

POL 492-2392: Comparative Law and Social Change

Winter 2023

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

Meeting Times and Place: Tuesdays 10am – 12pm, LM 123

Office Hours:

- Office hours on Tuesdays 3-4pm via Zoom (see Quercus for details) or in person @ Munk at Trinity, Room 318 N (1 Devonshire Pl)
- Email Prof. Kahraman to request a meeting at a different time

Course Description

This seminar focuses on the question of how legal institutions and legal ideologies influence efforts to produce or prevent social change. We will examine what happens when individuals and groups attempt to use law or courts to obtain benefits or protection from government. Some parts of the course will focus on court-initiated action while other parts will focus on social actions “from below” (social movements), but overall the course will analyze the interactions between state legal 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

Assessment:

- Weekly posts 27% (highest 9 posts)
- Class presentation 15%
- Class participation 20%
- Paper proposal 3%
- Final Paper 35%

Class Participation

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

Weekly Posts

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

Post two questions: due on **Monday at noon** BEFORE that week's scheduled class.

- Questions should be incisive, reflecting a serious consideration of the material.
- Your questions should cover ALL readings assigned for that day
- You're especially encouraged to ask questions that put several authors into conversation with one another (including themes from the previous weeks).

Post a response: Post EITHER an answer to a classmate's question OR respond to a comment made by someone else. Responses are due on **Mondays at 7pm** BEFORE that week's scheduled class

Answers must

- a) speak directly to the concerns voiced in the question;
- b) present textual evidence in support of the answer;
- c) engage with at least two readings
- d) be min 250 words.

This means that your first discussion question & post for Week 2 is due on January 16, Monday. There are ten weeks for which you are eligible to earn marks. Only the nine highest marks will contribute to your final score.

Final Paper

Students are required to write a final paper (4,500-5,000 words for undergraduate students, 6,000 words 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. Undergraduate students are especially encouraged to pursue the first 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: Research Paper based on Secondary Resources. 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.** If you are unsure, please check in with me.

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. This option is mostly for **graduate students** who received advanced training in research methodology. Undergraduate students interested in this option should first check in with me.

The final paper is due to be submitted on Quercus by **April 4th, Tuesday at 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 21st, Tuesday at midnight.**

You will also be required to submit feedback on two presentations. The feedback is due on **March 31st, Friday at 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 explain 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 21st, Tuesday at 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, Sunday 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 your peers and revise your final paper accordingly.

To get extra points, you have to turn in a full draft (indicate the word count at the beginning of your paper) and you have to have a full list of references. 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 **March 29th, 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 21st, Tuesday at midnight**
- Presentations are due on **March 21st, Tuesday**
- Research paper drafts are due on **March 26, Sunday at midnight**
- Peer-reviews for research drafts are due on **March 29th, Wednesday at midnight**
- Peer-reviews for presentations are due on **March 31st, Friday by midnight**
- Final papers are due on **April 4th, Tuesday at midnight**

University and Class Policies

Submission of Assignments

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

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

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

Emergency circumstances beyond the student's control include:

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

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

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

Communication with the Instructor

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

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

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

Zoom

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

Classroom Manners

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

Academic Integrity

I will strictly enforce the University of Toronto's [*Code of Behavior on Academic Matters*](#), including the policy on plagiarism. 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 the University's plagiarism detection tool for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the tool's reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of this tool are described on the Centre for Teaching Support & Innovation web site (<https://uoft.me/pdt-faq>)."

Accessibility

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

If you have a letter from the accessibility center, please set up an appointment with me to discuss appropriate accommodations.

Course Outline

Part I. What is Law?

Week 1 (January 10): Introduction

Week 2 (January 17): 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? How does “lumping it” described by Miller & Sarat compare to the anti-litigiousness in Sanders County (described by Engel)?

- 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].
- McCann, M., Haltom, W. and Bloom, A., 2001. Java Jive: Genealogy of a Juridical Icon. *U. Miami L. Rev.*, 56, p.113-178.
- Engel, David. 1984. “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injury in an American Community” *Law & Society Rev.* 18 (4): 551-582

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 24): Individual Rights Claiming and Rights Discourse

What is law? Where do we find it? How does law shape everyday social and political interaction? How do the experiences of battered women (described by Merry) compare to “lumping it” described by Miller & Sarat and the anti-litigiousness in Sanders County (described by Engel)? How does Zemans describe legal mobilization?

- 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.
- 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

- 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. 1990. *Getting justice and getting even: Legal consciousness among working-class Americans*. University of Chicago Press.
- Lovell, G.I., 2012. *This is not civil rights: Discovering rights talk in 1939 America*. University of Chicago Press.
- Dudas, Jeffrey. 2008. The cultivation of resentment: *Treaty rights and the new right*.
- Ewick, Patricia, and Susan Silbey, 1998. *The common place of law: Stories from everyday life*. University of Chicago Press.

Part II. Mobilizing for Law

Week 4 (January 31): 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?

- Epp, C. R. *The Rights Revolution*. Chps 1, 2,3, and, 4
- 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 7): 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.

Recommended

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

Week 6 (February 14): Why do activists engage in legal mobilization? III. Strategic and Ideational Factors

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

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

Recommended

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

Week 7 (February 21): READING WEEK

Part III. Impact of Law

Week 8 (February 28): 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 9 (March 7): Indirect Effects of Legal Mobilization I.

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

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

Recommended

- Sieder, R., 2010. Legal Cultures in the (Un) Rule of Law: Indigenous Rights and Juridification in Guatemala. in Couso, Huneuus, and Sieder eds. *Cultures of legality: Judicialization and political activism in Latin America*.

- Rodríguez-Garavito, C.A., 2005. Nike's law: the anti-sweatshop movement, transnational corporations, and the struggle over international labor rights in the Americas. *Law and globalization from below: Towards a cosmopolitan legality*, pp.64-91.
- González-Ocantos, E.A., 2016. *Shifting legal visions: Judicial change and human rights trials in Latin America*. Cambridge University Press.

Week 10 (March 14): Indirect Effects of Legal Mobilization II.

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

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

Recommended

- 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.

Week 11 (March 21): Legal Mobilization in Authoritarian Settings

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

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

Recommended

- Mary Gallagher. 2017. *Authoritarian legality in China: Law, workers, and the state*. Cambridge University Press.
- Moustafa, T., 2018. *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*. Cambridge University Press
- Stern, R.E., 2013. *Environmental litigation in China: a study in political ambivalence*. Cambridge University Press.
- Chua, L.J., 2014. *Mobilizing gay Singapore: Rights and resistance in an authoritarian State*. NUS Press.
- Osanloo, Arzoo, *The Politics of Women's Rights in Iran*

Week 12 (March 28): Impact of Mobilizing International Law

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

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

Recommended

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

Week 13 (April 4):

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

A WARNING ABOUT PLAGIARISM

Plagiarism is an academic offence with a severe penalty.

In essence, plagiarism 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 or a software.
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.
6. Submitting a paper you used for another class.

Please note 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.

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