

POLI 330: Law and Courts in Europe

POLI 330
Fall 2017
Education 129

TR 13:05-14:25

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Office Hrs: T/Th 10:30-
11:30am or by appt
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This course is an introduction to judicial politics in Europe. We will examine the conceptual, theoretical, and empirical foundations of the study of the rule of law and the role of courts in European politics. The conceptual discussion will focus on the elements of the rule of law doctrine, the multiple definitions of judicial independence, and the judicialization of politics. We will also examine the dominant theories of the emergence and sustainability of independent courts and the trend towards judicial empowerment. The empirical examples will be very diverse: contemporary and historical European experiences, Western and Eastern European states, democratic, authoritarian, and post-authoritarian regime settings, and constitutional and ordinary judiciaries. The aim of the course is for students to come away with both a strong theoretical understanding of how civil law systems function, as well as some concrete factual knowledge of institutional configurations and salient issues in a broad range of European countries.

Required Readings

This course requires a moderate amount of reading, but many of the articles are challenging either conceptually or methodologically. Plan accordingly. Do NOT fall behind, because you will not be able to skim the readings to catch up. Readings include:

John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford University Press, 1985)

Articles available online through McGill library resources.

A few readings will be posted on the course website.

Course Obligations

Students will be evaluated on the basis of four measures:

- 1) Conference and film attendance + conference participation (10%)
- 2) Midterm (30%)
- 3) Group Presentation (20%)
- 4) Final essay (40%)

Conferences: 10%

You should register for a conference time on Minerva as soon as possible. Conferences will be led by the TA for this course, Costin Ciobanu. You can contact him at costin.ciobanu@mail.mcgill.ca Conferences will begin during the third week of classes (the week of Sep 18th). Half of your conference grade will be based on attendance. You are expected to attend all conferences and all film screenings. The other half of your conference grade will be based on the quality of your participation in group discussions and activities.

In-class Midterm: 30%

The midterm will be given in class on October 12th. The midterm will consist of term identifications and short-answer questions. The material will be drawn both from lecture and from the readings.

Group Presentation: 20%

The class will break up into small groups (up to 5 people) and prepare a 30-minute presentation to be delivered in conference in late October and November (last 5 weeks of the semester). Groups will research recent European examples of the intersection of courts and politics, such as the Polish government's major judicial reforms and the protests they triggered, or the Spanish Constitutional Court's repeated refusal to authorize an independence referendum for Catalonia. The goal of the presentations will be to educate your peers about the facts of the case you worked on and to analyse the case in light of theories and concepts that we have studied in the course. The topics for group presentations and details about how the groups will be formed will be posted on the website in early October.

Final Essay: 40%

Each student will write an 8-10 page essay on an aspect of the case that they worked on for the group presentation. Think of the research you do for the group presentation as background preparation for writing this essay. The essay should engage with a theory or concept covered in lecture or the readings. This assignment is individual work, NOT a group project. It is a good idea to discuss the specific theoretical/conceptual approach/question that you want to address in your essay with the TA or with me in office hours or after class. I will NOT be able to offer detailed guidelines on your topic over email.

On Academic Integrity and Submitting Written Work in French

McGill University values academic integrity. Therefore all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/integrity for more information).

L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site www.mcgill.ca/integrity).

In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

Other issues

If you have a disability and you would like to discuss the issue with me, please contact me to arrange a time to meet. It would be helpful if you contact the Office for Students with Disabilities at 514-398-6009 before you do this.

End-of-term course evaluations are one of the ways that McGill works towards maintaining and improving the quality of courses and the students' learning experience. You will be

notified by e-mail when the evaluations are available on Mercury, the online course evaluation system. Please note that a minimum number of responses must be received for results to be available to students.

Additional policies governing academic issues which affect students can be found in the McGill Charter of Students' Rights (The Handbook on Students' Rights and Responsibilities is available at : www.mcgill.ca/files/secretariat/Handbook-on-Student-Rights-and-Responsibilities-2010.pdf).

Lecture and Reading Schedule

PART I: THE STRUCTURE OF EUROPEAN JUDICIARIES

Introduction: why do we study courts in a political science course? (Sep 5)

The civil law legal tradition (Sep 7):

- John Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America (Stanford University Press, 1985), pp. 1-33.

Ordinary Judiciary (Sep 12, Sep 14):

- John Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America (Stanford University Press, 1985), pp. 34-161.

Criminal prosecution in the civil law countries (Sep 19, Sep 21):

- Bron McKillop, "Anatomy of a French Murder Case," *American Journal of Comparative Law*, 45:3 (Summer 1997), pp. 447-504, available online [here](#)
- Stanislaw Pomorski, "In a Siberian Criminal Court," *East European Constitutional Review*, Vol. 11 (Winter/Spring 2002), pp. 111-116, available online [here](#)
- Independent Commission Against Corruption, Inquisitorial Systems of Criminal Justice and the ICAC: A Comparison, November 1994, pp. 4-31 (article will be posted on the course website)
- William Pizzi, *Trials Without Truth* (New York University Press, 1999), pp. 5-25; 117-140 (article will be posted on the course website)

Film Screening and Discussion: 10th District Court: Judicial Hearings (2004)

<http://www.imdb.com/title/tt0395421/> The screening replaces Sep 26th lecture. Attendance is mandatory. You don't need to sign up. Exact date/time/location: TBA

Constitutional Courts (Sep 28, Oct 3)

- Donald Kommers, "The Federal Constitutional Court in the German Political System," *Comparative Political Studies*, Vol. 26, No. 4 (1994), pp. 470-491, available online [here](#)
- Alec Stone Sweet. "Why Europe rejected American judicial review: and why it may not matter." *Michigan Law Review* 101.8 (2003): 2744-2780, available online [here](#)

ECJ and ECHR (Oct 5)

- Karen Alter, "Who are the “masters of the treaty”?: European governments and the European Court of Justice." *International organization* 52, no. 1 (1998): 121-147, available online [here](#)
- Helen Keller and Alec Stone Sweet, eds. *A Europe of rights: the impact of the ECHR on national legal systems*. Oxford University Press, USA, 2008, Chapter 1 and Chapter 11, available online [here](#)

Main concepts: power, activism, (in)dependence, and accountability (Oct 10)

- C. Neal Tate and Torbjorn Vallinder, *The Global Expansion of Judicial Power* (New York University Press, 1995), chapters 1 and 2, pp. 1-25 (reading will be posted on website)
- Maria Popova, *Politicized Justice in Emerging Democracies* (Cambridge University Press, 2012), pp. 14-26. available online [here](#)
- Staton, Jeffrey K. and William Moore. 2011. “Judicial Power in Domestic and International Politics” *International Organization* 65(3): 553-587, available online [here](#)

IN-CLASS MID-TERM ON OCTOBER 12th

PART II: COURTS AND POLITICS IN EUROPE

Determinants of power and independence of the ordinary judiciary (Oct 17, Oct 19)

- Lisa Hilbink, "The origins of positive judicial independence." *World Politics* 64, no. 4 (2012): 587-621, available online [here](#)
- Jose Toharia, “Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain,” *Law and Society Review*, 9:3 (Spring 1975), pp. 475-496, available online [here](#)
- Hendley, Kathryn. "Rewriting the rules of the game in Russia: the neglected issue of the demand for law." *E. Eur. Const. Rev.* 8 (1999): 89.
- Maria Popova, *Politicized Justice in Emerging Democracies*, pp. 26-44, available online [here](#).

Judicial anti-corruption campaigns (Oct 24, Oct 26)

- Donatella Della Porta and Alberto Vannucci, “Corruption and Anti-Corruption: The Political Defeat of ‘Clean Hands’ in Italy,” *West European Politics*, Vol. 30, Iss. 4 (September 2007), pp. 830-853, available online [here](#)
- Sberna, Salvatore, and Alberto Vannucci. ““It’s the politics, stupid!”. The politicization of anti-corruption in Italy.” *Crime, law and social change* 60, no. 5 (2013): 565-593, available online [here](#).
- Ceron, Andrea, and Marco Mainenti. "Toga Party: The political basis of judicial investigations against MPs in Italy (1983–2013)." *South European Society and Politics* 20, no. 2 (2015): 223-242, available online [here](#).

Film Screening and Discussion: My Way (2016) <https://www.netflix.com/ca/title/80148275>
The screening replaces Oct 31 lecture. You don’t need to sign up anywhere. Attendance is mandatory.

Courts in authoritarian regimes (Nov 2, Nov 7)

- Kathryn Hendley "'Telephone law' and the 'rule of law': The Russian Case." *Hague Journal on the Rule of Law* 1, no. 2 (2009): 241-262, available online [here](#)
- Maria Popova "Putin-Style 'Rule of Law' & the Prospects for Change." *Daedalus* 146, no. 2 (2017): 64-75, available online [here](#)

Film Screening and Discussion: Vlast (2010) <http://www.imdb.com/title/tt1568910/>

The screening replaces Nov 9 lecture. You don't need to sign up anywhere. Attendance is mandatory.

Sources of power and independence of constitutional courts (Nov 14, Nov 16)

- Lee Epstein, Olga Shvetsova and Jack Knight, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law & Society Review*, Vol. 35, No. 1 (2001), pp. 117-163, available online [here](#)
- Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press, 2004), pp. 31-100, reading will be posted on course website
- Alec Stone Sweet, "Where Judicial Politics Are Legislative Politics: The French Constitutional Council," *West European Politics*, Vol. 15, Iss. 3 (1992), pp. 29-49, available online [here](#)

Courts and regime type (Nov 21, Nov 23)

- Waldron, Jeremy. 2006. The Core of the Case against Judicial Review. *The Yale Law Journal*. 115:1346, available online [here](#)
- Scheppele, Kim Lane. "Democracy by judiciary. Or, why courts can be more democratic than parliaments." *Rethinking the rule of law after communism*(2005): 53-54, available online [here](#)
- Helmke, Gretchen, and Frances Rosenbluth. "Regimes and the rule of law: Judicial independence in comparative perspective." *Annual Review of Political Science* 12 (2009): 345-366, available online [here](#)
- Bánkuti, Miklós, Gábor Halmai, and Kim Lane Scheppele. "Disabling the constitution." *Journal of Democracy* 23.3 (2012): 138-146, available online [here](#)

European integration and the courts (Nov 28, Nov 30)

- Daniel Kelemen. "Suing for Europe: adversarial legalism and European governance." *Comparative Political Studies* 39.1 (2006): 101-127, available online [here](#)
- Stone Sweet, Alec. "The European Court of Justice and the judicialization of EU governance." (2010), available online [here](#)
- Helfer, Laurence R., and Erik Voeten. "International courts as agents of legal change: Evidence from LGBT rights in Europe." *International Organization* 68, no. 1 (2014): 77-110, available online [here](#)