

# **POL 492-2392: Comparative Law and Social Change**

## **Winter 2020**

**Professor:** Filiz Kahraman [filiz.kahraman@utoronto.ca](mailto:filiz.kahraman@utoronto.ca)

**Meeting Times and Place:** M 10am – 12pm in SS 1078

**Office Hours:** M 12-1pm in Munk School (Devonshire 1), N 120

### **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.

### **Readings**

All readings, except one book listed below, are available on Quercus. Required books:

- Michael McCann. 1994. *Rights at Work*. Chicago: University of Chicago Press
- César A. Rodríguez Garavito, and Diana Rodríguez-Franco. 2016. *Radical Deprivation on Trial*. Cambridge University Press. (AVAILABLE ONLINE)

### **Course Requirements**

#### Class Participation

This is a seminar class. You are required 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 weekly posts on the readings. The paper should **not** summarize readings for the week, but you may compare and contrast themes across the readings. 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. 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 limitations of the approach that the author uses.

- Engage with **at least two readings** in your papers. You are not required to engage with every reading, but if the issue/question you're addressing in your paper is directly related to a reading, I expect you to bring up that article explicitly and engage with that author's argument.
- Pose **two original discussion questions** at the end of the paper. These questions may put that week's readings into conversation with the previous weeks' readings.
- Please post the papers on Quercus by **8 pm on the Sunday before class**.
- Word length: **250-350 words**.
- Your papers will be graded either Exemplary (1 full mark), Strong (0.75 mark), Adequate (0.5).
- Late papers will not be accepted and will be marked a zero for that week.
- You must submit posts for at least 8 weeks (out of 9 weeks of readings).

## 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.

The paper should critically review the most important scholarly work on your 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.

*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

to 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 **March 30 (Monday) by 9am**. Please post it on Quercus and bring a hard copy to class.

### Class Presentation

Each student will make one class presentation based on their final research paper during one of the final three days of class. Everyone is required to prepare a powerpoint presentation. The slides should not be too crowded with words (e.g. avoid full sentences); you should use pictures and illustrations to keep the attention of your audience alive. You may bring written notes with you to help you remember your points, but during your presentation should NOT be reading from your notes. Practice at home several times in order to make sure you do not exceed your allocated amount of time and that your presentation flows smoothly.

The presentation date for each student will be determined by the instructor. Regardless of the date of presentation, all powerpoint presentations should be sent to the instructor via email by **March 22 (Monday), 9am**.

### 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 (or mark several paragraphs at once) 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. You may check out *World Politics* or *Annual Review of Law and Social Science* to find review articles (may be especially useful for Option 1). Alternatively, you may 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 format to what you have in mind for your project.

The assignment is due on Quercus by **January 27 (Monday), 9am**.

### Paper Proposal

Students are required to write a two-page, single-spaced proposal outlining their research paper. The proposal should clearly identify the research question or puzzle, your argument, and how the literature deals with your question. 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 (**at least**

**10)** you will draw on in your paper. The proposals are due on Quercus by **February 10 (Monday), 9am**

Assessment:

- Weekly posts 20% (at least 8 posts)
- Class presentation 20%
- Class participation 15%
- Deconstruction assignment 5% (due Jan 27, 9am)
- Paper proposal 7% (due Feb 10, 9am)
- Final Paper 33% (due March 30, 9am on Quercus and hard copy in class)

Late assignments throughout the term will be 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](http://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](mailto: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 email it to me (Prof. Kahraman) immediately and set up an appointment to discuss appropriate accommodations.**

## CLASS SCHEDULE

### Week 1 (January 6): Introduction

### Week 2 (January 13): 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? What is legal mobilization? What is legal consciousness? How does law shape legal consciousness?*

- 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 (January 20): Individual Rights Claiming**

*How does law construct both equality and difference? How does “lumping it” described by Miller & Sarat compare to the anti-litigiousness in Sanders County (described by Engel)? What are some of the assumptions people generally make regarding the “litigiousness” of the American society? How much do rights and law 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 (January 27): Legal Mobilization and Judicial Change: Support Structures of Advocacy**

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

*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 & Canada?*

- Epp, C. R. *The Rights Revolution*. Chps 1, 2, 3, 4 (pp.1-70)
- Epp, C.R., 1996. Do bills of rights matter? The Canadian Charter of Rights and Freedoms. *American Political Science Review*, 90(4), pp.765-779.
- 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

- 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 5 (February 3): 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”? If so, why would this be the case?*

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

#### Recommended

- 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

### **Week 6 (February 10): Indirect Effects of Legal Mobilization I.**

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

*What is legal mobilization? How does McCann’s definition of LM differ from Epp and Zemans’ definitions? 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. Read Chp 1, 4, 8. skim chps 3, 5, 6

#### Recommended

- Rosenberg, G.N., 2008. *The hollow hope: Can courts bring about social change?*. University of Chicago Press.
- 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.

### **Week 7 (February 17): READING WEEK**

### **Week 8 (February 24): 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?*

- 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.
- Arrington, C.L., 2019. The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan. *Law & Society Review*, 53(1), pp.6-40.
- Madlingozi, Tshepo. 2013. "Post-Apartheid Social Movements and Legal Mobilisation" in Langford et al. eds. *Socio-Economic Rights in South Africa: Symbols or Substance?*.
- McCann, M. and Lovell, G.I., 2018. Toward a Radical Politics of Rights. in Gray ed. *From the Streets to the State: Changing the World by Taking Power*. SUNY Press

#### 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.
- Vanhala, L., 2010. *Making rights a reality?: Disability rights activists and legal mobilization*. Cambridge University Press.
- Cheeseman. *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*.

### **Week 9 (March 2): Legal Mobilization in Transitional Democracies**

*What are the direct and indirect effects of law according to Rodríguez Garavito & Rodríguez-Franco? How do the indirect effects compare to other indirect effects of legal mobilization discussed so far? How do findings from this book 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?*

- César A. Rodríguez Garavito, and Diana Rodríguez-Franco. 2016. *Radical Deprivation on Trial*. Cambridge University Press. Read Chp 1, 5, 6, 8. Skim chp. 2, 4, 7.

#### 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.
- González-Ocantos, E.A., 2016. *Shifting legal visions: Judicial change and human rights trials in Latin America*. Cambridge University Press.

### **Week 10 (March 9): 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?*

- 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.
- Stern, R. E., & O'Brien, K. J. (2012). Politics at the Boundary: Mixed Signals and the Chinese State. *Modern China*, 38(2), 174–198.
- Gallagher, M. and Yang, Y., 2017. Getting schooled: Legal mobilization as an educative process. *Law & Social Inquiry*, 42(1), pp.163-194.
- 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

- Mary Gallagher. 2017. *Authoritarian legality in China: Law, workers, and the state*. Cambridge University Press. Read chp 1, chp 2 pp. 21-36 (skim rest of the chp), chp 3 pp. 52-62 (skim rest of the chp), chp 4 pp. 112-119 (skim rest of the chp), chp 6 (pp. 191-2015). Skim chp 5.
- 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 (March 16): Mobilization and Vernacularization of Human Rights**

*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.
- Merry and Stern (2005). "The Female Inheritance Movement in Hong Kong." *Current Anthropology*, Vol. 46(3):387-409.
- Chua, L.J., 2015. The Vernacular Mobilization of Human Rights in Myanmar's Sexual Orientation and Gender Identity Movement. *Law & Society Review*, 49(2), pp.299-332.

**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.
- Kahraman, F., 2017. A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting. *Law & Social Inquiry*.

**Week 12 (March 23): Presentations****\*\*\*\*\*ALL POWERPOINT PRESENTATIONS ARE DUE\*\*\*\*\*****Week 13 (March 30): Presentations****\*\*\*\*\*FINAL PAPERS DUE\*\*\*\*\***