

POL 492-2392: Comparative Law and Social Change

Fall 2024

Instructor: Assistant Professor Filiz Kahraman filiz.kahraman@utoronto.ca

Meeting Times and Place: Thursdays 3-5pm, LA 341

Office Hours:

- Office hours on Thursdays 10-11am via Zoom (see Quercus for details) or in person @ Munk at Trinity, Room 318 N (1 Devonshire Pl)
- Email Prof. Kahraman to request a meeting at a different time

Course Description

This seminar focuses on the question of how legal institutions and legal ideologies influence efforts to produce or prevent social change. We will examine what happens when individuals and groups attempt to use law or courts to obtain benefits or protection from government. Some parts of the course will focus on court-initiated action while other parts will focus on social actions “from below” (social movements), but overall the course will analyze the interactions between state legal institutions and social groups. Discussion will focus on both empirical studies of such efforts and the broader theoretical frameworks scholars have used to understand the power and possibilities of law. Law will be analyzed in terms of particular state institutions (especially but not exclusively courts), professional elites (lawyers, legal academics), cultural norms (rights discourses, legal consciousness), and international institutional frameworks for protecting human rights.

Course Requirements

Assessment:

- Class participation 30%
- Weekly posts 15%
- 1st In-class test 30% (Oct 10)
- 2nd In-class test 25% (Nov 28)

Class Participation

This is a seminar, therefore, your participation constitutes an essential part of this class. You are expected to complete **all assigned readings for that day before coming to class** and participate in class discussions. You should make thoughtful and meaningful contributions to class discussions and demonstrate a clear understanding of the readings. Please contact me immediately, if a circumstance arises that prevents you from attending class on a particular day and use the [Absence Declaration tool in ACORN](#).

Weekly Posts

Prior to that week's class, I'd like you to write a brief post (approx. 250-350 words) about your thoughts on that week's readings. You can think of these posts like a weekly journal.

- You are expected to share your critical reflections on that week's readings.
- You can draw on comparisons with the previous weeks' readings, if you like.
- You can write in a colloquial form and include things like "I could not make sense of this concept of X in this reading, I hope we can talk more about this in class."
- You can respond to someone else's discussion post, if you like.
- You are welcome to post a discussion question, if you like.

I will use these posts to structure the class discussion for that week. I hope that you will use these posts to include your genuine thoughts about the readings (rather than the thoughts of an AI, which will be superficial at best or erroneous at worst). The impact of these posts on your final grade is small, but its impact on our class discussion can be significant.

The discussion forum will be available for nine weeks throughout the semester. Only eight of your highest marks will contribute to your final score.

The discussion posts are due at noon (12pm) on Thursdays, before that week's scheduled class. This means that your first discussion question & post for Week 2 is due on September 12, at noon.

Term Tests

There will be two in-class tests. The test questions and the assignment prompt require your knowledge of anything covered in class (readings+discussions) up until that time. The tests will include short answer and essay questions.

If you are a student registered with the AccessAbility services and need accommodations for these assignments, please contact Prof. Kahraman as soon as possible.

University and Class Policies

Submission of Assignments

Late assignments for reasons within your control will receive a **10% penalty per day**, including weekends. The penalty will run from the day the assignment was due until the day it is submitted to the instructor via Quercus. Assignments that are more than six (6) days late will not be accepted. Please contact me immediately with the following information, if an emergency circumstance arises that prevents you from completing an assignment:

- Indicate the original due date, and any extensions previously granted to you
- Explain why you were unable to complete the work
- Propose a reasonable plan for when you will complete the work, including a new deadline. The expectation is that the extension is proportionate to the delay that prevented you from completing your work on time - for example, a three-day extension is probably appropriate for a three-day illness.
- Use the [Absence Declaration tool in ACORN](#)

In order not to be considered late, assignments must be submitted via Quercus by the due date listed on the syllabus. ***You are expected to keep a back-up, hard copy of your assignment in case it is lost.*** I strongly recommend that you check Quercus again a few minutes after you make a submission in order to make sure that your assignment is posted. I will not accommodate technology failure for legitimate grounds to grant an extension.

Emergency circumstances beyond the student's control include:

- Illness or injury
- Disability (see Accessibility section below)
- Other unplanned circumstances entirely beyond the student's control (e.g., a court subpoena, a funeral, a car accident).

If [religious observances](#) conflict with your class duties, let me know at the beginning of the semester, since you will be aware of such dates upfront.

Reasons such as having other exams/papers, pre-purchased plane tickets, family plans (unless critical, such as death of an immediate family member), attending a wedding, lack of preparation, technology failure, or too many commitments are not considered to be beyond a student's control and will not be accommodated.

Communication with the Instructor

Many questions about ideas and materials in the course or personal matters are far more effectively addressed in face-to-face exchanges, so use discretion in choosing the format for communication. I will endeavor to respond promptly (within 48 hours) to your emails during

weekdays, but actual response times will vary. You should remember to contact me via your utoronto email address.

There may be times when you are unable to complete course work on time due to non-medical reasons. If you have concerns, speak to me about these issues as early as possible. It is also a very good idea to speak with an academic advisor.

Zoom

Please create a Zoom account with your university email address (<https://utoronto.zoom.us>), as only authenticated users will be able to join class sessions (if required) and Zoom office hours.

Classroom Manners

A successful learning experience depends on proper displays of respect for everyone in the class. As such, all cell phones and other electronic devices should be put away during seminars. Laptops/tablets are permitted *only* for note-taking or checking assigned readings; inappropriate computer use can distract from the learning environment and will not be permitted. Please arrive in class on time in order not to disrupt the class.

Academic Integrity

I will strictly enforce the University of Toronto's [Code of Behavior on Academic Matters](#), including the policy on plagiarism.

Normally, students will be required to submit their course essays to the University's plagiarism detection tool for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the tool's reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of this tool are described on the Centre for Teaching Support & Innovation web site (<https://uoft.me/pdt-faq>).

Use of Generative AI

The use of generative artificial intelligence tools and apps, including ChatGPT, Gemini, Microsoft Copilot and other AI writing and coding assistants, is **strictly prohibited in completing assignments in this course**. The knowing use of generative artificial intelligence tools for the completion of, or to support the completion of, an examination, term test, discussion posts, or any other form of academic assessment, may be considered an academic offense in this course.

- Representing as one's own an idea, or expression of an idea, that was AI-generated may be considered an academic offense in this course.
- Students may not copy or paraphrase from any generative artificial intelligence applications, for the purpose of completing assignments in this course.

You may use generative artificial intelligence tools for **researching and practicing the concepts** in this course. You will not be punished for doing so, however, I should note that

information gathered through these tools may include erroneous or biased information, so you should be extremely careful if you decide to use these tools. Ultimately, you are responsible for the accuracy of information you gather through these sources. I would recommend you consult the class material or myself (Prof. Kahraman), if you have any questions about concepts you learn in this class or need help with research.

This course policy is designed to promote your learning and intellectual development and to help you reach course learning outcomes.

Accessibility

Students with diverse learning styles and needs are welcome in this course. In particular, if you have a disability/health consideration that may require accommodations, please feel free to approach me and/or Accessibility Services as soon as possible. Accessibility staff are available by appointment to assess specific needs, provide referrals and arrange appropriate accommodations. Please call 416-978-8060 or email accessibility.services@utoronto.ca. The sooner you let us know your needs the quicker we can assist you in achieving your learning goals in this course. *If you have a letter from the accessibility center, please set up an appointment with me to discuss appropriate accommodations.*

***** See next page for course outline*****

Course Outline

Part I. What is Law?

Week 1 (September 5): Introduction

Week 2 (September 12): Individual Rights Claiming and Rights Discourse

What is law? Where do we find it? How does law shape everyday social and political interaction? How does law construct equality and difference? What are some of the assumptions regarding the “litigiousness” of the American society? How do the experiences of women in Japan (Merry & Stern) compare to the anti-litigiousness in Sanders County (Engel)? How much do rights and law really matter in American society and beyond?

- McCann, M., Haltom, W. and Bloom, A., 2001. Java Jive: Genealogy of a Juridical Icon. *U. Miami L. Rev.*, 56, p.113-178.
- Engel, David. 1984. “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injury in an American Community” *Law & Society Rev.* 18 (4): 551-582
- Merry, Sally Engle, and Rachel Stern. 2005. "The female inheritance movement in Hong Kong: Theorizing the local/global interface." *Current Anthropology* 46, no. 3: 387-409.

Recommended

- Galanter, M., 1983. Reading the landscape of disputes: What we know and don't know (and think we know) about our allegedly contentious and litigious society. *Ucla L. Rev.*, 31, p.4.
- Engel, D.M., 2005. Globalization and the decline of legal consciousness: Torts, ghosts, and karma in Thailand. *Law & Social Inquiry*, 30(3), pp.469-514.
- Cover, R.M., 1983. Foreword: Nomos and narrative. *Harv. L. Rev.*, 97, p.4.
- Bourdieu, P., 1986. The force of law: Toward a sociology of the juridical field. *Hastings LJ*, 38, p.805.
- Merry, Sally Engle. 1990. *Getting justice and getting even: Legal consciousness among working-class Americans*. University of Chicago Press.
- Ewick, Patricia, and Susan Silbey, 1998. *The common place of law: Stories from everyday life*. University of Chicago Press.
- Zemans, F.K., 1983. Legal mobilization: The neglected role of the law in the political system. *American Political Science Review*, 77(3), pp.690-703.
- Galanter, M. 1983. “The Radiating Effects of Courts” in *From Empirical Theories About Courts*, Keith O Boyum and Lynn Mather, ed. Pp. 117-142

Part II. Why do activists engage in legal mobilization?

Week 3 (September 19): Legal Support Structures

What constitutes a “rights revolution” according to Epp? What types of factors influence the variable capacity of groups or movements to mobilize law effectively on behalf of their rights? Do you think these factors would hold in other contexts beyond the US?

- Epp, C. R. *The Rights Revolution*. Chps 1, 2,3, and, 4

Recommended

- Galanter, M., 1974. Why the "haves" come out ahead: Speculations on the limits of legal change. *Law & society review*, 9(1), pp.95-160.
- Scheingold, S. and Sarat, A., 2004. *Something to believe in: Politics, professionalism and cause lawyering*. Stanford University Press.

Week 4 (September 26): Structural and Agential Factors

Why do activists turn to litigation? What are political opportunity structures? What are legal opportunity structures? What is the role of agential factors, according to Vanhala? How does Wilsons' findings compare to Epp's findings from the previous week?

- Hilson, C., 2002. New social movements: the role of legal opportunity. *Journal of European Public Policy*, 9(2), pp.238-255.
- Vanhala, Lisa. 2018. Is legal mobilization for the birds? Legal opportunity structures and environmental nongovernmental organizations in the United Kingdom, France, Finland, and Italy. *Comparative Political Studies*, 51(3), pp.380-412.
- Wilson, Bruce M. 2009. Institutional Reform and Rights Revolutions in Latin America: The Cases of Costa Rica and Colombia. *Journal of Politics in Latin America* 1 (2): 59–85.

Recommended

- Vanhala, L., 2010. *Making rights a reality?: Disability rights activists and legal mobilization*. Cambridge University Press.
- Pavone, T., 2022. *The Ghostwriters: Lawyers and the Politics Behind the Judicial Construction of Europe*. Cambridge University Press.

Week 5 (October 3): Strategic and Ideational Factors

Why does judicialization happen? When do we see courts becoming more involved in politics? What are the conditions under which courts are more likely to become resources for activists? What are the ways in which the judicial empowerment process that Belge describes incorporate elements of the ideational factors and strategic behavior approaches described by the other authors?

- Moustafa, T. (2003). Law versus the state: the judicialization of politics in Egypt. *Law & Social Inquiry*, 28(4), 883-930.
- Hilbink, L. (2008). "Agents of anti-politics: courts in Pinochet's Chile." in Ginsburg and Moustafa. eds. *Rule by law: the politics of courts in authoritarian regimes*. Cambridge University Press.
- Belge, C., (2006). Friends of the Court: The Republican alliance and selective activism of the Constitutional Court of Turkey. *Law & Society Review*, 40(3), pp.653-692.

Recommended

- Moustafa, T., 2007. *The struggle for constitutional power: law, politics, and economic development in Egypt*. Cambridge University Press.
- Hilbink, L., 2007. *Judges beyond politics in democracy and dictatorship: Lessons from Chile*. Cambridge University Press.
- Hirschl, R. (2008) "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Political Science* 11: 93–118.
- Cheeseman. *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*.

Week 6 (October 10): 1st Term Test

Part III. Impact of Law

Week 7 (October 17): Critical Approaches to Rights and Litigation

What are the drawbacks of utilizing litigation in advocating for social justice? Are certain issues unfit for litigation? Do socioeconomic rights always lag behind in "rights talk"? Is litigation a waste of activists' time and resources?

- Rosevear and Hirschl. 2011. "Socio-economic Rights and Political Realities" in Campbell, Tom, Keith D. Ewing, and Adam Tomkins, eds. *The Legal Protection of Human Rights: Sceptical Essays*. Oxford University Press on Demand, 2011.
- Savage, L., 2009. Workers' rights as human rights: Organized labor and rights discourse in Canada. *Labor Studies Journal*, 34(1), pp.8-20.
- Rosenberg, G., 2004. Substituting symbol for substance: What did Brown really accomplish?. *PS: Political Science and Politics*, pp.205-209.

Recommended

- Rosenberg, G.N., 2008. *The hollow hope: Can courts bring about social change?*. University of Chicago Press.
- Klarman, M.J., 1994. How Brown changed race relations: The backlash thesis. *The journal of american history*, 81(1), pp.81-118.
- Klarman, M.J., 2007. *Brown versus board of education and the civil rights movement*. Oxford University Press.
- Hirschl, R., 2009. *Towards juristocracy: the origins and consequences of the new constitutionalism*. Harvard University Press.
- Paul Frymer, *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*
- Moyn, S., 2014. A powerless companion: Human rights in the age of neoliberalism. *Law & Contemp. Probs.*, 77, p.147
- Rajagopal B. 2007. Pro-human rights but anti-poor? A critical evaluation of the Indian Supreme Court from a social movement perspective. *Hum. Rights Rev.* 8:157–86.

Week 8 (October 24): Indirect Effects of Legal Mobilization I.

What are the direct and indirect effects of law according to Rodríguez Garavito & Rodríguez-Franco? How does law help constitute social movements according to McCann? How do findings from this weeks' readings speak to the critiques of legal mobilization of socioeconomic rights we discussed before? How does legal mobilization in democratizing countries differ from (or is similar to) those in liberal democracies?

- Michael W. McCann (2006), 'Legal Mobilization and Social Reform Movements: Notes on Theory and Its Application', in *Law and Social Movements*, ed. Michael McCann.
- Rodríguez-Garavito, C. (2011). Beyond the courtroom: The impact of judicial activism on socioeconomic rights in Latin America. *Texas Law Review*, 89(7), 1669-1698.

Recommended

- Sieder, R., 2010. Legal Cultures in the (Un) Rule of Law: Indigenous Rights and Juridification in Guatemala. in Couso, Huneuus, and Sieder eds. *Cultures of legality: Judicialization and political activism in Latin America*.
- Rodríguez-Garavito, C.A., 2005. Nike's law: the anti-sweatshop movement, transnational corporations, and the struggle over international labor rights in the Americas. *Law and globalization from below: Towards a cosmopolitan legality*, pp.64-91.
- Michael McCann. 1994. *Rights at Work*. Chicago: University of Chicago Press.

Week 9 (October 31): READING WEEK

Week 10 (November 7): Indirect Effects of Legal Mobilization II.

What are the indirect effects of legal mobilization? What is the effect of litigation on social movements? Are courts a restraint or catalyst on social movements? What do we learn from the comparative studies about the role of political opportunity structures for legal mobilization? How do the indirect effects compare to other indirect effects of legal mobilization discussed so far?

- Arrington, C.L., 2019. The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan. *Law & Society Review*, 53(1), pp.6-40.
- Holzmeyer, C., 2009. Human rights in an era of neoliberal globalization: The Alien Tort Claims Act and grassroots mobilization in *Doe v. Unocal*. *Law & Society Review*, 43(2), pp.271-304.
- Chua, L.J., 2012. Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore. *Law & Society Review*, 46(4), pp.713-748.

Recommended

- Langford, M., Cousins, B., Dugard, J. and Madlingozi, T. eds., 2013. *Socio-economic Rights in South Africa: Symbols or Substance?* Cambridge University Press.
- Rajagopal, B., 2003. *International law from below: Development, social movements and third world resistance*. Cambridge University Press.
- González-Ocantos, E.A., 2016. *Shifting legal visions: Judicial change and human rights trials in Latin America*. Cambridge University Press.
- Taylor, Whitney K. 2023. *The Social Constitution: Embedding Social Rights Through Legal Mobilization*. Cambridge University Press.

Week 11 (November 14): Legal Mobilization in Authoritarian Settings

What are the conditions under which legal mobilization can become an option for citizens in an authoritarian context? Can new rights legislations become a tool for authoritarian governments to solidify their rule? What are the expectations of citizens from litigation campaigns in authoritarian countries?

- Stern, R. E., & O'Brien, K. J. (2012). Politics at the Boundary: Mixed Signals and the Chinese State. *Modern China*, 38(2), 174–198.
- Stockmann, D. and Gallagher, M.E., 2011. Remote control: How the media sustain authoritarian rule in China. *Comparative Political Studies*, 44(4), pp.436-467.
- Gallagher, M. and Yang, Y., 2017. Getting schooled: Legal mobilization as an educative process. *Law & Social Inquiry*, 42(1), pp.163-194.

Recommended

- Mary Gallagher. 2017. *Authoritarian legality in China: Law, workers, and the state*. Cambridge University Press.
- Moustafa, T., 2018. *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*. Cambridge University Press
- Stern, R.E., 2013. *Environmental litigation in China: a study in political ambivalence*. Cambridge University Press.
- Chua, L.J., 2014. *Mobilizing gay Singapore: Rights and resistance in an authoritarian State*. NUS Press.

Week 12 (November 21): Impact of Mobilizing International Law

What are the conditions under which citizens turn to international law for remedies? How do we evaluate the success and impact of legal mobilization efforts in international courts? How does mobilizing international law differ from mobilizing domestic laws?

- Çalı, B., 2010. The logics of supranational human rights litigation, official acknowledgment, and human rights reform: The Southeast Turkey cases before the European Court of Human Rights, 1996–2006. *Law & Social Inquiry*, 35(2), pp.311-337.
- Van der Vet, F. 2013. Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights. *Review of Central and East European Law* 38.3-. pp. 363-388

Recommended

- Merry, S.E., 2009. *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press.
- Kahraman, F., 2017. A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting. *Law & Social Inquiry*.

Week 13 (November 28):

*******2nd Term Test*******