are D-H will present the second reading listed on the syllabus for that week, and students whose last names are P-Z will present the third reading listed on the syllabus for that week. From each group, one student will be selected to present the reading. Each student who is selected to present a reading to be prepared, each student should bring a 1-2 page set of notes to class, and will be required to submit the notes for circulation following the class if they are called on.

### Exams

There will be two in-class midterms. Both exams will be based on the assigned readings and class discussion. They will contain identification terms, short questions, and essays. A list of possible identification terms will be distributed prior to each exam.

### 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 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 20<sup>th</sup>. Annotated bibliographies are due no later than March 20<sup>th</sup>. A draft is required and can be turned in anytime on or before April 3<sup>rd</sup>. **Final Papers are due at the beginning of class on Wednesday, April 17<sup>th</sup>. Late papers will not be accepted.**

### Books

The following books are required and available for purchase on Amazon:

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

Charles R. Epp. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press.

John Morone and Rogelio Durán Belmont. 2007. *The Civil Law Tradition, 3rd Edition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press.

Tom Ginsburg and Tamir Moustafa. 2008. *Rule By Law: The Politics of Courts in Authoritarian Regimes*. Cambridge University Press.

### Articles

All articles and individual book chapters are available on-line via Blackboard

## Weekly Class Schedule

### ~~Week 1: Course Introduction~~

1/16

### **Week 2: Judicial Independence and the Rule of Law**

1/23

~~Charles M. Gaba and 2002, "Judicial Independence: How Can You Tell It When You See It? And Who Cares?" in *Judicial Independence At the Crossroads: An Interdisciplinary Approach* (edited by Stephen P. Burbank and Barry Friedman). Sage Publications.~~

Gretchen Helmke and Frances Rosenbluth. 2009. "Regimes and the Rule of Law: Judicial

~~Independence in Comparative Perspective." *Annual Review of Political Science* 12: 371-393.~~

366

Julio Rios-Figueroa and Jeffrey K. Staton. 2012. "An Evaluation of Cross-National Measures of Judicial Independence" *Journal of Law, Economics and Organization*.

### **Week 3: Judicial Independence and Institutional Design**

1/30

~~Lee Epstein, Jack Knight, and Olga Schvetsova. 2001. "The Role of Constitutional~~

~~Courts in the Establishment and Maintenance of Democratic Institutions in Various~~

~~Law and Society Review 35(1): 117-164.~~

~~Tom Ginsburg. 2002. "Empirical Analysis and the Design of Constitutional Courts"~~

~~Theoretical Inquiries in Law 3(1): 2-39.~~

Donald L. Horowitz. 2006. "Constitutional Courts: A Primer for Decision-Makers"

*Journal of Democracy* 17(4): 125-137

### **Week 4: Theories of Judicial Decision-Making**

2/6

~~Robert Dahl. 1957. "Decision Making in the 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. (Chapters 1-~~

~~3)~~

Lee Epstein and Jack Knight. 1998. *The Choices Judges Make*. CQ Press. (Chapters 4-

6)

## **Week 5: Explanations of Judicial Independence I: Delegation**

2/13

Stephen Holmes. 2002. "Lineages of the Rule of Law" in *Democracy and the Rule of Law* (edited by Adam Przeworski and José María Maravall). Cambridge University Press.

Matthew C. Stevenson. 2003. "When the Devil Turns...": The Political Foundations of Independent Judicial Review" *Journal of Legal Studies* 32: 59-89

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): 583-596.

## **Week 6: Explanations of Judicial Independence II: Information, Bargaining, and Competition**

2/20

William Landes and Richard Posner. 1975. "The Independent Judiciary in an Interest-Group Perspective" *Journal of Law and Economics* 18: 885-914

Elisabeth R. Spitzer. 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: 340-19.

Mark L. Rossiter. 1994. "The Dueling of Independence of Courts: A Comparative Approach," *Journal of Legal Studies* 23: 721-747.

*W/ Students: Paper Topics Due in Class*

## **Week 7: Midterm I**

2/27

In-Class Midterm

## **Week 8: Common Law versus Civil Law Systems**

3/6

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

John Merryman and Rogelio Perez-Perdomo. 2007. *The Civil Law Tradition, 3rd Edition. An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press. (Chapters 1-10)

John Merryman and Rogelio Pérez Perdomo. 2007. *The Civil Law Tradition, 3rd Edition. An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press. (Chapters 11-20)

**Week 9: Spring Break No Class**  
3/13

**Week 10: Rights Revolutions in Comparative Perspective**  
3/20

Charles R. Epp. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press. (Chapters 1-4)

Charles R. Epp. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press. (Chapters 5-8)

Charles R. Epp. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press. (Chapters 9-11)

*W Students: Annotated Bibliography Due in Class*

**Week 11: Western Europe**  
3/27

José J. Tehera. 1975. "Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain" *Law and Society Review* 9: 475-496

George Monks. 2001. "Legislative-Judicial Relations: A Comparative Approach to Constitutional Review" *American Journal of Political Science* 45(2): 246-261

Alan S. Sussman. 2002. "Constitutional Courts and Politics in Europe" *European Politics* 25(1): 77-100

**Week 12: Russia and Eastern Europe**  
4/3

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

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)

*W Students: Last Day to Turn in Drafts*

**Week 13: No Class**

4/10

**Week 14: Latin America**

4/17

Gretchen Helmke. 2001. "The Logic of Strategic Defection: Judicial Decision Making in Argentina under Dictatorship and Democracy." *American Political Science Review* 96(2): 291-30

Daniel M. Brinks. 2001. "'Faithful Servants of the Regime': The Brazilian Constitutional Court's Role under the 1988 Constitution" in *Courts in Latin America* (edited by Gretchen Helmke and Julio Ríos Figueroa), Cambridge University Press.

Beatriz Magaloni. 2008. "Enforcing the Autocratic Political Order and the Role of Courts: The Case of Mexico" in *Rule By Law: The Politics of Courts in Authoritarian Regimes* (edited by Tom Ginsburg and Tamir Moustafa), Cambridge University Press.

*W. Sauer's Final Papers Due in Class—No Exceptions*

**Week 15: Asia, Africa and the Middle East**

4/24

Tamir Moustafa. 2008. "Law and Resistance in Authoritarian States: The Institutionalization of Politics in Egypt" in *Rule By Law: The Politics of Courts in Authoritarian Regimes* (edited by Tom Ginsburg and Tamir Moustafa), Cambridge University Press.

Pierre Landry. 2008. "The Institutional Diffusion of Courts in China: Evidence from Survey Data" in *Rule By Law: The Politics of Courts in Authoritarian Regimes* (edited by Tom Ginsburg and Tamir Moustafa), Cambridge University Press.

Jennifer Widner and Daniel Scher. 2008. "Building Judicial Independence in Semi-Democracies: Uganda and Zimbabwe" in *Rule By Law: The Politics of Courts in Authoritarian Regimes* (edited by Tom Ginsburg and Tamir Moustafa), Cambridge University Press.

**Week 16: Midterm II**

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