

## **Gov 365S: Comparative Legal Systems**

(Unique 38540)

Classroom: WAG 201, Thursdays 11:00-12:30

Professor: Daniel Brinks

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Office: Batts Hall 2.116

Office hours

by Zoom: Mondays, 11:00 – 12:30 am;

in person: Thursdays, 1:00-2:30 pm. Sign-up  
sheet on Canvas

TA: TBA

TA Office hours: TBA.

### **Course Description:**

Judicial politics is the study of how political dynamics shape courts and how courts, in turn, shape politics and society. This course is an introduction to the comparative study of judicial politics, designed for students who want to learn more about the role of courts in the modern state and to better understand their growing importance as political actors. We will engage with different theories to compare and contrast how law, politics and judiciaries interact around the world. To help us understand and apply the readings, we will role play a constituent assembly and design our own court.

Participating in this course will help you understand questions such as the following: What is the political logic that gives rise to judicial power? How do different courts make decisions? How do different political contexts (democracy, authoritarianism) shape the way courts make decisions? Why are some judiciaries more independent than others? Can courts bring about social and political change?

The readings will help you develop an understanding of some of the key theories and debates in the field of comparative judicial politics. We will put the theories we engage with in dialogue with events and facts about judicial systems in the United States, Europe, Latin America and Africa. Over the course of the semester we will apply what we learn about courts and politics in a collective class project: we will re-design the US Supreme Court. The class will represent different political factions that are fictionalized versions of those present in our politics today. We will prepare for and hold debates to determine the characteristics of our new supreme court, then we will appoint justices to that court and submit some cases for decision.

Given the nature of the class, this syllabus should be considered somewhat preliminary. We may add or subtract readings if our constitutional design project seems to require it, and we may need to add some readings about what is happening in our country or others, if there are significant developments there.

You should know before we begin that the readings are often quite challenging and many of them are quite long. In order to participate in the debates regarding institutional design you will need to be very familiar with the readings. The class will demand a significant amount of preparation each week. You should not take this class if you are not able or willing to spend time on it outside of class hours.

### **Class structure:**

1. We will hold classes in person, and attendance is required.

2. If you must miss class for some reason, or if you feel you could use additional discussion of a reading, you can find recorded discussions of the readings – something like a lecture – on our Canvas page.

3. The following general expectations will help you be successful in this course.

- Log into the course at least a day before each class to check the course content, announcements, and new materials.
- Keep up with the weekly readings and assignments.
- Please do not miss an assignment deadline. Refer to the course schedule/calendar to ensure that you submit assignments on time.
- Remember that academic integrity is important. Click [here](#) for the UT honor code.

### **Class requirements, grading:**

- In class comprehension checks for the readings worth 10% total
  - The comprehension checks are graded on a simple 0-2 scale, where 0 = failed to turn anything in, or what was turned in was patently not a serious attempt to carry out the assignment, 1 = an attempt to meet the goals of the assignment that fails in some significant way, 2 = a good to excellent performance on the assignment. We do not offer extensions or make-ups for these assignments but will drop the two lowest grades.
- Four assignments worth 2.5% each (10% total)
- Six review quizzes worth 6% each (30% total)
- A take home, open book midterm worth 25%
- A take home, open book final worth 25%
- Extra credit for participation in class debates, group projects, and other in-class activities. This has a system of rewards (announced at the time) for taking on prominent roles; and a subjective component, which I mostly use to reward students whose class participation stands out in some way, either because of its quantity or because of its quality.

Letter grades on all tests and the final grade will be assigned using pluses and minuses.

**Grade appeals policy.** Please read the policy carefully: Following the return of graded work, a student must wait **three (3)** days before contacting the TA about an appeal. After the three day waiting period, a student has **eleven (11)** days after the return of graded work to appeal a grade. Appeals must be made in writing (via email is fine) and provide evidence for the change. In total, the appeal time frame is **fourteen (14)** days from the day the graded work is returned. Do not appeal a grade unless evidence presented is compelling and thoughtfully reasoned.

### **Required Books:**

All the required readings will be available from the course's Canvas site. No books are required.

### **Disclosures:**

Please see disclosures relating to various issues, at the end of this syllabus.

### **First week of classes:**

**Unfortunately, I will have to be away from Austin for the first and second class, so we will hold those classes virtually.**

## Course schedule and reading assignments

Week	Day	Topic and required reading for the day in question – note that you need to complete the readings <i>before class</i>
1	Tue	<p><b>Introduction to the course. Please watch the introductory video.</b></p> <p>Work through all the preliminary materials in the Welcome module; review the syllabus; post answers to the “Where have you been?” prompt; complete the Academic Integrity Agreement.</p>
8/22-8/26	Thu	<p><u>Read about the creation of judicial power:</u> A. <u>Origins of courts in social and regime logic.</u></p> <p>1. Stone Sweet, Alec. 1999. "Judicialization and the Construction of Governance." <i>Comparative Political Studies</i> 32 (2):147-84 (35 pp) – First read only the theory section (pp. 147 through 164). Then watch the first lecture video on Stone Sweet’s Judicialization article.</p> <p>Now read the section on the French Fifth Republic (pp. 172-end) of Stone Sweet’s article. Then watch the second video on Stone Sweet’s Judicialization article.</p> <p>There’s a quick comprehension check on this reading, which you should complete by the end of Thursday, August 25.</p>
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8/29-9/2	Tuesday	<p>2. Shapiro, Martin. 1981. <i>Courts: A Comparative and Political Analysis</i>. Chicago and London: University of Chicago Press, chapter 1 – what are courts and what are they good for? (the pages posted are excerpts – read what is not crossed out). Read through Part 1 on the Logic of the Triad in Dispute Resolution.</p> <p>(We will read parts 2 and 3 for Thursday.)</p> <p>In-class discussion of Rich v. Annie</p>
	Thursday	Finish reading Shapiro, Parts 2 and 3.
3	Monday	Labor Day
9/6-9/9	Tuesday	<p><u>B. Political Models to account for creation of judicial review:</u> 1. The "hegemonic preservation" theory</p> <p>Read Belge, Ceren. 2006. "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey." <i>Law &amp; Society Review</i> 40 (3):653-92.</p>

	<b>Thursday</b>	2. The “credible commitment” theory Read Moustafa, Tamir. 2003. "Law versus the State: The Judicialization of Politics in Egypt." <i>Law &amp; Social Inquiry</i> 28 (4):883-930.
	Friday	<b>Review Quiz 1</b>

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9/12-9/16		3. The “insurance” theory:
	Tuesday	Read Ginsburg, Tom. 2003. <i>Judicial Review in New Democracies: Constitutional Courts in Asian Cases</i> . Cambridge: Cambridge U. Press. Excerpts: Ch.1 and Conclusion.
	Wednesday	Complete comprehension check
	<b>Thursday</b>	<b>Electing officers and crafting constitutional proposals. Debate on constitutional amendment to abolish/limit judicial review.</b>

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9/19-9/23		C. <u>Begin reading about the design of judicial institutions</u>
	Tuesday	Brinks, Daniel M., and Abby Blass. 2017. "Rethinking Judicial Empowerment: The new foundations of constitutional justice." <i>International Journal of Constitutional Law</i> 15 (2):296-331.
	Wednesday	<b>Submit Assignment 1 on judicial review by 11:59 pm 9/21</b>
	<b>Thursday</b>	Read the Constitution of the United States (available in multiple places online) and identify key provisions relating to the design of courts (note that not all of them are in the section on the judicial power).
	Friday	<b>Review Quiz 2</b>

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9/26-9/30		Go to <a href="http://ConstituteProject.org">ConstituteProject.org</a> , pick the constitution of one other country, and identify key provisions relating to the design of courts.
	Tuesday	<b>Come in prepared to discuss elements of judicial design, in general and as applied to the US. Organize as a party to deliberate on your preferred design.</b>
		Begin conferring on your party’s preferred design: Choices regarding access, effect of decisions, appointment and accountability, term length, and size of the court.
	Wednesday	<b>Submit Assignment 2 by 11:59 pm</b>

	<b>Thursday</b>	<b>Debate on the design of the courts: Choices regarding access, effect of decisions, appointment and accountability, term length, and size of the court.</b>
7	Tuesday	Finalize design of our court
10/3-10/7	Thursday	Discuss pros and cons of our design
	Friday	<b>Review Quiz 3</b>
8	Tuesday	<b>Midterm</b>
10/10-10/14		
	<b>Thursday</b>	<p><u>D. What motivates and constrains judges?</u></p> <p>1. First, 3 models of judicial behavior:</p> <p>Watch video of debate between Justices Breyer and Scalia on constitutional interpretation and what should guide judges in their decision-making</p>
9	Tuesday	<p>a. Legal (idealist): Dworkin, Ronald. 1986. <i>Law's Empire</i>. Cambridge: The Belknap Press of Harvard U. Press, pp. 46-53.</p> <p>Dworkin, pp. 225-238, 254-258.</p>
10/17-10/21	<b>Thursday</b>	<p>b. Policy preference</p> <p>i. Following majority: Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." <i>Journal of Public Law</i> VI (2):279-95</p>
10	Tuesday	<p>ii. What if law is really the least important influence on judges? Segal, Jeffrey. Chapter 2. "Judicial Behavior."</p>
10/24-10/28		
	<b>Thursday</b>	<p>c. Strategic</p> <p>Read Epstein, Lee, and Jack Knight. 1998. <i>The Choices Justices Make</i>. Washington, D.C.: Congressional Quarterly Press, pp.1-21</p>
11	Tuesday	<p>Read through the biographies of judges and identify and rank the judges you think your group should support (their biographies can be found in the document that is posted with the assignment).</p> <p><b>Submit Assignment 3 by 11:59 pm 11/2</b></p> <p><b>Parties begin work on Extra Credit Assignment.</b></p>
10/31-11/4	<b>Thursday</b>	<p>2. Contemporary interbranch relations – state and federal</p> <p>Clark, Tom. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." <i>Am. Journal of Political Science</i> 53:971-989</p>

	Friday	<b>Review Quiz 4</b>
12		
11/7-11/11		
<b>Election Day!</b>	Tuesday	<b>Selection and appointment of judges to our Supreme Court.</b>
<b>Vote!</b>		
	Thursday	<p><u>E. LAW AND SOCIAL CHANGE</u> (or, will the courts be able to carry out their assigned role?)</p> <p>1. Interbranch relations and establishing constitutionalism - Epstein, Lee, Jack Knight, and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." <i>Law &amp; Society Review</i> 35 (1):117-64</p>
	Friday	Complete Extra Credit Assignment. Individual students begin work on Oral Argument assignment.
13	Monday	<b>Submit Assignment 4, oral arguments, by 11:59 pm 11/14</b>
11/14-11/18	Tuesday	<b>Filing cases with our Supreme Court, oral arguments.</b>
	Thursday	<b>Filing cases with our Supreme Court, oral arguments.</b>
11/21-11/25		Thanksgiving Break – tell your relatives all the exciting things you’re learning in Comparative Legal Systems!!!
	Tuesday	<p>2. Courts and dismantling constitutional democracy – David Landau and Rosalind Dixon. 2020. “Abusive Judicial Review: Courts Against Democracy.” 53 UC Davis Law Review 1313 (2020)(selections).</p> <p>Work on <b>last assignment</b></p>
11/28-12/2	Wednesday	<b>Review Quiz 6</b>
	Thursday	<b>Discussion of last Assignment</b>
<b>December 10-12, 14-16 are exam days</b>		Final exam is a take home with a week to complete it.



## Disclosures and requirements

**Students with disabilities:** Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>

**COVID Caveats:** To help keep everyone at UT and in our community safe, it is critical that students report COVID-19 symptoms and testing, regardless of test results, to University Health Services (<https://www.healthyhorns.utexas.edu/>) as soon as possible. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this University Health Services link: [https://healthyhorns.utexas.edu/coronavirus\\_exposure\\_action\\_chart.html](https://healthyhorns.utexas.edu/coronavirus_exposure_action_chart.html).

**Sharing of Course Materials is Prohibited:** No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

**Class Recordings:** Class recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form. Violation of this restriction by a student could lead to Student Misconduct proceedings.