

**POL378H1 (S) – Topics in Comparative Politics II
Courts and Politics**

Time: Tuesdays and Thursdays 4pm – 6pm

Location: BA 1210

Instructors: Nicholas Fraser (email: nicholasar.fraser@mail.utoronto.ca)
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Office Hours: Nicholas Fraser, Thursdays 2-3pm Room 3007, Sidney Smith Hall
Faisal Kamal, Thursdays 1-2pm Room 3007, Sidney Smith Hall

Course Description

Courts have increasingly come under the spotlight for settling political disputes. From temporarily restraining Donald Trump's travel ban in the US to outlawing the practice of triple talaq (three instant divorces) in India, to dismissing elected premiers in Pakistan and Thailand, to propping up dictators in Latin America, courts have come to play a preeminent role in politics. This course will introduce students to major developments in comparative judicial politics. Public law and judicial politics are growing subfields within the discipline of political science. The emphasis in this course would be on studying courts as political actors and institutions. We will study the multiple roles that courts play and the kind of disputes they resolve. Topics covered will include: courts as rights advocates, courts as arbiters of political disputes, courts as shapers of public policy, courts as enforcers of international law and norms, and courts as umpires between different levels of government, to name a few. The course will survey a wide range of countries and societies, judgments from several apex courts, and political and legal analysis from a comparative perspective.

Communication with Instructors

Office Hours

Students are welcome to drop in during office hours for any course or content related questions. If students are not able to see instructors during office hours, they are welcome to contact them by email.

Emails

When sending emails students must communicate respectfully and thoughtfully. Students will *not* receive a reply from instructors if:

- the email includes disrespectful, obscene, or aggressive language/tone
- the email does not follow standard email etiquette (i.e., one line text-like emails)
- the email asks a simple question that could easily be answered by reviewing the syllabus or lecture notes
- the email is sent within 48 hours of the deadline for an assignment

*****Only emails sent by the student's official UTORONTO email account will be responded to*****

Accessing Course Website and Submission of Assignments:

All students are required to register for Quercus. The syllabus, required readings, and important announcements will be posted online. In addition, **all papers will need to be submitted electronically via Quercus** by the due date and time as specified below. Students are required to check Quercus regularly for course announcements and updates. Please be aware that students must ***not*** submit written assignments without proper citation (including page numbers) or which cite lecture notes (*students are not permitted to cite lecture notes under any circumstances*)—failure to comply with this rule will result in a grade penalty to be determined by the instructors.

Turnitin

This course will be using Turnitin. All assignments will need to be submitted before 12:00pm on the due date of the assignment on Quercus.

Normally, students will be required to submit their course essays to Turnitin.com 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 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.

Course Requirements

• Participation	10%
• Article Review	20%
• Proposal	25%
• Final Essay	45%
Total	100%

Weekly Schedule and Assignment Due Dates

- Lecture 1 – July 2nd, 2019
- Lecture 2 – July 4th, 2019
- Lecture 3 – July 9th, 2019
- Lecture 4 – July 11th, 2019 Article Review Due at 12:00pm
- Lecture 5 – July 16th, 2019
- Lecture 6 – July 18th, 2019 Proposal Due at 12:00pm
- Lecture 7 – July 23rd, 2019
- Lecture 8 – July 25th, 2019
- Lecture 9 – July 30th, 2019
- Lecture 10 – August 1st, 2019
- Lecture 11 – August 6th, 2019
- Lecture 12 – August 8th, 2019 Final Paper at 12:00pm

Late Assignments and Grade Appeals

Late assignments will receive deductions of 15% per day, any assignments that have not been handed in within 3 days (72 hours) of the deadline will not be accepted. Anything submitted after 12:00pm on the day of the assignment due date (even if it is 12:01pm) will be considered late. Students are strongly advised to make rough drafts and hard copies before handing anything in and to keep those copies until

after grades are posted on ROSI.

Grade appeals must be made in person within two weeks of receiving the grade. They must include a 100-200 word written statement of why the assignment deserves to be re-graded. The grade will change only in cases where the second grading is more than 10 points different from the first (i.e. a 60 will not be changed unless the second grading produces a score of 70+ or 50-). **Grades can go up or down during the second grading.**

Evaluation

Participation (10%)

Students should be aware that this class will involve lectures and in-class discussions. While we recognize that many students are used to passively taking notes in class while the instructor summarizes the weekly readings for them, this class will operate differently. First, we will operate on the assumption that all students have done the required readings and will have carefully thought about them before the start of class. Second, we want to ensure that students are able to express themselves meaningfully in class. To accomplish this, we expect students to earn their participation grade by demonstrating that they have not only read the required readings but also that they are prepared to make substantive contributions to each class discussion. Above all, students should understand that doing the weekly required readings will be an integral part of their performance in the class and will be reflected in all assignments for this course.

Below, we outline in detail what students will be expected to do in order to receive a high participation grade.

- before the start of every class, students will be expected to prepare a list of 2-4 discussion questions that they will submit at the beginning of each lecture (written on a single sheet of paper)
- all discussion questions will include the student's full name, student number and date
- late or digital copies of discussion question will not be accepted (after 4:10pm no discussion questions will be accepted)
- discussion questions must be based on an reflection of the required readings for the week (students are not permitted to merely re-state the research questions that are stated in each reading)
- students should base discussion questions on their assessment of each reading or a comparison of all required readings for the week
- once discussion questionnaire submitted, students should expect to be called upon to provide at least one thoughtful answer to one of their discussion questions
- students should be aware that the failure to submit discussion questions for one class will result in the loss of 1%
- if students submit discussion questions for all 11 weeks (L2-L12), they will receive 10% plus an additional 1% to be added to their overall grade

Recommended Practices for Class Preparation:

1. Several days before class, skim and scan the required readings to get a sense of the author's research question, main argument and research method (first reading)

2. Skim the recommended readings to look for patterns: key words, shared themes, etc.
3. Spend a few hours closely reading each of the required readings and take notes; if you think you might wish to write your essay on the same topic then try to read as many of the recommended readings as you can manage (*reading ahead early on will save you time later*)
4. Several hours before class, review your notes and come up with a list of questions
5. Pick the questions that you think are the hardest to answer by yourself or which you think others might disagree with you on
6. Write up your chosen questions and submit them as your discussion questions

Article Review (worth 20% and due on July 11 at 12:00pm)

This assignment is designed to help students develop their reading and writing skills. Specifically, it will test how well you can put together a thoughtful but concise literature review. All academic essays require the author to devote one section to reviewing relevant previous studies they seek to respond to and draw from when putting forth an original contribution to an ongoing scholarly debate. Students may choose any pre-selected recommended reading from the syllabus in order to complete this assignment—readings denoted with [*]. For this assignment, students should demonstrate a clear understanding of the debate within political science that the author is responding to, their theoretical argument, and their research method. Students will be expected to cite all sources and are *not* permitted to cite lecture notes or quote the instructors. Students should also take note of the following:

- length 750 words (students must provide a word count and fall within 50 words of the limit)
- pick any of the recommended articles that makes a contribution to one of the topics covered in class
- it should provide a succinct summary of the author's main argument
- it should highlight the research method and evidence that the author uses
- critically assesses the strengths and weaknesses of the author's approach
- it explores the author's contribution to the wider debate on the topic (this means briefly mentioning other studies on the same topic from the syllabus)

Essay Proposal (worth 25% and due on July 18th at 12:00pm)

This assignment is designed to help students prepare to conduct in-depth research for their final essay. Students will be expected to seriously develop a detailed plan for their final essay that outlines a clear research question that connects with an ongoing theoretical debate about the political influence of courts covered by the readings on this syllabus. In addition to identifying a clear research question and conducting a thorough literature review, students must also develop a detailed plan for how they will conduct research and analysis. ***Students should seek prior approval of their topic by email. It should be noted that students who wish to change their essay topic after the submission of the essay proposal may do so but they must consult with the instructors and obtain their permission at least two weeks prior to the deadline of the final essay and submit a new essay proposal that will not be graded.*** We will discuss these points in more detail in class. Lastly, students will be expected to incorporate the comments they receive on this assignment into their final essay.

- length 750-1000 words (students must include a word count and submit no less than 750 words, no more than 1000 words)
- clear research question and why it matters
- summary of the debate within political science the paper aims to contribute to (identifies a gap in the literature)
- specifies how the author will conduct research
- provides a list of sources and specifically explains how the sources will help the author understand the topic better

Essay Assignment (worth 45% and due on August 8 at 12:00pm, 3500-4500 word limit, Microsoft Word format, Chicago Style, 1 inch margins, 12 point font):

All students will be expected to make an original theoretical argument by examining a single case or comparing 2-3 cases. Students must spend a portion of the essay explaining the case or cases that they selected. Students should identify a theoretical debate covered in class and gear their analysis toward making a contribution to it. This means that they should carefully select a case or set of cases that helps them illustrate a theoretical point that provides new insight into how to answer the larger question that guides the theoretical debate. Students will be graded based on how well they demonstrate an understanding of the theories that they test, and the originality of their analysis. Before submission, students are required to get their essay topic approved (via email) as well as incorporate any changes requested by the instructors in the essay proposal. Students who wish to change their essay topic after the submission of the essay proposal must obtain the permission of the instructors and should submit a new essay proposal that will not be graded. The revised proposal should be submitted at least two weeks prior to the due date of the final essay.

Rubric:

- Organization, Formatting, and Quality of Writing (5 points)
- Citation and Bibliography (5 points)
- Literature Review (10 points)
- Case Selection (5 points)
- Theoretical Argument (10 points)
- Quality of Evidence and Analysis (10 points)

Citation Style for Assignments

- You are **required** to use the **17th edition of the Chicago Manual of Style** (Author-Date System, also called in-text parenthetical method) for all assignments and essays. Failure to do so would entail penalties and the possibility of receiving a failing grade. Here is the link to the electronic version of The Chicago Manual of Style:

<https://www-chicagomanualofstyle-org.myaccess.library.utoronto.ca/book/ed17/part3/ch15/toc.html>

Academic Integrity and a Warning About Plagiarism

Academic integrity is fundamental to learning and scholarship at the University of Toronto. Participating honestly, respectfully, responsibly, and fairly in this academic community ensures that the U of T degree that you earn will be valued as a true indication of your individual academic achievement, and will continue to receive the respect and recognition it deserves.

Familiarize yourself with the University of Toronto's *Code of Behaviour on Academic Matters* (<http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>). It is the rule book for academic behaviour at the U of T, and you are expected to know the rules. Potential offences include, but are not limited to:

In papers and assignments:

- Using someone else's ideas or words without appropriate acknowledgement.
- Copying material word-for-word from a source (including lecture and study group notes) and not placing the words within quotation marks.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Including references to sources that you did not use.
- Obtaining or providing unauthorized assistance on any assignment including:
 - working in groups on assignments that are supposed to be individual work;
 - having someone rewrite or add material to your work while "editing".
- Lending your work to a classmate who submits it as his/her own without your permission.

On tests and exams:

- Using or possessing any unauthorized aid, including a cell phone.
- Looking at someone else's answers
- Letting someone else look at your answers.
- Misrepresenting your identity.
- Submitting an altered test for re-grading.

Misrepresentation:

- Falsifying or altering any documentation required by the University, including doctor's notes.
- Falsifying institutional documents or grades.

To remind you of these expectations, and help you avoid accidental offences, we will ask you to include a signed Academic Integrity Checklist with every assignment. *If you do not include the statement, your work will not be graded.*

The University of Toronto treats cases of academic misconduct very seriously. All suspected cases of academic dishonesty will be investigated following the procedures outlined in the *Code*. The consequences for academic misconduct can be severe, including a failure in the course and a notation

on your transcript. If you have any questions about what is or is not permitted in this course, please do not hesitate to contact the instructors. If you have questions about appropriate research and citation methods, seek out additional information from us, or from other available campus resources like the [U of T Writing Website](#). If you are experiencing personal challenges that are having an impact on your academic work, please speak to the instructors or seek the advice of your college registrar.

*****How Not To Plagiarize:** *Please note that all students are expected to read and understand this document before submitting any written assignments.****

<https://advice.writing.utoronto.ca/wp-content/uploads/sites/2/how-not-to-plagiarize.pdf>

READINGS

L1 July 2—Introduction (Fraser and Kamal)

L2 July 4—Theories of Judicial Politics (Fraser)

***Required Readings:**

Epstein, Lee, and Jack Knight. 2013. "Reconsidering judicial preferences." *Annual Review of Political Science* 16: 11-31.

Bleich, Erik. 2018. "Historical Institutionalism and Judicial Decision-Making: Ideas, Institutions, and Actors in French High Court Hate Speech Rulings." *World Politics* 70 (1): 53-85.

****Recommended Readings (broad theoretical approaches in comparative politics):**

Ostrom, Elinor. "A behavioral approach to the rational choice theory of collective action: Presidential address, American Political Science Association, 1997." *American political science review* 92.1 (1998): 1-22.

Hall, Peter A., and Rosemary CR Taylor. "Political science and the three new institutionalisms." *Political studies* 44.5 (1996): 936-957.

Blyth, Mark. "Powering, puzzling, or persuading? The mechanisms of building institutional orders." *International studies quarterly* 51.4 (2007): 761-777.

****Recommended Readings (interests, institutions, and ideas in judicial politics):**

[*] Black, Ryan C., and Ryan J. Owens. "Courting the president: how circuit court judges alter their behavior for promotion to the Supreme Court." *American Journal of Political Science* 60.1 (2016): 30-43.

[*] Carrubba, Clifford J., and Tom S. Clark. "Rule creation in a political hierarchy." *American Political Science Review* 106.3 (2012): 622-643.

Gillman, Howard. "Martin Shapiro and the movement from "old" to "new" institutionalist studies in public law scholarship." *Annu. Rev. Polit. Sci.* 7 (2004): 363-382.

L3 July 9—Judicialization of Politics (Kamal)

***Required Readings:**

Hirschl, Ran. 2008. "The Judicialization of Mega-Politics and the Rise of Political Courts." *Annual Review of Political Science* 11 (1): 93–118. <https://doi.org/10.1146/annurev.polisci.11.053006.183906>.

****Recommended Readings:**

[*] Ferejohn, John. 2002. "Judicializing Politics, Politicizing Law." *Law and Contemporary Problems* 65 (3): 41. <https://doi.org/10.2307/1192402>.

[*] Sikkink, Kathryn. 2005. "The Transnational Dimension of the Judicialization of Politics in Latin America." In *The Judicialization of Politics in Latin America*, edited by Rachel Sieder, Line Schjolden, and Alan Angell, 263–92. New York: Palgrave Macmillan. https://doi.org/10.1007/978-1-137-10887-6_11.

Siddique, Osama. 2015. "The Judicialization of Politics in Pakistan: The Supreme Court after the Lawyers' Movement." In *Unstable Constitutionalism*, edited by Mark Tushnet and Madhav Khosla, 159–91. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781107706446.006>.

Domingo, Pilar. 2004. "Judicialization of Politics or Politicization of the Judiciary? Recent Trends in Latin America." *Democratization* 11 (1): 104–26. <https://doi.org/10.1080/13510340412331294152>.

Dressel, Björn, and Marcus Mietzner. 2012. "A tale of two courts: The judicialization of electoral politics in Asia." *Governance* 25 (3): 391-414.

Howard, Robert M. 2007. "Controlling forum choice and controlling policy: Congress, courts and the IRS." *Policy Studies Journal* 35 (1): 109-123.

Cheema, Moeen H. 2016. "The 'Chaudhry Court': Deconstructing the 'Judicialization of Politics' in Pakistan." *Washington International Law Journal* 25 (3): 447–87.

L4 July 11—Can Courts Bring About Social Change? (Fraser)

***Required Readings:**

Epp, Charles R. 1998. *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*. Chicago: University of Chicago Press. (Chapters 2-4)

Rosenberg, Gerald N. 2008 *The hollow hope: Can courts bring about social change?*. Chicago: University of Chicago Press. (Chapters 2-5).

****Recommended Readings:**

Arrington, Celeste L. "Hiding in Plain Sight: Pseudonymity and Participation in Legal Mobilization." *Comparative Political Studies* 52.2 (2019): 310-341.

[*] Arrington, Celeste L. "The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan." *Law & Society Review* 53.1 (2019): 6-40.

[*] Baxi, Upendra. 1985. "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India." *Third World Legal Studies* 4: 107-132.

Botero, Sandra. 2018. "Judges, Litigants, and the Politics of Rights Enforcement in Argentina." *Comparative Politics* 50 (2): 169–187.

Brinks, Daniel M., and Varun Gauri. 2014. "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights." *Perspectives on Politics* 12 (2): 375–93.
<https://doi.org/10.1017/S1537592714000887>.

Bishin, Benjamin G., et al. "Opinion backlash and public attitudes: Are political advances in gay rights counterproductive?." *American Journal of Political Science* 60.3 (2016): 625-648.

Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. "How public opinion constrains the US Supreme Court." *American Journal of Political Science* 55.1 (2011): 74-88.

Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. "Ideological Divergence and Public Support for the Supreme Court." *American Journal of Political Science* (2000): 768-776.

Graham, Barbara L. "Explaining Supreme Court Policymaking in Civil Rights: The Influence of the Solicitor General, 1953–2002." *Policy Studies Journal* 31.2 (2003): 253-271.

Javeline, Debra, and Vanessa Baird. "Who Sues Government?: Evidence From the Moscow Theater Hostage Case." *Comparative Political Studies* 40.7 (2007): 858-885.

King, Desmond S., and Rogers M. Smith. "'Without Regard to Race': Critical Ideational Development in Modern American Politics." *The Journal of Politics* 76.4 (2014): 958-971.

Mondak, Jeffery J., et al. "The vicarious bases of perceived injustice." *American Journal of Political Science* 61.4 (2017): 804-819.

Robinson, Rob. "Culture and Legal Policy Punctuation in the Supreme Court's Gender Discrimination Cases." *Policy Studies Journal* 42.4 (2014): 555-589.

Upham, Frank K. "Stealth activism: norm formation by Japanese courts." *Wash. UL Rev.* 88 (2010): 1493.

Sanchez Urribarri, Raul A., et al. "Explaining changes to rights litigation: Testing a multivariate model in a comparative framework." *The Journal of Politics* 73.2 (2011): 391-405.

Wedeking, Justin. "Supreme Court litigants and strategic framing." *American Journal of Political Science* 54.3 (2010): 617-631.

L5 July 16—What Role Do Courts Play in Federal States? (Kamal)

***Required Readings:**

Schertzer, Robert. 2017. "Federal Arbiters as Facilitators: Towards an Integrated Federal and Judicial Theory for Diverse States." *International Journal of Constitutional Law* 15 (1): 110–36.
<https://doi.org/10.1093/icon/mox007>.

Selway, B., and J. M. Williams. 2005. "The High Court and Australian Federalism." *Publius: The Journal of Federalism* 35 (3): 467–88. <https://doi.org/10.1093/publius/pji018>.

****Recommended Readings:**

Aroney, Nicholas, and John Kincaid, eds. 2017. *Courts in Federal Countries: Federalists or Unitarists?* Toronto: University of Toronto Press.

Saxena, Rekha, and Wilfried Swenden. 2017. "The Indian Supreme Court and Federalism." *Fédéralisme Régionalisme* 17 Les juridictions constitutionnelles suprêmes dans les États fédéraux : créatures et créateurs de fédéralisme, URL : <https://popups.uliege.be:443/1374-3864/index.php?id=1699>.

Krishnaswamy, Sudhir. 2015. "Constitutional Federalism in the Indian Supreme Court." In *Unstable Constitutionalism*, edited by Mark Tushnet and Madhav Khosla, 355–80. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781107706446.012>.

Kelly, James B., and M. Murphy. 2005. "Shaping the Constitutional Dialogue on Federalism: Canada's Supreme Court as Meta-Political Actor." *Publius: The Journal of Federalism* 35 (2): 217–43. <https://doi.org/10.1093/publius/pji010>.

Vickers, Jill. 2010. "A Two-Way Street: Federalism and Women's Politics in Canada and the United States." *Publius: The Journal of Federalism* 40 (3): 412–35. <https://doi.org/10.1093/publius/pjq006>.

Baier, Gerald. 2007. *Courts and Federalism: Judicial Doctrine in the United States, Australia, and Canada*, By Gerald Baier. Vancouver: University of British Columbia Press.

L6 July 18—What Determines Judicial Independence? (Fraser)

***Required Readings:**

Tsebelis, George. 2002. *Veto players: How political institutions work*. Princeton: Princeton University Press. (Chapter 10)

Hilbink, Lisa. 2012. "The origins of positive judicial independence." *World Politics* 64 (4): 587-621.

****Recommended Readings:**

Clinton, Robert Lowry. 1994. "Game theory, legal history, and the origins of judicial review: A revisionist analysis of Marbury v. Madison." *American Journal of Political Science* 38 (2): 285-302.

Clark, Tom S. 2009. "The separation of powers, court curbing, and judicial legitimacy." *American Journal of Political Science* 53 (4): 971-989.

Douglas, James W., and Roger E. Hartley. 2001. "State court budgeting and judicial independence: clues from Oklahoma and Virginia." *Administration & Society* 33 (1): 54-78.

Gordon, Sanford C., and Gregory A. Huber. 2002. "Citizen oversight and the electoral incentives of criminal prosecutors." *American Journal of Political Science* 46 (2): 334-351.

Graber, Mark A. 2005. "Constructing judicial review." *Annu. Rev. Polit. Sci.* 8: 425-451.

Hall, Matthew EK, and Joseph Daniel Ura. 2015. "Judicial majoritarianism." *The Journal of Politics* 77 (3): 818-832.

Helmke, Gretchen, and Frances Rosenbluth. 2009. "Regimes and the rule of law: Judicial independence in comparative perspective." *Annual Review of Political Science* 12: 345-366.

Iaryczower, Matías, Pablo T. Spiller, and Mariano Tommasi. 2002. "Judicial independence in unstable environments, Argentina 1935-1998." *American Journal of Political Science* 46 (4): 699-716.

Larsson, Olof, et al. 2017. "Speaking law to power: The strategic use of precedent of the court of justice of the European Union." *Comparative Political Studies* 50 (7): 879-907.

Law, David S. 2017. "The anatomy of a conservative court: Judicial review in Japan." *Public Law in East Asia*. Routledge. 3-44.

Leiras, Marcelo, Guadalupe Tuñón, and Agustina Giraudy. 2014. "Who Wants an Independent Court? Political Competition and Supreme Court Autonomy in the Argentine Provinces (1984–2008)." *The Journal of Politics* 77 (1): 175-187.

Nicholson, Stephen P., and Thomas G. Hansford. 2014. "Partisans in robes: Party cues and public acceptance of Supreme Court decisions." *American Journal of Political Science* 58 (3): 620-636.

Popova, Maria. 2010. "Political competition as an obstacle to judicial independence: evidence from Russia and Ukraine." *Comparative Political Studies* 43 (10): 1202-1229.

Ramseyer, J. Mark. 1994. "The puzzling (in) dependence of courts: A comparative approach." *The Journal of Legal Studies* 23 (2): 721-747.

Ramseyer, J. Mark. 2001. "Why are Japanese judges so conservative in politically charged cases?." *American Political Science Review* 95 (2): 331-344.

L7 July 23—Do Courts Strengthen or Weaken Authoritarian Regimes? (Fraser and Kamal)

***Required Readings:**

Ginsburg, Tom, and Tamir Moustafa. 2008. "Introduction: the functions of courts in authoritarian politics." *Rule by Law: The Politics of Courts in Authoritarian Regimes* : 1-22.

Helmke, Gretchen. 2002. "The logic of strategic defection: Court–executive relations in Argentina under dictatorship and democracy." *American Political Science Review* 96 (2): 291-303.

****Recommended Readings:**

- Ang, Yuen Yuen, and Nan Jia. "Perverse complementarity: Political connections and the use of courts among private firms in China." *The Journal of Politics* 76.2 (2014): 318-332.
- Barros, Robert. "Courts out of context: Authoritarian sources of judicial failure in Chile (1973–1990) and Argentina (1976–1983)." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 156-79.
- Gibler, Douglas M., and Kirk A. Randazzo. "Testing the effects of independent judiciaries on the likelihood of democratic backsliding." *American Journal of Political Science* 55.3 (2011): 696-709.
- Ginsburg, Tom. "Administrative Law and the Judicial Control of Agents in Authoritarian Regimes." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 58-72.
- Hilbink, Lisa. "Agents of anti-politics: courts in Pinochet's Chile." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 102-31.
- Landry, Pierre. "The institutional diffusion of courts in China: Evidence from survey data." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 207-34.
- Magaloni, Beatriz. "Enforcing the autocratic political order and the role of courts: the case of Mexico." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 180-206.
- Moustafa, Tamir. "Law and resistance in authoritarian states: The judicialization of politics in Egypt." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 132-155.
- Reenock, Christopher, Jeffrey K. Staton, and Marius Radean. "Legal institutions and democratic survival." *The Journal of Politics* 75.2 (2013): 491-505.
- Silverstein, Gordon. "Singapore: the exception that proves rules matter." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 73-101.
- Widner, Jennifer, and Daniel Scher. "Building judicial independence in semi-democracies: Uganda and Zimbabwe." *Rule by Law: The Politics of Courts in Authoritarian Regimes* (2008): 235-60.

L8 July 25—Courts and Religion (Kamal)

***Required Readings:**

- Hirschl, Ran. 2010. *Constitutional Theocracy*. Cambridge, MA: Harvard University Press, (read Chapter 2).
- Mahmood, Saba, and Peter G. Danchin. 2014. "Immunity or Regulation? Antinomies of Religious Freedom." *South Atlantic Quarterly* 113 (1): 129–159. <https://doi.org/10.1215/00382876-2390455>.

****Recommended Readings:**

- Sullivan, Winnifred Fallers. 2006. "Comparing Religions, Legally." *Washington and Lee Law Review* 63 (3): 913–28. <https://scholarlycommons.law.wlu.edu/wlulr/vol63/iss3/2/>.

- Borrows, John. 2009. "Living Law on a Living Earth: Aboriginal Religion, Law, and the Constitution." In *Law and Religious Pluralism in Canada*, edited by Richard J. Moon. Vancouver: University of British Columbia Press.
- Schonthal, Benjamin, Tamir Moustafa, Matthew Nelson, and Shylashri Shankar. 2016. "Is the Rule of Law an Antidote for Religious Tension? The Promise and Peril of Judicializing Religious Freedom." *American Behavioral Scientist* 60 (8): 966–986. <https://doi.org/10.1177/0002764215613380>.
- Lerner, Hanna. 2013. "Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey." *World Politics* 65 (4): 609–55. <https://doi.org/10.1017/S0043887113000208>.
- Sen, Ronojoy. 2010. *Articles of Faith: Religion, Secularism, and The Indian Supreme Court*. New Delhi: Oxford University Press.
- Hirschl, Ran, and Ayelet Shachar. 2014. "The Constitutional Boundaries of Religious Accommodation." In *Constitutional Secularism in an Age of Religious Revival*, edited by Susanna Mancini and Michel Rosenfeld, 175–92. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199660384.003.0010>.
- Saeed, Sadia. 2016. *Politics of Desecularization: Law and the Minority Question in Pakistan*. New York: Cambridge University Press.
- Schonthal, Benjamin. 2016. *Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka*. New York: Cambridge University Press. <http://dx.doi.org/10.1017/9781316585429>.
- Shah, Dian A. H. 2017. *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka*. Cambridge: Cambridge University Press. doi:10.1017/9781316869635.

L9 July 30—Do Courts Liberalize Immigration Policy? (Fraser)

***Required Readings:**

- Anderson, Christopher G. 2010. "Restricting Rights, Losing Control: The Politics of Control over Asylum Seekers in Liberal-Democratic States—Lessons from the Canadian Case, 1951–1989." *Canadian Journal of Political Science/Revue canadienne de science politique* 43 (4): 937-959.
- Joppke, Christian. 1998. "Why liberal states accept unwanted immigration." *World politics* 50 (2): 266-293.

****Recommended Readings:**

- Bonjour, Saskia. "Speaking of Rights: The Influence of Law and Courts on the Making of Family Migration Policies in Germany." *Law & Policy* 38.4 (2016): 328-348.
- Ellermann, Antje. "When can liberal states avoid unwanted immigration? Self-limited sovereignty and guest worker recruitment in Switzerland and Germany." *World Politics* 65.3 (2013): 491-538.

Hamlin, Rebecca. "International law and administrative insulation: a comparison of refugee status determination regimes in the United States, Canada, and Australia." *Law & Social Inquiry* 37.4 (2012): 933-968.

Johannesson, Livia. "Exploring the "Liberal Paradox" from the Inside: Evidence from the Swedish Migration Courts." *International Migration Review* 52.4 (2018): 1162-1185.

Joppke, Christian. "The legal-domestic sources of immigrant rights: The United States, Germany, and the European Union." *Comparative Political Studies* 34.4 (2001): 339-366.

Joppke, Christian, and Elia Marzal. "Courts, the new constitutionalism and immigrant rights: the case of the French Conseil Constitutionnel." *European Journal of Political Research* 43.6 (2004): 823-844.

Koopmans, Ruud, and Ines Michalowski. "Why do states extend rights to immigrants? Institutional settings and historical legacies across 44 countries worldwide." *Comparative Political Studies* 50.1 (2017): 41-74.

Triadafilopoulos, Triadafilos. "Global norms, domestic institutions and the transformation of immigration policy in Canada and the US." *Review of International Studies* 36.1 (2010): 169-193.

L10 August 1—Who Should Have the Final Say Over the Constitution (& Constitutional Amendment)? (Kamal)

***Required Readings:**

Finn, John E. 1999. "Transformation or Transmogrification? Ackerman, Hobbes (as in Calvin and Hobbes), and the Puzzle of Changing Constitutional Identity." *Constitutional Political Economy* 10: 355–65. <https://doi-org.myaccess.library.utoronto.ca/10.1023/A:1009023000354>.

Albert, Richard. 2017. "How a Court Becomes Supreme: Defending the Constitution from Unconstitutional Amendments." *Maryland Law Review* 77 (1): 181–91.

Khosla, Madhav. 2016. "Constitutional Amendment." In *The Oxford Handbook of the Indian Constitution*, edited by Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta. New York: Oxford University Press. [10.1093/law/9780198704898.003.0014](https://doi.org/10.1093/law/9780198704898.003.0014).

****Recommended Readings:**

[Constitute Project](#) (see constitutional amendment procedures and unamendable provisions):

Roznai, Yaniv. 2017. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford: Oxford University Press.

Weinrib, Lorraine Eisenstat. 1999. "Canada's Constitutional Revolution: From Legislative to Constitutional State." *Israel Law Review* 33 (1): 13–50. <https://doi.org/10.1017/S0021223700015880>.

Albert, Richard. 2018. "Constitutional Amendment and Dismemberment." *Yale Journal of International Law* 4 (1): 1–84. <https://doi.org/10.2139/ssrn.2875931>.

- Tushnet, Mark V. 2008. *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton, NJ: Princeton University Press.
- Morton, F.L. 1992. "The Charter Revolution and the Court Party." *Osgoode Hall Law Journal* 30 (3): 627-652.
- Levinson, Sanford, ed. 1995. *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*. Princeton: Princeton University Press.
- Albert, R. 2015. "Amending Constitutional Amendment Rules." *International Journal of Constitutional Law* 13 (3): 655–85. <https://doi.org/10.1093/icon/mov040>.
- Krishnaswamy, Sudhir. 2011. *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine*. New Delhi: Oxford University Press.
- Dixon, R. 2007. "Creating Dialogue about Socioeconomic Rights: Strong-Form versus Weak-Form Judicial Review Revisited." *International Journal of Constitutional Law* 5 (3): 391–418. <https://doi.org/10.1093/icon/mom021>.
- Manfredi, Christopher P., and Michael Lusztig. 1998. "Why Do Formal Amendments Fail?: An Institutional Design Analysis." *World Politics* 50 (3): 377–400. <https://doi.org/10.1017/S0043887100012855>.
- Vanberg, Georg. "Constitutional courts in comparative perspective: a theoretical assessment." *Annual Review of Political Science* 18 (2015): 167-185.
- Kontiadēs, Xenophōn I., ed. 2013. *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada, and the USA*. New York: Routledge.
- Hoque, Ridwanul. 2018. "Eternal Provisions in the Constitution of Bangladesh: A Constitution Once and for All?" In *An Unamendable Constitution? Unamendability in Constitutional Democracies*, edited by Richard Albert and Bertil Emrah Oder, 195–229. Cham, Switzerland: Springer.

L11 August 8—Do International Courts Matter? (Fraser)

***Required Readings:**

Carrubba, Clifford J., and Matthew Gabel. 2017. "International Courts: A Theoretical Assessment." *Annual Review of Political Science* 20: 55-73.

****Recommended Readings:**

- Alter, Karen J., and Sophie Meunier-Aitsahalia. "Judicial politics in the European Community: European integration and the pathbreaking Cassis de Dijon decision." *Comparative Political Studies* 26.4 (1994): 535-561.
- Börzel, Tanja A. "Participation through law enforcement: the case of the European Union." *Comparative Political Studies* 39.1 (2006): 128-152.

- Chaudoin, Stephen. "How Contestation Moderates the Effects of International Institutions: The International Criminal Court and Kenya." *The Journal of Politics* 78.2 (2016): 557-571.
- Cichowski, Rachel A. "Courts, rights, and democratic participation." *Comparative Political Studies* 39.1 (2006): 50-75.
- Jo, Hyeran, and Beth A. Simmons. "Can the International Criminal Court Deter Atrocity?." *International Organization* 70.3 (2016): 443-475.
- Kelemen, R. Daniel. "The limits of judicial power: trade-environment disputes in the GATT/WTO and the EU." *Comparative Political Studies* 34.6 (2001): 622-650.
- König, Thomas, and Lars Mäder. "The strategic nature of compliance: An empirical evaluation of law implementation in the central monitoring system of the European Union." *American Journal of Political Science* 58.1 (2014): 246-263.
- Lupu, Yonatan, and Geoffrey PR Wallace. "Violence, Nonviolence, and the Effects of International Human Rights Law." *American Journal of Political Science* (2018).
- Martinsen, Dorte Sindbjerg. "Judicial influence on policy outputs? The political constraints of legal integration in the European Union." *Comparative Political Studies* 48.12 (2015): 1622-1660.

L12 August 8—What Role Do Courts Play in Deeply Divided and Post-Conflict Contexts? (Kamal)

***Required Readings:**

- O'Leary, Brendan, and Christopher McCrudden. 2013. *Courts and Consociations: Human Rights Versus Power-Sharing*. New York: Oxford University Press.
- Sikkink, Kathryn, and Carrie Booth Walling. 2007. "The Impact of Human Rights Trials in Latin America." *Journal of Peace Research* 44 (4): 427–45. <https://doi.org/10.1177/0022343307078953>.

****Recommended Readings:**

- Nyseth Brehm, Hollie, Christopher Uggen, and Jean-Damascène Gasanabo. 2014. "Genocide, Justice, and Rwanda's Gacaca Courts." *Journal of Contemporary Criminal Justice* 30 (3): 333–52. <https://doi.org/10.1177/1043986214536660>.
- Schertzer, Robert. 2016. "Quebec Justices as Quebec Representatives: National Minority Representation and the Supreme Court of Canada's Federalism Jurisprudence." *Publius: The Journal of Federalism* 46 (4): 539–67. <https://doi.org/10.1093/publius/pjw017>.
- McEvoy, Kieran, and Alex Schwartz. 2015. "Judges, Conflict, and the Past." *Journal of Law and Society* 42 (4): 528–55. <https://doi.org/10.1111/j.1467-6478.2015.00724.x>.