

**POLS\*4050 (01)  
ADVANCED TOPICS IN LAW AND POLITICS**

**(COMPARATIVE JUDICIAL POLITICS)**

**Department of Political Science  
University of Guelph**

**Winter 2019**

**Tuesdays 7:00 pm – 9:50 pm  
MINS 101**

**Professor Jordi Díez  
Office Hours: MACK 539, Thursdays 3-5  
jordi.diez@uoguelph.ca  
wwwjordidiez.ca  
Twitter: @buenosdiez**

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**Overview**

This ‘capstone’ seminar engages some of the main debates in judicial politics. From a comparative perspective, we will be looking at cross-national patterns in the judicialization of politics, the origins of more autonomous courts, and the implications for politics in general and policymaking in particular. The course will be informed by examples from the Global North and South.

**Required Readings**

All the required readings are available on CourseLink. The final list of required readings (taken from the list below) will be set within 48 hours after the end of our first class, once students select the reading on which they want to do their presentation.

**Format and Requirements**

This course is structured in **seminar format**. As such, it is based on the active and sustained participation of students who are expected to have read all of the assigned material prior to class. This is necessary to have meaningful and fruitful debate and discussion. Participation is therefore a critical component of the course and its success depends upon it.

The requirements for the course are as follows:

Participation:	20%
Article Presentation:	30%

Research Paper: (April 15) 50%

The deadline (April 15 at noon) for the essay is firm. Papers submitted after the deadlines will be given a grade of 0 (zero).

### Participation

Participation is a critical element of this course. This component of the course requirements will be assessed by the instructor on the basis of your thoughtful and active contribution to class discussions and your reading of the course material. You are expected to do an average of 3 readings per week, required to submit weekly comments based on the articles, and take part in class discussion. **Each of you *must* do all readings every week.** You must also prepare **two critical questions or comments** per reading so that you are able to actively engage in class discussion. You must print out and bring to class your comments and questions for each article at the beginning of each class. This is mandatory or else the level of class participation degenerates extremely rapidly. Be prepared to speak each week. **Please note: the participation component of your grade can go from 0 to 20.**

Collectively, every effort will be made to create an atmosphere in which everyone feels confident participating in discussions. Students will be awarded a participation mark on the basis of the criteria outlined in Table 1.

**Table 1. Seminar Participation Grading Criteria**

Grade	Participation	Discussion	Reading
17-20	Always	Excellent—leads debate; offers original analysis and comment; uses assigned reading to back up arguments. Valuable comments in virtually every seminar.	Clearly has done and understands virtually all reading; intelligently uses this understanding in discussion.
13-16	Almost always	Good—thoughtful comments for the most part; willing, able, and frequent contributor.	Has done most reading; provides competent analysis of reading when prompted.
6-12	Frequent	Fair—has basic grasp of key concepts; arguments sporadic and at times incomplete or poorly supported.	Displays familiarity with most reading, but tends not to analyze it or explore connections between different sources.
5-8	Occasional	Not good—remarks in class marred by misunderstanding of key concepts; only occasionally offers comments or opinions.	Actual knowledge of material is outweighed by improvised comments and remarks.
0-4	Rare	Poor—rarely speaks, and parrots readings when put on the spot to offer an opinion.	Little to no apparent familiarity with assigned material.

## Article Presentation

You are each required to present an article from the course syllabus. Article selection will take place within 48 after the end of our first class. Students are asked to e-mail me their 3 top choices and I will do my best in accommodating everyone's selections, although that may not always be possible. Your presentation should be 20 minutes in length. Marks will be deducted if you are significantly over or under time. You must also include in the handout at least three substantive questions that arose from your reading of the material. Make sure you print a copy for each student in the class. Do *not* highlight sections of the article and read them. The purpose of this is to give a critical overview of the author's main arguments and what evidence or analysis the author brings to make their case. I do not want a summary along the lines of "Dahl says this, then he says that..." I want **critical assessments** of the reading. This should involve whether the author made a convincing case, any gaps you see in the author's logic, etc. Those presenting first receive a 10% bonus.

## Essay

Students are required to submit a research paper on one of the 10 topics we cover in this course, **other than** the one selected for the presentation. The essay is due on **April 15**, at noon, (submitted on Courselink). An annotated bibliography, which reviews the debates in the literature (beyond the work listed in this syllabus), is due on **February 12**, and an essay outline, which presents the research question, hypotheses and variable selection, is due on **March 12**. There will be absolutely **no extensions granted** on the due dates for any of these items. The three items must be submitted in print. No email attachments will be accepted. Students must meet with the instructor for twenty minutes during Weeks 11 and 12.

**The Annotated Bibliography and Essay Outline are both due in class, and no late work will be accepted afterward. Failure to submit any of the assigned work related by the deadlines will automatically result in a grade of zero for the essay component of the course. This includes the face-to-face meeting with the instructor.**

## Schedule of Topics and Readings

**Week 1 (Jan 8) – Introduction, Overview of the Course and Assignment of Article Presentations**

**Week 2 (Jan 15) – Judicial Politics in Comparative Perspective**

Hirschl, Ran. 2008. "The Judicialization of Mega-Politics and the Rise of Political Courts." *Annual Review of Political Science*.

**Week 3 (Jan 22) – Getting Started: The Mechanics of Judicial Politics through a Canadian Lens**

Hausegger, L., M Hennigar and T. Ridell. 2015. "An Introduction to Politics Law and the Judicial Process" In Hausegger, L., M Hennigar and T. Ridell. *Canadian Courts: Law, Politics and Process*. Don Mills, ON: Oxford University Press Canada, 2-16.

MacIvor, H. 2012. *Canadian Government and Politics in the Charter Era*. Don Mills, ON: Oxford University Press Canada, Chapters 1 and 2.

MacIvor, H. 2012. *Canadian Government and Politics in the Charter Era*. Don Mills, ON: Oxford University Press Canada, Chapter 3.

#### **Week 4 (Jan 29) – Foundational Debates**

Dahl, R. A. 1957. "Decision Making in a Democracy: The Supreme Court as a National Policy Maker." *Journal of Public Law*, 6, 279-95.

Bickel, A. M. 1962. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Indianapolis: Bobbs-Merrill, Chapter 1, 1-33.

Horowitz, D. L. 1977. *The Courts and Social Policy*. Washington: Brookings Institution, Chapter 1, 1-15.

Casper, J. D. 1976. "The Supreme Court and National Policy Making." *The American Political Science Review*, 70(1), 50-63.

#### **Week 5 (Feb 5) – The Counter-Majoritarian Debate**

Graber, M. A. 1993. "The Non-majoritarian Difficulty: Legislative Deference To The Judiciary." *Studies in American Political Development*, 7(1), 35-73.

Devins, N. 2004. "Is Judicial Policymaking Counter-majoritarian?" *Making Policy, Making Law: An Interbranch Perspective*. Washington D.C.: Georgetown University Press, 189-201.

Epstein, L., Knight, J., & Martin, A. D. (2004). "Constitutional Interpretation from a Strategic Perspective." *Making Policy, Making Law: An Interbranch Perspective*. Washington D.C.: Georgetown University Press, 170-88.

#### **Week 6 (Feb 12) – The Judicialization of Politics**

Shapiro, M. 2003. "Political Jurisprudence" in M. Shapiro and Alec Stone Sweet (eds.) In *On Law, Politics and Judicialization*. New York: Oxford University Press.

Stone Sweet, A. 2003. "Judicialization and the Construction of Governance" In *On Law, Politics and Judicialization*. New York: Oxford University Press.

Ferejohn, J. 2002. "Judicializing Politics, Politicizing Law" *Law and Contemporary Problems*, 61, 41-68.

### **ANNOTATED BIBLIOGRAPHY DUE**

#### **Week 7 (Feb 19) – Reading Break, No Classes Scheduled**

#### **Week 8 (Feb 26) – Judicial Review in Comparative Perspective**

Ishimaya-Smithey, S. and Ishiyama, J. 2002. "Judicious Choices: Designing Courts in Post-Communist Politics" *Communist and Post Communist Studies*.33, 166-82.

Shapiro, D. 2006. "Constitutional Courts: A Primer for Decision Makers" *Journal of Democracy* 17(4): 125-37.

Hirschl, R. 2000. "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions" *Law and Social Inquiry*, 25, 95-139.

#### **Week 9 (Mar 5) – Courts, Social Influence and Participation**

Cichowski, R. A. (2006). "Courts, Rights, and Democratic Participation." *Comparative Political Studies*, 39(1), 50–75.

Smith, M. 2000. "Political Activism, Litigation and Public Policy: The Charter Revolution and Lesbian and Gay Rights in Canada, 1985-1999" *International Journal of Canadian Studies* 21 (Spring): 81-110.

Sheldrick, B. 1995. "Law, Representation, and Political Activism: Community-based Practice and Mobilization of Legal Resources" *Canadian Journal of Law and Society* 10, 155-84.

#### **Week 10 (Mar 12) –The US**

Shapiro, M. 1994. "The Judicialization of Politics in the United States" *International Political Science Review* 15(4): 101-12.

Kagan, R. A. (2004). "The American Courts and the Policy Dialogue" In M. C Miller and J. Barnes (eds.) *Making Policy, Making Law: An Interbranch Perspective*. Washington D.C.: Georgetown University Press, 13-34.

Silverstein, G. 2010. "Law's Allure in American Politics and Policy: What It is, What It is Not, and What It Might Yet Be" *Law & Social Inquiry* 35(4): 1007-97.

### **OUTLINE DUE**

### **Week 11 (Mar 19) – Judicial Politics in a Global Perspective**

Vallinder, T. 1995. “When the Courts Go Marching In” In N Tate and T. Vallinder (eds.) *The Global Expansion of Judicial Power*. New York: New York University Press, 13-26. AND N. Tate “Why the Expansion of Judicial Power” In N Tate and T. Vallinder (eds.) *The Global Expansion of Judicial Power*. New York: New York University Press, 27-38.

Cerar, Dr. Miro (2009) "The Relationship between Law and Politics" *Annual Survey of International & Comparative Law*, 15 (1), Article 3.

Helmke G. and F. Rosenbulth. 2009. “Regimes and the Rule of Law: Judicial Independence in Comparative Perspective” *Annual Review of Political Science* 12(1), 345-366.

### **Week 12 (Mar 26) Judicial Politics in Europe**

Vanberg, G. 2000. “Establishing Judicial Independence in West Germany” *Comparative Politics* 333-53.

Stone Sweet, A. 2007. “The Politics of Constitutional Review in France and Europe” *International Journal of Constitutional Law* 5(1): 69-92.

Tamm, D. 2013. “The History of the Court of Justice of the European Union since its Origin” In *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case Law* The Hague: Asser Press, 9-35.

### **Week 13 (Apr 2) – Judicial Politics in Latin America**

Smulovitz, C. 2012. “Public Policy by Other Means: Playing the Judicial Arena” In Díez, J. and Susan Franceschet (eds.) *Comparative Public Policy in Latin America*. Toronto: The University of Toronto Press, 105-25.

Wilson, B. 2013. “Enforcing Rights and Exercising an Accountability Function: Costa Rica’s Constitutional Chamber of the Supreme Court.” In G. Helmke and J. Ríos-Figueora (eds.) *Courts in Latin America*. New York: Cambridge University Press, 55-80.

Kapiszewski, D. 2010. “How Courts Work: Institutions, Culture and the Brazilian *Supremo Tribunal Federal*” In J Couso, A. Huneus and R Sieder (eds.) *Cultures of Legality: Judicialization and Political Activism in Latin America*. New York: Cambridge University Press, 51-77.

**Please read the following, as per requested by the University Administration:**

#### **E-mail Communication**

As per university regulations, all students are required to check their <mail.uoguelph.ca> e-mail account regularly: e-mail is the official route of communication between the university and its students.

### **When You Cannot Meet a Course Requirement**

When you find yourself unable to meet an in-course requirement because of illness or compassionate reasons, please advise the course instructor [or designated person] in writing, with your name, id#, and e-mail contact. Where possible, this should be done in advance of the missed work or event, but otherwise, just as soon as possible after the due date, and certainly no longer than one week later. Note: if appropriate documentation of your inability to meet that in-course requirement is necessary, the course instructor, or delegate, will request it of you. Such documentation will rarely be required for course components representing less than 10% of the course grade. Such documentation will be required, however, for Academic Consideration for missed end-of-term work and/or missed final examinations. See the undergraduate calendar for information on regulations and procedures for Academic Consideration. ([http://www.uoguelph.ca/undergrad\\_calendar/c08/c08-ac.shtml](http://www.uoguelph.ca/undergrad_calendar/c08/c08-ac.shtml))

### **Drop Date**

The last date to drop one-semester Winter 2017 courses, without academic penalty, is **Friday Mar 8**. For regulations and procedures for Dropping Courses, see the Undergraduate Calendar.

### **Copies of out-of-class assignments**

Keep paper and/or other reliable back-up copies of all out-of-class assignments: you may be asked to resubmit work at any time.

### **Academic Misconduct**

The University of Guelph is committed to upholding the highest standards of academic integrity and enjoins all members of the University community – faculty, staff, and students – to be aware of what constitutes academic misconduct and to do as much as possible to prevent academic offences from occurring. The University of Guelph takes a serious view of academic misconduct, and it is your responsibility as a student to be aware of and to abide by the University's policy. Included in the definition of academic misconduct are such activities as cheating on examinations, plagiarism, misrepresentation, and submitting the same material in two different courses without written permission from the relevant instructors. To better understand your responsibilities, read the Undergraduate Calendar. ([http://www.uoguelph.ca/undergrad\\_calendar/c01/index.shtml](http://www.uoguelph.ca/undergrad_calendar/c01/index.shtml)) for a statement of Students' Academic Responsibilities; also read the full Academic Misconduct Policy ([http://www.uoguelph.ca/undergrad\\_calendar/c08/c08-amisconduct.shtml](http://www.uoguelph.ca/undergrad_calendar/c08/c08-amisconduct.shtml)). You are also advised to make use of the resources available through the Learning Commons (<http://www.learningcommons.uoguelph.ca/>) and to discuss any questions you may have with your course instructor, TA, or academic counsellor.

Instructors have the right to use software to aid in the detection of plagiarism or copying and to examine students orally on submitted work. For students found guilty of academic misconduct, serious penalties, up to and including suspension or expulsion, can be imposed. Hurried or careless submission of work does not exonerate students of responsibility for ensuring the academic integrity of their work. Similarly, students who find themselves unable to meet course requirements by the deadlines or criteria expected because of medical, psychological or compassionate circumstances should review the university's regulations and procedures for Academic Consideration in the calendar ([http://www.uoguelph.ca/undergrad\\_calendar/c08/c08-ac.shtml](http://www.uoguelph.ca/undergrad_calendar/c08/c08-ac.shtml)) and discuss their situation with the instructor and/or the program counsellor or other academic counsellor as appropriate.