**Comparative Rights and Legal Systems**Rutgers University, Fall 2014 (790:395)
**Wednesdays** 2:15pm—5:15pm
Classroom: HCK 132
Instructor: Sarah Weirich
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Office: HCK 610
Office Hours: Mondays 11am – 1pm and by Appt.

**Course Description**

This seminar will compare the international law of human rights with the constitutional law of rights in the United States and other national systems. The seminar will examine the history, theory, and sources of rights in these systems, the institutions for implementing them, and the remedies for violations.

Constitutionalism has traditionally been seen as the primary mechanism for facilitating the mutual accommodation of multiple national realities within multinational democracies. However, it is not the only dimension of the politics of accommodation. In fact, the politics of accommodation can be disaggregated into a number of components, including constitutionalism, political culture, nationalism, etc. This seminar examines these critical dimensions of the politics of accommodation, engaging in a genuinely interdisciplinary conversation between comparative politics and constitutional law.

**Research Paper**

Each student will be required to complete a final paper describing a sample research problem in international or foreign law or one of the themes of the course, detailing the research strategy the student devised to address the problem, discussing the steps of the research process undertaken, and outlining the resources the student found most useful in addressing the problem. The paper should clearly demonstrate the student’s critical thinking skills with respect to both the research problem and the process of foreign and international legal research. This paper will constitute **60%** of the credit for the course. Students are free to choose any topic of personal interest or relevance to their related coursework, journal or clinic participation, or outside activities, but all topics must be approved by the instructor in individual conferences during the week of October 1. Students are encouraged to re-visit topics previously explored, provided they can show updated research and analysis sufficient to meet the requirements. Word limit: 4,000 words (excluding bibliography, tables, maps, or diagrams), and would be due on the last day of class.

**Participation**

This is a seminar, so I expect to have strong student participation in each of the sessions. The seminar also aims to inspire students to conduct their own research projects on topics related to the seminar’s themes. Seminar participation will count for **40%** of the final grade (including the weekly presentations on the readings).

**Attendance**
Class participation will be essential in this course. Therefore, class attendance is a must. Unexcused absences will not reflect well in your participation grade. Missing 3 classes (unexcused) will affect your final grade because you would not benefit from classroom lectures, presentations, discussions, and q&a.

**Services for Students with Difference**
If you have a documented difference (learning, physical, psychological) for which you are or may be requesting reasonable academic adjustments, you are encouraged to inform me as early as possible in the semester. I, personally, would be happy to accommodate all your legitimate requests regarding such matters, with or without documentation.

**Academic Integrity**

Academic integrity is required of all students. Ignorance of what constitutes plagiarism and violations of academic integrity do not excuse guilt of committing these offenses. If parts of someone else’s work are used directly (paraphrased or quoted) without acknowledgement, this constitutes plagiarism. If you are unsure of what plagiarism is or how to identify your sources, ask the course instructor or consult a style manual. Plagiarism is cheating, to the detriment of both the university and fellow students. Cases of minor plagiarism will normally result in a major reduction in the assignment grade. More severe cases will result in a grade of F, and will be reported to the Faculty with a recommendation for the strongest possible disciplinary action. To avoid committing any offenses, intentional or not, see the academic integrity code: <http://ctaar.rutgers.edu/integrity>.

# SAS CORE LEARNING GOALS MET BY THIS COURSE

# *t.          Communicate effectively in modes appropriate to a discipline or area of inquiry.*

# *u.         Evaluate and critically assess sources and use the conventions of attribution and citation correctly.*

# *v.       Analyze and synthesize information and ideas from different sources to generate new insights.*

***Grading Rubric***

Participation and Classroom Conduct

Participation is a significant part of your grade in this class. You are expected to come to class prepared to contribute actively to classroom discussions and activities. This will not only enhance your own learning experience but the experience of your fellow students. Good participation entails not only speaking and sharing your thoughts on a regular basis, but also being considerate and respecting the views of others. To earn high points in the participation part of the final grade, students will have demonstrated their awareness of the different functions of classroom comments by:

1. Varying their discussion strategies,
2. Considering what they say before they say it,
3. Taking intellectual risks, and
4. Always respecting the feelings of peers by not interrupting classmates while speaking and acknowledging interesting ideas.

Any successful learning experience requires mutual respect on the part of the student and the instructor. Neither instructor nor student should be subject to others’ behavior that is rude, disruptive, intimidating, or demeaning. The instructor has primary responsibility for and control over classroom behavior and maintenance of academic integrity.

Instructor responsibilities:

* Start and end class on time.
* Treat all students with courtesy and respect.
* Be open to constructive input from students in the course.
* Ensure that opportunities to participate are enjoyed equally by all students in the course.

Student responsibilities:

* Come to class on time, and refrain from packing up belongings before class ends.
* Turn off all electronic devices that might create a disruption in class.
* Be quiet and give full respectful attention while either instructor or another student is speaking.
* When speaking, use courteous, respectful language and keep comments and questions relevant to the topic at hand.

I expect you to fulfill your responsibilities to me and to your fellow students. By the same token, if I am not meeting my responsibilities to you I expect you to let me know. In short, let's make our classroom a comfortable space for real intellectual dialogue, where everyone has the opportunity to contribute.

**EVALUATION RUBRIC:**

I will use this rubric in assessing your performance. It sets the most basic criteria of assessment, but it should give you the basic idea of what is expected of you.

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| --- | --- | --- | --- | --- | --- |
|  |  | **A** | **B** | **C** | **D/F** |
| Essays and other written work | Argument and analysis | Makes clear and compelling argument. Solid reasoning. Offers insightful analysis | Makes clear argument, based on plausible readings. Some effort to sustain argument throughout the analysis. | Attempts to offer a cogent argument and analysis, but argument and analysis are based on faulty reasoning. | Fails to make a cogent argument or to offer sound analysis.  |
| Writing and grammar | Writes well, making appropriate word choices and avoiding grammar and spelling mistakes. | Writes well, but may include a handful of grammar, spelling, or word choice mistakes.  | Makes multiple errors, but still writes in a clearly intelligible manner.  | Makes multiple errors that interfere substantially with comprehension.  |
| Organization and structure | Presents clear, navigable structure with introduction, body, and conclusion. Provides reader with a "road map" of essay.  | Offers clear organization with some road map for reader.  | Makes some effort to structure the paper, but organization is problematic or difficult to follow.  | Structures the paper in a way that is disorganized and difficult or impossible to follow. |
| Mastery and use of readings | Uses multiple readings and demonstrates mastery of facts and arguments made in readings.  | References multiple readings and demonstrates a good degree of understanding.  | Makes minimal use of readings and/or fails to demonstrate adequate mastery of readings.  | Fails to use readings  |
| Conceptual analysis | Knows the analytical concepts, provides their definition(s), and applies them precisely and systemically in the analysis of specific problems. | Knows most of the concepts. Makes minor definitional errors.  | Makes some headway toward knowing and applying the relevant concepts. | Fails to know and apply basic concepts. |
| Empirical analysis | Marshals appropriate evidence to describe, understand, and explain political problems. | Marshals appropriate evidence to describe, understand, and explain political problems, with small errors. | Attempts to provide and explain evidence but with substantial omissions or errors in interpretation. | Fails to provide relevant evidence. |
| Theoretical analysis | Explains the relevance and applicability of a wide range of theoretical analyses to specific political problems. | Is able to apply successfully some of the course’s theoretical analyses to selected political problems.  | Has difficulty connecting theoretical analyses to the political problems. | Fails to connect the course’s theoretical analyses to analyzed political problems. |
| “Political literacy” | Exhibits a nuanced understanding of the relationship between the analytical tools learned in class and “real life” global/comparative political problems. | Demonstrates a general understanding of the relevance of political scientific theories for the analysis of the global political world. | Has difficulty connecting the theories to actual issues of global/comparative politics. | Fails to connect the theories to actual issues of global/comparative politics. |
| Participation Analysis | Exhibits attentiveness, detail, comes to class on time. Exhibits active participation (does not always mean talking) through eye contact, body posture, presenting with thoughtful questions or inciting thoughtful responses from the class, and providing an analysis of theoretical understandings of the material and relating it to “real life” global/comparative political problems. | Demonstrates attentiveness, detail, comes to class on time but is not as active in participation and listening to both colleagues and the professor or asks questions or raises comments not directly related to the relevant topic at hand. | Has difficulty connecting to student presentations, lecture material, is not interested in giving feedback either to the professor or to classmates; repeatedly misses presentations and classes. | Fails to demonstrate interest in the subject material or by not attending class or fails to treat all students with courtesy and respect. |

**Required Books:**

* *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*

**Provisional Course Outline**

1. Introduction to the Course
2. The US
3. UK, Canada, and other common law countries
4. The EU
5. The EU Convention of Human Rights
6. Transformative Constitutionalism in South Africa – part 1
7. Transformative Constitutionalism in South Africa – part 2
8. Constitution-Making Under Occupation: Iraq
9. Constitution-making in the aftermath of the Arab Spring: Tunisia
10. Constitution-making in the aftermath of the Arab Spring: Egypt
11. The Rule of Law and Economic Growth: China
12. Constitutional Law and Strategies of Accommodation: Rule by Law or Rule of Law? – Latin American Examples here
13. Judicialization and its Implications/UN TRIP?

**Session 1 (September 3): Introduction to the Course**

Readings

* *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chapters 1 & 2 [Sakai and Text]
* *The First Amendment in Cross-Cultural Perspective*, Chapter 1 [Text].
* *Adéu Espanya*, film on the politics of Catalonia, Scotland, and Québec (it has subtitles in English) [Film]
* **NOTE***:* Please sign up to present on a reading.

**Session 2 (September 10): Constitutionalism and Accommodation: The USA**

Key themes for the week: What is distinctive about the US federal model, when compared to other models of federalism in multinational societies? Is the US the prototype of a “national federation”? There is at least one (small) territory of the US that would pose a plurinational challenge to the historic homogeneity of the US: could the US ever accommodate Puerto Rico as a constituent unit of the US federation or in a non-territorial (i.e., non-colonial) form of autonomism? Does the US Congress have a duty to de-territorialize its territories?

Readings:

* *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chapters 3 & 4 [Sakai and Text]
* *The First Amendment in Cross-Cultural Perspective*, Chapter 2 [Text].
* Gary Lawson and Robert Sloane, “The Constitutionality of Decolonization: Puerto Rico’s Domestic and International Legal Status,” *50 Boston College Law Review 1123* (2009)
* Juan Linz and Alfred Stepan, “The U.S. Federal Model and Multinational Societies: Some Problems for Democratic Theory and Practice,” chapter 8 in Linz, Stepan, and Y. Yadav, *Crafting State Nations: India and other Multinational Democracies* (Johns Hopkins Univ Press, 2011), pp. 257-275.

**Session 3 (September 17): Constitutionalism and Accommodation: UK, Canada and other Common Law Countries**

Readings:

* *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chapters 7, 8, 9 & 10 [Text]
* *The First Amendment in Cross-Cultural Perspective*, Chapters 3 & 6 [Text].

**Session 4 (September 24): Constitutionalism and Multinational Polities: The European Integration Process**

Readings:

* *Eurolegalism*, Chapters 1-3. [Sakai]
* *European Law and Politics,* Chapter from *Europe Today* [Sakai]
* **NOTE**: You must schedule an individualized meeting with me this week to discuss your research paper topics.

**Session 5 (October 1): The EU Convention of Human Rights**

Readings:

* *A Europe of Rights: The Impact of the ECHR on National Legal Systems,* Chapters 1
* “On the Constitutionalisation of the Convention” [Sakai]
* “Courts, Rights and Democratic Participation [Sakai]

**Session 6 (October 8): Transformative Constitutionalism in South Africa**

Readings:

* *Ubuntu and the Law*, Chapters TBD [Sakai]

**Session 7 (October 15): Transformative Constitutionalism in South Africa**

Readings:

* *The Dignity Jurisprudence of the South African Constitutional Court*, Chapters TBD [Sakai]
* FILM: *Ubuntu Hokae*

**Session 8 (October 22): Constitution-Making Under Occupation: Iraq**

What is the process for constitution-making under occupation? Is it a different process altogether? What are the lessons from the Iraqi constitution-making process and hopes for the future?

Readings:

* *Constitution Making Under Occupation: The Politics of Imposed Revolution in Iraq*, Chapters 1, 2, 4, and 5. [Sakai]

**Session 9 (October 29): Constitution-making in the aftermath of the Arab Spring: Tunisia**

What is the legitimacy of constitution-making processes in the aftermath of the Arab Spring? What roles do Islamic legal thought and international pressure have on the constitution? What are the possibilities and limits of constitutional developments in authoritarian regimes? Can the idea of a relatively modern notion of statehood be reconciled with Islamic pressures? What is the role of the EU and the constitution-making processes in the Arab world? That of observer or actor?

Readings:

* Nimer Sultany, “Against Conceptualism: Islamic Law, Democracy and Constitutionalism in the Aftermath of the Arab Spring”, 31(2) *Boston University International Law Journal* 435-463 (2013). [Sakai]
* Nimer Sultany, “Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism”, *Emory International Law Review* (forthcoming, 2014). [Sakai]
* Haider Ala Hamoudi, “Death of Islamic Law”, *38 Georgia Journal of International & Comparative Law* 293-337 (2010).
* “Equal or complementary? Women in the new Tunisian Constitution after the Arab Spring,” [Sakai]

**Session 10 (November 5): Constitution-making in the aftermath of the Arab Spring: Egypt**

What is the legitimacy of constitution-making processes in the aftermath of the Arab Spring? What roles do Islamic legal thought and international pressure have on the constitution? What are the possibilities and limits of constitutional developments in authoritarian regimes? Can the idea of a relatively modern notion of statehood be reconciled with Islamic pressures?

What role is the military (if any) in the process of constitution-building? What is the role of the EU and the constitution-making processes in the Arab world? That of observer or actor?

Readings:

* *An Analysis of the Egyptian Constitution* [Sakai]
* *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, Selections [Sakai]

**Session 11 (November 12): The Rule of Law and Economic Growth China**

Is there a connection between the rule of law and economic growth? For many theories of economic growth, the judiciary has to be independent. However, China has no independent judiciary and has grown dramatically in the past 30 years. Does this call into question theories regarding the role of the legal system?

Readings:

* *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Chapters 8 and 12. [Sakai]
* *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Chapter 5. [Sakai]

**Session 12 (November 19): Constitutional Law and Strategies of Accommodation: Rule by Law or Rule of Law?**

What is the role of and the politics surrounding courts in authoritarian regimes? What is the role the courts play in democratizations? How does judicial review emerge in new democracies? Why does it?

Readings:

* *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Introduction & Chapters 1, 2, and 13.
* *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Chapters 1-5.

**November 26: Thanksgiving Break! No Class!**

**Session 13 (December 3): Judicialization and its Implications**

What explains the broad trend of judicialization? How does American exceptionalism tie into this (if at all)? Is all this judicial power in the hands of a few a good idea? What pivotal roles do domestic and international courts play? Debate on judicial review (pro and con).

Readings:

* *The Judge in a Democracy* [Sakai]
* Waldron, “The Case Against Judicial Review,” *The Yale Law Journal*, 2006, pp. 1346-1406. [Sakai]

**NOTE: Research Papers Due!**

*Note: This syllabus is subject to change.*