

Politics and Laws

정치와 법

Ewha Womans University

2021 Spring Semester

Tuesday 4 (12:30-13:45), Friday 5 (14:00-15:15)

Online: zoom link to be announced at Ewha Cybercampus in the mid-February

Instructor: Moohyung Cho

Assistant Professor, Department of Political Science & International Relations

✉ moohyungcho@ewha.ac.kr

🌐 <https://www.moohyungcho.com>

Office: Ewha-POSCO Building, Room 324

☎ TBA

Office hour: Thursday & Friday 16:00-17:00 or by appointment

I. Course Description

This course examines scholarly themes and real-world issues in the study of *law and politics* and *judicial politics*, an interdisciplinary research area bridging political science and legal studies. This course consists of three parts.

- In Part I, we study major theories of judicial institutions and discuss several key concepts in the literature of law and politics, e.g., the rule of law, judicial independence, judicial and constitutional review, and the judicialization of politics.
- In Part II, we study how judicial actors and institutions interact with the political environment (both domestic and international) and examine the politico-economic effects of law and courts.
- In Part III, we apply our knowledge obtained in the first two parts to the case of South Korea. We study the history of legal-political development in South Korea and discuss recent issues and debates regarding law and politics in South Korea.

Note that this course adopts a *political science approach*. In this course, laws and constitutions are legal institutions that generate political outcomes; the judiciary is a governmental branch that checks and balances against the executive and the legislature; judges are actors operating under and influenced by a political environment. Since this course highlights the social-scientific implications of legal institutions and judicial decisions, it does *not* take a purely legalistic approach taken by most of the Law School courses. This course is more oriented to politics than jurisprudence.

This course is designed for advanced undergraduate students interested in studying political institutions, law and courts, and comparative politics. Works from political science and law are equally covered. No prior knowledge is required.

II. Reading Materials

Reading materials consist of journal articles, book chapters, and online resources. All materials are accessible on the Ewha Cybercampus or by hyperlinks colored in blue on this syllabus. For

those interested, we will read several chapters in the following book, and you can get access to this book — both [hard copies](#) and [electronic copies](#) — in the library.

Whittington, Keith E., R. Daniel Kelemen, and Gregory A. Caldeira, (eds.) 2008.
The Oxford Handbook of Law and Politics. Oxford University Press. (hereafter *Handbook*)

III. Course Requirements and Grades

1. **Participation** (10%): Although my lecture occupies a large portion of this course, your active and thoughtful participation is the key to making this course a success. To this end, I expect you to read the assigned reading before class and be ready to participate in the class. I will be flexible to adjust the relative weight between my lecture and discussion depending on the class size. Unexcused absences result in the deduction of your participation grade. (See IV. Class Policies for details.)
2. **Writing assignments** (50%): One of the main goals of this course is to develop your *critical thinking* through *analytic writing*. For this reason, there are no exams in this course, but you are expected to write **three short essays** (in English) throughout the semester. For essays #1 and #2 (750±50 words each), I will provide an essay question and detailed guidelines two weeks before their due, and you should respond to the question and provide your own thoughts in your essay by using theories, concepts, and arguments you learn in class. Essay #3 (375±25 words) is the draft introduction of your final paper to be submitted at the end of this course (see below). Each essay should be uploaded to the Ewha Cybercampus on the following dates.
 - **Essay #1** (20%): April 13th (Tuesday) 17:00
 - **Essay #2** (20%): May 18th (Tuesday) 17:00
 - **Essay #3** (10%): June 1st (Tuesday) 17:00
3. **Final paper** (40%): You should submit a final paper (2,000-2,500 words; 8-10 pages, double-spaced; in English) focused upon a selected topic of your interest, which is also related to this course. I will give you an extensive freedom to work on the subject that intrigues you. But your paper should have the structure of typical research papers. It should include (a) an introduction setting out your research question, (b) a brief review of prior research or existing discussions, (c) a theory section outlining your main argument, (d) qualitative, quantitative, and/or case-specific evidence to support your argument, (e) a conclusion, and (f) the full list of works cited. I strongly recommend you to start working on your final paper early and to meet me regularly to develop your paper. The final paper should be submitted to the Ewha Cybercampus until **June 18th (Friday), 17:00**.

The **absolute evaluation** will be made according to the following grading scale:

A+: 95.0–100.0	A: 92.0–94.9	A-: 90.0–91.9	B+: 85.0–89.9	B: 82.0–84.9	B-: 80.0–81.9
C+: 75.0–79.9	C: 72.0–74.9	C-: 70.0–71.9	D+: 50.0–69.9	F: below 50	

IV. Class Policies

- **Class via zoom:** Except in unavoidable circumstances, all students are expected to attend the class with their *video turned on* and *audio turned off*. During the class via zoom, any activities other than class attendance are strictly prohibited. If you have any questions, use the “Chat” function to leave your questions, and I will answer them in the middle of the class or before the class is over. If class time is too tight to answer those questions fully, I will respond via the Ewha Cybercampus or e-mail.
- **Attendance:** You should make every effort to attend the class. If you cannot attend due to personal reasons, e-mail me before the class begins. Every unexcused absence leads to the 0.5 points deduction of your participation grade. Independent of this policy, Article 40-1 of the University regulation indicates that more than one-third of unexcused absences—more than 9 absences in this course—result in the grade F. In the cases of serious illness, family members’ death, and the attendance of events and competitions, your absence can be approved as attendance only when you submit a document that proves these incidents within two weeks after their occurrence (Article 40-2).
- **Late assignments:** You should submit your essays and a final paper on time. Late submissions are penalized by one point for every one hour overdue. If the essays and final paper are submitted more than 24 hours after due, it will automatically receive a zero. Extensions will be made only for extraordinary circumstances (e.g., family emergencies, personal illness), which require appropriate documentation.
- **Re-grading:** I will grade all your essays and final paper both thoroughly and fairly based on my own established rubric. Nevertheless, if you have any grade appeals on your essays and/or final paper, you should do no later than a week after I return your essays and/or final paper. For the appeal, you should submit a written statement that explains clearly why you think you need a grade change. In the event of the appeal, I will re-grade your entire essay and/or final paper. Please note that your appeal never guarantees the improvement of your grade: It may be higher, lower, or unchanged.

V. Academic Dishonesty

Any acts of academic dishonesty will never be tolerated. If I suspect that a student has attempted to represent someone else’s work as their own, or to cheat in any other manner on an exam or a written assignment, I will refer the case to the university and follow the policy prescribed by the university. If a violation of the academic integrity policy is found to have occurred, the minimum penalty will be a zero on the assignment/exam in question. If you have any questions about plagiarism and proper citation methods, please consult me or the library, or access to the following link: <http://lib.ewha.ac.kr/local/html/researchEthics>.

VI. Students with Challenges

According to Article 57-3 of the University regulation, students with disabilities can request for special accommodations related to attendance, lectures, assignments, or tests by contacting the course professor at the beginning of semester. Based on the nature of the students’ request, students can receive support for such accommodations from the course professor or from the

Support Center for Students with Disabilities (SCSD). Please refer to the below examples of the types of support available in the lectures, assignments, and evaluations.

- Lecture: Visual impairment(braille, enlarged reading materials), hearing impairment (note-taking assistant), physical impairment (access to classroom, note-taking assistant)
- Assignment: Extra days for submission, alternative assignments
- Evaluation: Visual impairment (braille examination paper, examination with voice support, longer examination hours, note-taking assistant), hearing impairment (written examination instead of oral), physical impairment (longer examination hours, note-taking assistant)

VII. Course Schedule

Week 1 (3/2, 3/5): Course Introduction & the Overview of the Law and Politics

Course introduction (3/2)

Whittington, Keith E., R. Daniel Kelemen, and Gregory A. Caldeira. 2008. "The Study of Law and Politics." *Handbook* Chapter 1. pp.1-15. (3/5)

PART I. MAJOR THEORIES AND CONCEPTS OF LAW AND POLITICS

Week 2 (3/9, 3/12): Theories of Judicial Institutions

Ríos-Figueroa, Julio. 2015. "Judicial Institutions." in Jennifer Gandhi and Rubén Ruiz-Rufino, (eds.) *Routledge Handbook of Comparative Political Institutions*. Routledge. pp.195-208.

Hardin, Russell. 2006. "Constitutionalism." in Barry R. Weingast and Donald Wittman, (eds.) *The Oxford Handbook of Political Economy*. Oxford University Press. pp.289-311.

Week 3 (3/16, 3/18): Rule of Law

Tamanaha, Brian Z. 2004. *On the Rule of Law: History, Politics, Theory*. Cambridge University Press. Chapter 9. pp.114-126.

World Justice Project, [Rule of Law Index 2020](#).

Week 4 (3/23, 3/25): Judicial Independence

Geyh, Charles Gardner. 2014. "Judicial Independence as an Organizing Principle." *Annual Review of Law and Social Science* 10. pp.185-200.

Vanberg, Georg. 2008. "Establishing and Maintaining Judicial Independence." *Handbook* Chapter 7. pp.99-118.

Week 5 (3/30, 4/2): Judicial and Constitutional Review

Tate, C. Neal. “[Judicial Review](#)” and “[Judicial Review](#).” *Britannica*

Ginsburg, Tom. 2008. “The Global Spread of Constitutional Review.” *Handbook* Chapter 6, pp.81-98.

Week 6 (4/6, 4/9): The Judicialization of Politics

Hirschl, Ran. 2008. “The Judicialization of Politics.” *Handbook* Chapter 8. pp.119-141.

Yi, Young-jae. 2012. “Judicialization of Politics, is the Crisis of Democracy? Focusing on the Principle of Habermas’s Democratic Constitutional State Theory.” *Peace Studies* 20.1. pp.71-103. (in Korean)

(이영재. “‘정치의 사법화’, 민주주의의 위기인가?: 하버마스의 민주법치국가 원리를 중심으로.” *평화연구*. 20권 1호. 71-103.)

PART II. LAW AND COURTS UNDER POLITICAL ENVIRONMENT

Week 7 (4/13, 4/16): Judges as Political Actors?

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press. Chapter 3. pp.86-114.

Epstein, Lee, and Jack Knight. 1997. *The Choices Justices Make*. Sage. Chapters 1 and 3.

Essay #1 due (4/13)

Week 8 (4/20, 4/23): Interlude

Special lecture on how to write a research paper (4/20): Munger, Michael C. “[10 Tips on How to Write Less Badly](#).” *The Chronicle of Higher Education*. September 6, 2010.

Midterm exam period for liberal art courses (no class, 4/23)

Week 9 (4/27, 4/30): Courts in the Relationship with the Legislature and the Executive

Vanberg, Georg. 2001. “Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review.” *American Journal of Political Science* 45.2. pp.346-361.

Helmke, Gretchen. 2002. “The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy.” *American Political Science Review* 96.2. pp.291-303.

Week 10 (5/4, 5/7): Law, Courts, and Economic Development

North, Douglass C., and Barry R. Weingast. 1989. “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England.” *The Journal of Economic History* 49.4. pp.803-832.

Haggard, Stephan, Andrew MacIntyre, and Lydia Tiede. 2008. "The Rule of Law and Economic Development." *Annual Review of Political Science* 11. pp.205-234.

La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2008. "The Economic Consequences of Legal Origins." *Journal of Economic Literature* 46.2. pp.285-332.

Week 11 (5/11, 5/14): Law, Courts, and Political Regimes

Helmke, Gretchen, and Frances Rosenbluth. 2009. "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective." *Annual Review of Political Science* 12. pp.345-366.

Moustafa, Tamir. 2014. "Law and Courts in Authoritarian Regimes." *Annual Review of Law and Social Science* 10. pp.281-299.

Week 12 (5/18, 5/21): Law and Courts in International Politics

Simmons, Beth. 2008. "International Law and International Relations." *Handbook* Chapter 11, pp.187-208.

Reus-Smit, Christian (ed.) 2004. *The Politics of International Law*. Cambridge University Press. pp.1-44.

Essay #2 due (5/18)

PART III. LAW AND POLITICS IN SOUTH KOREA

Week 13 (5/25, 5/28): Legal and Political Development in South Korea

Yoon, Dae-Kyu. 2010. *Law and Democracy in South Korea: Democratic Development since 1987*. Institute for Far Eastern Studies, Kyungnam University.

Ginsburg, Tom. 2003. "Rule by Law or Rule of Law? The Constitutional Court of Korea." in *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press. pp.206-246.

Week 14 (6/1, 6/4): Rule of Law and Judicial Independence in South Korea

World Justice Project. [Rule of Law Index 2020, Republic of Korea](#)

Ham, Chaihark. 2010. "Uneasy about Rule of Law: Reconciling Constitutionalism and 'Participatory Democracy'." in Jongryn Mo and David W. Brady (eds.) *The Rule of Law in South Korea*. Hoover Institution Press: pp.23-60.

Choi, Sun. 2015. "A Critical Analysis on the Judicial Independence in South Korea." *Korean Political Science Review* 49.1. pp.205-226. (in Korean)

(최선. "사법권 독립에 대한 비판적 검토: 독립과 책임의 조화를 중심으로." *한국정치학회보* 49권 1호. 205-226.)

Essay #3 due (6/1)

Week 15 (6/8, 6/11): Judicial Review and Judicialization of Politics in South Korea

Chon, Jong Ik. 2015. "Effect of Constitutional Review on the Legislature and the Executive Branch for Last 25 Years in Korea." *Journal of Korean Law* 14.2: pp.131-165.

Kim, Jongcheol, and Jonghyun Park. 2012. "Causes and Conditions of Sustainable Judicialization of Politics in Korea." in Björn Dressel (ed.), *The Judicialization of Politics in Asia*. Routledge: pp.37-55.

Week 16 (6/15, 6/18): Wrap-up & Final Paper Submission

Han, Sangkyou. 2018. "Judicial Distrust and Court Reform: Reflection of Court Reform after Democratization in 1987." *Kangwon Law Review* 53: pp.423-457. (in Korean) (6/15)

(한상규. "사법 불신과 법원 개혁: 1987년 민주화 이후 법원개혁의 성찰." *강원법학* 53권. 423-457.)

Final paper should be submitted no later than June 18th (Friday), 17:00.