

Law & Society in Comparative Perspective

PLSC 412/780

Fall 2020

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Meeting Times: Wednesday, 3.30-5.20 pm EST

Office Hours: By Appointment

Course Description:

This advanced seminar is about the functions of law across historical, political, and cultural contexts. We will discuss what is law, why people obey the law, and how do societies govern themselves in the absence of strong state legal institutions. We will work with the concepts of the rule of law, the state, legitimacy, legal mobilization and legal consciousness. We then proceed with discussion of how to measure law and social order. We will investigate how legal institutions influence efforts to produce or prevent social change and examine what happens when individuals and groups attempt to use law to obtain benefits or protection from government. The class will explore the relationship between law and colonialism, the functioning of law under the authoritarian and democratic governments, and the patterns of social ordering during the armed conflict and its aftermath. We will also discuss comparative perspectives on policing.

Learning objectives:

- 1) To familiarize with the most important debates and issues in law and society
- 2) To learn theories and empirical tools to study law
- 3) To learn how to conduct social science research; formulate research questions and hypotheses, construct concepts, and develop an argument;
- 4) To learn different ways of conducting comparative analysis
- 5) To learn how to present your ideas effectively;

Organization of the course:

Announcements, lecture slides, readings, assignments, and grades will be posted on the Canvas.

Textbook and supporting reading materials:

There is not a recommended textbook for this class. All the readings for the class (see course schedule) will be made available through course reserve in canvas. If you experience any problem getting access to the readings, please email me.

In case of illness, family emergency, or conflict with a religious observance, please email me to arrange an appropriate accommodation.

Academic Integrity: It is your responsibility to be aware of the various forms of academic dishonesty and plagiarism, related university regulations, and to adhere to these regulations. Please refer to the [Yale Undergraduate Regulations](#) for more detail, and to the [Yale Writing Center](#) for guidance on how to appropriately cite sources in your work.

Disability: I will work to provide the appropriate accommodations for students with disabilities. Please contact the [Yale University Resource Office on Disabilities](#) to discuss your needs and request accommodations.

Inclusivity and Classroom Climate: An inclusive and safe learning environment for all students is a priority for this course. To this end, we will use time on the first day of class to set collective guidelines for discussion.

This course may involve material pertaining to sexual violence. If you are concerned about your ability to participate at any time, please reach out to me to discuss this. Please be aware that if you discuss an incident of potential sexual misconduct with a staff/faculty member, we are obligated to inform the college's Title IX coordinator about the basic facts of the incident. The coordinators will not take action or plan response without the complainant's consent and can be asked to maintain confidentiality.

Requirements:

- Active informed participation in the discussion (15%)
- Leading the class discussion of one week's material (10%)
- Writing a research proposal; 750-1000 words; (15%) **Due October 14**
- Peer-review of another seminar participant's research proposal; (10%) **Due October 21**
- Final project presentation (10%) **On December 2**
- Final paper; 4,000-8,000 words; (40%) **Due December 9**

Late submissions will be brought down at least one point for each day that it is late.

First, active, informed participation is key component of the seminar. You should read the required texts and be ready to talk about them in class, answer instructor's questions and raise your own questions related to the topics of discussion. If you are uncomfortable speaking in class due to any reasons, there is an alternative form of participation based on written responses to course readings. Responses with your thoughts and questions should be posted in Discussions section on Canvas the day before class by 5pm.

Second, during weeks 3-12, small groups of seminar participants will lead discussion. Discussion leaders will cover both required and recommended readings (with an emphasis on the latter) and can also include the readings beyond the syllabus. Class will begin with the discussion leaders' critical overview of each work's key concepts, claims, and questions for the group discussion. Discussion leaders should use Powerpoint presentations. This lead-in to each week's class should take about 20-30 minutes. At that point, the floor will be open to the entire class. Seminar participants will choose "their session" when they would like to lead the discussion during the first 2 weeks of the seminar.

Third, you will be asked to write a one-page (750 words) research proposal. You are absolutely free to choose your research topic as long as it is related to law and society broadly defined. The topic might be contemporary or historical, it can be about any country. You will have to formulate a research question, explain why it is important to study it, propose a hypothesis or an argument, discuss a theory you want to engage with, and speculate on the sources of evidence to test your ideas. You are encouraged to sign up to the virtual office hours to discuss your project ideas.

Fourth, after submitting your research project, you will receive a research project from another student in the class (this will be randomly assigned by the instructor) and you will be asked to provide brief comments and suggestions to your fellow seminar participant.

Finally, you will be required to write a short final paper on the topic of your interest (approximately 10-15 pages for undergraduate students, 15-20 pages for graduate students). For example, you can write on the following topics: How does the British colonialism affect executive-judiciary relations in contrast to the French colonialism? Why does country A formally recognize customary law, while country B does not? Why do some authoritarian states promote the rule of law while others do not? How do criminal groups establish their social order? Why do some transitional justice initiatives are more efficient in gaining public support than others? When legal transplants actively resisted by the local population and when are they accepted? Why police reform was successful in country A, but failed in country B, or town X versus town Y? You will come up with a great question of your own! Undergraduate students' paper can be based on the critical analysis of the secondary sources and/or some original research. Graduate students' final papers should either be a detailed NSF-style research proposal or a paper based on original research.

You will be also asked to give a short – 5-10 min presentation of your project during the last meeting of the seminar.

All writing assignments should be 12 Times New Roman font double-spaced; Word file or pdf.

The Schedule:

1 Course Introduction 09/02

2 Conceptual Work 09/09

- Holland Alisha, 2016. Forbearance. *The American Political Science Review*. 110 (2), 232.
- Massoud, Mark Fathi. 2013. *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*. Cambridge University Press. Chapter 1, "Lawfare and Warfare in Sudan;"
- Cheesman, Nick. 2014. "Law and Order as Asymmetrical Opposite to the Rule of Law." *Hague Journal on the Rule of Law* 6: 96-114.

Recommended:

- Tamanaha Brian 2001. *A General Jurisprudence of Law and Society*, Oxford University Press. [Chapters 1 & 2].

3 Empirical Approaches and Methods 09/16

- Hirschl, Ran. "The question of case selection in comparative constitutional law." *The American Journal of Comparative Law* 53.1 (2005): 125-156.
- Hendley, Kathryn. *Everyday Law in Russia*. Cornell University Press, 2017. Chapters 1 & 2.
- Stern, Rachel, Benjamin Liebman, Margaret Roberts, and Alice Wang. "Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law." (2020) *J. L. & Courts* (2020)
- Scheppele, Kim Lane. "Constitutional ethnography: an introduction." *Law & Society Review* 38, no. 3 (2004): 389-406.

Recommended:

- Rosenberg, G. (1996). Positivism, Interpretivism, and the Study of Law. *Law & Social Inquiry*, 21(2), 435-455
- McCann, M. 1996. Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive...). *Law & Social Inquiry*, 21(2), 457-482.

4 Law and Social Change 09/23

- González-Ocantos, E.A., 2016. Shifting legal visions: Judicial change and human rights trials in Latin America. Cambridge University Press. [Extracts].
- Kohler-Hausmann, Issa. *Misdemeanorland: Criminal courts and social control in an age of broken windows policing*. Princeton University Press, 2018. [Extracts].

Recommended:

- Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago, IL: University of Chicago Press, Chapter 1, "The Dynamic and the Constrained Court;" Chapter 2, "Bound for Glory?;" Chapter 3, "Constraints, Conditions, and the Courts"

5 Legal Mobilization 09/30

- Arrington, Celeste. 2014. "Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea." *Law & Society Review* 48 (3): 563-593
- Paschel, Tianna S. *Becoming black political subjects: movements and ethno-racial rights in Colombia and Brazil*. Princeton University Press, 2016. [Chapters 1, 2, 3 & 8].
- Kahraman, Filiz. 2017. A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting. *Law & Social Inquiry*.

Recommended:

- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: University of Chicago Press, Chapter 1, "Introduction;" Chapter 3, "Law as Catalyst;" Chapter 7, "Rights Consciousness and Social Change."
- Epp, Charles. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago, IL: University of Chicago Press, Chapter 2, "The Conditions for the Rights Revolution: Theory;" Chapter 6, "India's Weak Rights Revolution and its Handicap;"

6 Social Orders without Law and State 10/7

- Murtazashvili, Jennifer 2016. *Informal order and the state in Afghanistan*. Cambridge University Press. Introduction, Chapter 4.
- Skarbek, David. "Covenants without the sword? Comparing prison self-governance globally." *American Political Science Review* 110.4 (2016): 845-862.

Recommended:

- Ellickson, Robert C. 1991. *Order without law: How neighbors settle disputes*. Harvard University Press. Introduction and Part I.
- Ostrom, Elinor. 1990. *Governing the commons*. Cambridge university press. Chapter 1-2.

7 Colonialism and Legal Pluralism 10/14

- Hussin, Iza R. 2016. *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State*. University of Chicago Press. [Extracts].
- Sezgin, Yuksel. 2013. *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India*. Cambridge University Press. Introduction, Chapters 2 and 3.

Recommended:

- Benton, Lauren. 2002. *Law and colonial cultures: Legal regimes in world history, 1400-1900*. Cambridge University Press. Chapter 1
- Mamdani, Mahmood. 1996. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press. Pages 3-138.

8 Democracy and Law 10/21

- Meierhenrich, Jens. *The legacies of law: long-run consequences of legal development in South Africa, 1652-2000*. Cambridge University Press, 2008. [Extracts].
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. New York, NY: Cambridge University Press, Chapter 1, "Introduction," Chapter 2, "Why Judicial Review?"
- Popova, Maria. *Politicized justice in emerging democracies: a study of courts in Russia and Ukraine*. Cambridge University Press, 2012. [Extracts].

Recommended:

- Smith, Nicholas Rush. *Contradictions of Democracy: vigilantism and rights in post-apartheid South Africa*. Oxford University Press, 2019. [Extracts].
- De, Rohit. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton University Press, 2018. [Extracts].

9 Authoritarianism and Law 10/28

- Hilbink, Lisa. *Judges beyond politics in democracy and dictatorship: Lessons from Chile*. Cambridge University Press, 2007. [Extracts].
- Stern, Rachel E. *Environmental litigation in China: a study in political ambivalence*. Cambridge University Press, 2013. [Extracts].
- Shen-Bayh, Fiona. "Strategies of Repression: Judicial and Extrajudicial Methods of Autocratic Survival." *World Politics* (2018): 1-37.

Recommended:

- Scheppele, Kim Lane. "Autocratic legalism." *The University of Chicago Law Review* 85, no. 2 (2018): 545-584.
- Moustafa, Tamir. "Law and courts in authoritarian regimes." *Annual Review of Law and Social Science* 10 (2014): 281-299.
- Gallagher, Mary E. *Authoritarian legality in China: Law, workers, and the state*. Cambridge University Press, 2017. [Extracts].

10 Conflict, Order, and Transitional Justice 11/04

- Lake, Milli. 2017. "Building the Rule of War: Post-conflict Institutions and the Micro-Dynamics of Conflict in Eastern DR Congo." *International Organization* pp. 1–35.
- Lazarev, Egor. "Laws in conflict: legacies of war, gender, and legal pluralism in Chechnya." *World Politics* 71, no. 4 (2019): 667-709.
- Loyle, Cyanne E., and Christian Davenport. "Transitional injustice: Subverting justice in transition and postconflict societies." *Journal of Human Rights* 15, no. 1 (2016): 126-149

Recommended:

- Arjona, Ana. 2016. *Rebelocracy*. Cambridge University Press. Chapter 1-3.
- Loyle, Cyanne E. "Rebel Justice During Armed Conflict." *Journal of Conflict Resolution* (2020):
- Kaminski, Marek M., Monika Nalepa, and Barry O'Neill. "Normative and strategic aspects of transitional justice." *Journal of Conflict Resolution* 50, no. 3 (2006): 295-302.

11 Gender and Law 11/11

- Lake, Milli. 2018. *Strong NGOs and Weak States: Pursuing Gender Justice in the Democratic Republic of Congo and South Africa*. Cambridge University Press. [Extracts].
- Htun, Mala, and S. Laurel Weldon. *The logics of gender justice: State action on women's rights around the world*. Cambridge University Press, 2018. [Extracts].

Recommended:

- Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating - International Law into Local Justice*. Chicago, IL: University of Chicago Press. Chapters 1 and 5.

12 Comparative Perspectives on Policing 11/18

- Weaver, Vesla M., and Amy E. Lerman. "Political consequences of the carceral state." *American Political Science Review* (2010): 817-833.
- Magaloni, Beatriz, and Luis Rodriguez. "Institutionalized Police Brutality: Torture, the Militarization of Security and the Reform of Inquisitorial Criminal Justice in Mexico." *American Political Science Review* (2020): 1-22.
- McCarthy, Lauren A. *Trafficking justice: How Russian police enforce new laws, from crime to courtroom*. Cornell University Press, 2015. [Extracts].

Recommended:

- Soss, Joe, and Vesla Weaver. "Police are our government: Politics, political science, and the policing of race–class subjugated communities." *Annual Review of Political Science* 20 (2017).
- Harcourt, Bernard. 2001. *Illusion of Order: The False Promise of Broken Windows Policing*. Cambridge, MA: Harvard University Press, Chapter 1, "Punishment and Criminal Justice at the Turn of Century;" Chapter 3, "The Broken Windows Theory."

November Break 11/25

13 Final Presentations 12/02