

POLS 492-2392: Comparative Law and Social Change

Fall 2018

Professor: Filiz Kahraman filiz.kahraman@utoronto.ca

Meeting Times and Place: M 10am – 12pm in TC 22

Office Hours: M 12-1pm in Sidney Smith Hall 3125

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 actors 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

Class Participation

This is a seminar 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. Be prepared to provide documentation.

Weekly Papers

Students are required to write response papers on the readings – one per week, except December 3 and the day of your presentation (**8 papers in total**). Your goal for each paper should be to address critically an interesting controversy or intellectual puzzle that arises in the assigned readings for the week the paper is due. The paper should **not** summarize readings for the week, but you may compare and contrast themes across the readings. You may respond to the questions listed for each week, although you are not required to do so. Your paper can note how an author addresses some issue or problem and explain some of the strengths or limits of the approach that the author uses.

- Please post the papers on Quercus by **5 pm on the Sunday before class**.
- Pose an original discussion question at the end of the paper.
- Word length: 250-350.

- Top papers will receive 2 points. Papers that do not provide a thoughtful analysis following the guidelines will receive 1 point.
- Late papers will not be accepted and will be marked a zero for that week.

Class Presentation

Each student will make one class presentation during a week selected on the first day of class. The presentation should last 12-15 minutes and include a brief summary of the readings, highlight important common themes (if it is a book, you may compare and contrast with readings from previous weeks), and provide original analysis, including a discussion of the strengths and weaknesses of the approaches suggested in the readings. You are not required to do any outside reading for the presentation. At the end of the presentation, you should pose at least two questions that will stimulate discussion during the seminar session.

If more than one student is presenting on the same day, it is the responsibility of the presenting students to coordinate ahead of time to divide the work for a group presentation.

You are not required to use powerpoint for the presentations, but if you intend to do so, you should email your presentation to me by 5pm the day before your presentation.

Final Paper

Students are required to write a final paper (10-15 pages double-spaced for undergraduate students, 15-20 pages for graduate students). You have two options for the final paper. You should decide which option you think would best serve your goals. Graduate students are especially encouraged to pursue the second option. Students are expected to discuss their topic of choice with me early on in the semester (no later than October 22).

The paper should critically review the most important scholarly work on our topic and present a thoughtful analysis. Each paper should reference at least ten sources. At least five of these should include sources that were not listed as required readings on the syllabus. The research paper is due December 3.

Option 1: Literature Review. The paper should provide an original analysis in response to a theoretical question related to law and social change and to topics covered in the course. A list of such questions will be posted on Quercus. If you would like to address a different question, you should work with me closely to refine your theoretical question.

Option 2: Research Design. The paper should be a research paper that addresses an empirical puzzle or theoretical question related to law and social change and topics covered in the course. You should explain how the existing literature deals with that question and explain how the proposed project can address it. You are not required to undertake research in primary sources, but should propose a paper involving original research. The paper should clearly identify the proposed methodology and expectations of findings. If you want use or develop material from a paper that you have already written for another course or other purpose, you should let me know so I can advise you on how to proceed.

The final paper is due on December 3. Please post it on Quercus and bring a hard copy to class

Deconstruction Assignment

This assignment is designed to help prepare for your final paper. You should pick a scholarly article that follows a similar style to your choice of final paper; the topic is not important. The purpose is not to summarize the article, but to deconstruct the format of it to help you understand how academic papers are written. In a pdf document (or word, if that is available) use comments and highlight features to

- identify the research question and argument
- explain what purpose each paragraph serves and how each paragraph advances the main thesis of the article.

Please discuss your intended article with me in advance to make sure that it is appropriate for this assignment. Students that picked Option 1 should select a review article. You may check out *World Politics* or *Annual Review of Law and Social Science* to find such articles. Students that picked Option 2 should select a research paper from a wider range of journals, such as *Law & Social Inquiry*, *Law and Society Review*, or *Human Rights Quarterly*. You should find an article that uses a similar methodology to what you have in mind for your project.

The assignment is due on October 15. Please post it on Quercus before 10am.

Paper Proposal

Students are required to write a one-page, single-spaced proposal outlining their research paper. The proposal should clearly identify the research question or puzzle, your argument, how the literature deals with your question, and your proposed methodology (if writing a research design). You should also list how each section of your paper will develop your main argument. An additional page should include a full list of the sources you will draw on in your paper.

The proposals are due on October 29. Please post it on Quercus before 10am and bring a hard copy to class.

Assessment:

- Weekly Papers 20% (due weekly on Quercus, 8 papers in total)
- Class Presentation 15%
- Class Participation 15%
- Deconstruction assignment 5% (due October 15 on Quercus)
- Paper proposal 5% (due October 29 on Quercus and hard copy in class)
- Final Paper 40% (due December 3 on Quercus and hard copy in class)

Late assignments throughout the term will not be accepted other than in documented emergency circumstances. 10% will be deducted per day for late final papers. Please contact me immediately with documentation, if a circumstance arises that prevents you from completing an assignment.

University and Class Policies

Quercus

This course uses Quercus for announcements, readings, and assignment submissions. Please be sure to have access to Quercus and check it regularly.

Email Communication:

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.

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. 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* (www.governingcouncil.utoronto.ca/policies/behaveac.htm), including the policy on plagiarism.

A useful resource is the "How not to plagiarize" information on the following website:

<http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>

Normally, students will be required to submit their course essays to Turnitin.com for 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 Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site.

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.

CLASS SCHEDULE

Week 1 (September 10): Introduction

Week 2 (September 17): The Ambiguities of Legal Institutions and Rights Discourse

What is law? Where do we find it? How does law shape everyday social and political interaction? Specifically, how does law figure into the practices of individuals and groups disputing with each other?

- Merry, S.E., 2003. Rights talk and the experience of law: implementing women's human rights to protection from violence. *Human rights quarterly*, pp.343-381.
- 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.
- Ewick, P. and Silbey, S.S., 1999. Common knowledge and ideological critique: The significance of knowing that the "haves" come out ahead. *Law & society review*, 33(4), pp.1025-1041.
- Galanter, M. 1983. "The Radiating Effects of Courts" in *From Empirical Theories About Courts*, Keith O Boyum and Lynn Mather, ed. Pp. 117-142

Recommended

- 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, *Getting Justice and Getting Even*.
- Lovell, G.I., 2012. *This is not civil rights: Discovering rights talk in 1939 America*. University of Chicago Press.
- Dudas, Jeffrey. *The Cultivation of Resentment*
- Ewick, Patricia, and Susan Silbey, *The Common Place of Law*

Week 3 (September 24): Individual Rights Claiming

How does law construct both equality and difference? What are some of the assumptions regarding the "litigiousness" of the American society? How much do rights really matter in American society and beyond?

- Miller, R.E. and Sarat, A., 1980. Grievances, claims, and disputes: Assessing the adversary culture. *Law and Society Review*, pp.525-566.
- Engel, David. "The Oven Bird's Song: Insiders, Outsiders, and Personal Injury in an American Community" *Law & Society Rev.* 18 (4): 551-582 (1984)*
- McCann, M., Haltom, W. and Bloom, A., 2001. Java Jive: Genealogy of a Juridical Icon. *U. Miami L. Rev.*, 56, p.113.

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.
- McCann, Michael and William Haltom, *Distorting the Law*
- Liu, S., 2006. Beyond global convergence: Conflicts of legitimacy in a Chinese lower court. *Law & Social Inquiry*, 31(1), pp.75-106.

Week 4 (October 1): Legal Mobilization and Judicial Change: Support Structures of Advocacy

What constitutes a "rights revolution"? What types of factors influence the variable capacity of groups or movements to mobilize law effectively on behalf of their rights?

- Charles Epp, *The Rights Revolution*. Chps 1, 2, 6, 9 (pp1-43; 90-110; 171-196)

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.
- 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.
- Scheingold, S. and Sarat, A., 2004. *Something to believe in: Politics, professionalism and cause lawyering*. Stanford University Press.

Week 5 (October 8): THANKSGIVING HOLIDAY

Week 6 (October 15): The Impact and Success of Litigation Campaigns

*******Deconstruction assignment due*******

What is legal mobilization? What are the limits and possibilities of legal rights as a resource for promoting justice? How does legal equality both challenge and support social inequality?

- Michael McCann. 1994. *Rights at Work*. Chicago: University of Chicago Press. Entire book. (Skip chp 2; skim chp 3, 5 and 6)

Recommended

- Rosenberg, G. (1996). Positivism, Interpretivism, and the Study of Law. *Law & Social Inquiry*, 21(2), 435-455
- McCann, M. 1996. Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive...). *Law & Social Inquiry*, 21(2), 457-482.
- Scheingold, S.A., 1974. *The politics of rights: Lawyers, public policy, and political change*. University of Michigan Press.
- Kitty Calavita, *Immigrants at the Margins*. Cambridge University Press

Week 7 (October 22): 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”?

- Risa L. Goluboff, “‘Let Economic Equality Take Care of Itself.’ The NAACP, Labor Litigation, and the Making of Civil Rights in the 1940s.” *52 UCLA Law Rev.* 1393
- Hirschl, R., 2000. Negative Rights vs. Positive Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order. *Hum. Rts. Q.*, 22, p.1060.
- Moyn, S., 2014. A powerless companion: Human rights in the age of neoliberalism. *Law & Contemp. Probs.*, 77, p.147.

Recommended

- Savage, L., 2009. Workers' rights as human rights: Organized labor and rights discourse in Canada. *Labor Studies Journal*, 34(1), pp.8-20.
- 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*

Week 8 (October 29): Legal Mobilization in Transitional Democracies

*****Paper proposals due*****

What are the direct and indirect effects of law? How do findings from this book speak to the critiques of legal mobilization of socioeconomic rights we discussed the previous week? How does legal mobilization in democratizing countries differ from (or is similar to) those in liberal democracies?

- César A. Rodríguez Garavito, and Diana Rodríguez-Franco. 2016. *Radical Deprivation on Trial*. Cambridge University Press (skim chp 2, 4, 7; skip chp 3 and 8)

Recommended

- Langford, M., Cousins, B., Dugard, J. and Madlingozi, T. eds., 2013. *Socio-economic Rights in South Africa: Symbols Or Substance?*. Cambridge University Press.
- 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.
- González-Ocantos, E.A., 2016. *Shifting legal visions: Judicial change and human rights trials in Latin America*. Cambridge University Press.

Week 9 (November 5): READING WEEK

Week 10 (November 12): 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?

- Mary Gallagher. 2017. *Authoritarian legality in China: Law, workers, and the state*. Cambridge University Press. (Skim chp 3 and 5; skip chp 4)

Recommended

- Moustafa, T., 2007. *The struggle for constitutional power: law, politics, and economic development in Egypt*. 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.
- Osanloo, Arzoo, *The Politics of Women's Rights in Iran*

Week 11 (November 19): The 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.
- Holzacker, R., 2013. State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The “Boomerang” and the “Ricochet” between European Organizations and Civil Society to Uphold Human Rights. *Law & Policy*, 35(1-2), pp.1-28.

Recommended

- Rajagopal, B., 2003. *International law from below: Development, social movements and third world resistance*. Cambridge University Press.
- Vanhala, L., 2010. *Making rights a reality?: Disability rights activists and legal mobilization*. Cambridge University Press.
- Cichowski, R.A., 2007. *The European court and civil society: litigation, mobilization and governance*. Cambridge University Press.

Week 12 (November 26): Dynamics of Mobilization at the International Level

How does human rights law change the dynamics of mobilization at the grassroots level? How does human rights law change the identity constructions, allegiances, discourses, and expectations of local activists? Under what circumstances do people decide to use human rights discourse to express their grievances?

- Merry, S.E., 2006. Transnational human rights and local activism: Mapping the middle. *American anthropologist*, 108(1), pp.38-51.
- Kahraman, F., 2017. A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting. *Law & Social Inquiry*.
- 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

- Merry, S.E., 2009. Human rights and gender violence: Translating international law into local justice. University of Chicago Press.
- Chua, L.J., 2018. *The Politics of Love in Myanmar: LGBT Mobilization and Human Rights as a Way of Life*. Stanford University Press.

Week 13 (December 3): Current Debates in Legal Mobilization and Review

*******Final papers due (no response papers)*******

- McCann, M., 2014. The unbearable lightness of rights: On sociolegal inquiry in the global era. *Law & Society Review*, 48(2), pp.245-273.
- Merry, S.E., 2014. Inequality and Rights: Commentary on Michael McCann's "The Unbearable Lightness of Rights". *Law & Society Review*, 48(2), pp.285-295.