

JS Hilary Term 2025 DRAFT

Instructor:

William Phelan

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Lecture times:

Wednesday 4-6pm B132 in Trinity Business School

Teaching Assistants:

Benedetta Lobina (Head TA)

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Eve Ryan

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Tutorial times :

Tuesday 1-2 Arts 5033

Tuesday 5-6 Arts 4050B

Thursday 12-1pm Arts 3027

Thursday 3-4pm Arts 3051

Friday 10-11 Arts 4047

Friday 11-12 Arts 3051

(These meet alternative weeks, starting week 2 HT, students will be allocated to a tutorial group and informed by the teaching assistant of which to attend. We regret that it is not possible to move students between tutorials).

Learning Outcomes:

At the end of this course students will have an advanced understanding of the politics, history and law of the European Court of Justice, one of the most remarkable institutions in contemporary international politics and without precedent in previous world history. It will be an interdisciplinary module drawing on political science, law, and history. Although the major focus of the module is on the European Court of Justice, the politics and law of other courts and international tribunals will also be discussed, including the United States Supreme Court, as well as international dispute settlement tribunals such as the World Trade Organization. This year also includes a discussion of the Nuremberg Trials in postwar Germany.

Students will have developed an understanding of alternative approaches to understanding and investigating court decision-making, including through a focus on legal texts, use of the comparative method, archival research, judicial biography, and quantitative approaches.

Assignments:

Tutorial Attendance and Discussion Points:	10%
Essay:	25%
End of term examination:	65%

Lectures

The module is taught by lectures covering a variety of topics week on week together with associated readings, required and optional. Attendance at lectures is required.

Please make sure to engage carefully with the readings as you will be expected to be thoroughly and critically familiar with them in order to obtain passing grades in the essay and the exam assignments.

One reading per week will be identified for discussion during lectures and students will in turn be particularly responsible for questions and comments about these readings at lecture time.

Readings:

Readings for each week of the course are set out in the syllabus.

For the reader who wishes to easy access to conventional descriptions of the content and purpose of the ECJ's famous judgments, including *Van Gend en Loos* and *Costa v ENEL*, a recommended resource is :

Phelan, W. (2019). Great Judgments of the European Court of Justice: Rethinking the Landmark Decisions of the Foundational Period. Cambridge, Cambridge UP. (This book is available in paperback, or in the library of course)

Each chapter of the book contains a discussion of conventional textbook interpretations of various “great judgments” before going on to offer a more polemical new approach, both more comparative and more engaged with the writings of an influential ECJ judge.

The following pages offer this “conventional” summary for various judgments:

Van Gend en Loos	39-47
Costa v ENEL	70-76
Dairy Products	91-92
International Fruit	130-133

For a full length political science accounts of European legal integration, this book from 2001 by Alter is perhaps the best-known:

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

Chapter 2 of “In Place of Inter-State Retaliation” by Phelan has an opinionated summary of a wider range of political science research on the ECJ.

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

The Alter and Phelan books can be compared as alternative approaches to understanding the politics of European legal integration.

Classes/Tutorials/Discussion Points: A fifty-minute seminar for students will be held every other week. These help develop analytical skills and provide the opportunity for discussion of the readings. Tutorials begin in the second week of term. Tutorial discussions will be led by a Teaching Assistant or by Professor Phelan.

When attending the tutorial every two weeks, students should submit 3 typed discussion points addressing the tutorial’s readings. Here you are not asked to provide a detailed discussion or analysis. You are simply required to raise some interesting points about the week’s readings/materials (**see the specific tutorial reading list at the end of this syllabus**) that will form the basis of tutorial discussion. These should be in the form of 3 numbered points; each should be a maximum of one paragraph in length. Consider what points will make for an interesting discussion in the tutorial. Think of applying questions like: What are the major themes and implications from the readings? How well or poorly do the major arguments or explanations from the readings from class fit with the cases or examples under discussion? Do you agree with the arguments in the articles? What are alternative explanations for the patterns and processes we observe? How could the author have made their argument stronger or clearer? How do the readings agree or disagree with each other, or from readings discussed in previous weeks?

Using these submissions as points to bring up in class will help guide the discussion in the tutorial and help make the tutorial more participatory. You can also use the discussion points as notes on this topic that will be helpful for revision.

Please be sure to read all the readings required for the particular tutorial.

Please note:

Tutorial attendance and the submission of discussion questions will count for 10 % of the overall module mark. Each student must submit a set of Discussion Points, while attending the tutorial, four times (out of five) throughout the module. **These points must be submitted before the relevant tutorial in the manner that the TA requires. On the basis of past policy, this will be in folders on Blackboard (in the Assessments folder) set up to receive discussion points for all tutorials taking place in that particular week, and Discussion Points must be submitted by a particular deadline prior to the tutorial to be set by the Teaching Assistant.**

A student should attend tutorial on the relevant week after submitting the discussion questions in order to receive credit for them. Per Department Policy, participation and attendance marks are capped at 80. For a breakdown of marks per submission and attendance, please see the table below.

Discussion Points Submitted and Tutorials Attended	Mark
1	20
2	40
3	60
4	80

Although students should attend tutorials whether they have submitted Discussion Points or not, points for the module grade are only obtained in relation to tutorials where student both attend and have submitted Discussion Points by the relevant deadline. The Discussion Points should discuss the readings relevant to that particular tutorial – it is not possible to submit Discussion Points retroactively relating to previous tutorial meetings.

Discussion Points are not graded, but can be rejected if not a genuine attempt to respond to the readings, or too short, or otherwise inadequate. They must be the students' own work and may be rejected if this does not appear to be

the case. TAs may refuse to accept papers submitted other than as per their requirements, or late submissions. Get your act together to submit your Discussion Points on time as required. If a tutorial is cancelled, for example due to a Bank Holiday, Discussion Points can be submitted by email to the tutor by the time of the week that the tutorial would otherwise have been held, and in this case only submission of the Discussion Points counts for the attendance of the tutorial as well in terms of the module grade.

Excused absences from tutorials: Students who for medical or similar reasons wish to request that absence from a tutorial / preparation of a response paper be excused must ask their college tutor to contact their Teaching Assistant by email (make sure the tutor receives the TA's email address, and knows exactly which tutorial you wish to excused from), cc'ing me as instructor on phelanw@tcd.ie, to request for an excused absence for a particular tutorial. Only requests from college tutors will be considered – requests from students direct will not be considered. Requests must be made within one week of the day of the tutorial for which the excuse is requested, and, if the student wishes to obtain module credit for that particular tutorial, Discussion Points on that week's topic must be still be submitted at or before the next tutorial (or within one week of the end of term, if it relates to the last tutorial of a term). It is student's responsibility to ensure that their college tutors are informed of the proper means to request an excused absence from tutorials.

To repeat: non-attendance at tutorials and non-submission of Discussion Points can have an important impact on your final grade, and therefore your ability to pass the module. You will be given an opportunity to query attendance and Discussion Point records at the end of each term, to ensure that your attendance and Discussion Point submissions in the previous term have been correctly recorded. Suggested corrections to attendance and Discussion Point records will not be considered after the deadlines set for correcting these records.

Supplemental examinations

Reassessment for this module (e.g. in the case of a failing module grade, or other circumstances) is via in person examinations in Dublin during the August/September supplementals period.

Essay and Examination

One essay will be required on topics provided at the beginning of term, with the essay making up 25% of the total course grade. An in-person end of term examination will take place in the exam period at the end of Term, which will consist of a series of identification concepts to define and discuss – see the elaboration and list later in this syllabus - as well as one essay to be completed from a choice provided. Students must be ready to answer questions on all topics covered by the module. That includes questions that might cover themes across topics, or comparisons between different court systems. That also includes discussing theoretical approaches to the topics discussed. The end of term examination counts for 65% of the total course grade, 10% of the module grade is made up of attendance at tutorials and Discussion Points.

The essay is due not later than 10am on the Monday of teaching week 8, 10th March 2025 in Hillary term – i.e. Monday after Reading week. Please make sure you are aware of the submission arrangements via Blackboard at least several days prior to the deadline. All submission deadlines are Irish time, of course. All late work, unless excused in advance by the course lecturer will be penalized as a rate of 5 marks per day (up to a maximum of 30 marks). All requests for excuses from submission penalties, whether justified by a medical certificate, a LENS report, or other reason, must be submitted in advance of the deadline to the course instructor by the student's college tutor. Where any essay is submitted after the deadline for any reason, the student must also email the Head TA (see front page) to inform them it has been submitted.

All coursework needs to be submitted via the course's Blackboard account, which includes plagiarism detection software. Please also be sure to complete the required plagiarism "cover sheet" with any essay submitted. You may also wish to see the department's undergraduate handbook at:

https://www.tcd.ie/Political_Science/undergraduate/module-outlines/UndergradHandbook.pdf

This also gives guidelines about how to plan and write an essay, what the markers are looking for, what qualities a good essay possesses, and what factors can result in low marks.

Under no circumstances will work be accepted after the set work has been marked and returned to other students, or after the end of Hilary lecture term. Requests for special consideration advanced at a later stage will not be accepted. Essays may, of course, be handed in earlier than the due date. All essays will be marked by the Teaching Assistant. **All essays submitted should be clearly marked with the student's name.**

Some of the topics under discussion in this module on the European Court of Justice necessarily touch on topics covered in other modules (e.g. at the Law School) or in

the media. Both the essays and the examination should be written in response to the lectures and the material provided for this course.

Plagiarism: Students are reminded that plagiarism is unacceptable in any circumstances and both the Department and College takes all plagiarism cases very seriously. Remember that careless note-taking can lead to this happening: you must enclose direct quotations in quotation marks and, even when paraphrasing, ensure that a reference is provided. Offenders will be referred to tutors and plagiarized essays may be given a zero mark or penalized in other ways. Students are strongly recommended not to look at all at any previous essays on similar topics written by students at Trinity or other universities, as the likelihood of incurring plagiarism penalties becomes high. It is crucial to note that the use of Artificial Intelligence tools can also constitute plagiarism also (see below).

Just as the use of professional copy-editing services, the use of essay mills, the submission of work that has been completed by a student who was formerly enrolled in the module etc. are banned on the basis it means that the work submitted is not the student's own, AI tools are not permitted to be used by students completing assignments for this course.

This includes the use of chatbots/virtual assistants like ChatGPT, as well as writing tools like Grammarly.

Any assignment that is suspected of using AI will be investigated. Any student found to have used AI to write their assignments for them will be penalized.

Please note that the content of Discussion Points must also constitute entirely the student's own work and should not contain any unreferenced extracts from other sources.

Visiting students should complete the "Ready Steady Write" tutorial re plagiarism standards at Trinity College Dublin.

<https://libguides.tcd.ie/academic-integrity/ready-steady-write>

Checklist for Essays:

1. Make sure that your essay demonstrates a thorough and active engagement with the module's readings as set out in the syllabus up to and including week 6. (For the final exam, all readings throughout the syllabus may be relevant).
2. However, the essay should not aim to provide a summary of the readings – instead knowledge of (and criticism of) the readings should be employed to contribute to offering a clear and precise answer to the essay question.
3. Please think about alternative answers to the question and make sure the essay sets out which one is most convincing. Consider counterarguments if you can, addressing them fairly and with some consideration.
4. Criticism of the readings is welcome but criticism is often best when careful and “measured” – set out the reason why the argument in this reading or readings are less convincing than others.
5. Please be sure to consider the full range of module topics and readings in answering any particular essay question. Even if the essay question mentions only e.g. one court or one theory, demonstrating knowledge of other courts and other theories will often be beneficial in producing a good answer.
6. An essay should be focussed throughout on answering the question in a planned manner from start to finish.
 - a. The introduction should briefly outline the direction of the argument and the approach of the essay to follow. i.e. indicate an answer to the essay question and an outline of the main reason for this answer.
 - b. The middle sections should develop an argument step by step (based on engagement with the readings) for the best answer to the question.
 - c. The conclusion should summarise the argument and bring together strands in the earlier discussion. Please note – the essay is not like a “murder mystery” where there is a shocking revelation on the final page, the argument of the essay should be clear from the start and then worked through transparently until the final section.
7. The essay is short – so prioritise as necessary and focus on the essentials. You have time to write a full version, let it sit, then edit and improve it.
8. For the final examination, the essays must refer to the readings by the authors name, however no formal bibliography is necessary. Write e.g. “As Burley and Mattli explain, ...”
9. Remember that this is a political science module – answers which draw only on “legal” approaches to EU law without considering the alternative approaches discussed in this module (comparative, biographical, historical, etc) may receive a zero or otherwise failing mark.

ESSAY QUESTION

Burley & Mattli claim that the European Court of Justice has “the power to pursue its own agenda” and “that the personal incentives in the judicial and legal community, as well as the structural logic of the law, favour integration”. Assess Burley & Mattli’s explanation of the early development of the European legal order compared to alternatives.

Answer drawing on course readings in an essay of no more than 1900 words. The essay should draw on readings and materials up the end of week 6 of the HT.

A good paper will draw on course materials from the course to date, and consider alternative answers to the question as suggested by different theoretical approaches to European legal integration, and alternative approaches to studying the European Court of Justice.

These essays are *short*, so do not attempt to cover everything which could possibly be relevant – prioritise – indeed state and justify the essay’s prioritization. Make sure you show knowledge of alternative answers to the question, and careful engagement with variety of course materials. The essay must demonstrate knowledge and engagement with the course readings contained in the syllabus (not just the lecture materials). The ability to be concise is part of the job of writing a good essay. Graders may stop reading after 1900 words. One point may be subtracted from the overall grade for every 100 words over 1900 i.e. one point for 2000 words, two points for an essay of 2100 words, etc. The word count does include the bibliography. If you are any doubt as to whether your essay may exceed the word count, we recommend that you shorten it as necessary – taking another 50 words out is always good advice if close to the full word count.

All essays must be submitted via Blackboard.

Please ensure your name is on the essay paper submitted.

Examples of ‘Identification’ Concepts / Terms for End of Term Examination. The final examination may contain questions asking you to define and comment on the significance for the study of the European Court of Justice (and other famous courts) of a series of terms and concepts used in the course. The list on the following page, together with reading references, may help you in your studies for the examination. The list is not exhaustive, and the examination may contain terms not included on this list, and the examination itself will contain the definitive instructions.

The exam will contain 8 “Identification concepts” and students will be expected to respond to all of those listed. We recommend practicing in advance, including writing to time, given that no more than half the exam time should be spent on the “identification concepts”.

Note that the IDs part of the exam will be graded in the following way: up to five points will be given for each ID, giving a total out of 40, which will then be multiplied by two. So the IDs part of the exam will give a grade between 0 and 80, counting as a half of the total examination for students who also write a single essay (from a choice provided).

Note that these reading references may not be sufficient to ensure full marks in a test, since the purpose of the ID questions is for the concept to be situated within the course materials as a whole, including lectures and broad theoretical approaches to international relations. Students should be prepared to assess their importance in understanding the role of the ECJ (or of other courts, as the case may be), give illustrative examples if relevant, discuss authors and readings who are especially associated with these concepts, describe their differences from other related concepts, and so on.

- Direct Effect e.g. Great Judgments “Van Gend en Loos”
- Supremacy e.g. Great Judgments “Costa”
- Dairy Products case 1964 e.g. Great Judgments “Dairy Products”
- Pork Products case 1961 e.g. Great Judgments “Pork Products”
- International Fruit 1972 e.g. Great Judgments “International Fruit”
- National Constitutional Law Fundamental Rights
e.g. Great Judgments “Internationale Handelsgesellschaft”, Alter, Delle Donne & Fabbrini, Phelan on Fundamental Rights
- Defrenne e.g. Gubin on Vogel-Polsky
- Radhabinod Pal e.g. Bass, Tokyo, pages on R. Pal
- Robert Lecourt e.g. Phelan papers on Lecourt
- WTO Dispute Settlement e.g. Phelan, Lawrence
- WTO Appellate body crisis e.g. Pollack
- Escape Mechanisms e.g. Rosendorff & Milner
- Neofunctionalism e.g. Burley & Mattli
- Intergovernmentalism e.g. Garrett
- Hyper-pluralism e.g. Cameron and Kastellec
- Nuremberg Trial e.g. Bass
- Tokyo War Crimes Tribunal e.g. Bass, Tokyo
- “Elevator Effect” e.g. Hazelton et al.
- “Hollow Hope” e.g. Rosenberg
- Dissenting opinions e.g. Beim, Hazelton, writings on ECJ and SCOTUS etc
- Christian Democracy e.g. Accetti
- Article 255 Committee e.g. Lasser
- Nuremberg Trials e.g. Bass

(In addition, students will be asked to write 1 essay from a choice provided.)

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the European Union**

Week 1: Introduction

Outline:

1. European Integration as Extraordinary Event
2. Outline of the Module ahead
 - a. Assessment Structure
3. Outline of European Institutions
4. Brief Overview of European Legal Integration
 - a. Simplified Timeline
5. VGL and Costa

Readings:

"The Wizards of Luxembourg" Economist Magazine May 23rd 2020, Blackboard.

Pasture, Patrick "Imagining European Unity since 1000 AD" (Palgrave Macmillan, 2015), extract on Blackboard

Essential Provisions of the Treaty of Rome (from "Great Judgments")

Direct Effect

Supremacy

Texts of the two most Famous Judgments in Detail:

Van Gend en Loos (1963)

Costa v. ENEL (1964)

Phelan "Great Judgments" on Van Gend en Loos 39-47
(conventional discussion of VGL)

Optional Reading

Phelan "Great Judgments" on Costa v ENEL 70-76
(conventional discussion of Costa)

Week 2: Narratives of European Legal Integration

Outline:

1. Weiler's influential scholarship on European integration
2. Three main approaches which inform political science on the ECJ:
 - Neofunctionalism
 - Intergovernmentalism
 - Historical Institutionalism
3. Power of the Court vis a vis legislation produced by the European institutions (G. Davies)

Readings:

Phelan, W. (2015). In Place of Inter-State Retaliation: The European Union's Rejection of WTO-style Trade Sanctions and Trade Remedies. Oxford, Oxford UP. pp. 29-36 only – a basic description of the development of the European legal order.

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

Garrett, G. (1992). "International Cooperation and Institutional Choice: The European Community's Internal Market." International Organization **46**(2): 533-560, but you are expected to read in particular 553-559 which relates to European law/ the Court of Justice.

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

Optional extra:

Davies, G. (2016). "The European Union Legislature as an Agent of the European Court of Justice." Journal of Common Market Studies.

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

JHH Weiler, 'The Transformation of Europe' (1991) 100 *Yale Law Journal* 2403-2483
[No need to read, but it is the influential account of the early years of EU law which underlies the publications of many other scholars, particularly Burley & Mattli].

Week 3: The New History of European Law

Outline:

1. The "Postwar Moment" and the rise of Christian Democracy
2. History as a means of studying courts and law
3. New History of European law
4. Focus on :
 - a. The European Commission
 - b. Legal Networks
 - c. Postwar European Constitutions esp the Netherlands
5. An example in depth: the European Court of Justice's development of the Fundamental Rights protections in EU law.

Readings:

Wider Ideological Currents

Accetti, C. I. (2019). What is Christian democracy? : politics, religion and ideology. Cambridge, Cambridge UP. Extracts from Chapter on Subsidiarity.

The Fundamental Rights Challenge to European Law - Compare and Contrast:
Alter, K. (2001). Establishing the Supremacy of European Law : The Making of an International Rule of Law in Europe. Oxford, Oxford University Press. EXTRACT.

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

Delledonne, G. and F. Fabbrini (2019). "The Founding Myth of European Human Rights Law: Revisiting the Role of National Courts in the Rise of EU Human Rights Jurisprudence." European Law Review 44(2): 178-195.

Phelan, W. (2021). The Role of the German and Italian Constitutional Courts in the Rise of EU Human Rights Jurisprudence: A Response to Delledonne & Fabbrini. Dublin, European Law Review 46(2): 175-193.

Optional Extras

Rasmussen, M. (2008). "The Origins of a Legal Revolution – The Early History of the European Court of Justice." Journal of European Integration History 14(2): 77-98.

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

Byberg, R. (2017). Academic Allies: The Key Transnational Institutions of the Academic Discipline of European Law and Their Role in the Development of the Constitutional Practice 1961-1993. History, Copenhagen. **PhD**. SELECTED PAGES.

Van Leeuwen, K. (2018). "Paving the road to 'legal revolution': The Dutch origins of the first preliminary references in European law (1957–1963)." European Law Journal: 1-14.

W Phelan, 'The Limited Practical Relevance of National Constitutional Rights as a Constraint on the National Application of European Law in the Early Decades of European Integration' (2014) 17 (1) Irish Journal of European Law 43-61

Week 4: World Trade Organization's Dispute Settlement System

Outline:

1. History of the GATT / WTO
2. The WTO's dispute settlement procedure
 - a. Origins
 - b. Details
 - c. US China Relations in the WTO
 - d. The WTO Appellate Body Crisis: The Trump administration's refusal to allow the appointment of new members of the WTO's Appellate Body.

Readings:

Discussion of operation of GATT / WTO Dispute Settlement from "In Place of Interstate Retaliation", Phelan (2015) pp. 71-76

Gerald Wilkinson 'Reciprocal food sharing in the vampire bat' in *Nature* 1984, 308:8 March, pp. 181-184.

RZ Lawrence, Crimes and Punishments? Retaliation under the WTO (Institute for International Economics, Washington, D.C 2003) "Options for Reform".

Davis, C. and Y. Shirato (2007). "Firms, Governments and WTO Adjudication: Japan's Selection of WTO Disputes." *World Politics* 59: 274-313. *Selected pages only*.

Guohua, Yang (2015). "China in the WTO Dispute Settlement : A Memoir" *Journal of World Trade*.

Blustein, P. Schism: China, America, and the Fracturing of the Global Trading System, (CIGI, 2019) *selection on Blackboard*

Selection of recent writings about the WTO Appellate Body crisis on Blackboard.

Optional:

BP Rosendorff and HV Milner, 'The Optimal Design of International Trade Institutions: Uncertainty and Escape' (2001) 55 (4) *International Organization* 829-857 *selected pages only*

M Pollack "*International Court-Curbing in Geneva: Lessons from the Paralysis of the WTO Appellate Body*", paper prepared for presentation at the International Studies Association Annual Convention, 6-9 April 2021. Blackboard.

Week 5: European Court of Justice: Comparative Approaches

Outline:

1. The comparative method in Political Science
2. The comparative method in political science scholarship on the European Court of Justice
3. Comparative Approaches:
 - a. Comparisons with the early US Supreme Court.
 - b. Comparisons with the GATT / WTO systems
 - i. The *Dairy Products* judgment
4. Comparison between the European legal order and the GATT / WTO system by the European Court of Justice itself
 - a. *International Fruit*

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-&.

Phelan, W. (2012). "What is *Sui Generis* about the European Union? Costly International Cooperation in a Self-Contained Regime." *International Studies Review* **14**: 367-385.

The ECJ's *Dairy Products* judgment of 1964.

Phelan, W. (2016). "Supremacy, Direct Effect, and *Dairy Products* in the Early History of European law." *International Journal of Constitutional Law* **14**(1): 6-25.

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

Phelan on "International Fruit" in *Great Judgments of the European Court of Justice*. [ECJ's decision on possible "direct effect" of GATT/ WTO in the EU]

Optional Extras:

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

Phelan, W. (2015). "Enforcement and Escape in the Andean Community: Why the Andean Community of Nations is not a Replica of the European Union." *Journal of Common Market Studies* **53**(4): 840-856.

Phelan on "Dairy Products" and on "Van Gend en Loos" in *Great Judgments of the European Court of Justice* – full chapters. Even "Pork Products" 1961 ...

[Draft paper on previous theoretical debates on the role of the ECJ, if completed]

Week 6: European Court of Justice: Personalities Judicial and Legal Biography

Outline:

1. Judicial biography as a method of studying courts and law
2. Some judges of the European Court of Justice
3. Judge Robert Lecourt in particular:
 - a. Impact on the Court
 - b. Aspects of early life and political career before joining the Court
4. Biographies of lawyers outside the court:
 - a. Italians (Pavone)
 - b. Vogel-Polsky re *Defrenne*

Readings:

Davies, Bill (2021) Biography as a Window into the EU's Legal History, EU Law Live, no 49, Feb 27 2021, 7-11.

Fritz, V. (2018). Juges et avocats généraux de la Cour de Justice de l'Union européenne (1952-1972) : une approche biographique de l'histoire d'une révolution juridique. Frankfurt, Klostermann. [In French, extracts - Introduction]

Fritz short outline on Robert Lecourt in English.

Phelan, W. 2024 "Constitutional Audacity of Robert Lecourt". European Law Open

Pavone chapter/paper on Italian lawyers and EU law.

Eliane 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

Optional Extras:

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.

Robert Lecourt 1931 doctoral dissertation in law, extract.

Week 8: United States Supreme Court: Powers and Independence

Outline:

1. The United States Supreme Court
 - a. History in brief (!)
 - b. Details
2. Dahl's assessment
3. *Brown v Board of Education* and Rosenberg's *Hollow Hope*
4. Changing the Constitution: The Treaty Power (Ackerman)
5. Journalist accounts of the US Supreme Court

Readings:

Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law*. 6(279).

Casper, J. D. (1976). "The Supreme Court and National Policy Making." *American Political Science Review* **70**(1): 50-63.

Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* University of Chicago Press. Pages to be assigned

Biskupic on John Roberts and Obamacare in *The Chief : The Life and Turbulent Times of Chief Justice John Roberts* (Basic, 2019), extract on Blackboard.

On US Politics in general:

Alesina, A., et al. (2001). "Why Doesn't the United States Have a European-Style Welfare State?" *Brookings Papers on Economic Activity*(2): 187-278.

Optional Extra:

Ackerman, B. and D. Golove (1995). *Is NAFTA Constitutional?* Cambridge, Harvard University Press.

The Supreme Court of the United States "Activity Booklet" (enjoy!)

**Week 9: United States Supreme Court:
Appointments, Personalities, Judicial Biography**

NOMINATIONS AND APPOINTMENTS:

Outline:

1. Nominations process in outline
2. Recent Scholarship
3. By Contrast: Nominations to the European Court of Justice

Readings:

Making the Supreme Court: The Politics of Appointments, 1930-2020 by Cameron and Kastellec, [Extract on Blackboard, pages 28-35]

On appointments to European Court of Justice:

M de S.-O.-l'E. Lasser, *Judicial Dis-Appointments: Judicial Appointments Reform and the Rise of European Judicial Independence* (Oxford UP, Oxford 2020) Selection on Blackboard.

(Optional extra on ECJ appointments: Rebecca D. Gill & Christian Jensen (2020) Where are the women? Legal traditions and descriptive representation on the European Court of Justice, *Politics, Groups, and Identities*, 8:1, 122-142)

BIOGRAPHY

Outline:

1. Judicial Biography as a Method (again)
2. A selection of Judges of the United States Supreme Court

Finkelman, P. (2018). Supreme Injustice: Slavery in the Nation's Highest Court. Cambridge, MA, Harvard UP. Selection.

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.

Cope and Fischman "An Empirical Analysis of Judge Amy Coney Barrett's Record on the Seventh Circuit" (from SSRN).

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710951

Annette Gordon-Read, The Hemmingses of Monticello, extract.

Optional:

John Dean, The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court

[on examples of a US president 'creating' vacancies on the Supreme Court]

Making the Supreme Court: The Politics of Appointments, 1930-2020 by Cameron and Kastellec [Whole Book or e.g. pages on hyper-pluralism]

Week 10: The Nuremberg Trials

Introduction

Brief introduction to 1945-1947

Basic Chronology

The Nuremberg Trials : A Summary Introduction by John Q Barrett [on Blackboard]

Rebecca West New Yorker articles on Nuremberg

“Stay the Hand of Vengeance: The Politics of War Crimes Tribunals” by Gary Bass Chapter on Nuremberg Trials

Long Term Trends

Mark Lewis “The Birth of the New Justice: The Internationalization of Crime and Punishment 1919-1950” pp. 14-26

Recent research:

“Soviet Judgment at Nuremberg: A New History of the International Military Tribunal After World War II” by F. Hirsch, extract.

Staedler PhD Dissertation on Franco-German Reconciliation, extract on French judge Donnedieu de Vabres

Megret, F. “The Dawn of a Discipline: International Criminal Justice and its Early Exponents”

Optional:

Stay the Hand of Vengeance by Bass, Chapters on Germany and Ottoman Empire after World War 1

Week 11: Tokyo War Crimes Tribunal ; Quantitative Approaches

Readings:

John Dower, Embracing Defeat: Japan in the Wake of World War II, (Norton, 2000) extract on Blackboard.

Gary Bass, Judgment at Tokyo: World War II on Trial and the Making of Modern Asia (Knopf, 2023), *extracts*
Including on Radhabinod Pal, the Indian judge.

Sandra Wilson Why were there no war crimes trials for the Korean War? Journal of Global History (2021), 16: 2, 185–206

Quantitative Approaches to Studying Law and Courts:

Ayres, I. Supercrunchers : How Anything Can be Predicted (John Murray. 2007) pp. 103-108, 116-117.

"How Consistently Are Death Penalty Appeals Decided?" Deborah Beim, Tom Clark and Ben Lauderdale, Working Paper on Blackboard

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.

Hazelton M., et al, The Elevator Effect: Contact and Collegiality in the American Judiciary, Oxford UP, 2023, extract on Blackboard, "Chapter 3"

Week 12 Miscellaneous, Summary and Conclusion

“The Court is not your friend” by Samuel Moyn.

“Court Reform Is Dead! Long Live Court Reform!” The Atlantic 2021 December, Moyn and Doefler

Kaplan et al. “Clarence Thomas and the Billionaire”, Propublica 2023

PLEASE FOLLOW LINK, NOT ON BLACKBOARD

<https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>

Vachez and France “The Neoliberal Republic: Corporate Lawyers, Statecraft, and the Making of Public-Private France” (Cornell UP, 2021), Extract.

Colm Toibin article on the Irish Supreme Court in Magill magazine, 1985

Readings on ECJ etc for In Class Discussion

POU33132 JS European Court of Justice
William Phelan

Week Reading

2. Burley and Mattli
3. Alter *on fundamental rights*
4. Gouhua
5. Phelan *Sui Generis*
6. Davies, *Biography*

Reading Week

8. Dahl
9. Segal & Cover
10. Bass on Nuremberg
11. Supercrunchers
12. [no reading for final class]

Tutorials

Five tutorials, meeting every Two Weeks, online or in person per College policy. Students will be split into several groups for these tutorials. The materials covered are set out below. NB remember that Discussion Points are due for each tutorial (e.g. handed in at the start of the tutorial or submitted in advance via e.g. Blackboard, as Teaching Assistant specifies). Tutorials may be taught by the Teaching Assistants or by Professor Phelan.

Five topics:

1. European Court of Justice (week 2)

Van Gend en Loos (1963) – full text

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

Pasture, Patrick "Imagining European Unity since 1000 AD" (Palgrave Macmillan, 2015), extract on Blackboard

2. World Trade Organization, ECJ in Comparative Context (week 4)

Description of WTO Dispute Settlement from "In Place of Interstate Retaliation", Phelan (2015)

RZ Lawrence, Crimes and Punishments? Retaliation under the WTO (Institute for International Economics, Washington, D.C 2003) "Options for Reform".

Phelan, W. (2012). "What is *Sui Generis* about the European Union? Costly International Cooperation in a Self-Contained Regime." International Studies Review 14: 367-385.

3. ECJ in comparison, judicial biography (week 6)

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-&.

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

Chapter 5, Narrative, compare with previous e.g. Burley & Mattli

Phelan, W. European Law Open "Constitutional Audacity of Robert Lecourt".

4. United States Supreme Court: Week 9

Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law*. 6(279).

Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* University of Chicago Press. Selection.

Making the Supreme Court: The Politics of Appointments, 1930-2020 by Cameron and Kastellec, [Extract on Blackboard, pages 28-35]

5. War Crimes, Quantitative Analysis, Conclusion (weeks 11-12)

Sandra Wilson Why were there no war crimes trials for the Korean War? Journal of Global History (2021), 16: 2, 185–206

Beim et al. on Death Penalty Appeals

Hazelton M., The Elevator Effect: Contact and Collegiality in the American Judiciary, Oxford UP, 2023, extract on Blackboard, “Chapter 3”

Major Cases of the European Court of Justice

PORK PRODUCTS

VAN GEND EN LOOS

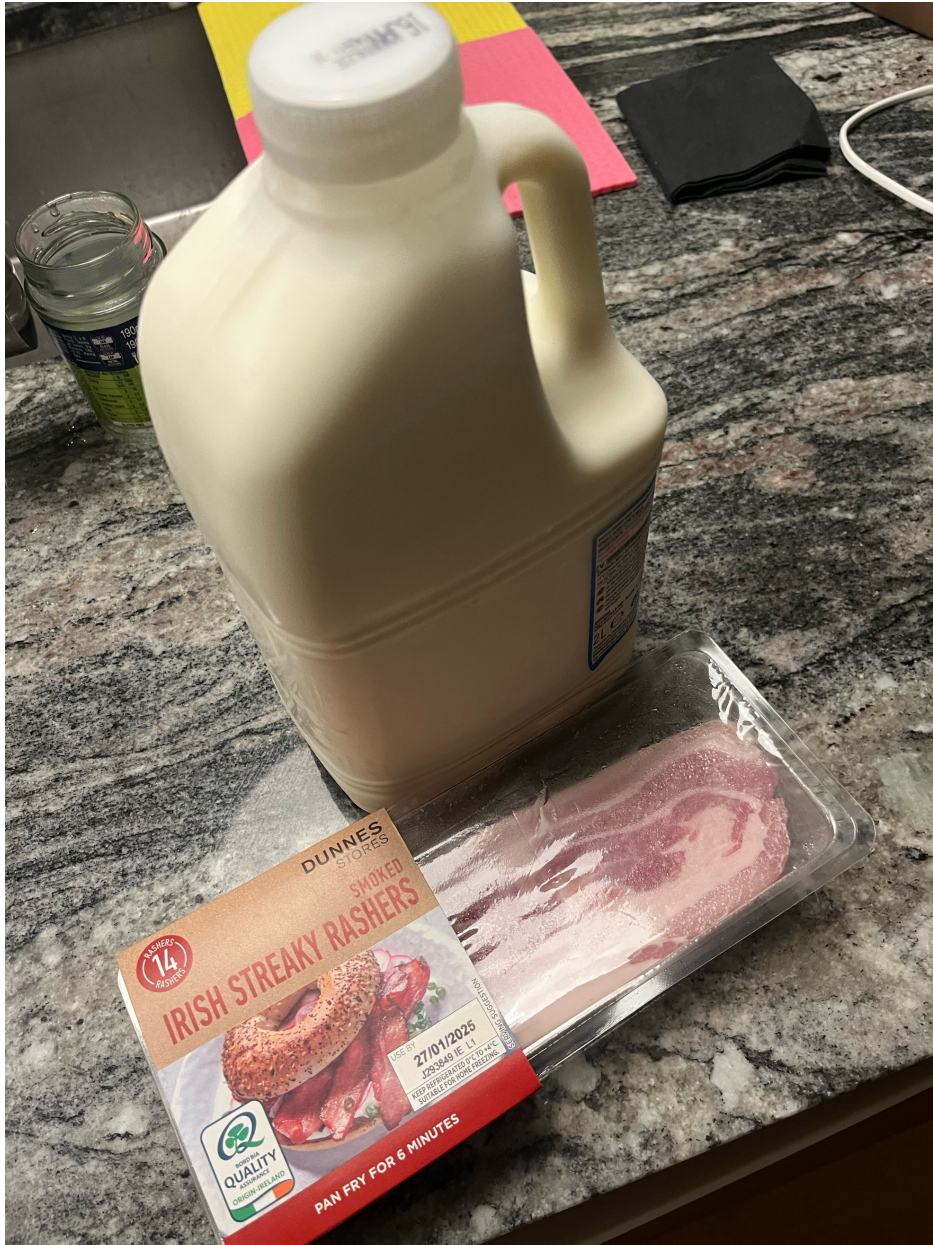
COSTA V ENEL

DAIRY PRODUCTS

INTERNATIONALE HANDELSGESELLSCHAFT

INTERNATIONAL FRUIT

DEFRENNE



“Don't forget the Pork and Dairy!”