

Dear MSc Students,

Please find attached a draft syllabus for a five-week module on the European Court of Justice (ECJ), set in the first half of Hillary Term.

It offers an introduction to understanding the politics of the ECJ, with a focus on political science debates about how the Court became so powerful, and then addresses a variety of other topics including women's rights, new historical investigations of the Court, the ECJ's relationship with other international courts, Brexit etc etc. It requires no legal background or prior knowledge of the ECJ. There will be at least three lectures to help students get the necessary technical background on the ECJ and aspects of European law, as well as the usual seminar discussion. It should interest students who want to know more about the politics of treaties and international law, the politics of one of the most important institutions in the European Union, or the politics of judges and lawyers.

Please let me know if you have any questions, I am looking forward to meeting you.

**Will Phelan
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The European Court of Justice

HT 2018, First Half, Half Module

Mondays 10-1pm.

(In fact, sometimes 10-1pm, other times 11-1pm, dates will be fixed in advance of next term. Some class meetings will include lectures as well as seminar discussion as the best way to give students the necessary introduction to some of the technical aspects of European law and the ECJ)

TRSS Seminar Room, top floor of Arts Block.

William Phelan
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DRAFT – SUBJECT TO CHANGE

This is a five week module on the politics of the European Court of Justice. This is a thriving area of academic research and one likely to have an ever-increasing impact on international politics.

If you wish to read ahead during the Christmas break, you might wish to read (or re-read!) one or both of the following books. Only if you are interested of course, and no assumption will be made that module participants have pre-read these books.

On the European Legal Order

K Alter, *Establishing the Supremacy of European Law : the Making of an International Rule of Law in Europe* (Oxford University Press, Oxford 2001)

Terpan, F. and S. Saurugger (2016). *The Court of Justice of the European Union and the politics of law* (Palgrave Macmillan).

Even after the term has begun, these are a books that you can benefit from just reading through from start to finish. They are available at Trinity library and of course at bookstores.

Turnitin information for this Module

Class ID: **UPDATE**

Password: intdispute

Course requirements includes:

- Seminar participation, demonstrating knowledge of readings for each week's discussion (15%)
 - You are expected to have read, and be prepared to ask and answer questions about all the required readings for each week's seminar.
 - The readings for this course are set out in sequence for both individual weeks and for the module overall. Please read in sequence and do not read ahead to later week's readings.
- Response papers (20% - three papers)
 - A response paper is a 1-3 pages paper, double-spaced, offering some assessment or critique of one or more readings for the week's seminar. It is not a summary of the readings.
 - Response papers are due by noon on the Friday prior to class via Turnitin.
 - Response papers will be shared with other students in advance of class and should be read by all students so that we can discuss together.
- A final paper due Friday 5pm of week 7 (reading week) (65%).
Late essays will be penalized at the rate of 5 points per day, excused lateness will only be permitted with the provision of a medical certificate. Submit your paper well in advance, e.g. Thursday or earlier, so that your essay's grade is not penalized for any last minute computer difficulties. The deadline for meeting or put any questions is noon on Friday of week 6 (or earlier of course, and by far the best).

Two possibilities are available for the final paper:

- (a) an extended review of a recent book on the politics of the European Court of Justice, engaging with issues of research design (e.g. dependent and independent variables, positioning vis-à-vis previous scholarship, theory, testing, etc). Even within a book review, you will be able to prioritize / focus on particular aspects of course. Any of the books listed at the end of this syllabus are possibilities. You could also focus on a series of paper by prolific scholars such as Morten Rasmussen or Gareth Davies who publish largely in article or chapter format. Students can also propose alternatives by email to the instructor by 10am Monday of week 4 of the term, the instructor may not agree with all suggestions. After that date, only the books available at the end of the syllabus are available. Students may need to make available copies of books reviewed to the instructor. NB if you can't find a copy of the book you would like to review, choose another one! And make sure to get ahead reading your book now so that you don't suffer from difficulties obtaining the books closer to the deadlines.
- (b) a research proposal in the area of the European Court of Justice, setting out a variation to be explained, discussion of how the research relates to previous scholarship, identification of important independent variables, and a discussion of how the proposed argument will be tested. I am fully aware that a fully developed research proposal is a challenge within the

weeks allowed, please take the project as far as possible within the time allowed.

In both cases, the paper should be 3500 words, all included (including bibliography), written in double-spaced text. A penalty of one grade point will apply to all essays above 3500, two points above 3600 words, and so on. You are advised to write an essay at least 3000 words long. Please remember to include page numbers and a word count on your text. You have time enough to produce a polished and carefully written paper.

In both cases, your final paper should demonstrate your engagement with the concepts and materials we have discussed in this module.

You will also be asked to submit a note outlining briefly your understanding of some of the most important legal and political science concepts used in the scholarship on the European Court of Justice (e.g. Direct Effect, Supremacy, etc)

You are reminded of your obligation to avoid plagiarism and to provide sources of any materials consulted in the course of writings. If you wish to write a book review, you must not consult other book reviews on the topic. Write your own review. (The same applies for Response Papers). If you consult published reviews in relation to a book which you are writing a final paper on, you should expect that your paper will receive a grade of zero, and that you will fail the module. (Perhaps I should be clear that I am really not recommending you look at any published/ journal book reviews at all, even if you are not writing a book review paper, even for other modules.)

No content submitted for another module or course here at Trinity or any other university can be re-used for this final paper.

Readings will be available on Blackboard, and books that the library owns will be put on reserve in the Trinity College Library.

Week 1:

Setting the Scene: Ordinary International Law and Some New Versions: Realists and international law, the World Trade Organization, International Human Rights Treaties, Investor-State Dispute Settlement

The purpose of this week is to set out some other treaty systems and aspects of international law so that we can then better understand how the European Court of Justice is new and distinctive.

Morgenthau, Hans Negotiating with the Russians *Bulletin of the Atomic Scientists* (1950) 143-148

Phelan, W. (2015). In Place of Inter-State Retaliation: The European Union's Rejection of WTO-style Trade Sanctions and Trade Remedies. Oxford, Oxford University Press.

Short selection on disputes in the World Trade Organization

WTO Example : Indonesia-US Clove Cigarettes dispute *on Blackboard*

Moravcsik, A. (2000). "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." International Organization 54(2): 217-252.

Pelc, K. What Explains the Low Success Rate of Investor-State Disputes? *International Organization* 71, Summer 2017, pp. 559–583

Phelan, W. (2016). Diagonal Enforcement in International Trade Politics. *Short Version*, selected pages only.

Optional Readings:

Hull, I. V. (2014). A Scrap of Paper: Breaking and Making International Law during the Great War. Ithaca, NY, Cornell.

Selection

**Week 2 How did the ECJ get so powerful?
Classic debates**

Short extracts from ECJ decisions:

“*VAN GEND EN LOOS*” (1963)

and

“*COSTA v ENEL*” (1964)

Weiler, Joseph H. H. (1994). 'A quiet revolution: The European Court of Justice and its Interlocutors.' *Comparative Political Studies* 26(4): 510-534.

Garrett, G. (1992). "International Cooperation and Institutional Choice: The European Community's Internal Market." *International Organization* 46(2): 533-560.

Burley, A.-M. and W. Mattli (1993). "Europe Before the Court: A Political Theory of Legal Integration." *International Organization* 47(1): 41-76.

B Davies, *Resisting the European Court of Justice: West Germany's Confrontation with European law, 1949-1979* (Cambridge University Press, Cambridge 2012),

Introduction pages ONLY

P Pierson, 'The Path to European Integration: A Historical Institutional Analysis' (1996) 29 (2) *Comparative Political Studies* 123-163

Phelan, W. (2015). In Place of Inter-State Retaliation: The European Union's Rejection of WTO-style Trade Sanctions and Trade Remedies. Oxford, Oxford University Press.

Selected pages only – just outline of the system.

Optional Readings:

K Alter, *Establishing the Supremacy of European Law : the Making of an International Rule of Law in Europe* (Oxford University Press, Oxford 2001)

Introduction Chapter

**Week 3: How did the ECJ get so powerful?
 Comparative Approaches and New History**

Goldstein, L. F. (1997). "State resistance to authority in federal unions: The early United States (1790-1860) and the European Community (1958-94)." Studies in American Political Development **11**(1): 149-&.

K Alter and L Helfer, 'Nature or Nurture? Judicial Law Making in the European Court of Justice and the Andean Tribunal of Justice' (2010) 64 (4) *International Organization* 563-592

Rasmussen, M. (2014). "Revolutionizing European law: A history of the *Van Gend en Loos* judgment." International Journal of Constitutional Law **12**(1): 136-163.

Bill Davies, 2012. Pushing Back: What Happens When Member States Resist the European Court of Justice? A Multi-Modal Approach to the History of European Law *Contemporary European History* pp 417-435

Phelan draft paper on the political science debates about the European Court of Justice.

Extract from ECJ judgment 1964 *Dairy Products*.

Phelan, W. (2015). In Place of Inter-State Retaliation: The European Union's Rejection of WTO-style Trade Sanctions and Trade Remedies. Oxford, Oxford University Press.
Chapter 5: New Narrative

Week 4:

Women's Rights, Migrants' Rights, the ECJ and other international courts, Quantitative Approaches...

Éliane Vogel-Polsky: A Woman of Conviction by E. Gubin with C. Jacques
Chapter 3 "Equal Rights for All Workers" pp. 59-95 esp on *Defrenne* Cases.
Whole document available at:

http://igvm-iefh.belgium.be/sites/default/files/downloads/13%20-%20Vogel-Polsky_EN.pdf

Katerina Linos, *Path Dependence in Discrimination Law: Employment Cases in the U.S. and the E.U.*, 35 YALE JOURNAL OF INTERNATIONAL LAW 116, 116-120, 149-67 (2010)

Kochenov, D. and J. Lindebloom (2017). Breaking Chinese Law - Making European One: The Story of *Chen*, or two winners, two losers, two truths. EU Law Stories: Contextual and Critical Histories of European Jurisprudence. F. Nicola and B. Davies.

Larsson, O. and D. Naurin (2016). "Judicial independence and political uncertainty. How the risk of override impacts on the Court of Justice of the EU." International Organization **70**(2): 377-408.

The ECJ and the European Convention on Human Rights:

Short comment on ECJ's decision rejecting proposal for the EU to become a party to the European Convention on Human Rights

The ECJ and the World Trade Organization:

Phelan, W. (2016). Diagonal Enforcement in International Trade Politics. *Short Version*, selected pages only.

Week 5: New Approaches to Studying Courts, Insiders speak out, History, Brexit, Final Thoughts ...

Segal, J. A. and A. D. Cover (1989). "Ideological Values and the Votes of U.S. Supreme Court Justices." The American Political Science Review **83**(2): 557-565.

Judge Franklin Dehousse's Farewell Address to the Court of Justice of the European Union 2016 available on *Blackboard* originally from <http://eulawanalysis.blogspot.ie/2016/10/eu-judge-dehousse-farewell-address-to.html>

Rasmussen, M. (2017). "How to enforce European law? A new history of the battle over the direct effect of Directives, 1958-1987." European Law Journal **23**: 290-308.

UK Eurosceptics discussing the Court of Justice:
Examples on Blackboard

Department for Exiting the European Union (2017). Enforcement and Dispute Resolution: A Future Partnership Paper. London, HM Government.

Gareth Davies "The European Union Legislature as an Agent of the European Court of Justice", 2016 [early view] *Journal of Common Market Studies*.

Phelan, W. (2017). "The Revolutionary Doctrines of European Law and the Legal Philosophy of Robert Lecourt." European Journal of International Law **28**(3): 935-957.

Phelan, William (2016). Diagonal Enforcement in International Trade Politics. EUI Working Paper SPS 2016/1. Fiesole, EUI.

Possible books for final paper

Lindseth, P. L. (2010). Power and Legitimacy: Reconciling Europe and the Nation-State. Oxford, Oxford University Press.

Kelemen, R. D. (2011). Eurolegalism: The Transformation of Law and Regulation in the European Union. Cambridge MA, Harvard University Press.

Alter, K. (2014). The New Terrain of International Law: Courts, Politics, Rights. Princeton, NJ, Princeton University Press.

Davies, B. (2012). Resisting the European Court of Justice: West Germany's Confrontation with European law, 1949-1979. Cambridge, Cambridge University Press.

Carrubba, C. J. and M. Gabel (2015). International Courts and the Performance of International Agreements. Cambridge, Cambridge University Press.

Goldstein, L. F. (2001). Constituting Federal Sovereignty: the European Union in comparative context. Baltimore, Maryland, Johns Hopkins.

EU Law Stories: Contextual and Critical Histories of European Jurisprudence. Edited by F. Nicola and B. Davies. Cambridge 2017.

Isiksel, T. (2016). Europe's Functional Constitution: A Theory of Constitutionalism Beyond the State. Oxford, Oxford UP.

Vachez, A. (2015). Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity. Cambridge, Cambridge University Press.

I have probably missed out some of the best ones! Please let me know early on if there is another book that you would like to review. NB our interest is on books on the Court of Justice in political or historical context, not strictly legal-doctrinal analysis.

If you wish to look for further recent publications on the politics of European law, perhaps the leading scholars currently publishing include e.g. Karen Alter (Northwestern), Bill Davies (American University), Antoine Vachez (Paris), Morten Rasmussen (Copenhagen), Cliff Carrubba (Emory), and Peter Lindseth (Connecticut).