

## Comparative Judicial Politics

Professor Tom Ginsburg

Fall 2009

v. 1.3

### Course Description and Objectives

In the early 21<sup>st</sup> century, judges in many countries exercise a good deal of power over public policy, making major substantive decisions, striking legislation, and even selecting political leaders. This development represents a significant change from the way societies were governed only fifty years ago. This seminar examines and tries to explain variations in the role, autonomy, power, and accountability of courts and judges in countries with both democratic and authoritarian regimes. It considers various theories of judicial behavior and motivation, the impact of institutional structures in which judges operate, and the phenomenon of “judicialization”, the term given to the phenomenon of increasing judicial power. Readings will cover a variety of regional environments, as well as the international sphere.

### Requirements and Grading

This is a seminar and the expectation is that you come fully prepared to discuss the week’s topic. Readings should be completed by the beginning of each class. Your grade will be based on the following components:

- (1) *Reaction papers and class participation (50%)*. For at least four of the sessions, you will be required to respond to the readings in a short reaction paper. You may choose which weeks you turn in papers. Reaction papers are short (two page, double-spaced) essays in which you reflect on the readings and address any criticism(s) or reactions to the readings.

Reaction papers for each week must be submitted on the website by **midnight on the Sunday before class**. I will try to provide specific instructions on how to post your paper on Chalk.

- (2) *Essay (50%)*. You will be expected to produce a medium-length essay (15-18 pages) in which you expand on one of the themes addressed in the course. The topic will be arranged individually in consultation with the instructor and will be flexible as long as it relates to the themes of this course. Depending upon your experience, skills, and interests you may choose to write one of several different kinds of papers including: (1) a critical review of the literature on a particular topic; (2) an empirical article focusing on a single country or on multiple cases; (3) an empirical article focusing on a single country or case; (4) a theoretical or conceptual article; (5) a research design.

The essay will be due the first day of the Winter Quarter (January 4). You can also choose to write a paper sufficient to fulfill the substantial writing requirement (roughly 35 pages), in which case the paper will be due at the beginning of Spring Quarter.

### **Office Hours**

I will hold office hours by appointment in Room 509.

### **Schedule and Readings**

There are three required books for the class. Other materials will be available on CHALK. The required books are:

Tom Ginsburg, *JUDICIAL REVIEW IN NEW DEMOCRACIES* (2003)

Tom Ginsburg and Tamir Moustafa, eds. *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* (2008)

Mark Tushnet, *WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW* (2003).

### **October 5: What is Judicial Politics?**

Segal, *Judicial Behavior*, in *OXFORD HANDBOOK OF LAW AND POLITICS* (Whittington et al, eds 2008)

Ferejohn, Rosenbluth & Shipan, *Comparative Judicial Politics*, in *OXFORD HANDBOOK OF COMPARATIVE POLITICS* (Boix & Stokes eds., 2007)

Shapiro, *COURTS: A COMPARATIVE AND POLITICAL ANALYSIS* (1981), ch. 1

### **October 12: Judicial Politics in Israel**

Martin Edelman, *Israel*, in *THE GLOBAL EXPANSION OF JUDICIAL POWER* (C. Neal Tate & T. Vallinder, eds, 1995).

Aharon Barak, *The Role of a Judge in Democracy*, 53 *HASTINGS L. J.* 1205 (2002).

[Optional if especially interested: *Beit Sourik Village Council vs. The Government of Israel & Commander of the IDF Forces in the West Bank*]

Stefan Voigt, Philipps-Universität Marburg, *Mapping Constitutionally Safeguarded Judicial Independence – A Global Survey*, Saturday morning, 10:50 a.m-12:20 p.m.

**October 16-17: Conference at the Law School on Comparative Constitutional Design, Room V**

John Ferejohn/Pasquale Pasquino, *The Italian Model of Constitutional Review*, Friday October 16, 3:50-5:20 p.m.

Stefan Voigt, Philipps-Universität Marburg, *Mapping Constitutionally Safeguarded Judicial Independence – A Global Survey*, Saturday morning, 10:50 a.m-12:20 p.m.

**October 19: Judicial Review**

Ginsburg, *JUDICIAL REVIEW IN NEW DEMOCRACIES* (2003) introduction and Chapters 1-2, 8

Tushnet, *WEAK COURTS, STRONG RIGHTS* (2003), chapter 2

**October 26: Judicial Independence: Japan**

Tushnet, *WEAK COURTS, STRONG RIGHTS* (2003), chapter 3

J. Mark Ramseyer, *Why Are Japanese Judges So Conservative in Politically Charged Cases?*, 95 AM. POL. SCI. REV. 331 (2001)

John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, in *LAW IN JAPAN: A TURNING POINT* (Daniel Foote ed., 2007)

**November 2: NO CLASS**

**November 9: Judicial Politics in Authoritarian Regimes**

RULE BY LAW, Introduction and Chapters 1, 3, 5, 13.

**November 16: Latin America**

RULE BY LAW, Chapters 4 & 7

Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy." *American Political Science Review* 96 (2): 305-20.

## **November 23: Europe**

Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (2000), chs. 6

Karen Alter, *Establishing the Supremacy of European Law* (2001), ch. 5

Rachel Cichowski, *Women's Rights in the European Union*, 38 *Law & Soc'y Rev.* 489

## **November 30: International Judicial Politics**

Posner and de Figueiredo, *Is the International Court of Justice Biased?* *Journal of Legal Studies* (2004).

Voeten, *European Court of Human Rights Voting Patterns*

Ginsburg, *Bounded Discretion in International Judicial Lawmaking*, *Va. J. Int'l L.* (2005).

Romano, *The Price of International Justice*

## **Other possible sources**

There are a variety of other topics that we could cover, depending upon the interests of the participants, though the constrained time available in the quarter system will not allow us to do so. By way of suggestion only, here are some potential topics and readings. Regardless of what we cover during the semester, this list may provide you with a useful starting point for your own research and self-directed reading.

Milgrom, North & Weingast, *The Role of Institutions in the Revival of Trade*, 1 *Econ. & Politics* 1 (1990)

Gardbaum, "The New Commonwealth Model of Constitutionalism," 49 *Am. J. Comp. L.* 49 (2001)

Tate & Vallinder, *The Global Expansion of Judicial Power* (1997), chs. 1-3, chs. by Bogart on Canada and Shapiro on U.S.

- Kersch, "The New Legal Transnationalism," 4 *Wash. U. Global Stud. L. Rev.* 345 (2005)

- Law, "Generic Constitutional Law," 89 *Minn. L. Rev.* 752 (2005) (on webpage)

- Law, "Globalization and the Future of Constitutional Rights," 102 *Nw. U. L. Rev.* 1277 (2008)

- Choudhry, *Constitutional Design for Divided Societies: Integration or Accommodation?* (2008)

- Hogg & Bushell, "The Charter Dialogue Between Courts and Legislatures," 35 *Osgoode Hall L.J.* 75 (1997)

- Lasser, *Judicial Deliberations* (2004)

Gretchen Helmke and Jeffrey J. Staton, "Courting Conflict: The Logic of Risky Judicial Decisions in Latin America" draft

Ginsburg and Garoupa, Reputation Papers