Comparative Law, Courts & Politics
Session Moderator: Rachel Cichowski, Department of Political Science
MHG 074
1:30 PM to 3:00 PM

* Note: Titles in order of presentation.

“The People’s Court:” The Role of the Constitutional Court of Korea in Upholding South Korea’s Democracy
Elaine Kim, Junior, Political Science
Mentor: Rachel Cichowski, Department of Political Science

Emerging from past authoritarian regimes, it has not always been easy for developing democracies to maintain democratic rule in government institutions. However, for countries like South Korea, whose citizens are skeptical towards government actions due to a history of corruption, they hold a lot of faith in their judicial institutions as defenders of societal interests and democratic rule. To better understand the role of the judiciary in upholding democratic ideals in newer democracies, I study the Constitutional Court of Korea (CCK). Utilizing a sociolegal approach, I analyze how the CCK maintains legitimacy as the people’s court in upholding democracy. To answer this question, I create a unique dataset of the Court’s case law from 1995-2019 focusing on a case study of gender equality and political affairs. Through case law analysis, I analyze the Court’s efficacy in expanding non-traditional rights focused on gender equality and forming decisions that emphasize a separation of powers which limits political corruption. Preliminary findings reveal that the CCK has not hesitated to uphold democracy and holds widespread societal support as a proactive, accessible legal institution that is independent from other government influences. This research opens avenues to better comprehend the role of courts and their actions in rising democratic societies. Additionally, observing institutions like the CCK and their practices may serve as an example on a global scale of how courts play a role in preserving democratic norms.

Preparing for the Impacts of Climate Change: The Environment Court of New Zealand
Michael Abramowitz, Senior, Political Science
Mentor: Rachel Cichowski, Department of Political Science

Climate change is one of the most difficult legal challenges that the world faces today. Courts face new threats in combating climate change while interpreting legislation, previous case law and scientific evidence. Climate change includes issues regarding human rights, immigration rights, resource and land rights and native rights. New Zealand’s courts are limited by parliamentary sovereignty and cannot interpret the law in ways that invoke new legislation. Despite this, New Zealand’s legal system has played a critical role in climate change adaptation and policy innovation. In this project, I examine the use of the New Zealand Court system to better understand how the country is taking on the challenges climate changes poses. The project analyzes how the Environment Court tackles issues of climate change cases regarding land usage and resource management. However, it is important to discuss how the higher courts, the Court of Appeals, the High Court and the Supreme Court, settle climate change related disputes that exceed the jurisdiction of the Environment Court. All of New Zealand courts stay within the constraints of parliamentary sovereignty as they face a variety of issues resulting from climate change. To do this, I develop an original dataset. The data is from Environment Court cases, ranging from 1999 to 2021. The cases are coded to examine the court’s response to these cases while taking into account the various impacts of climate change including land usage, pollution, and coastal erosion. Some cases from the higher courts are acknowledged in sections of the paper due to the importance of the case. First findings suggest that the court stays within the limits of parliamentary sovereignty and increases the legitimacy of future climate change litigation. The research at hand provides valuable insight on what future cases will cover and how courts around the world will respond.

On the International Supervision of Militant Democracy: Political Party Bans and the European Court of Human Rights
Vladimir Bejdo, Senior, Political Science
UW Honors Program
Mentor: Rachel Cichowski, Department of Political Science

Undergraduate Research Program
Political party bans (party proscription) are a fundamental way a state can protect itself against parties which threaten democracy, whether they are ideologically anti-democratic, or pose other threats to a state such as political violence. Party bans, however, lie at odds with a right at the cornerstone of democracy: the freedom of association. International courts increasingly play a powerful role in addressing this fundamental rights dilemma; many banned parties in Europe have sought recourse before the European Court of Human Rights (ECtHR) claiming violations of the freedom of association (Article 11 of the European Convention on Human Rights). To understand how ECtHR case law shapes domestic party proscription practices, this project examines under which conditions the Court permits proscription, and how it works to make its judgments effective when bans violate Article 11. To examine these questions, I develop an original dataset of ECtHR party proscription cases from 1998 to 2018. The data is coded for domestic proscription rationales, party salience, domestic democratization levels, final Court decisions and domestic level implementation. Through case law analysis and comparative analysis, I examine the interaction between domestic level variables and judicial decision outcomes to understand the Court’s norms on proscription. Preliminary findings suggest the ECtHR only upholds bans of politically salient parties espousing support for political violence, and that the successful implementation of measures meant to prevent future Article 11 violations relies heavily on domestic level cooperation. This research constitutes a significant contribution to a gap in the literature on the role international courts play in ‘supervising’ the domestic practice of militant democracy – the idea behind proscription which suggests that democracies can protect political and civil rights by restricting the freedoms of political actors that aim to threaten them.

**The Japanese Supreme Court’s Role in the Promotion of LGBTQ+ Rights: A Likely Reality?**

*Estefani Marie Hernandez, Senior, Law, Societies, & Justice, Political Science*

*Mentor: Rachel Cichowski, Department of Political Science*

Japanese LGBTQ+ individuals currently experience little rights protections. While there is considerable public support for the expansion of LGBTQ+ rights, the Japanese government and Supreme Court remain conservative and continuously seek to embrace a heteronormative and patriarchal society. These qualities are disadvantageous for sexual minorities, especially those who identify as transgender and are required to undergo sterilization if they want to legally change their gender. In this project, I examine the Japanese Supreme Court LGBTQ+ rights decisions and the effects of this case law on social group mobilization. This project examines how and why the Japanese Supreme Court rules in favor of upholding a standard based on a heteronormative and patriarchal society and how the court attempts to maintain its legitimacy in response to the social mobilization. To answer these questions, I develop an original case law dataset ranging from 2000-2021 involving a set of human rights claims. I code for whether the Court expanded or dismissed rights pertaining to LGBTQ+ individuals and examine the societal effects of this case law through a case study of litigation involving the constitutionality of the Japanese Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder. My findings suggest that where the Court refuses to expand LGBTQ+ rights, social mobilization efforts take the form of protests and sparks anger, especially in Japanese youth, who are the most supportive allies of expanding LGBTQ+ rights, yet this mobilization has yet to affect subsequent case law. These findings bring to light the potential limitations of Court-led changes on LGBTQ+ rights, especially in the face of heteronormative and conservative legislation.

**Legal Reform and Court Capture: Indigenous Rights Litigation in Bolivia from Evo Morales to Luis Arce**

*Oscar Zahner, Senior, International Studies*

*Mentor: Rachel Cichowski, Department of Political Science*

Three different regimes have governed Bolivia within the past two years. Two of the regimes, the Morales and the Arce regimes, have been aligned with the Movement for Andean Socialism, a leftist party whose largest voting block is indigenous Bolivians. The other, the Áñez regime, was an interim government led by a right-wing alliance. This research examines the effect each regime has had on both indigenous rights litigation and the treatment of indigenous parties within the legal system. The analysis identifies how the three regimes interacted with the Bolivian legal system to affect indigenous rights. To explore this dynamic, the research develops an original case law dataset examining indigenous rights cases before the Plurinational Constitutional Tribunal of Bolivia from 2009 to 2021. Utilizing case law analysis, the study explores the extent to which the Tribunal’s decision constrains or empowers the regime in power. Finally, it analyzes the three regimes’ uses of the legal system to determine the extent of indigenous persecution or empowerment in each of the three regimes. Preliminary findings suggest that rulings during the Evo Morales regime had the most consistently favorable outcomes for indigenous rights, even in rulings which constrained the Morales government. While there is a dearth of cases before the Plurinational Constitutional Tribunal during the Áñez regime due to its short length, I provide additional data on lower-level court cases, use of prosecutors, and arbitrary detentions during this period to reveal the severity of indigenous persecution. I raise broader questions of judicial capture and regime change and both the promise and limitations of courts as an avenue for indigenous rights protections, and contextualizes comparisons between the legal systems of the three regimes within an understanding of the struggle for indigenous rights and related race and class based conflicts in
Bolivia.