

Course descriptions for Duke-Leiden Institute in Global and Transnational Law June-July 2018

Authority and Legitimacy in International Adjudication

Laurence Helfer and Carsten Stahn

There are two dozen international courts (ICs) in operation today with jurisdictions covering a broad array of subjects. ICs have issued myriad rulings on issues including the conduct of individuals during armed conflicts, respect for human rights, the legality of trade restrictions, territorial claims in the oceans and on land, and the protection of health, safety, and the environment. How have ICs established and maintained their authority and their legitimacy? Do different institutional design features—such as jurisdictional provisions, access rules, and standing requirements—affect whether ICs are effective in changing the behavior of states? What role do lawyers, national judges, and NGOs play in filing cases and promoting compliance with international judicial rulings? And what are the risks of backlash against ICs that overreach? This course explores these questions through a comparative analysis of global and regional ICs. Students will be exposed to different theoretical perspectives on international adjudication and to the decisions of a range of judicial bodies, including the International Court of Justice, the International Criminal Court, human rights courts in Africa, the Americas and Europe, and regional economic integration courts. More generally, the course analyzes the opportunities and challenges associated with building an effective systems of adjudication in international law.

Challenges in Multilateral and Regional Trade Governance

Rachel Brewster and Giovanni Gruni

This course will explore how trade relations between states are negotiated and governed in regional and multilateral institutions. The course highlights the pluralistic and overlapping structure of modern international trade law where dozens of preferential trade agreements supplement and compete with the WTO's multilateral trade rules. The course will focus on two specific challenges to the international trade system – the question of how to negotiated food security concerns and issues related to resolving disputes over trade agreements. In the first half, the course will explore how shifting food prices can leave vulnerable populations without access to sufficient food resources and how regional and multilateral agreements have separately addressed such food security concerns. This part of the course examines how specific trade policy tools, such as subsidies, export restrictions, and stockpiling regimes, are negotiated between governments and affect the availability of food resources. The second half focuses on how states resolve disputes once agreements have been negotiated, both in the food security context and for other issues. This part continues the course's examination the interaction between regional regimes and the multilateral system. Issues include who has standing to bring claims, the remedies available when breaches occur, and how to manage similar and competing claims in different institutional fora. This part also examines a range of possible mechanisms to enforce agreements, including retaliation, monetary penalties, voluntary financial compensation, and renegotiation. In particular, this part will focus on the limits of dispute resolution for issues such as food security and innovative means for addressing such crises.

Comparative Foreign Relations Law and Democratic Accountability

Curtis Bradley and Joris Larik

This course will consider some of the legal issues common to constitutional democracies, as well as to the European Union (EU) as a supranational entity, in allocating authority in the conduct of foreign affairs. These issues include the distribution of powers between the legislative and executive branches relating to topics such as the making and unmaking of treaties, the conduct of diplomatic relations, and the use of military force. They also concern the constitutional and other questions that can arise when nations delegate sovereign authority to international institutions. Moreover, in federal systems and in the EU, there are issues relating to the vertical distribution of authority between the federal/supranational whole and its constituent parts in situations in which foreign affairs are implicated. The course will further consider the proper role of courts in addressing foreign affairs questions, including their role in applying international law. Finally, the course will reflect on broader issues concerning the nature of foreign relations law as a field of study and the potential benefits and pitfalls of comparative research in this area, drawing in part on the findings of the forthcoming [*Oxford Handbook of Comparative Foreign Relations Law*](#), which is edited by Prof. Bradley. The first half of the course will compare and contrast how various constitutional democracies address common legal issues relating to foreign affairs. The second half will focus on how these issues are addressed within the system of external relations of the European Union and its Member States. Contemporary examples, such as the UK Supreme Court's decision concerning "Brexit," will be emphasized.

Comparative Perspectives on Criminal Justice: Central Issues and Contextual Implementation

Sara Sun Beale and Pinar Olcer

This course will use comparative law methodology to examine contemporary criminal justice issues, including over criminalization, corporate criminal liability, prosecutorial discretion, and bribery and corruption. The course materials will explore how the U.S. system and other national systems respond to contemporary challenges. Readings also will consider how over-arching norms are transposed within supranational and international frameworks and down to national and subnational governments, from Europe to the United States (and vice versa) and back up to international treaties. Deeply and intricately tied into local legal frameworks and realities, criminal and criminal procedural law concerns an area of positive law in which it is famously difficult to gain consensus, even within one national sphere. Thus, what behavior should be criminalized, how law enforcement should be arranged, what constitutes fairness and just punishment all concern sensitive issues in the context of which "sharing" law can be difficult. Nevertheless, a great deal of "borrowing" or diffusion of law does take place, either informally or formally via international and supranational treaties or joint law enforcement efforts, in order to effectively combat crimes which are held to endanger international and transnational interests. Adopting similar rules – either by conscious decision or informal (judicial or executive) borrowing – does not always mean however that transplanted law will work, or work in the same manner in every environment, where contextual factors may have an impact on the way in which the law operates. By turning to distinct substantive and procedural themes within the domain of criminal justice, the aim is to gain understanding of the manner in which this type of law can be transposed to different contexts, what types of bottlenecks can be encountered therein and how issues of transposition can and should be dealt with.

Introduction to American Law

Donald Beskind and Kathryn Bradley

The first part of this course will introduce students to some distinctive aspects of United States law and legal institutions. Students will explore the interrelationship between state and federal law, as well as the various sources of law, including constitutions, common law, statutes, and treaties. Three issues involving significant public debate

– gun control, same-sex marriage, and the Executive “travel bans” – will be used as lenses through which to examine the interplay between state and federal law and the respective roles of judicial, legislative, and public lawmaking, all against the backdrop of the US Constitution. This part of the course will close with a consideration of the role of the lawyer in the US legal system by examining the education, bar admission, and regulation of lawyers, as well as the ethical obligations of lawyers. The second part of the course will shift its focus to the trial court, looking at the role of the jury in US civil litigation. Students will learn the history of the jury trial in American jurisprudence, and will explore relevant rules of evidence, discovery, and legal ethics. Students also will have an opportunity to practice advocacy skills through a simplified mock trial, as well as understand the role of the jury in interpreting facts and seeking truth.

Realizing Rights: Strategic Human Rights Litigation and Advocacy

Helen Duffy and Jayne Huckerby

This course provides a framework for understanding strategic human rights litigation and advocacy, assessing its limitations and challenges, as well as positive impacts. As advocates around the globe increasingly resort to litigation and advocacy—in national, regional, and international courts and/or forums—to protect and promote human rights, this course will explore what difference this litigation and advocacy makes in the real world, when and why. It will grapple with the legal, strategic, and other choices that are made around issues such as which rights’ violations to focus on in a given context; how to frame rights’ claims; where to lodge claims and choice of forum; building the evidence-base for claims (e.g., through fact-finding); remedies sought; and the ways in which strategic litigation and advocacy feature a range of human rights methodologies (e.g., documentation and messaging). The course will examine the multiple actors against whom strategic human rights litigation and advocacy is directed, from governments to non-State actors (e.g., corporations), to inter-governmental actors (e.g., the United Nations), considering how these different targets affect the legal claims and forums available to advocates. Issues ranging from the role of social movements, victims, and their representatives, in human rights litigation and advocacy to the challenges in the enforceability of judgments, will also be addressed. This course will draw heavily on case studies to illustrate these issues and to provide insight into the broader question of how to assess and enhance the effectiveness of strategic human rights litigation and advocacy in the future.