

Gov 365S: Comparative Legal Systems

(Unique 37575)

Classroom: WCP 1.402, Thursdays 11:00-12:30

Professor: Daniel Brinks
danbrinks@austin.utexas.edu

Office: Batts Hall 2.116

Office hours by Zoom: Mondays, 11:00 – 12:30 am; Thursdays, 1:00-2:30 pm. Sign-up sheet on Canvas

Professor: Joseph Cozza
joseph.cozza@utexas.edu

Office hours by Zoom: Tuesdays, 10:30-12:00; Thursdays, 2:30-4:00. Sign-up sheet on Canvas

TA: Alex Claycomb

claycombalex@gmail.com

Office hours by Zoom: Wednesdays, 9:00-12:00 and by appointment. Sign-up sheet on Canvas

Course Description:

Judicial politics is the study of how political dynamics shape courts and how courts, in turn, shape politics and society. This course is an introduction to the comparative study of judicial politics, designed for students who want to learn more about the role of courts in the modern state and to better understand their growing importance as political actors. We will engage with different theories to compare and contrast how law, politics and judiciaries interact around the world. To help us understand and apply the readings, we will role play a constituent assembly and design our own court.

Participating in this course will help you understand questions such as the following: What is the political logic that gives rise to judicial power? How do different courts make decisions? How do different political contexts (democracy, authoritarianism) shape the way courts make decisions? Why are some judiciaries more independent than others? Can courts bring about social and political change?

The readings will help you develop an understanding of some of the key theories and debates in the field of comparative judicial politics. We will put the theories we engage with in dialogue with events and facts about judicial systems in the United States, Europe, Latin America and Africa. Over the course of the semester we will apply what we learn about courts and politics in a collective class project: we will re-design the US Supreme Court. The class will represent different political factions that are fictionalized versions of those present in our politics today. We will prepare for and hold debates to determine the characteristics of our new supreme court, then we will appoint justices to that court and submit some cases for decision.

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, and we may need to add some readings about what is happening in our country or others, if there are significant developments there.

You should know before we begin that 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.

Class structure:

1. We will hold in-person classes every Thursday; I expect that the Thursday sessions will be primarily devoted to discussions of the readings or to debates related to our simulation.

If you must miss class for some reason:

On the days we are in class we will be using the Lectures Online recording system. This system records the audio and video material presented in class for you to review after class. Links for the recordings will appear in the Lectures Online tab on the Canvas page for this class. You will find this tab along the left side navigation in Canvas. Unfortunately, Lectures Online is not very good at capturing class discussions, so this will be less useful than actually being in class.

To review a recording, simply click on the Lectures Online navigation tab and follow the instructions presented to you on the page. You can learn more about how to use the Lectures Online system at <http://sites.la.utexas.edu/lecturesonline/>.

Please note that your professor decides when and for how long recordings will be available for you to review.

You can find additional information about the lecture capture system at: <http://sites.la.utexas.edu/lecturesonline/>.

2. There will be a series of recorded discussions of the readings – something like a lecture – covering all the readings for the week, for you to watch at different times throughout the week.

3. At the end of every week, you will be asked to reflect in writing on the readings for the week, and to post your reflections on our Canvas site.

Tips for Success

To help you not fall behind, I have a suggested schedule for you to follow throughout the week. You can find it in more detail in the Modules for each week. Essentially, we will follow the same pattern for every reading:

- The readings will be broken up into sections, with each section followed by a video discussion of that section of the reading. You should alternate reading and listening, through each reading.
- When you finish each reading, you will fill out a comprehension check to help you review.
- You will complete each module (which may have two readings) with a Reflection posting.
- At the end of each syllabus section dealing with a particular topic, you will complete a Review Quiz.

Everything related to a module (comprehension checks, reflections and review quizzes) must be completed before the beginning of the following module – this is a hard deadline.

Breaking down this pattern into daily sessions should not take up a large part of your day and will help you stay on track. If you find another schedule works better for you, you may follow it, but be careful not to fall behind. You may find it helpful to read ahead on weekends, especially those weeks when we have two articles to read, to make it easier to stay current.

The following general expectations will help you be successful in this course.

- Log into the course daily to check the course content, announcements, and new materials.

- Keep up with the weekly readings and assignments. Students who keep up with the weekly reading and assignments tend to do much better in an online course than those who do not.
- Please do not miss an assignment deadline. Refer to the course schedule/calendar to ensure that you submit assignments on time.
- Remember that academic integrity is important, and especially so in an online course. Click [here](#) for the UT honor code.

Class requirements, grading:

- Comprehension checks for each of the readings worth 10% total
- One reflection posting for each module worth 10% total
 - The comprehension checks and reflections 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 these assignments if you get all 2s (the 3 is offered as an extra credit option for those who wish to apply extra effort to recover from one or more 0s or 1s, but it will not put you over 100% on this portion of your grade). We do not offer extensions or make-ups for these assignments but will drop the lowest grade on each (and you can always aim for a 3, to partially make up a 0).
- Four assignments worth 2.5% each (10% total)
- Six review quizzes worth 5% each (30% total)
- A take home, open book midterm worth 20%
- A take home, open book final worth 20%
- Extra credit for 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 using pluses and minuses.

Required Books:

All the required readings will be available from the course's Canvas site. No books are required.

Disclosures:

Please see disclosures relating to various issues, at the end of this syllabus.

Course schedule and reading assignments

Week	Day	Topic and required reading for the day in question
1	Thursday	Introduction to the course. In-class exercise in dispute resolution. Please watch the introductory video before class
8/26-8/28	Friday	Work through all the preliminary materials in the Welcome module; review the syllabus; post answers to the “Where have you been?” prompt; complete Academic Integrity Agreement (you may also want to get a jump on next week’s readings; those are probably our longest)
2	Monday	<p><u>Read about the creation of judicial power:</u> A. <u>Origins of courts in social and regime logic.</u></p> <p>1. Stone Sweet, Alec. 1999. "Judicialization and the Construction of Governance." <i>Comparative Political Studies</i> 32 (2):147-84 (35 pp) – Read only the theory section (pp. 147 through 164). Watch first lecture video on Stone Sweet’s Judicialization article.</p> <p>Now read the section on the French Fifth Republic (pp. 172-end) of Stone Sweet’s article. Watch second video on Stone Sweet’s Judicialization article.</p>
8/31-9/4	Tuesday	<p>Post reflections on Stone Sweet and our Orphan Annie exercise; complete comprehension check</p> <p>Begin the second reading, through Part 1 on the Logic of the Triad in Dispute Resolution:</p>
	Wednesday	<p>2. Shapiro, Martin. 1981. <i>Courts: A Comparative and Political Analysis</i>. Chicago and London: University of Chicago Press, chapter 1 – what are courts and what are they good for? (the pages posted are excerpts – read what is not crossed out). Be sure to pause at the end of each of the three parts (they are marked with “end of part x”) to watch the related video. We will read parts 2 and 3 next week.</p>
	Thursday	Attend class, ready for discussion of Stone Sweet and Shapiro
	Friday	Post reflection
3	Monday	Labor Day
9/7-9/11	Tuesday	Finish reading Shapiro, Parts 2 and 3, and watching related videos.
	Wednesday	complete comprehension check
	Thursday	Attend class, ready for discussion of Shapiro on social control and lawmaking, and hegemonic preservation and the Turkish court

	Friday	Post reflection; complete Review Quiz 1 .
		Begin reading about our next topic:
	Monday	<p>B. <u>Political Models to account for creation of judicial review:</u></p> <p>1. The "hegemonic preservation" theory</p> <p>Read Belge, Ceren. 2006. "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey." <i>Law & Society Review</i> 40 (3):653-92 and watch associated videos.</p>
9/14-9/18	Tuesday	Finish reading and complete comprehension check
		2. The "credible commitment" theory
	Wednesday	Read Moustafa, Tamir. 2003. "Law versus the State: The Judicialization of Politics in Egypt." <i>Law & Social Inquiry</i> 28 (4):883-930, and watch associated videos on Moustafa's article. Complete comprehension check
	Thursday	Attend class, ready for discussion of credible commitment and insurance
	Friday	Post reflection on Belge and Moustafa readings
5	Monday	<p>3. The "insurance" theory:</p> <p>Read Ginsburg, Tom. 2003. <i>Judicial Review in New Democracies: Constitutional Courts in Asian Cases</i>. Cambridge: Cambridge U. Press. Excerpts: Ch.1 and Conclusion, and watch associated videos</p>
9/21-9/25	Tuesday	Post reflection on models that account for creation of judicial review; Complete Review Quiz 2
	Wednesday	Submit Assignment 1 on judicial review by 11:59 pm 9/23
	Thursday	Electing officers and crafting constitutional proposals. Debate on constitutional amendment to abolish/limit judicial review.
	Friday	Post reflection
6		C. <u>Begin reading about the design of judicial institutions</u>
	Monday	Brinks, Daniel M., and Abby Blass. 2017. "Rethinking Judicial Empowerment: The new foundations of constitutional justice." <i>International Journal of Constitutional Law</i> 15 (2):296-331.
9/28-10/2	Tuesday	Continue reading and watching videos on design
	Wednesday	Read the Constitution of the United States (available in multiple places online) and identify key provisions relating to the design of courts (note that not all of them are in the section on the judicial power).

Go to ConstituteProject.org, pick the constitution of one other country, and identify key provisions relating to the design of courts

Thursday **Come in prepared to discuss elements of judicial design, in general and as applied to the US.**

Friday **Post reflection.**

7	Monday	Continue reading and watching videos on design Begin conferring on your party's preferred design: Choices regarding access, effect of decisions, appointment and accountability, term length, and size of the court. Submit Assignment 2 by 11:59 pm 10/5
10/5-10/9	Tuesday	Watch video lecture on design; continue conferring with co-partisans
	Wednesday	Watch video lecture on design; continue conferring with co-partisans
	Thursday	Debate and decision on the design of the courts: Choices regarding access, effect of decisions, appointment and accountability, term length, and size of the court.
	Friday	Review Quiz 3. Post reflection.
8	Monday	Negotiations over court design
10/12-10/16	Tuesday	Negotiations over court design; watch video on design
	Wednesday	Review design work and theory.
	Thursday	Finalize debate
	Friday	Midterm
9	Monday	<u>D. What motivates and constrains judges?</u> 1. First, 3 models of judicial behavior: Watch video of debate between Justices Breyer and Scalia on constitutional interpretation and what should guide judges in their decision-making
10/19-10/23	Tuesday	a. Legal (idealist): Dworkin, Ronald. 1986. <i>Law's Empire</i> . Cambridge: The Belknap Press of Harvard U. Press, pp. 46-53. Video.
	Wednesday	Dworkin, pp. 225-238, 254-258. Video.
	Thursday	Come to class prepared to discuss the way in which you think law constrains judges in their decision-making

	Friday	Post reflection
10	Monday	b. Policy preference i. Following majority: Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." <i>Journal of Public Law</i> VI (2):279-95
10/26-10/30	Tuesday	Finish Dahl, and watch video lecture
	Wednesday	ii. What if law is really the least important influence on judges? Segal, Jeffrey. Chapter 2. "Judicial Behavior."
	Thursday	Come to class prepared to discuss the alternative view – that law doesn't matter at all
	Friday	Post reflection
11	Monday	c. Strategic Read Epstein, Lee, and Jack Knight. 1998. <i>The Choices Justices Make</i> . Washington, D.C.: Congressional Quarterly Press, pp.1-21
11/2-11/6	Tuesday	Watch video
	Wednesday	Finish video on the effect of appointments on US Federal Courts and complete Comprehension check
	Thursday	Come to class prepared to discuss these three models (legal, attitudinal, strategic) of judicial behavior
	Friday	Post reflection. Complete Review Quiz 4 .
12	Monday	Read through the biographies of judges, and identify and rank the judges you think your group should support (their biographies can be found in the document that is posted with the assignment). Submit Assignment 3 by 11:59 pm 11/9 Parties begin work on Extra Credit Assignment.
11/9-11/13	Tuesday	2. Contemporary interbranch relations – state and federal Clark, Tom. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." <i>Am. Journal of Political Science</i> 53:971-989.
	Wednesday	Watch video lecture
	Thursday	Selection and appointment of judges to our Supreme Court/Judicial Council (if any).
	Friday	Post reflection.

13	Monday	Complete Extra Credit Assignment. Individual students begin work on Oral Argument assignment.
11/16-11/20	Tuesday	<u>E. LAW AND SOCIAL CHANGE</u> (or, will the courts be able to carry out their assigned role?) 1. Interbranch relations and establishing constitutionalism - Epstein, Lee, Jack Knight, and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." <i>Law & Society Review</i> 35 (1):117-64
	Wednesday	Watch video. Submit Assignment 4, oral arguments, by 11:59 pm 11/18
	Thursday	Filing cases with our Supreme Court, oral arguments.
	Friday	Post reflection
14	Monday	2. Courts and dismantling constitutional democracy – David Landau and Rosalind Dixon. 2020. "Abusive Judicial Review: Courts Against Democracy." 53 UC Davis Law Review 1313 (2020)(selections).
11/23-11/24	Tuesday	Post reflection
11/25-11/28	Wednesday-Friday	Thanksgiving Break
15 -Begin online only instruction	Monday	3. Courts as engines of social change – what kind of support do they need? Rosenberg, Gerald N. 2008. <i>The hollow hope: can courts bring about social change?</i> 2nd ed. Chicago: University of Chicago Press, pp.1-36, 336-343.
11/30-12/4	Tuesday	Post reflection and complete Review Quiz 6.
	Wednesday	Work on last assignment.
	Thursday	Virtual discussion of last Assignment
	Friday	Post last reflection

**December
10-12, 14-
16 are
exam days**

Final exam is a take home with a week to complete it.

Disclosures and requirements

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/>

Safety and Class Participation/Masks: We will all need to make some adjustments in order to benefit from in-person classroom interactions in a safe and healthy manner. Our best protections against spreading COVID-19 on campus are masks (defined as cloth face coverings) and staying home if you are showing symptoms. Therefore, for the benefit of everyone, this means that all students are required to follow these important rules.

- **Every student must wear a cloth face-covering properly in class and in all campus buildings at all times.**
- **Students are encouraged to participate in documented daily symptom screening.** This means that each class day in which on-campus activities occur, students must upload certification from the symptom tracking app and confirm that they completed their symptom screening for that day to Canvas. Students should not upload the results of that screening, just the certificate that they completed it. If the symptom tracking app recommends that the student isolate rather than coming to class, then students must not return to class until cleared by a medical professional.
- Information regarding safety protocols with and without symptoms can be found here: https://healthyhorns.utexas.edu/coronavirus_exposure_action_chart.html.

If a student is not wearing a cloth face-covering properly in the classroom (or any UT building), that student must leave the classroom (and building). If the student refuses to wear a cloth face covering, class will be dismissed for the remainder of the period, and the student will be subject to disciplinary action as set forth in the university's Institutional Rules/General Conduct 11-404(a)(3). Students who have a condition that precludes the wearing of a cloth face covering must follow the procedures for [obtaining an accommodation](#) working with [Services for Students with Disabilities](#).

COVID Caveats: To help keep everyone at UT and in our community safe, it is critical that students report COVID-19 symptoms and testing, regardless of test results, to University Health Services (<https://www.healthyhorns.utexas.edu/>) as soon as possible. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this University Health Services link: https://healthyhorns.utexas.edu/coronavirus_exposure_action_chart.html.

Sharing of Course Materials is Prohibited: No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

Class Recordings: Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.