

## **Gov 365N: Comparative Legal Systems**

(Unique 39008)

Classroom: PAR 301, TTH 3:30-5:00

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This course carries out a comparative study of the nature of courts and law, their position in political systems, and their potential impact on society. The course is very theoretical, and organized around key themes rather than countries. The main themes of the course include the following: the political and regime logic giving rise to judicial power, competing theories about how courts make decisions, the meaning of judicial independence and the extent to which it can be found in different systems, and the implications of all this for the potential effectiveness of courts as a tool for social and political change.

Two modes of approaching the material will distinguish this class. First, we will not read pre-digested summaries or textbooks, but original social science research. We will engage critically with the readings, testing authors' claims against their evidence, challenging the logic of their arguments, and questioning their conclusions. Secondly, we will apply what we have learned to an imaginary country modeled roughly on Iraq's constitutional and ethno-political situation. The class will represent the various factions present in the Iraqi parliament, and will model debates about how the judiciary should be shaped in our imaginary country.

I expect that, in the course of this class, students will learn some facts about various judicial systems around the world, and the historical circumstances surrounding their development. More importantly, however, I want students to acquire the theoretical tools they need to understand how courts work and what their possibilities and limitations are, so that they can apply this theory to our own judicial system, and to events affecting judiciaries and legal systems around the world.

The readings are often quite challenging and many of them are quite long. In order to participate in the debates regarding institutional design you will need to be very familiar with the readings. The class will demand a significant amount of preparation each week. You should not take this class if you are not able or willing to spend time on it outside of class hours. Attendance is mandatory and part of your grade.

Given the nature of the class, this syllabus should be considered somewhat preliminary. We may add or subtract readings, if our constitutional design project seems to require it.

### **Class requirements:**

- 2 quizzes worth 10% each (20% total)
- A midterm worth 25%
- A final (May 17, 2-5) worth 30%
- Class participation, worth 25% total, calculated on the basis of
  - The quiz lottery results (details on the quiz lottery are below)

- A series of written assignments due throughout the semester. The assignments are graded on a simple 0-3 scale, where 0 = failed to turn anything in, or what was turned in was patently not a serious attempt to carry out the assignment, 1 = an attempt to meet the goals of the assignment that fails in some significant way, 2 = a good to excellent performance on the assignment, and 3 = a truly exceptional performance. You can get an A on the assignments if you get all 2s (the 3 is offered as an option for those who wish to apply extra effort to recover from one or more 0s or 1s, it will not put you over 100% on this portion of your grade). We do not offer make-ups for the assignments but will drop the lowest grade (and you can always shoot for a 3, to partially make up a 0).
- Participation in class debates, group projects, and other in-class activities. This has a system of rewards (announced at the time) for taking on prominent roles; and a subjective component, which I mostly use to reward students whose class participation stands out in some way, either because of its quantity or because of its quality.

Letter grades on all tests and the final grade will be assigned as in the table at right (but note that the grade on your final transcript only goes up to an A).

If your score rounds up to the lowest value in a grade range, you will receive the higher grade. If it rounds down, however, you will receive the lower grade. In a class this size there are always a number of scores that cluster around the cut-off points and we simply have to draw the line somewhere.

**The quiz lottery:** At the beginning of each class period, I will run the quiz lottery. The lottery generates random numbers between 0 and 10. If the last number is 4 or less, the quiz question will pop up, so that every class there is a 40% chance that your preparation will be tested.

The question is a single question designed to determine whether you have done the reading or not. The question is designed to be fairly obvious if you have done the reading, and to make it obvious if you have not. If you are absent, you get a 0, if you are present but don't know the answer, you earn a 1, if you answer accurately, you get a 2. At the end of the semester I will drop the two lowest scores and average the rest, then factor the result into your class participation grade. The quiz lottery seeks to ensure that you come to class prepared. Attendance is required and participation is expected, so they should be a part of your grade. In addition, the quiz lottery ensures that you do not fall too far behind in the readings, which, I find, is detrimental to your grade.

> or =	97	up to	100	=	A+
> or =	94	but <	97	=	A
> or =	90	but <	94	=	A-
> or =	87	but <	90	=	B+
> or =	84	but <	87	=	B
> or =	80	but <	84	=	B-
> or =	77	but <	80	=	C+
> or =	74	but <	77	=	C
> or =	70	but <	74	=	C-
> or =	67	but <	70	=	D+
> or =	64	but <	67	=	D
> or =	60	but <	64	=	D-
> or =	0	but <	60	=	F

**Students with disabilities:** Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>

### Required Books:

A course pack with the required readings is available from Jenn's (2200 Guadalupe). No books are required.

## Course schedule and reading assignments

Day	Date	Topic and required reading for the day in question
Tuesday	Jan 18	Introduction. No readings.
Thursday	Jan 20	<u>THE CREATION OF JUDICIAL POWER:</u> A. <u>Origins of courts in social and regime logic.</u>  Alec Stone Sweet (1999) on triad logic and the social origins of adjudication (35 pp)
Tuesday	Jan 25	Martin Shapiro, chapter 1 – what are courts and what are they good for? (pp.1- 56, 63-64).
Thursday	Jan 27	Shapiro, chapter 2 – Origins of the Common Law (pp.65-125)
Tuesday	Feb 1	<b>Turn in Assignment 1</b>  B. <u>Political Models to account for creation of judicial review:</u> 1. The "hegemonic preservation" theory (judicial review is a tool for hegemonic groups to insulate preferred policies from politics): Ceren Belge on the Turkish Constitutional Court's protection of Kemalist Republican principles
Thursday	Feb 3	2. The "credible commitment" theory: Tamir Moustafa argues that Egypt created independent courts to offer "credible commitment" to outside investors
Tuesday	Feb 8	<b>Quiz 1 (45 min). After the quiz we will assign students to their political parties.</b>
Thursday	Feb 10	3. The "insurance" theory: Tom Ginsburg's "pact" between equal parties in situations of uncertainty. Pp. 21-33, 247-263
Tuesday	Feb 15	<b>Electing officers and crafting constitutional proposals. Turn in Assignment 2. Debate on constitutional amendment to abolish/limit judicial review.</b>
Thursday	Feb 17	C. <u>Design of judicial institutions</u>  Brinks & Blass, on the basics of judicial design (2010) (posted on BB)
Tuesday	Feb 22	Selecting Selection Systems, Epstein, Knight and Shvetsova (2002)
Thursday	Feb 24	Design, continued. Read the Constitution of Iraq (on BB) and identify key provisions relating to the design of courts (note that not all of them are in the section on the judicial power). Read the United States Constitution (available in multiple places online) and do the same.
Tuesday	Mar 1	<b>Bring Assignment 3 to class. Debate and decision on the design of the courts:</b> Choices regarding access, effect of decisions, appointment and accountability, term length, and size of the court. Attend a session of the conference on constitutionalism (at UT Law School).
Thursday	Mar 3	<u>THE BEHAVIOR OF JUDGES</u> A. First, 3 models of judicial behavior:  1. Legal (idealist): Dworkin, Law's Empire, pp. 46-53, 225-238, 254-258.

Tuesday	Mar 8	Dworkin, continued
Thursday	Mar 10	<b>Midterm</b>
Tu-Thu	<b>Mar 15</b>	<b>Spring Break</b>
	<b>- 17</b>	
Tuesday	Mar 22	2. Policy preference a. Following majority (Dahl, Decision Making in a Democracy)
Thursday	Mar 24	b. Unconstrained (Segal and Spaeth) - No legal constraints ch.7  - Attitudes predict cases better pp.312-326, ch.10 (406-429), concl. (430-435)
Tuesday	Mar 29	3. Strategic Epstein and Knight, Choices, pp.1-21
Thursday	Mar 31	<b>Bring Assignment 4 to class. Selection and appointment of judges to our Supreme Court/Judicial Council (if any)</b>
Tuesday	Apr 5	C. Applying these models to "judicial independence." What is it? Brinks, Judicial Independence in Brazil and Argentina (sections I-IV)
Thursday	Apr 7	Judicial (in)dependence in Japan. O'Brien and Okoshi, ch.3 in Russell and O'Brien, Judicial Independence in the Age of Democracy
Tuesday	Apr 12	<b>Quiz 2 (45 minutes)</b>
Thursday	Apr 14	<b>Bring Assignment 5 to class. Filing cases with our Supreme Court, arguments and decision.</b>
Tuesday	Apr 19	<u>LAW AND SOCIAL CHANGE</u> (or, will the courts be able to carry out their assigned role?) 1. Interbranch relations - what can the courts get away with? Epstein, Knight and Shvetsova (2001), The Role of Constitutional Courts in a Democracy
Thursday	Apr 21	2. Courts are not independent engines of social change – what kind of support do they need?  a. Political support: Rosenberg, pp.1-36, 336-343.
Tuesday	Apr 26	b. Organized society support: Epp, pp.1-25 (theory), 197-205 (conclusion).
Thursday	Apr 28	c. The backing of at least one important political actor: Brinks and Gauri (2009)
Tuesday	May 3	<b>Bring assignment 6 to class. Discussion on the limits of using law for social change.</b>
Thursday	May 5	Last class day: Lessons learned and prognosis
<b>Tuesday</b>	<b>May 17</b>	<b>Final Exam (2:00-5:00 pm)</b>