

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

## **Fall 2018**

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

**Meeting Times and Place:** Wednesdays 10am – 12pm

**Office Hours:** By appointment (same Zoom link we use for class meetings)

### **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 and we will hold synchronous meetings every week on Zoom (details are on Quercus). You are expected to complete all assigned readings for that day before the scheduled class and participate in class discussions. You should make thoughtful and meaningful contributions to class discussions and demonstrate a clear understanding of the readings. During the discussions, you may use the chat function. Do not worry about grammar mistakes + emojis are welcome! :)

You are encouraged, but not required to turn on your camera during the meeting. It is nice to see people’s faces during a conversation and the face-to-face connection is especially appreciated during the pandemic. So, if you’re able, please turn on your camera. [Here are instructions](#) on how you can change your background. Please see below for Zoom etiquette.

Please contact me immediately, if a circumstance arises that prevents you from attending class on a particular day. Be prepared to provide documentation. Weekly meetings will **not** be posted on Quercus and you are not allowed to record these discussions (see *University and Class Policies* below).

## Weekly Posts

You will have a discussion forum open for nine weeks throughout the semester. Prior to that week's scheduled class, you will be asked to contribute in two ways listed below.

- Post two discussion questions. Questions should be incisive, reflecting a serious consideration of the material. You're especially encouraged to ask questions that put several authors into conversation with one another (including themes from the previous weeks). Discussion questions are due on **Mondays at midnight** BEFORE that week's scheduled class.
- Post EITHER an answer to a classmate's question OR respond to a comment made by someone else. Answers must a) speak directly to the concerns voiced in the question; b) do so respectfully; c) present textual evidence in support of the answer; d) engage with at least two readings (at least one from that week's readings). Your response should be 250-300 words. Responses are due on **Tuesdays at 3pm** BEFORE that week's scheduled class

A few guidelines:

- This means that your first discussion question for Week 2 is due on January 18, Monday at midnight. And your first response is due on January 19, Tuesday at 3pm.
- There are nine weeks for which you are eligible to earn marks. Only the eight highest marks will contribute to your final score.
- 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 are encouraged to bring up questions or arguments from the discussion board during our class meetings.

## 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 should also have an additional page of references). 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**. Five of these sources should be from the syllabus and five 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. You are

encouraged to pick a case study to address your question. **Please make sure that your case study is different than one that is already covered in class.**

*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 to be submitted to Quercus on **April 7 (Wednesday) by midnight.**

### Class Presentation

Each student will prepare a powerpoint presentation based on their final research paper. More guidelines will be posted on Quercus. All presentations are due to be submitted on Quercus by **March 30, Tuesday midnight.**

You will also be required to submit feedback for at least two presentations. The feedback is due on **April 2, Friday by midnight.**

### 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. Think of the proposal as a mini-version of your final paper. You should also list how each section of your paper will develop your main argument. An additional page should include at least six sources (three of these should be from the syllabus and three should not be from the syllabus) you will draw on in your paper.

The proposals are due on Quercus by **February 24 (Wednesday), midnight.**

### Extra Credit Opportunity:

You have two extra credit opportunities:

- 1- *Research draft* (three points towards final paper):

If you turn in a draft version of your paper by **March 26, Friday at midnight**, you will get extra three points (out of a hundred) on your final paper grade. This means that if you get 77 (B-), with extra credit, it will bump up to 80 (A-).

This is a great opportunity to receive feedback from us and revise your final paper accordingly.

To get extra points, you have to turn in a full draft and you have to have a full list of references (see instructions in the syllabus). If you fulfill these minimum requirements, you will automatically receive your extra credit, you will not receive a separate grade on the drafts.

Since this is an extra credit opportunity, late papers will not be accepted under **any** circumstances.

## 2- *Peer review* (two points towards final paper)

Only students who turn in a draft paper can use this extra credit opportunity. After you turn in a draft, you will be assigned another student's paper and you will provide peer-review on this paper. I will provide a rubric for the peer review. You have to submit your peer review by **December 2, Wednesday at midnight**.

You will get extra two points (out of a hundred) towards your final paper grade for submitting your peer review. If you turn in both a draft and peer-review on time, you will get a total of five points towards your final paper grade.

Since this is an extra credit opportunity, late peer review submissions will not be accepted under **any** circumstances.

### Key dates regarding research papers:

- Research proposals are due on **February 24, Wednesday at midnight**
- Research paper drafts are due on **March 26, Friday at midnight**
- Presentations are due on **March 30, Tuesday at midnight**
- Peer-reviews for research drafts are due on **March 31, Wednesday at midnight**
- Peer-reviews for presentations are due on **April 2, Friday by midnight**
- Final papers are due on **April 7 (Wednesday) by midnight**

### Assessment:

- Weekly posts 24% (highest 8 posts)
- Class presentation 20%
- Class participation 16%
- Paper proposal 5%
- Final Paper 35%

## University and Class Policies

### Submission of Assignments

**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 and presentations. Please contact me immediately, if a circumstance arises that prevents you from completing an assignment. Please keep in mind that if an emergency situation is preventing you from completing an assignment or attending class (e.g., COVID, cold, flu and other illness or injury, family situation), you must register your absence on 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.*

### Unauthorized use of video recordings is prohibited

Students **are not allowed to record, copy, or share virtual class meetings or any course material** without the explicit permission of your instructor. **The unauthorized use of any form of device and/or software to audiotape, photograph, video-record or otherwise reproduce lectures or other teaching materials is prohibited.** Course materials belong to your instructor, the University, and/or other sources depending on the specific facts of each situation and are protected by the Canadian Copyright Act. Students violating this agreement will be subject to disciplinary actions under the Code of Student Conduct.

The live meetings (including your participation) may sometimes be recorded and made available to students for viewing remotely under certain circumstances. For questions about the recording and use of videos in which you appear, please contact your instructor.

### 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 and Zoom office hours. You are encouraged but not required to keep your cameras on during Zoom meetings. It is always nice to see people's faces for human connection, especially during the pandemic. [Here are instructions](#) on how you can change your background. Please keep your mic muted unless you are speaking.

### Communication with Instructor:

If you have logistical questions about the class (e.g. if you're having difficulty accessing a reading), you are encouraged to post your question on the "casual discussion forum." For any other class related issues, please email me to set up an appointment. 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.

### Online code of conduct

In this course, you will be participating in class discussions and assignments through a variety of online tools. Although we will not be meeting regularly in a physical classroom, we expect you to adhere to the same standards of behavior and engagement that you would follow in person and on campus. Please follow the online code of conduct posted on quercus in all your communications (private or public).

### Academic Integrity

I will strictly enforce the University of Toronto's [\*Code of Behavior on Academic Matters\*](#), including the policy on plagiarism. I have attached a memo on how to avoid plagiarism at the end of the syllabus. Please read it carefully.

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.**

## **A WARNING ABOUT PLAGIARISM**

Plagiarism is an academic offence with a severe penalty.

It is essential that you understand what plagiarism is and that you do not commit it. In essence, it is the theft of the thoughts or words of others, without giving proper credit. You must put others' words in quotation marks and cite your source(s). You must give citations when using others'

ideas, even if those ideas are paraphrased in your own words. Plagiarism is unacceptable in a university. What the university calls “plagiarism”, non-university institutions might call “fraud”.

The University of Toronto provides a process that faculty members must initiate when they suspect a case of plagiarism. In the Department of Political Science, suspected evidence of plagiarism must be reported to the Chair; in most cases, the Chair passes the case on to the Dean.

A faculty member may not mark an assignment or assess a penalty if he or she finds evidence of plagiarism – the matter must be reported. Penalties are assigned by the Chair, by the Dean or by the University of Toronto Tribunal.

The following are some examples of plagiarism:

1. Submitting as your own an assignment written by someone else.
2. Quoting an author without indicating the source of the words.
3. Using words, sentences, or paragraphs written by someone else and failing to place quotation marks around the material and reference the source and author. Using either quotation marks or reference alone is not sufficient. Both must be used!
4. Adapting an author’s ideas or theme and using it as your own without referencing the original source.
5. Seeking assistance from a friend or family member in respect to work you claim as your own.

Ignorance of the rules against plagiarism is not a defense; students are presumed to know what plagiarism is and how to avoid it.

Students are especially reminded that material taken from the web **must** be quoted and cited in the same manner as if it came from a book or printed article.

If you are not sure whether you have committed plagiarism, it is better to ask a faculty member or teaching assistant than risk discovery and be forced to accept an academic penalty.

Plagiarism is cheating. It is considered a **serious offence** against intellectual honesty and intellectual property. Penalties can be **severe**, ranging from a mark of “0” for the assignment or test in question, **up to and including expulsion from the university.**

Some websites listed below on avoiding plagiarism:

A useful resource is the “[How not to plagiarize](#)” information on the university website.

Other Advisory Material available at: <http://www.writing.utoronto.ca/home>

**See next page for course outline.**

## Course Outline

### Week 1 (January 13): Introduction

### Week 2 (January 20): The Ambiguities of Legal Institutions

*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 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. [SELECT PAGES, see PDF doc].
- Albiston, Catherine, Edelman, Lauren B., Milligan, Joy. 2014. The Dispute Tree and the Legal Forest, *Annual Review of Law and Social Science* 1 (10): 105–131.
- 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 3 (January 27): 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 “lumping it” described by Miller & Sarat compare to the anti-litigiousness in Sanders County (described by Engel) and the experiences of battered women (described by Merry)? How does Zemans describe legal mobilization?*

- 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, 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.

#### Recommended

- Galanter, M. 1983. “The Radiating Effects of Courts” in *From Empirical Theories About Courts*, Keith O Boyum and Lynn Mather, ed. Pp. 117-142
- 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 4 (February 3): Why do activists engage in legal mobilization? I. Support Structures of Advocacy**

*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 and 4
- 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 10): Why do activists engage in legal mobilization? II. 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?*

- 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.

#### **Week 6 (February 17): READING WEEK**

## **Week 7 (February 24): 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**

- 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 (March 3): 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.
- 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**

- Michael McCann. 1994. *Rights at Work*. Chicago: University of Chicago Press.
- 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 10): 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 17): 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.
- 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 24): 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 12 (March 31): Presentations**

**\*\*\*\*\*ALL POWERPOINT PRESENTATIONS ARE DUE\*\*\*\*\***

### **Week 13 (April 7): Presentations**

**\*\*\*\*\*FINAL PAPERS DUE\*\*\*\*\***