

Comparative Judicial Systems
Political Science 6357 (POLS 6357-1 (26881))

Wednesday, 1:00 to 4:00 p.m.

Location: PGH 446

Professor: Lydia Tiede

Office Hours: W: 10 to 11:00 a.m. or by appointment
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The course surveys the variation of legal systems and courts across the world from a comparative perspective. Students will learn how constitutions, courts, and other legal actors vary and how these variations affect judicial decisions, independence, and the judiciary's interaction with other branches of government in lawmaking and enforcement.

Format

Course meetings are scheduled for each Wednesday of the semester. Generally, each week will introduce a new theme in comparative judicial systems. The reading list distinguishes between two categories of readings. *Required* readings will form the basis of the general seminar discussions and all students should read them carefully and critically before class. They are available on Canvas. *Recommended* readings are additional readings to help you with papers or dissertation ideas, comprehensive examination preparation, or general knowledge.

Course requirements:

(1) Preparation. Prepare for every class by reading and digesting the assigned material.

(2) Participation and reading presentations. Students are expected to come to class well prepared and ready to discuss all the *required* readings. In addition, I would suggest coming to class with notes for the assigned readings. Articles designated (Gen) are for your general reading and will help you understand the theme more in depth. Depending on class size, students will be expected to present one reading (Qualitative or Quantitative) every other class. Student presentations will vary by type as follows:

Qualitative articles (designated Qual) are articles which are more descriptive in nature. For students presenting these types of articles, the presentation should state a) what is the scholar's main research question and where does it fit into the debate in the literature?, b) what is the main argument or point of the article? c) what country, courts, and time period are being described? and d) what are the main criticisms of the argument or its evidence? Presenters of this type of paper should prepare 1 or 2 questions to pose to other students during their presentation.

Quantitative articles (designated Quant) usually have statistics or game theory in them. If you are not trained in this yet, you can present the article to your level of understanding, skipping over the methodological details, which others will help to fill in. Students presenting quantitative articles should discuss a) where the article fits into the main debate in the literature, b) the main question the article attempts to answer, c) the main theory and hypotheses, d) the manner of testing the theory, e) the results, and f) any methodological and substantive critiques.

For the presentations, please do not read from the article or extensive notes. Failure to attend class or participate will negatively influence your grade.

(3) Institutional design paper (4-6 pages; due September 30)

Choose a country which is not the United States or your country of birth or residence. Each student should research their own unique country (ie. no duplicates) and provide an analysis of this country's specific judicial system and institutions within the country's political structure and environment.

The paper should *focus on critiquing how the judicial institutions enhance or limit judges' individual independence as well as the independence of a court or the judiciary as a whole*. Besides the written paper, please provide a 1-page table or diagram of the judicial institutions you studied to make available to the entire class.

The table below provides some suggestions about how to organize your work. Students should avoid extensive descriptions of institutions as this appears on the one page hand-out you have prepared. I will not read beyond the 6 page limit. See general areas to discuss below. In class, you will present for not more than 2-minutes, the institution that you found affected judicial independence (positively or negatively) the most.

An Analytical Framework of courts and their relation to judicial independence

Level of analysis	General Institutions	Specific institutions
Judicial system	General configuration Legal Origin	Role of the supreme court and constitutional courts Structure of judiciary Type of law: civil, common law or other
	Jurisdiction	Unified vs. fragmented Administrative courts
	Access	Rules: standing (e.g. collective actions) Pressure groups, use of amicus briefs The "support structure" (ie. Public defender, legal aid) The public prosecution: institutional setting and organization
	Judicial prerogatives in the process	Accusatorial vs. inquisitorial
	Judicial review of legislation	Centralized vs. diffuse Abstract vs. concrete review A priori vs. a posteriori Constitutional judges: role definitions
Judges	Recruitment, selection method, training, discipline, removal	Political influence vs. technical criteria Bureaucratic vs. professional
	Definition of judicial role	Executor vs. activist Judicial associations International judicial networks

Political system	What type of political system does the court operate in	Regime type: democratic, authoritarian, semi-authoritarian, transitional Presidential/parliamentarian Party fragmentation
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(4) Literature review and introduction to research paper or law review type article and Presentation (Multiple due dates provided below)

Write one paper approximately 10 to 15 pages in length on an approved topic related to comparative judicial systems which seeks to answer a specific research question. I will not read beyond the 15 page limit. Students are strongly encouraged to see me to discuss possible topics. References will follow the citation style of the American Political Science Review (except law students should use Bluebook format and footnotes). The paper has both a literature review and research component. Make sure to include an introduction to the entire paper, succinctly stating the question to be researched, the main debates in the literature, and a summary of how you might approach the research. The papers will vary by type of student and years in the program as discussed below.

- 1) For the introduction:
 - What is the research question?
 - Why do we care?
 - Road map for the paper
- 2) For the literature review, each paper should include a summary of the main literature on the topic chosen and formatted so as to provide the following:
 - a) What is the main debate in the literature within which your question fits?
 - b) A description of the work that has been published on your topic or question of choice. This section should be organized to illuminate the differing perspectives of the literature on your specific research area and (possibly) show how those perspectives have emerged over time. Organize this section by themes. (*Important: Do not just list authors and summarize their work one after another*).
 - c) A critical evaluation of the strengths and weaknesses of the different perspectives. This section should also address the extent to which the different perspectives are complementary to or in conflict with each other.
 - d) An evaluation of what sort of future research would be most important to further our understanding of the specific topic you have chosen.

Please look at the Annual Review of Political Science, AJPS, JOP and APSR for good examples of literature reviews. Law students should look at law reviews.
- 3) For, the research introduction portion of the paper, you should address the issues listed below. Please note that the paper does not need to involve carrying out a quantitative analysis as the goal of the paper is to think through a complete research project.
 - a) How the research undertaken fits the general debate in the literature
 - b) One or two predictions based on the literature that you would like to research
 - c) Data needed to carry out the research. This could be data you would collect or existing data. If the data does not exist, please describe what your ideal data would look like. Be certain to discuss the construct validity of the data (ie. how does each variable measure the concept that you think is important to your research).
 - d) Brief summary of research approach or design if experimental or quasi-experimental
 - e) Anticipated challenges carrying out the research

All students will do parts 1 and 2. PhD students will do all of part 3. MA students will do part 3a to 3b. Law students will present an argument which is based on research in lieu of part 3. A more in-depth and sophisticated approach is expected from students who are not in their 1st year.

The paper benchmark deadlines are as follows:

- 1) October 21: Preliminary proposal of your research topic. In not more than one page (double spaced 12 point font) provide your research question, which encompasses a debate in the literature and a brief description of your research. Please discuss your topic with me prior to this due date.
- 2) December 2: Class presentations (about 15 minutes) as well as responses to questions.
- 3) December 9 at 1:00 p.m.: Final paper due and uploaded to turnit.in.com

Excuse absence policy

Please carefully read the [Graduate Excused Absence Policy](#) which allows excused absences for reasons including medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Please see this policy for rules on notification, documentation, etc.

Grading

Attendance, participation, preparation, paper presentations (20%)

Institutional design paper and mini-presentations (35%)

Research paper (35%)

*Your written work is graded on substance, depth of analysis, organization, grammar, succinctness, and persuasiveness.

Presentation of research (15-20 minutes)(10%)

Late assignments. *If due dates and times are not met, grades on assignments will be significantly reduced for each day late*

Policies on re-grading.

Requests for re-grading must be in writing and must be submitted within 1 week of the assignment being graded and returned to students.

Honesty, Plagiarism, and AI assisted writing

Academic honesty is taken very seriously in the class. I will use “turn it in” software to check for plagiarism and AI assisted writing for all graded work. *Plagiarism and AI assisted writing of any kind will result, in deductions in graded work and possible referral for further investigation.* Plagiarism consists of copying directly or indirectly ideas as well as direct quotations from other people’s work without proper citation (ie. quotation marks and page number. AI assisted writing is the use of AI, such as ChatGPT, for substantive ideas and writing and grammar assistance, such as Grammarly.

Required Books

Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge: Cambridge University Press.

Tushnet, Mark. 2018. *Comparative Constitutional Law, Advanced Introduction*. 2nd Edition. Cheltenham, UK: Edward Elgar.

Recommended Books. These are useful books that you may want to purchase especially if you are interested in the field or plan on researching or teaching in this area. You are not required to buy or read these.

Epstein, Lee and Andrew Martin. 2014. *An Introduction to Empirical Legal Research*. Oxford: Oxford University Press.

Garoupa Nuno, Rebecca Gill and Lydia Tiede, eds. 2021. *High Courts in Global Perspective: Evidence, Methodologies, and Findings*. Charlottesville, VA: University of Virginia Press.

Kritzer, Bert. 2021. *Advanced Introduction to Empirical Legal Research*. Cheltenham, UK: Edward Elgar.

Volcansek, Mary. 2019. *Comparative Judicial Politics*. Lanham, MD: Rowman and Littlefield.

Schedule

1. Some preliminaries (August 26)

2. Comparative Constitutions and Constitutionalism (brief background) (September 2)

What is a constitution and why does it matter? How do constitutions differ? Why do constitutions change? How difficult is it to change a constitution? What are the effects of constitutional changes? How do constitutional changes influence judicial independence and decision-making? (this final question is to ponder throughout the class.

Informal assignment:

Look at a few constitutions available at: <https://www.constituteproject.org/> click, constitutions and explore countries and topics. What do you notice? What topics interest you most?

Required

Albert, Richard. 2018. *Constitutional Amendment and Dismemberment*, 43 YALE J. INT'L L. Read pages 1-29. (Qual)

Besso, Michael. 2005. "Constitutional Amendment Procedures and the Informal Political Construction of Constitutions." *Journal of Politics* 67(1): 69-87. (Qual)

Cepeda Espinosa, Manuel, "Responsive Constitutionalism," *Annual Review of Law and Social Science* (Qual)

Tushnet (required book): Chapters 1, 2, and 6 (Gen)

Recommended

Carey, John. 2000. "Parchment, Equilibria, and Institutions." *Comparative Political Studies* 33(6): 735-761.

Corwin, Edward S. 1936. "The Constitution as Instrument and as Symbol." *American Political Science Review* 30(Dec.):1071-1085.

Elster, Jon. 1995. "Equal or Proportional? Arguing and Bargaining over the Senate at the Federal Convention." In *Explaining Social Institutions*. Eds. Jack Knight and Itai Sened Ann Arbor: University of Michigan Press.

Elster, Jon "Constitution-Making in Eastern Europe: Rebuilding the Boat in the Open Sea," *Public Administration* Vol.71, No.1/2 (Spring/Summer 1993): 169-217.

Elster, Jon. 1995 "Forces and Mechanisms in the Constitution-Making Process. *Duke Law Journal* 45:364-396.

Epp, Charles E. 1996. "Do Bills of Rights Matter? The Canadian Charter of Rights and Freedoms."

- American Political Science Review* 90(4):765-779.
- Eskridge, William N., and John Ferejohn. 2006. "Super-Statutes: The new American Constitutionalism." In *The Least Examined Branch: The Role of Legislatures in the Constitutional State*. Eds. Richard W. Bauman and Tsvi Kahana. New York: Cambridge University Press.
- Ginsburg, Tom, Zach Elkins, and James Melton. 2009. *The Endurance of National Constitutions*. Cambridge: Cambridge University Press.
- Hardin, Russell. 1989. "Why a Constitution?" In *The Federalists Papers and the New Institutionalism*. Eds. Bernard Grofman and Donald Wittman. New York: Agathon Press.
- Hirshl, Ran. 2005. "The Question of Case Selection in Comparative Constitutional Law." *The American Journal of Comparative Law*, 53(1): 125-155.
- Hirshl, Ran. 2014. *Comparative Matters: The Renaissance of Comparative Constitutional Law*. Oxford: Oxford University Press.
- Levinson, Sanford. 1995. "How Many Times Has the Constitution Been Amended." In *Responding to Imperfection: The Theory and Practice of Constitutional Amendments* Ed. Sanford Levinson. Princeton, NJ: Princeton University Press.
- Lutz, Donald S. 1994. "Toward a Theory of Constitutional Amendment" *American Political Science Review* 88(June): 355-370.
- Michelman, Frank I. 2006 "What Do Constitutions Do That Statutes Don't (Legally Speaking)?" In *The Least Examined Branch: The Role of Legislatures in the Constitutional State*. Eds. Richard W. Bauman and Tsvi Kahana. New York: Cambridge University Press.
- North, Douglas C., and Barry R. Weingast. 1989. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth Century England." *Journal of Economic History* 49(Dec.): 803-832.
- Riker, William H. 1980. "Implications from the Disequilibrium of Majority Rule for the Study of Institutions." *American Political Science Review* 74(2):432-446.
- Sartori, Giovanni. 1962. "Constitutionalism: A Preliminary Discussion." *American Political Science Review* 56(4):853-864.
- Strauss, David. 2001. "The Irrelevance of Constitutional Amendments." *Harvard Law Review* 114:1457-1505.
- Weingast B. 1997. *The Political Foundations of Democracy and the Rule of Law*. *APSR* 91(2): 245–63.

3. Judicial Independence (September 9)

What is judicial independence? Is Ferejohn's distinction between individual judges' and courts' independence useful to the study of courts outside of the U.S. (why or why not)? What are the main approaches to studying judicial independence? How do we measure judicial independence when what goes on in a judges' mind is generally unobservable? Does judicial independence fluctuate?

Required

- Ferejohn, John. 1999. "Independent Judges, Dependent Judiciary: Explaining Judicial Independence." *Southern California Law Review* 72: 353-384 (Qual)
- Hanssen, F. Andrew. 2004. "Learning about Judicial Independence: Institutional Change in the State Courts" *The Journal of Legal Studies*, 33 (June): 431–473 (Qual & Quant)
- Linzer, Drew and Staton, Jeff. 2015. "A Global Measure of Judicial Independence, 1948-2012." *Journal of Law and Courts*, 3(2) 223-256. (Quant).

Stefan Voigt, Jerg Gutmann, Lars P. Feld. 2015. "Economic Growth and Judicial Independence, A Dozen years on: Cross-Country Evidence using an Updated Set of indicators, *European Journal of Political Economy*, Volume 38, 197-211. Skim their 2003 piece for reference. (Quant).

Recommended

- Domingo, Pilar. 2000. "Judicial Independence: The Politics of the Supreme Court in Mexico. *J. Lat. American Studies* 32: 205-735.
- Flemming, Roy B., and Glen S. Krutz. 2002. "Selecting Appeals for Judicial Review in Canada: A Replication and Multivariate Test of American Hypotheses." *Journal of Politics* 64(2):232-248.
- Gabel, Matt. N.d. "The Politics of Decision-Making in the European Court of Justice: The System of Chambers and Distribution of Cases for Decision." Working Paper.
- Hall, Melinda Gann. 2001. "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform." *American Political Science Review* 95(2):315-330.
- Hammergren, Linn. 2002. "Do Judicial Councils Further Reform? Lessons from Latin America" Carnegie Endowment for Int'l Peace Rule of Law Series, Working Paper No. 28, , <http://www.carnegieendowment.org/files/wp28.pdf>.
- Hanssen, F. Andrew. 2004. "Is there a Politically Optimally Level of Judicial Independence." *American Economic Review* 94(June):712-729.
- Hausegger, Lori, and Stacia Haynie. 2003. "Judicial Decisionmaking and the use of Panels in the Canadian Supreme Court and the South African Appellate Division." *Law and Society Review* 37(3):635-658.
- Hoekstra, Valerie. 2005. "Competing Constraints: State Court Responses to Supreme Court Decisions and Legislation on Wages and Hours." *Political Research Quarterly* 58(2):317-328.
- McCubbins, Matthew, Roger Noll, and Barry Weingast. 2006. "Conditions for Judicial Independence." *Journal of Contemporary Legal issues* 15: 105. (On fluctuations of JI)
- Perez-Linan, Anibal, Barry Ames, and Mitchell A. Seligson. 2006. "Strategy, Careers, and Judicial Decisions: Lessons from the Bolivian Courts." *Journal of Politics* 68(2):284-295.
- Crowe, Justin. 2007. "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft." *Journal of Politics* 69(1):73-87.
- Ramseyer, J. Mark, and Eric B. Rasmussen. 1997. "Judicial Independence in a Civil Law Regime: The Evidence from Japan." *Journal of Law, Economics, and Organization* 13:341-355.
- Ramseyer, J. Mark. 1994. "The Puzzling Independence of Courts: A Comparative Approach." *Journal of Legal Studies* 23:721-747.
- Ramseyer, J. Mark, and Eric B. Rasmusen. 2001. "Why are Japanese Judges so Conservative in Politically Charged Cases." *American Political Science Review* 95(June):331-344. *Science* 46 (Oct.):699-716.
- Stephenson, Matthew. 2004. "Courts of Public Opinion: Government Accountability and Judicial Independence." *Journal of Law, Economics, and Organization* 20(2):379-399.
- Stone Sweet, Alec, and Margaret McCown. 2003. "Discretion and Precedent in European Law." In *Judicial Discretion in European Perspective* ed. Ola Wiklund. The Hague: Kluwer Law.

4. Judicial institutions: Selection (September 16)

How does judicial selection relate to judicial decision-making? Is selection the only determinant of judicial decision-making? How might the judges' term length with the selection method influence judicial decision-making and/or independence?

Required

Arrington, Nancy, et al. 2021. "Constitutional Reform and Gender Diversification on Peak Courts." *American Political Science Review* (Quant)

Moreno, Erika, Brian Crisp and Matthew Shugart. 2003. "The Accountability Deficit in Latin America." *Democratic Accountability in Latin America*. Ed. Scott Mainwaring and Christopher Welna. Oxford: Oxford University Press. (Qual)

Garoupa, Nuno, Marian Gili, Fernando Gomez Pomar. 2021. "Loyalty to the Party or Loyalty to the Party Leader: Evidence from the Spanish Constitutional Court." *International Review of Law & Economics*. (Quant.) Testing the findings in: Epstein, Lee, and Eric A. Posner. 2016. "Supreme Court Justices' Loyalty to the President." *The Journal of Legal Studies* 45: 401-36. (May need to skim the Epstein piece to prepare) (Quant)

Schwartz, Alex and Melanie Murchison. 2016. "Judicial Impartiality and Independence in Divided Societies: An Empirical Analysis of the Constitutional Court of Bosnia-Herzegovina." *Law & Society Review*, 50(4): 821. (Descriptive representation; Quant)

Tiede, Lydia. 2024. "Judicial Selection, *Oxford Handbook on Comparative Judicial Behavior* (eds. Lee Epstein, Gunnar Grendstad, Urk'sa Sadl, and Keren Weinshall)(Gen)

Recommended

Epstein, Lee, and Eric A. Posner. 2016. "Supreme Court Justices' Loyalty to the President." *The Journal of Legal Studies* 45: 401-36.

Epstein, Lee, Jack Knight, and Olga Shetsova. 2001. "Comparing Judicial Selection Systems." *William and Mary Bill of Rights Journal* 10.

Garoupa, N., Gili, M., Gómez Pomar, F., 2021. Mixed Judicial Selection and Constitutional Review: Evidence from Spain. *European Constitutional Law Review* 1–27.
doi:10.1017/s1574019621000110

Tiede, Lydia Brashear. 2020. "Mixed Judicial Selection and Constitutional Review." *Comparative Political Studies* 53(7): 1092-1123.

5. Judicial Institutions: The Power of Constitutional Review (September 23)

What is constitutional review? What are the different types of constitutional review? How do the institutional and social context of constitutional review shape whether and how constitutional courts protect constitutional rights in the face of legislative or presidential opposition? What are constitutional courts? Why are they created? How do they differ from supreme courts (powers, jurisdiction, appointment of judges, independence)? What is their role within a separation of powers system?

Required

Autheman, Violaine. 2004. "Global Lessons Learned: Constitutional Courts, Judicial Independence and the Rule of Law" (IFES Rule of Law White Paper). Washington, DC (Skim, just an overview of types of constitutional review). (Gen)

- Brouard, Sylvain, and Christoph Hönige. 2017. "Constitutional Courts as Veto Players: Lessons from the United States, France and Germany." *European Journal of Political Research* 56: 529-52. (Quant)
- Gabel, Matthew et al. 2024. "CompLaw: A Coding Protocol and Database for the Comparative Study of Judicial Review." *Journal of Law and Courts*: 1–27. (Quant intro of a data set)
- Ginsburg (required book), Chapters 2 and 3 (Gen)
- Ginsburg, Tom and Mila Versteeg. 2014. "Why Do Countries Adopt Constitutional Review?" *The Journal of Law, Economics, and Organization* 30(3): 587–622 (Quant)
- Herron, Erik S., and Kirk A. Randazzo. 2003. "The Relationship Between Independence and Judicial Review in Post-Communist Courts." *Journal of Politics* 65(May):422-438. (Quant)
- Tushnet (required book), Chapter 3 and section 5.2.4 (Courts as an imperfect solution (Gen)

Recommended

- Bagashka, Tanya and Tiede, Lydia, 2021. "The Influence of Procurator Generals in Constitutional Review: The Case of Bulgaria." *Journal of Law and Courts* 9, 189–214.
- Clark, Tom S., and Jeffrey K. Staton. 2015. "An Informational Model of Constitutional Jurisdiction." *The Journal of Politics* 77: 589-607.
- Ely, John Hart. *Democracy and Distrust*
- Epstein, Lee, Jack Knight and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law and Society Review* 35: 1
- Garoupa, Nuno. Constitutional Review. working paper
- Ginsburg, Tom and Mila Versteeg. 2013. "Why Do Countries Adopt Constitutional Review?". *Journal of Law, Economics, and Organization* 30: 587-622.
- Helmke, Gretchen, and Mitchell S. Sanders. 2006. "Modeling Motivations: A Method for Inferring Judicial Goals from Behavior." *The Journal of Politics* 68(4):867-878.
- Ríos-Figueroa, Julio. 2011. "Institutions for Constitutional Justice in Latin America." In *Courts in Latin America*. Ed. Gretchen Hemke and Julio Ríos-Figueroa. Cambridge: Cambridge University Press. (Qual)
- Rogers, James R., and Georg Vanberg. 2002. "Judicial Advisory Opinions and Legislative Outcomes in Comparative Perspective" *American Journal of Political Science* 46(2): 379-397.
- Shapiro, Martin and Alec Stone. *On Law, Politics, and Judicialization*. Oxford: Oxford University Press., ch. 3, 6.
- Shipan, Charles. 2000. "The Legislative Design of Judicial Review: A Formal Analysis." *Journal of Theoretical Politics* 12(3):269-305.
- Stone, Alec. *The Birth of Judicial Politics in France*. Parts I and III.
- Vanberg, Georg. 1998. "Abstract Judicial Review, Legislative Bargaining, and Policy Compromise." *Journal of Theoretical Politics* 10(3):299-326.
- Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45:346-361.
- Vanberg, Georg S. 2005. *The Politics of Constitutional Review in Germany*. Cambridge: Cambridge University Press.

Ward, Dalston G. and Matthew Gabel. 2019. Judicial Review Timing and Legislative Posturing: Reconsidering the Moral Hazard Problem. *The Journal of Politics* 81: 681–685.

6. Judicial Independence and political context (September 30)

DUE: Institutional Design paper. Mini presentation for each student (1-2 minutes)

How does political context influence judicial independence? What is the logic behind the fragmentation theory? Do you think it is a good determinant of judicial independence? Why or why not?

Required

Epperly, Brad. 2017. Political competition and de facto judicial independence in non-democracies *European Journal of Political Research* 56: 279–300 (Quant)

Hilbink, Lisa. 2012. "The Origins of Positive Judicial Independence." *World Politics* 64: 587-621 (Qual).

Iaryczower, Matias, Pablo Spiller, and Mariano Tommasi. 2002. "Judicial Independence in Unstable Environments, Argentina 1953-1998." *American Journal of Political* (Quant)

Leiras, Marcelo, Guadalupe Tuñón, and Agustina Giraudy. 2015. "Who Wants an Independent Court? Political Competition and Supreme Court Autonomy in the Argentine Provinces (1984–2008)." *The Journal of Politics* 77: 175-87. (Quant)

Recommended

Aydın, Aylin, 2013. "Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition." *Law & Society Review* 47, 105–134

Epperly, Brad. 2013. "The Provision of Insurance? Judicial Independence and the Post-tenure Fate of Leaders." *Journal of Law and Courts* 1 (2): 247–78.

Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina Under Dictatorship and Democracy." *APSR* 96(2): 291-303 (Strategic)

McCubbins, Matthew, Roger Noll, and Barry Weingast. 2006. "Conditions for Judicial Independence." *Journal of Contemporary Legal Issues* 15: 105.

Melton, James, and Tom Ginsburg. 2014. "Does De Jure Judicial Independence Really Matter?". *Journal of Law and Courts* 2: 187-217.

Pérez-Liñán, Aníbal, Nicolás Schmidt, and Daniela Vairo. 2019. "Presidential Hegemony and Democratic Backsliding in Latin America, 1925–2016." *Democratization* 26: 606-25.

Stephenson, M.C. 2003. "When the *Devil Turns*: The Political Foundations of Independent Judicial Review." *Journal of Legal Studies* 32: 59–88.

Tiede, Lydia. 2006. "Judicial Independence: Often Cited, Rarely Understood." *Journal of Contemporary Legal Issues* 15: 129-61.

Vanberg, Georg. 2015. "Constitutional Courts in Comparative Perspective: A Theoretical Assessment. *Annual Review of Political Science*. (Qual)

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

7. Judicial Behavior (October 7)

What are the main theories of judicial behavior? How do their underlying assumptions vary? How and to what extent do these theories, mainly developed to explain the U.S. Supreme Court or other American courts, apply to courts outside the United States?

Required:

Driscoll, Amanda. 2021. "Comparative Studies of Judicial Behavior" in Garoupa Nuno, Rebecca Gill and Lydia Tiede, eds. 2021. *High Courts in Global Perspective: Evidence, Methodologies, and Findings*. Charlottesville, VA: University of Virginia Press. (Gen)

Epstein, Lee, and Jack Knight. 2013. "Reconsidering Judicial Preferences." *Annual Review of Political Science* 16: 11-31 (preferences) (Qual)

Fischman, Joshua. 2015. "Interpreting Circuit Court Voting Patterns: A Social Interactions Framework," *The Journal of Law, Economics, and Organization*, 31(4): 808-842.

Kornhauser, Lewis. 2021. "Understanding Adjudication" in Garoupa Nuno, Rebecca Gill and Lydia Tiede, eds. 2021. *High Courts in Global Perspective: Evidence, Methodologies, and Findings*. Charlottesville, VA: University of Virginia Press. (Gen/Qual)

Gill, Rebecca and Zorn, Christopher. 2021. "Overcoming the Barriers to Comparative Judicial Behavior Research." *High Courts in Global Perspective: Evidence, Methodologies, and Findings*. Charlottesville, VA: University of Virginia Press. (Gen)

Grossman, Guy, Oren Gazal-Ayal, Samuel D. Pimentel, and Jeremy M. Weinstein. 2016. "Descriptive Representation and Judicial Outcomes in Multiethnic Societies." *American Journal of Political Science* 60: 44-69 (Quant)

Recommended:

Different approaches (Attitudinal, legal, and strategic/methods for analyzing judges' preferences

Boyd, C, Epstein, L. and Martin, A. 2010 "Untangling the Causal Effects of Sex on Judging." *JOP* 54(2): 389-411.

Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring the Preferences of State Supreme Court Judges," *JOP* 62: 387-413.

Carruba, Clifford, et al. 2008. "Judicial Behavior under Political Constraints: Evidence from the European Court of Justice." *APSR* 102:4: 435

Clark, Tom and Benjamin Lauderdale. 2010. "Locating Supreme Court Opinions in Doctrine Space." *AJPS* 54(4) 87-890.

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington: CQ Press.

Epstein, Lee, Andrew Martin, Jeffrey Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics and Organization* 23(2): 303

Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4 (June): 261-276. (Legal)

Garoupa, Nuno, Veronica, Grembi. 2011. Judging under Political Pressure: An Empirical Analysis of Constitutional Review Voting in the Spanish Constitutional Court" *Journal of Law, Economics and Organization*

Gely, Rafael and Pablo T. Spiller. 1992. "The Political Economy of Supreme Court Constitutional Decisions: The Case of Roosevelt's Court-Packing Plan." *International Review of Law and Economics* 12 (March): 45-67

Giles, Michael W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3): 623-41.

Lauderdale, Benjamin and Tom Clark. 2012. "The Supreme Court's Many Median Justices." *APSR* 106(4): 847-866.

Martin, Andrew D. and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999." *Political Analysis*. 10:134-53.

Peress, Michael. 2009. "Small Chamber Ideal Point Estimation." *Political Analysis*

- Pritchett, C. Herman. 1948. *The Roosevelt Court*. New York: Macmillan. (Note: Pritchett is thought of as one of the founding fathers of the attitudinal model). Pages 1-46
- Scherer, Nancy. 2004. "Blacks on the Bench," *Political Science Quarterly* 119 (Winter 2004-05), 655-675.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press. Chapters 1,2, 3(86-99), 8(312-325)
- Songer, Donald and Siripurapu, Julia. 2009. "The Unanimous Decisions of the Supreme Court of Canada as a Test of the Attitudinal Model." *Canadian Journal of Political Science* 42(1): 65-92. (Attitudinal)(Quant)
- Zorn, Christopher and Jennifer Bowie. 2010. "Ideological Influences on Decision Making in the Federal Judicial Hierarchy: An Empirical Assessment." *Journal of Politics* 72(4): 1212-1221.
- Individual and group decision making: Dissent /concurrence and panel effects
- Bentsen, Henrik. 2018. "Court Leadership, Agenda Transformation, and Judicial Dissent." *Journal of Law and Courts* Spring: 189-213.
- Brace, Paul Brace and Melinda Gann Hall. 1993. "Integrated Models of Judicial Dissent." *JOP* 55: 914-935.
- Caldeira, Gregory, Zorn, Christopher. 1998. "Of Time and Consensual Norms in the Supreme Court." *American Journal of Political Science* 42(3): 874-902.
- Cohen, Jonathan Matthew Cohen, *Inside Appellate Courts*, ch. 5 (2002).
- Epstein, Lee, Landes, William, Posner, Richard. 2011. "Why (and When) Judges Dissent: A Theoretical and Empirical Analysis." *Journal of Legal Analysis* 3(1): 101-137.
- Fischman, Joshua. 2011. "Estimating Preferences of Circuit Judges: A Model of Consensus Voting," *JLEO*, 781-809.
- Fischman, J. B. 2013. "Interpreting Circuit Court Voting Patterns: A Social Interactions Framework." *Journal of Law, Economics, and Organization* 31: 808-42.
- Garoupa, Nuno & Tom Ginsburg. 2012. "Building Reputation in Constitutional Courts: Party and Judicial Politics." *Arizona Journal of International and Comparative Law*
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57: 167-83.
- Laffranque, Julia. 2003. "Dissenting Opinion and Judicial Independence." *Juridica International*, VIII: 162-172
- López-Laborda, Julio, Fernando Rodrigo, and Eduardo Sanz-Arcega. 2019. "Consensus and Dissent in the Resolution of Conflicts of Competence by the Spanish Constitutional Court: The Role of Federalism and Ideology." *European Journal of Law and Economics*.
- Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck., *Crafting Law on the Supreme Court: The Collegial Game* (Cambridge University Press 2000), ch. 1.

8. Judicial empowerment (October 14)

Why do governments empower courts? How do motivations for empowering courts differ for democracies versus autocracies or semi-autocracies? How are Ginsburg and Hirschl's theories of judicial empowerment similar? Different? How is judicial power conceptualized and measured?

Required:

- Brinks, Daniel M., and Abby Blass. 2017. "Rethinking Judicial Empowerment: The New Foundations of Constitutional Justice." *International Journal of Constitutional Law* 15: 296-331 (Qual)
- Finkel, Jodi. 2005. "Judicial Reform as Insurance Policy: Mexico in the 1990s." *Latin American Politics and Society* 47(1):87 – 113. (Qual)
- Ginsburg (required book) Introduction and Chapter 1 (Gen)
- Hirshl, Ran. 2000. "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions." *Law & Social Inquiry*, Vol. 25, No. 1 (Winter, 2000), pp. 91-149 (Qual)
- Tew, Yvonne. 2024. "Strategic Judicial Empowerment." *The American Journal of Comparative Law*

Recommended

- C. Neal Tate & Torbjörn Vallinder, *The Global Expansion of Judicial Power: The Judicialization of Politics*, in *The Global Expansion of Judicial Power 1* (C. Neal Tate & Torbjörn Vallinder eds., 1995).
- Hirschl, Ran. 2004. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press.
- Clifford Carrubba. 2009. *A Model of the Endogenous Development of Judicial Institutions in Federal and International Systems*, 71 J. Pol. 55 (2009)
- Finkel, Jodi. 2008. *Judicial Reform as Political Insurance: Argentina, Peru, and Mexico in the 1990s*. University of Notre Dame Press
- Staton, Jeffrey. 2010. *Judicial Power and Strategic Communication in Mexico*. Cambridge University Press
- Barros, Robert. 2002. *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution*. Cambridge University Press.
- Ginsburg, Tom and Moustafa, Tamir. 2008. *Rule by Law: The Politics of Authoritarian Regimes*. Cambridge (other chapters)

9. Courts and Democratization/Democratic Process (October 21)

DUE: One page research paper topic description

What role do courts play in the process of democratization? Do they affect consolidation and the development of legitimacy? How do courts and their role in law-making affect democratic processes and behavior in democracies? How does the democratization process influence courts?

Required

Ariotti, M., Dietrich, S. & Wright, J. 2022. "Foreign Aid and Judicial Autonomy." *Rev Int Organ* 17: 691–715 (2022)

Driscoll, Amanda, and Michael J. Nelson. 2015. "Judicial Selection and the Democratization of Justice: Lessons from the Bolivian Elections." *Journal of Law and Courts* Spring: 115-48. (Quant)

Ginsburg (required book), Chapter 4 (Gen)

Sanchez, Arianna, Beatriz Magaloni and Eric Magar. 2011. "Legalist versus Interpretivist: The Supreme Court and the Democratic Transition in Mexico. In *Courts in Latin America*. Ed. Gretchen Hemke and Julio Ríos-Figueroa. Cambridge: Cambridge University Press. (Quant)

VonDoepp, Peter. 2006. "Politics and Judicial Assertiveness in Emerging Democracies: High Court Behavior in Malawi and Zambia." *Political Research Quarterly*, 59(3): 389-399 (Quant)

Recommended

- Epstein, Lee, Jack Knight, and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law and Society Review* 35:117-163.
- Faundez, Julio. 2007. *Democratization, Development, and Legality: Chile, 1831-1973*. New York: Palgrave MacMillan.
- Hilbink, Lisa. 2007. *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile*. Cambridge:

- Larkins, Christopher. 1996. "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis." *American Journal of Comparative Law* 44: 605-26.
- Smithy, Shanon Ishiyama, and John Ishiyama. 2002. "Judicial Activism in Post-Communist Politics." *Law and Society Review* 36(4):719-742.
- Staton, Jeff. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50(1): 98-112.

10. Democratic and judicial backsliding (October 28)

Why are courts attacked in backsliding democracies? Does it make sense to study the concept of judicial backsliding apart from democratic backsliding or is it the same thing? What is the core concern regarding governments that attack courts? How might the democratic transition literature influence the literature on backsliding? What is the relation between the literature on empowering courts and the literature here?

Required

- Aydin-Cakir, A. (2023). The varying effect of court-curbing: evidence from Hungary and Poland. *Journal of European Public Policy*, 31(5), 1179–1205.
- Gibler, Douglas M., and Kirk A. Randazzo. 2011. "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding." *American Journal of Political Science* 55: 696-709. (Quant)
- Helmke G, Jeong Y, Kim J-EC. Insecure Institutions: A Survivalist Theory of Judicial Manipulation in Latin America. *Journal of Law and Courts*. 2022;10(2):265-285. doi:10.1086/716430
- Nalepa, Monika. 2021. "Transitional Justice and Authoritarian Backsliding." *Constitutional Political Economy* 32: 278–300. (Quant)
- Scheppele, Kim. 2018. "Autocratic Legalism." *The University of Chicago Law Review* 85: 545-83. (Qual.)
- Helmke, Gretchen et al. *Journal of Law and Courts*, forthcoming (Quant)

Recommended

- Ginsburg, Tom, and Aziz Z. Huq. 2019. *How to Save a Constitutional Democracy*. Chicago: University of Chicago Press.
- Haggard, Stephan and Robert Kaufman. 2021. *Backsliding: Democratic Regress in the Contemporary World*. Cambridge: Cambridge University Press. (note: has a lot on the rule of law)
- Haggard, Stephan and Lydia Tiede. 2024. Judicial Backsliding: a Guide to Collapsing the Separation of Powers. *Democratization*, 1–25. <https://doi.org/10.1080/13510347.2024.2381092>
- Helmke, Gretchen. 2010. "The Origins of Institutional Crises in Latin America." *American Journal of Political Science* 54: 737-50.
- Pérez-Liñán, Aníbal, Nicolás Schmidt, and Daniela Vairo. 2019. "Presidential Hegemony and Democratic Backsliding in Latin America, 1925–2016." *Democratization* 26: 606-25.
- Tiede, Lydia B. 2024. Rebuilding the Rule of Law in the Era of Democratic Backsliding. *Hague Journal on the Rule Law* (2024). <https://doi.org/10.1007/s40803-024-00238-z>
- Zakaria, Fareed. 1997. "The Rise of Illiberal Democracy." *Foreign Affairs* 76: 22 (November-December).

11. International Courts and Tribunals and international law (November 4), part 1

What is international law and what role and influence do international courts have in enforcing and interpreting that law? What are the powers and jurisdiction of international courts? How do the decisions of international courts affect domestic law? What influences judicial decision-making on international courts? Are these influences different than those discussed on domestic courts?

Required

Blauberger, Michael and Dorte Sindbjerg Martinsen. 2020. "The Court of Justice in Times of Politicisation: 'Law as a Mask and Shield' Revisited." *Journal of European Public Policy* (Qual.)

Carrubba, Cliff, Matthew Gabel and Charles Henkla. 2008. "Judicial Behavior under Political Constraints." *American Political Science Review* 102(4): 435-52. (Quant)

Naurin, Daniel, and Øyvind Stiansen. 2019. "The Dilemma of Dissent: Split Judicial Decisions and Compliance with Judgments from the International Human Rights Judiciary." *Comparative Political Studies* first online (Quant)

Tushnet (required book), section 4.5 (The role of international law in domestic constitutional law)

Voeten, Erik. 2008. "The Impartiality of International Judges: Evidence from the European Court of Human Rights" *American Political Science Review* (Quant)

Recommended

Alter, Karen. 1998. "Who Are the 'Masters of the Treaty'? European Government and the European Court of Justice." *International Organization* 52(1):121-148.

Carrubba, Clifford and Matthew Gabel. N.d. "Do Governments Sway European Court of Justice Decision-making? Evidence from Government Court Briefs." Working Paper.

Carrubba, Clifford, J., and Lacey Murrah. 2005. "Legal Integration and Use of the Preliminary Ruling Process in the European Union." *International Organization* 59:399-418.

Carrubba, Cliff. 2005. "Courts and Compliance in International Regulatory Regimes." *Journal of Politics* 67(3):669-689.

Conant, Lisa. A. 2002. *Justice Contained: Law and Politics in the European Union* Ithaca, NY: Cornell University Press., chapters 1-3.

Garrett, G., D. Kelemen and D. H. Schulz. 1998. "The European Court of Justice, National Governments, and Legal Integration in the European Union." *International Organization* 52(1):149-176.

Gibson, James L., and Gregory A. Caldeira. 1998. "Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis." *British Journal of Political Science* 28:63-91.

Mattli, W. and A. Slaughter. 1998. "Revisiting the European Court of Justice." *International Organization* 52(1):177-210.

Meron, Theodor. 2005. "Judicial Independence and Impartiality in International Criminal Courts." *The American Journal of International Law* 99 (April): 359-369.

Posner, Eric, A. and Miguel F. P. de Figueiredo. 2005. "Is the International Court of Justice Biased." *The Journal of Legal Studies* 34:599-628.

Shapiro, Martin and Alec Stone. 1994. "The New Constitutional Politics of Europe." *Comparative Political Studies* 26:397-420.

- Stone Sweet, Alec and Thomas Brunell. 1998. "Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community." *American Political Science Review* 92 (1): 63-82.
- Tallberg, Jonas. 2000. "Supranational Influence in EU Enforcement: the ECJ and the Principle of State Liability." *Journal of European Public Policy* 7(1):104-121.
- Tallberg, Jonas. 2002. "Paths to Compliance: Enforcement, Management, and the European Union." *International Organization* 56 (3):609-643.

12. International Courts and Tribunals and International Law, part 2 (November 11) **TBD**

13. Courts, public opinion and survey experiments (November 18)

How does public opinion influence the work of courts? Much of the public opinion literature deals with the concept of judicial legitimacy: what does this concept mean and is it useful? How might you measure it? How does judicial behavior influence public support for courts? What are the costs and benefits of using survey experiments?

Required

- Bartels, B.L., Kramon, E., 2020. Does Public Support for Judicial Power Depend on Who is in Political Power? Testing a Theory of Partisan Alignment in Africa." *American Political Science Review* 114, 144–163. (Quant)
- Carlin, Ryan, et al. 2022. "Public Reactions to Noncompliance with Judicial Orders," *American Political Science Review* 116(1): 265-282
- Driscoll, Amanda and Michael Nelson. 2023. "Costs of Court Curbing." *The Journal of Politics* 85:2, 609-624 (Note: this line of research is being expanded by these authors to other Latin American countries).
- Hilbink L, Salas V, Gallagher JK, Restrepo Sanín J. 2021. "Why People Turn to Institutions They Detest: Institutional Mistrust and Justice System Engagement in Uneven Democratic States." *Comparative Political Studies*. June 2021. (Qual)
- Krehbiel, Jay. 2019. "Elections, Public Awareness and the Efficacy of Constitutional Review." *Journal of Law and Courts* (Quant)
- Smyth, Russell. 2021. Public Opinion and Legitimacy. Chapter prepared for Lee Epstein, Gunnar Grendstad, Urksa Sadl, and Keren Weinshall (Eds). *The Oxford Handbook of Comparative Judicial Behavior*. (Gen)
- Stiansen, Øyvind, Daniel Naurin, Asimina Michailidou and Adriana Purzycka. 2024. "Enforcing the Rule of Law in the EU: Effects on Public Opinion, *Journal of European Public Policy*

Recommended:

- Clark, Tom S., and Jonathan P. Kastellec. 2015. "Source Cues and Public Support for the Supreme Court." *American Politics Research* 43 (3): 504–35.
- Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92 (2): 343–58.
- Kapiszewski, Diana, and Matthew M. Taylor. 2013. "Compliance: Conceptualizing, Measuring, and Explaining Adherence to Judicial Rulings." *Law & Social Inquiry* 38 (4): 803–35.

Staton, Jeffrey K. 2010. *Judicial Power and Strategic Communication in Mexico*. New York: Cambridge University Press.

Vanberg, Georg. 2005. *The Politics of Constitutional Review in Germany*. New York: Cambridge University Press.

15. Presentations (December 2)

Final paper due (December 9 no later than 1:00 p.m., uploaded to Turnitin.com)

Other areas which may be of interest:

❖ Comparing Common Law and Civil Law Systems

What is common law? How did it emerge and develop, and how does it affect political and economic life? How does the common law influence judicial decision-making? What is civil law? How does it differ from common law, and how does it influence social, economic, and political life? Although we focus only on the common law and civil law tradition in this course, be aware there are many other traditions. What are the underlying assumptions of these systems? How do they differ? How does civil law influence judicial decision-making.

Common Law

Required

Dam, Kenneth. 2006. Legal Institutions, Legal Origins and Governance. In *The Law-Growth Nexus: The Rule of Law and Economic Development*. Washington, DC: Brookings (Chapter 2) (Qual)

Nicola Gennaioli, and Andrei Shleifer. 2007. "The Evolution of Common Law." *Journal of Political Economy* 115: 43-68. (Model)

Shapiro, Martin and Alec Stone Sweet. 2002. *On Law, Politics and Judicialization*. Oxford: Oxford University Press (Chapter 2) (Qual)

Sellers, Mortimer N.S. 2006. "The Doctrine of Precedent in the United States of America." *American Journal of Comparative Law* 54:67-88 (Qual)

Recommended

Cappalli, Richard B. 1998. "At the Point of Decision: The Common Law's Advantage Over the Civil Law." *Temple International and Comparative Law Journal*

Goodhart, Arthur L. 1930. "Case law in England and America." *Cornell Law Quarterly* 15(2):173-193.

La Porta, Rafael, and Robert W. Vishny. 1998. "Law and Finance." *Journal of Political Economy* 106(6):1113-1155.

Rubin. 1977 "Why is the Common Law Efficient." *Journal of Legal Studies* 6(1):51-63.

Civil Law

Required

Merryman, John, and Perez-Perdomo. 2007. *The Civil Law Tradition*. Stanford, CA: Stanford University Press (read chapters 1-9, 12, 15, 19, 20)(Qual)

Djankov, Simeon, et al. . 2003. "Courts." *The Quarterly Journal of Economics* (Quant)

Shapiro, Martin. 1980. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press (Chapter 3) (Qual)

Recommended

Algero, Mary G. 2005. "The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation." *Louisiana Law Review* 65:775-822.

Berkowitz, Daniel, and Karen Clay. 2005. "American Civil Law Origins: Implications for State Constitutions." *American Law and Economics Review* 7(1):62-84.

Beck, Thorsten, Asli Demirguc-Kunt, and Ross Levine. 2002. "Law and Finance: Why Does Legal Origin Matter." Policy Research Working Paper. The World Bank.

Gardella, Anna, and Luca G. Radicati Di Brozolo. 2003. "Civil Law, Common Law and Market Integration: The EC Approach to Conflicts of Jurisdiction." *American Journal of Comparative Law* 51(3):611-637.

Oehler, Wolfgang. 1997. "Working with a Code: Is there a Difference Between Civil Law and Common Law People." *University of Illinois Law Review* 711-718.

❖ **Rule of law and the law and development movement**

How is the rule of law defined? Measured? What are the various dimensions of the rule of law? How is the rule of law related to economic development? How is the rule of law related to democracy? Political stability?

Required

Barro, Robert. 2000. "Rule of law, Democracy, and Economic Performance." Chapter 2 of Index of Economic Freedom (Quant)

Djankov, Simeon, et al. . 2003. "Courts." *The Quarterly Journal of Economics* (Quant)

Fukuyama, Francis. 2011. "Transitions to the Rule of Law." *Journal of Democracy* 21(1): 33-44. (Qual)

Helmke, G., & Rosenbluth, R. 2009. "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective". *Annual Review of Political Science*, 12: 345–366. (Qual)

Magaloni, Beatriz. 2003. "Authoritarianism, Democracy and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico" in Scott Mainwaring and Christopher Welna, eds., *Democratic Accountability in Latin America*. Cambridge: University of Cambridge Press. (Quant)

Recommended (Rule of Law and economic development)

Haggard, Stephan and Lydia Tiede. 2011. The Rule of Law and Economic Growth: Where Are We? *World Development*, 39(5): 673-85

Haggard et al. 2008. "The Rule of Law and Economic Development" *Annual Review of Political Science* 11: 205-34

O'Donnell, Guillermo. 2004. "Why the Rule of Law Matters." *Journal of Democracy* 15(4): 32-46.

- Skanning, S. (2009). Measuring the Rule of Law.” *Political Research Quarterly*, 63(2), 449–460.
- Voigt, Stefan, Jerg Gutmann, and Lars P. Feld. 2015. "Economic Growth and Judicial Independence, a Dozen Years On: Cross-Country Evidence Using an Updated Set of Indicators." *European Journal of Political Economy* 38: 197-211. (updated from Feld L, Voigt S. 2003. Economic Growth and Judicial Independence: Cross-country Evidence Using a New Set of Indicators. *European Journal of Political Economy* 19(3):497–527) (Quant)
- Related Recommended (legal transplantation and globalization, not discussed in class)
- What explains why and when legal ideas, concepts, and rules diffuse from one place to another? How do national constitutional and legal norms in one country (or subunit of a country) affect those in another?*
- Berkowitz, Daniel, Katharina Pistor, and Jean-Francois Richard. 2002. “The Transplant Effect.” *American Journal of Comparative Law* 51(1):163-204.
- Boehmke, Frederick J., and Richard Witmer. 2004. “Disentangling Diffusion: The Effects of Social Learning and Economic Competition on State Policy Innovation and Expansion.” *Political Research Quarterly* 57(1):39-51.
- Ewald, William. 1995. “The Logic of Legal Transplants.” *Amer. J. of Comparative Law* 43:489- 510.
- Gianmaria, Ajani. 1995. “By Chance and Prestige: Legal Transplants in Russia and Eastern Europe.” *American Journal of Comparative Law* 43:93-118.
- Keleman, Dan, and Eric C. Sibbitt. 2004. “The Globalization of American Law.” *International Organization* 58(1):103-136
- Mooney, Christopher Z. 2001. “Modeling Regional Effects on State Policy Diffusion.” *Political Research Quarterly*. 54(1):103-124.
- Twining, William. 2005. “Social Science and the Diffusion of Law.” *Journal of Law and Society* 32(2):203-240.
- Watson. Alan. “Aspects of Reception of Law.” *American Journal of Comparative Law*. 44:335-352.

❖ Courts, NGOS and the amicus process

How do amicus briefs and civil society advocacy influence judicial decisions? Are the courts more likely to file some interests more than others? Does the influence of amicus and civil society in the legal system make the judicial system more responsive and transparent? How might NGOS influence the public?

Required

- Cichowski, R.A. 2016. “The European Court of Human Rights, Amicus Curiae, and Violence against Women,” *Law & Society Review* 50(4): 890–919
- Collins, Paul and L. McCarthy. 2017. “Friends and Interveners: Interest Group Litigation in a Comparative Context,” *Journal of Law and Courts* 5, no. 1 (2017): 55–80.
- Korolczuk, E. 2023. “Challenging Civil Society Elites in Poland: The Dynamics and Strategies of Civil Society Actors. *East European Politics and Societies*, 37(3): 880-902.
- Langer, Máximo. 2007. “Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery. *The American Journal of Comparative Law* 55(4): 617-676.
- Viljoen, F. and A. K. Abebe, “*Amicus Curiae* Participation Before Regional Human Rights Bodies in

Africa,” *Journal of African Law* 58, no. 1 (2014): 22–44

Recommended

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

Hazelton, Morgan and Rachael Hinkle. 2024. *Persuading the Supreme Court: The Significance of Briefs in Judicial Decision-making*. University Press of Kansas

UNIVERSITY OF HOUSTON SYLLABUS LANGUAGE: 2026-2027

University Policies and Student Support Resources

Mental Health and Wellness Resources

The University of Houston has a number of resources to support students’ mental health and overall wellness, including [CoogsCARE](#) and the [UH Go App](#). [UH Counseling and Psychological Services \(CAPS\)](#) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off- campus. For assistance visit [uh.edu/caps](#), call 713-743-5454, or visit a [Let’s Talk](#) location in-person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

Need Support Now? If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat [988lifeline.org](#).

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office (known at UH as the Equal Opportunity Services office or "EOS"). Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the UH [Title IX/Sexual Misconduct Resources page](#). Please note that you may also report concerns of discrimination based on your protected class identity to EOS.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing

barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

The [Student Health Center](#) offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The [A.D. Bruce Religion Center](#) offers spiritual support and a variety of programs centered on well-being.

The [Center for Student Advocacy and Community \(CSAC\)](#) is where you can go if you need help but don't know where to start. CSAC is a "home away from home" and serves as a [resource hub](#) to help you get the resources needed to support academic and personal success. Through our [Cougar Cupboard](#), all students can get up to 30 lbs of FREE groceries a week. Additionally, we provide 1:1 appointments to get you connected to on- and off-campus resources related to essential needs, safety and advocacy, and more. The [Cougar Closet](#) is a registered student organization advised by our office and offers free clothes to students so that all Coogs can feel good in their fit. We also host a series of cultural and community-based events that foster social connection and helps the cougar community come closer together. Visit the CSAC homepage or follow us on Instagram: @uh_CSAC and @uhcupbrd. YOU belong here.

Cougar Parent and Family Engagement Office

This office, under the Dean of Students Office (<https://www.uh.edu/dos/>), coordinates resources for Pregnant and Parenting Students (<https://www.uh.edu/dos/parenting-students/>), Parents and Family members of UH students (<https://www.uh.edu/dos/parents/>), and Sexual Misconduct Support Services (<https://www.uh.edu/dos/sexual-misconduct-support-services/>). A description of available support and resources are provided on the respective web pages. The Cougar Parent and Family Engagement Office is located in Student Center South, room B12.

Academic Honesty Policy

High ethical standards are critical to the integrity of any institution, and bear directly on the ultimate value of conferred degrees. All UH community members are expected to contribute to an atmosphere of the highest possible ethical standards. Maintaining such an atmosphere requires that any instances of academic dishonesty be recognized and addressed. The [UH Academic Honesty Policy](#) is designed to handle those instances with fairness to all parties involved: the students, the instructors, and the University itself. All students and faculty of the University of Houston are responsible for being familiar with this policy.

Excused Absence Policy

Regular class attendance, participation, and engagement in coursework are important contributors to student success. Absences may be excused as provided in the University of Houston [Undergraduate Excused Absence Policy](#) and [Graduate Excused Absence Policy](#) for reasons including medical illness of student or close relative, death of a close family member, legal or government proceeding that a student is obligated to attend, recognized professional and educational activities where the student is presenting, and University-sponsored activity or athletic competition. Under these policies, students with excused absences will be provided with an opportunity to make up any quiz, exam or other work that contributes to the course grade or a satisfactory alternative. Please read the full policy for details regarding reasons for excused absences, the approval process, and extended absences. Additional policies address absences related to [military service](#), [religious holy days](#), [pregnancy and related conditions](#), and [disability](#).

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Justin Dart, Jr. Student Accessibility Center](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.