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

Spring Semester 2024; Wednesday 4-7 P.M. (Chase 210)

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

Office Hours: Wednesday, 3-4 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

Course Description and Aspirations

The course will not pursue narrowly defined, one-size-fits-all objectives but rather invite a fluid conversation on its topics. Mindful of the sociological and historical context, it will legally and philosophically cogitate the vindication of human rights in international, constitutional, civil, and procedural law, comparing Latin American and Continental European experiences with those of the United States. The overarching aim will consist in reflecting upon the relationship between legal institutions and social change, with a focus on domestic and global norms or caselaw and on philosophical debates.

With the instructor's guidance, participants will enjoy the opportunity to find their way to mastering the basics of the scrutinized subjects. They may additionally contemplate the multiple paths from entitlements—particularly those that each session will spotlight—to justice. Every week, students should study the assigned chapters and gradually develop their own outlook. They will become fully conversant with the principal concepts used by specialists in the fields and regions traversed.

From the perspective of the remonstrations by various administrations with the Inter-American system during the last decade, the class will first explore the nature of the safeguards at stake: in particular, the extent to which they draw on principle or policy and how their implementation should unfold. It will then consider a number of them: to wit, those pertaining to asylum, citizenship, abortion, due process, self-determination, self-government, environment, and recognition. Thereafter, the discussion will shift to conflicts between them or with democracy, focusing on the scholarship around moral or political dilemmas and on concrete examples. It will close with an exploration of the complex and complementary connection between positive, substantive, or national guaranties with their negative, adjective, or supranational counterparts.

Readings per Week

Students should review the readings and prepare to pose and answer questions. They will learn to analyze arguments, constructs, cases, constitutions, codes, and statutes comparatively.

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)