

POLI 330: Law and Courts in Europe

POLI 330
Winter 2019
Currie Gym, 305/6

Tue/Thu 10:05-11:25

Prof. Maria Popova
3438 McTavish, Rm 301
Office Hrs: Tue 11:30am-
12:30pm; Thu 1-2:30pm or by
appt
maria.popova@mcgill.ca

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:

You can buy the textbook from Paragraphe Bookstore

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

Articles are available online through McGill library resources.

A few readings will be posted on MyCourses.

Course Obligations

Students will be evaluated on the basis of four measures:

- 1) 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 and will begin during the third week of classes. 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 judicial reforms and the EU's response. 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 MyCourses in early February.

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? (Jan 8)

The civil law legal tradition (Jan 10):

- 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 (Jan 15, Jan 17):

- 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 (Jan 22, Jan 24, Jan 29):

- Bron McKillop, "Anatomy of a French Murder Case," *American Journal of Comparative Law*, 45:3 (Summer 1997), pp. 527-583, 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)

Constitutional Courts (Jan 31, Feb 5)

- Louis Favoreu, "American and European Models of Constitutional Justice," in David S. Clark (ed.), Comparative and Private International Law: Essays in Honor of John Henry Merryman on his Seventieth Birthday (Berlin: Duncker & Humblot, 1990), pp. 105-120.
- 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](#)

Main concepts: power, activism, (in)dependence, and accountability (Feb 7)

- 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](#)

Determinants of power and independence of the ordinary judiciary (Feb 12, Feb 14)

- 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](#).

ECHR (Feb 19): Guest Lecture by Petra Guasti (Harvard University)

- 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](#)
- Guasti, Petra, David S. Siroky, and Daniel Stockemer. "Judgement without justice: on the efficacy of the European human rights regime." *Democratization* 24, no. 2 (2017): 226-243, available online [here](#)

ECJ (Feb 21)

- 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](#)
- Stone Sweet, Alec. "The European Court of Justice and the judicialization of EU governance." (2010), available online [here](#)

IN-CLASS MID-TERM ON February 26st

PART II: COURTS AND POLITICS IN EUROPE

Judicial anti-corruption campaigns (Feb 28)

- 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](#)
- 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](#).
- Popova, Maria, and Vincent Post. "Prosecuting high-level corruption in Eastern Europe." *Communist and Post-Communist Studies* 51, no. 3 (2018): 231-244, available online [here](#)

Sources of power and independence of constitutional courts (Mar 12, Mar 14)

- 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
- Vanberg, Georg. "Constitutional courts in comparative perspective: a theoretical assessment." *Annual Review of Political Science* 18 (2015): 167-185; available online [here](#)

Courts and democracy (Mar 19, Mar 21)

- 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](#)

Rule of law backsliding (Mar 26, Mar 28)

- Bánkuti, Miklós, Gábor Halmai, and Kim Lane Scheppele. "Disabling the constitution." *Journal of Democracy* 23.3 (2012): 138-146, available online [here](#)
- Kovács, Kriszta, and Kim Lane Scheppele. "The fragility of an independent judiciary: Lessons from Hungary and Poland—and the European Union." *Communist and Post-Communist Studies* 51, no. 3 (2018): 189-200. Available online [here](#)
- Sadurski, Wojciech. "Polish Constitutional Tribunal Under PiS: From an Activist Court, to a Paralysed Tribunal, to a Governmental Enabler." *Hague Journal on the Rule of Law*(2018): 1-22.

Courts in authoritarian regimes (Apr 2, Apr 4)

- 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](#)
- Isiksel, Turkuler. "Between text and context: Turkey's tradition of authoritarian constitutionalism." *International Journal of Constitutional Law* 11, no. 3 (2013): 702-726. [here](#)

Film Screening and Discussion on April 2: Vlast (2010)

<http://www.imdb.com/title/tt1568910/>

Film Screening and Discussion on April 4: The Trial: The State of Russia vs. Oleg Sentsov

<https://www.imdb.com/title/tt6695340/>

European integration and the courts (Apr 9, Apr 11)

- Daniel Kelemen. "Suing for Europe: adversarial legalism and European governance." *Comparative Political Studies* 39.1 (2006): 101-127, available online [here](#)
- Ackerman, Bruce. "Three Paths to Constitutionalism—and the Crisis of the European Union." *British Journal of Political Science* 45, no. 4 (2015): 705-714, available online [here](#)
- Halmai, Gábor. "The Possibility and Desirability of Rule of Law Conditionality." *Hague Journal on the Rule of Law* (2018): 1-18.