
Comparative Law and Rights (7872-01) (Class # 17711)

Spring Semester 2024; Wednesday 4-6:30 P.M. (Chase 210)

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WebEx Personal Room: <uconn-cmr.webex.com/meet/aro02001>

Office Hours: Wednesday, 2-4 P.M. & by Appointment

Readings: THROUGH THIN AND THICK: FROM HUMAN RIGHTS PRINCIPLES TO POLITICS ACROSS THE AMERICAS AND BEYOND (Cambridge University Press) (2022) (*From Principles 2 Politics*); COMPARATIVE LAW AND RIGHTS: ARTICLES AND CASES (2023) (*Articles & Cases*)

SYLLABUS

Description, Aspirations

The course will *not* pursue narrow objectives. Rather, it will invite a fluid conversation about its topics. Mindful of the historical, sociological context, a successful participant will philosophically cogitate the vindication of human rights within numerous legal fields: from international onto constitutional through civil to procedural law. She will contrast Latin American with Continental European experiences, then against those of the United States.

The overarching aim will consist in reflecting upon the relationships of the institutions at hand to possible social transformations. In particular, it will alternate its reflective medium: from regulatory norms through adjudicatory opinions to philosophical texts. With the instructor's guidance, registrants and auditors will find their way toward the mastery of the scrutinized subjects. They will contemplate the multiple paths from entitlements—those under the spotlight in the sessions—to justice. The class will study the weekly chapters atop the materials matchable to them toward the development of its own outlook. It will become fully conversant with the principal concepts in use by specialists within regions en route.

From the standpoint of the remonstrations by various administrations with the Inter-American system during the last decade, every fellow traveler will first explore the nature of the safeguards at stake: from their conception qua principle or policy to the manner of their implementation. Afterward, she will consider a number of them: to wit, those pertaining to asylum, citizenship, abortion, due process, self-determination, self-government, environment, recognition. Thereafter, the discussion will shift to the potential conflict between them, sometimes that against democracy, with an alternation from scholarly perspectives on political dilemmas to concrete examples. It will close with an exploration of the complex connection, in sequence, of positive, substantive, national guaranties with their negative, adjective, supranational counterparts.

Readings (Outline)

Students should review the readings with care for a subsequent exchange around an answer to each emergent question. They should learn the contrastive analysis of arguments, constructs, cases, constitutions, codes, statutes.

- 1) *Principles 2 Politics* 1-24 (Intro., Chs. 1-2); *Articles & Cases* 1-18 (IRIS MARION YOUNG, *Self-Determination (Introduction)*; *Two Concepts of Self-Determination* (Chap. 2), GLOBAL CHALLENGES: WAR, SELF-DETERMINATION, AND RESPONSIBILITY FOR JUSTICE 1-2, 6-8, 39-57 (Polity Press: Cambridge, UK) (2007) (January 17)
- 2) *Principles 2 Politics* 24-46 (Chs. 3-5); *Articles & Cases* 19-38 (THOMAS M. SCANLON, *Human Rights as a Neutral Concern* (Ch. 6), in THE DIFFICULTY OF TOLERANCE: ESSAYS IN POLITICAL PHILOSOPHY 113-123 (2003); Bernard Williams, *Human Rights: The Challenge of Relativism*, SACKLER DISTINGUISHED LECTURE: UNIVERSITY OF CONNECTICUT (April 23, 1997) (January 24)
- 3) *Principles 2 Politics* 47-72 (Chs. 6-8); *Articles & Cases* 38-55 (Richard Rorty, *What's Wrong with "Rights"?*, 292 (Issue 1733) HARPER'S, June, 1996, at 15-18); *Human Rights, Rationality and Sentimentality*, in SUSAN HURLEY AND STEPHEN SHUTE (Eds.), ON HUMAN RIGHTS: THE 1993 OXFORD AMNESTY LECTURES 112-34 (New York: Basic Books, 1993) (January 31)
- 4) *Principles 2 Politics* 73-92 (Chs. 9-11); *Articles & Cases* 55-77 (Cuscul Pivaral v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 359 (Apr. 23, 2018)) (February 7)
- 5) *Principles 2 Politics* 93-119 (Chs. 12-13); *Articles & Cases* 78-93 (Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022) (Majority Opinion, Thomas Concurrence)) (February 14)
- 6) *Principles 2 Politics* 120-48 (Chs. 14-15); *Articles & Cases* 93-114 (Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022) (Kavanaugh Concurrence, Roberts Concurrence, Dissent)) (February 21)
- 7) *Principles 2 Politics* 149-66 (Ch. 16); *Articles & Cases* 114-28 (Puerto Rico Federal Relations Act of 1950, Pub. L. No. 81-600; United States v. Vaello Madero 142 S. Ct. 1539 (2022)) (February 28)
- 8) *Principles 2 Politics* 167-200 (Chs. 17-18); *Articles & Cases* 128-46 (Sierra Club v. Morton, 405 U.S. 727 (1972); Luján v. Defenders of Wildlife, 504 U.S. 555 (1992)) (March 6)
- 9) *Principles 2 Politics* 201-17 (Chs. 19-20); *Articles & Cases* 146-62 (JÜRGEN HABERMAS, *The System of Rights* (Ch. 3) (Intro.; 3.1 Private and Public Autonomy, Human Rights and Popular Sovereignty), in BETWEEN FACTS AND NORMS 82-131 (William Rehg trans., 1996)) (March 20)
- 10) *Principles 2 Politics* 218-44 (Chs. 21-23); *Articles & Cases* 162-82 (Ronald Dworkin, *Constitutionalism and Democracy*, 3 Eur. J. Phil. 2 (1995); Ruth Barcan Marcus, *More about Moral Dilemmas*, in MORAL DILEMMAS AND MORAL THEORY 23 (Homer E. Mason ed., 1996)) (March 27)
- 11) *Principles 2 Politics* 245-68 (Chs. 24-25); *Articles & Cases* 182-203 (Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 (Sept. 17, 2003)) (April 3)
- 12) *Principles 2 Politics* 269-97 (Chs. 26-28); *Articles & Cases* 204-21 (Davis v. Passman, 442 U.S. 228 (1979); Santa Clara Pueblo v. Martínez, 436 U.S. 49 (1978); Touche Ross & Co. v. Redington, 442 U.S. 560 (1979)) (April 10)
- 13) *Principles 2 Politics* 298-318 (Chs. 29-30); *Articles & Cases* 221-39 (FED. R. CIV. P. 23; Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867 (1984); Lovely v. Eggleston, 235 F.R.D. 248 (S.D.N.Y. 2006)) (April 17)

14) *Principles 2 Politics* 319-36 (Ch. 31, Concl.); *Articles & Cases* 239-52 (Morales [Aceña] de Sierra v. Guatemala, Case 11.625, Inter-Am. Comm'n H.R., Report No. 4/01, OEA/Ser. L/V/II.98 (2001) (Jan. 19, 2001)) (April 24)

Grading

For the most, the grade will rest on a three-hour, open-book final exam before a proctor toward the end of the semester. It may climb up a notch (never down) on the basis of oral participation.