THE AMERICAN UNIVERSITY OF PARIS

The Graduate School of Government

Syllabus - Law and Policy

COURSE TITLE: Legal Drafting Skills for the Non-Lawyer in International Development
COURSE NO: GV.
PREREQUISITES: Required
SEMESTER: Spring 2009
PROFESSOR: Bryane Michael
CREDITS: 4
CLASS SCHEDULE: TBD
ROOM NO: TBD
OFFICE HOURS: TBD
PERIOD (S): 6 and 7
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Course Content:

Imagine you have just been hired by the UN or USAID to advise the Chinese government on human rights and criminal justice reform. If you write a policy paper or recommendations, they are ignored. If you draft a law, you change the system (and the world). Around such a world, farmers, bankers, teachers, and even (some) lawyers write and adopt laws which guide the way millions of people act. Law turns policy into action.

This course aims to teach student to use some of the techniques of modern policy analysis and develop critical thinking skills. Full stop. The topic of the course which I have chosen as a training field consists of a number of policy issues (and the legislation in place which addresses the policy issue) from a number of countries. By the end of the course, you should be an amateur at drafting legal texts in a number of policy areas – but an expert at analysing policy questions, tackling the methods the government uses to address each policy issue, understanding the impacts on economic welfare as well as social justice, and – most importantly – critically assessing the gurus who write in a policy area (including lawyers who write laws).

Learning objectives: The learning objectives – using policy cases as a background – aims to teach the student to:

- Define and frame policy hypotheses (or questions)
- Apply various models from politics, economics, and legal theory
- Use empirical data in order to arrive at conclusions
- Convincingly critique their own analysis and the analysis of others

Learning Methods: Each class session proceeds according to the Socratic Method (as practiced at Harvard Law School and popularised by movies such as Paper Chase). Students are responsible for reading materials before each lecture and reading around the subject area on their own initiative. During the lecture, the professor will ask questions which test or probe our understanding of the policy areas covered for the week. I will not teach you in this course – I will teach you to teach yourself (I hope!).

As I am old-fashioned, I don’t use Discussion Board – you may find it useful to form study groups or meet with other students in groups (as the readings may be more than you can handle alone).
**Class participation:** There are neither right nor wrong answers. But there are better or worse answers. A good answer cites authors and data from the readings, uses the tools and methods of analysis shown in the course. Do not be afraid to ask for a couple of seconds to get your thoughts together before answering (I once waited 30 minutes for a student to answer a tutorial question). Unlike in an Opera Winfrey show, students do not get credit for simply talking.

The Socratic Method is, by nature, let’s say -- combative. I will often push you into changing your answers, claim (rightly or wrongly) that the answer was incorrect, or ask for more support. Do not feel these responses are personal – after one or two lecturers, you will see the method is a lot of fun.

**Tutorial Sessions:** For interested students who wish to go further into the subject, I offer 1 hour one-to-one tutorials. The tradition heralds back to the 12th century when scholars at the University of Paris learned in this way (and later fled to Oxford and Cambridge where the method is now famous). Tutorials are taught only by Socratic Method and appointments are available through my assistant (max. 5 students per term). The tutorials are aimed at intellectual/professional enrichment and do not in any way count toward your grade.

Naturally, I also hold office hours for all sundry and other questions.

**Grades.** Your final grade reflects my view about your mastery of the material covered in the course. In constructing this view, I take into account class participation, written work (emailed policy briefs, and any papers) and final 20 min *viva voce* exam. I do not use formulas – we both have an interest in your success and your B grade is as much a failure to me as it is to you. However, I do not grade on a curve (I am happy to give everyone an A or a D depending on their effort and “absorption capacity”). By tradition, since 2000, only roughly 5% of my students have managed to get an A+ (“distinction”).

**Question Everything!** The course will be less structured that you might be used to. You are given Powerpoints and readings which you must put into order in your own mind. In many cases, readings (like life) are contradictory, seemingly out of order, or just wrong. And don’t be surprised if you hear me refer to the 1742 Imperial Constitution of the United Kingdom…you should be as sceptical of my own lectures as of all the materials you get in the course (UK doesn’t have a constitution for a start!). Beware of “seersucker syndrome” – for every seer, there is a sucker.

**Readings:** The readings are a guide only. Focus on the ideas and concepts. Native English speakers will find it helpful to keep a little notebook to write new vocabulary words and definitions when they attend lecture and read. For non-native English speakers, such vocabulary lists will be their life-line. The limits of our language define the limits of our thought.

**Sprechen Sie Inglés?** Students enrolled at AUP and in the MPA Program should speak English at a high enough level to actively participate in the rather complicated and minute discussions the class requires. So, if you don’t have an excellent command of English already, you will likely fail the course. If you can understand English at a very, very high level, but prefer to write in French, Spanish, Russian or Turkish, you may be able to ask the MPA Director and course professor to submit written work in these language. Sorry, I don’t speak Lithuanian, Farsi or Swahili.
Background readings

Students may wish to consult the following text(s) as background, depending on their motivation.

Holland and Webb, *Learning Legal Rules*. Available [here](#). They taught me everything I know (well, almost). If you can’t get this book, look at the table of contents and find a similar book which you can get (or maybe some generous lecturer put the material online if you do a cunning Google search). Focus on statutory interpretation and chapter on non-Brit law. Don’t worry about precedent and court cases.

You may also wish to consult John Merryman, John Henry Merryman, Rogelio Pérez-Perdomo, *The Civil Law Tradition* which you can see parts of free on [Amazon](#).

Never use Wikipedia in your papers and if you use it as a source, get confirmation. However, you might find the following helpful as you struggle to organise in your mind the structure of law:

**Statutory Interpretation** – see if you can use the rules they describe on your own.

A quick overview of the difference between civil law (systems) and common law systems. Try to boil these down to differences which you think you would need to know in practical, every-day work.

**Criminal Law** – focus on principles, maybe set some examples with your friends and classmates to see if an action or activity would be (in theory) a crime or not

**Civil Law** – fish around the links until you think you have a good feeling for the various branches of law and what each is supposed to do.

Once you are a bit exhausted looking at legal theory (Wikipedia style), try to understand what it means. Law aims at justice. Look at these theories of justice and try to see how each branch of law tries to put into practice each theory of justice. If you are a real smartie, you will notice that different legal systems stress different concepts of justice (Brit-Yank law tends to be Millian whereas French law tends to be rather Rawlsian).

Of course, you need to know a little something about EU Law and you may wish to fish around the [EU law intro](#) website to see how it works in practice.

No legal discussion can be complete without US Law. Again, don’t get bogged down in details. Focus on what you need to: a) know how it differs from EU Law, b) what parts might be useful if someone ever asks you for a legal opinion on anything, and c) nice words you can use to show your parents (or creditors) they spent their money well in Paris.

Don’t panic if you feel like you are being asked to learn the whole of law in one week! Learning policy and law is like learning a foreign language – you must dip into some parts, learn, forget, re-learn. Just make “cheat sheets,” draw pictures and your vocabulary lists and after a while, it will all snap into place.

**Citation of Papers**

I admit I’m a snob – only Harvard method is acceptable. If your papers are social science oriented, use Harvard Citation. If you want to write like a lawyer, please use Bluebook. If you don’t have time to read hundreds of pages about Bluebook citation, just copy the footnotes used in articles from the HLR.
Session 1: Overview of the Law: Branches of Law, Anglo-Saxon versus Continental Flavours, Unitary and Federal Systems

Session 2: Practical in the Basics of Legal Interpretation and Drafting and a Small *Vade Mecum* for Regulatory Impact Analysis


Session 4: Argentine Law on Administrative Proceedings: Delegation of Sovereign Authority, Rights, Appeal

Session 5: Assault to Turkishness: Art 301 and Theories of Justice

Session 6: Who Wants to Be a Russian Oligarch? Competition Law, International Free Trade and Remedies

Session 7: The USA - A Bizarre Legal System: Freedom of Association

Session 8: Regulation of Politics: A Primer in New International Economics

Session 9: So You Want to Be Lawmaker (DJ Mishka Remix): Revision of Final Exam

Session 10: Final Exam: The Legal Opinion
**Session 1: Overview of the Law: Branches of Law, Anglo-Saxon versus Continental Flavours, Unitary and Federal Systems**

**Introduction**

In this first week, we will ease into the material. I will review the course, give you useful tips about study skills, and cover admin stuff. I will then present the Cliff-Note version of the whole of legal theory which a civil servant, politician or public administration scholar would need (in about one hour).

I will then introduce a case based on the recent [EU report](https://www.euractiv.com/) on Azerbaijan. I will pick a policy and show (with your help) how to devise legislation (and even regulation) which addresses a particular policy issue. If you want to cheat, you can see my own paper reviewing Azerbaijan’s [anti-corruption framework](https://www.(

though I will address another issue in class). We will also look at some statutes (also called acts or simply laws) in class and regulations which define those acts in more detail.

**Readings:**

Do please have a look at the following articles if you have time. Note the readings round out your knowledge instead of repeat lecture material.


Hint: Make sure you find their thesis first, look at their data and their way of arguing. If economics jargon is mumbo-jumbo to you, get your vocabulary book at start working! Don’t worry, I will nudge you along in class (but if you don’t try yourself first, you will be hopelessly lost).


Read-to-taste.


Hint: Even Nobel Prize laureates and Supreme Court justices can be critiqued. What’s up with Posner?


**Assignment (do this BEFORE lecture):**

Please look at the readings! I call on students in the first lecture and ask about them, so we will all be uncomfortable if you have not tried to do the readings and this page and the previous page.

In general, look at your lecture notes (time yourself for about 1-2 hours if necessary). Work on your academic citation if its not up-to-par and start work interpreting statues! If you are bored, you may wish to read ahead so you will have more time later to do other things…
Session 2: Practical in the Basics of Legal Interpretation and Drafting and a Small \textit{Vade Mecum} for Regulatory Impact Analysis

If you cheated last week, you saw my Regulatory Impact Analysis (or RIA) in my Azerbaijan paper from last session. We probably also quickly reviewed welfare economics, cost-benefit analysis and different approaches to justice when interpreting statutes. In this session, we will do several more practical exercises so you can get some practice interpreting laws (legislation, regulation, dog-catcher’s ordinances, etc.).

Remember the basic formula from last week: Theory of Justice (abstract stuff) \text{-->} policies (political and still pretty abstract) \text{-->} legislation (detailed) \text{-->} regulation (who? what? where? when? and how?).

Nice try, Soviets tried it and it didn’t work, because you can not escape the laws of economics. In this week, we will review several principles of legislation/regulation which the Soviets wish they knew: incentive-compatibility, government profit maximisation (and welfare maximisation), mechanism design (truth-telling and revelation) and cool principles from welfare economics.

Readings:

Do please have a look at the following articles if you have time. Note the readings round out your knowledge instead of repeat lecture material.


How legal scholars (or at least Chicago Boys) argue…


or in Bluebook citation (don’t forget to practice your citation methods):


Hint: Pay attention to his way of reasoning, his language. Try to “tie” his arguments (and the arguments he cited) with the theory you know so far.


Hint: OECD, UN, govt documents are usually full of abstract jargon and poorly organised. Don’t forget your reading skills which we covered in the first session. Try to “distill” the report using words a normal human would understand. Pick up any jargon you will need for your own glorious OECD/UN career after graduation.

Do look for the regulatory impact analysis manual or “instruction kit” of your choice…

Assignment (do this BEFORE lecture):

In 1992, riots shook South Central Los Angeles, leading to calls in the Congress for legislation which would outlaw assemblies of large numbers of people who could cause havoc. Be ready to discuss a) whether such a law would be overturned by the Supreme Court (and on what grounds), b) the design of such a bill, and c) the costs and benefits of your bill. To inspire you, see, some legislation. To help you think outside the box, see Rebuilding Los Angeles Case.

Hint: Don’t limit yourself to “constitutional/not constitutional”… look for a law which serves everyone’s interests.
Session 3: Anti-Corruption Law in Eastern Europe: Treaty on EU, Legislation, and International Treaties

In this week, we will practice our newly found interpretation and drafting skills. As you review these laws, think first and foremost about what the law is trying to achieve (reduce corruption, duh!). But what does the law “secretly” conceal about its view of justice, equality, equity, liberty, utilitarianism, etc. Second, think about how international principles and norms are translated (or not) at the national level.

Readings:

The UNCAC (choose the version most comfortable for you, available in 5 languages) and for a bit of background, see:
or read around a bit until you feel you have grasped some of the main issues.

and of course you get to see and interpret some anti-corruption law…

Lithuanian Law
Moldovan Law

Try to identify parts of the law which are vague, contradictory and articles which are so general that they apply to nothing (ie. “the Government will promote the responsibility of all citizens to further sustainable development for independent national harmony, blah, blah”).

World Bank, 2000. Writing an effective anticorruption law, PREMnotes. You will probably weep if you follow their advice too closely.

Channel, W. (2005), Lessons Not Learned: Problems with Western Aid for Law Reform in Post-communist Countries, Carnegie Papers 57, May. Hint: Don’t forget, your drafting work may hurt more than help…

Assignment (do this BEFORE lecture):

You have been hired as Afghanistan’s chief anti-corruption advisor (congratulations). You have flown in and been shown a copy of the Afghani anti-corruption law. Please provide a 2 page redraft for first reading by the National Assembly of Afghanistan (yes, I know 2 pages isn’t much, so you must focus! Don’t forget your economic and social welfare analysis in choosing what to legislate).

Extra credit: Sketch (preferably on the back of a napkin) the costs and benefits of your bill with exact dollar (or euro) costs and benefits of the bill.
Session 4: Argentine Law on Administrative Proceedings: Delegation of Sovereign Authority, Rights, Appeal

Administrative law is one of the most useful and unloved parts of legal work. If you work for a government or international organisation, you must be comfortable (really comfortable) with administrative law.

Don’t forget the basic equation: Principles --> People --> Parliament ---> Executive Agencies ---> you

Readings:

For an overview, see Administrative Law (but never use Wiki as a source, do as I say, not as I do) :p

Benedict Kingsbury et al. (2007). The Emergence of Global Administrative Law. Global Administrative Law Workshop held in Buenos Aires in March 2007. Available online. This reading looks like a red-herring, but I’m sure you will see the link to the topic-at-hand (and some nice observations about the over-arching themes of the course).


Frank Johnson Goodnow, Comparative Administrative Law
Steal what you can online at Amazon
For these two articles, focus on the way that government rules itself. Don’t forget your vocabulary lists.

Adrian Vermeule, Our Schmittian Administrative Law, HLR (forthcoming 2009).
For them folks from these United States of Amerrickaaa….

Assignment:

Please look at the Argentine Administrative Proceedings Act* (No. 19,549, Official Gazette 04.27.72).
Prepare a 2 page legal brief highlight the flaws in the Act.
Hint: Don’t get lost in details… use theory to guide you. I could do this exercise in about 1.5 hours (so try not to spend more than 5 hours on the exercise)

or

for the die-hard Americanists in the audience, you may do instead:
Administrative Law goes to War, online
With a 2 page brief whether administrative law does indeed empower the president to wage war.
Warning: It looks like Dr. Sunstein Esq. has done your work for you, but don’t be deceived – this is a tricky one!
Session 5: Assault to Turkishness: Art 301 and Theories of Justice

Article 301 is an unloved, often-criticised piece of legislation. Writers about the article (from the EU to the professor in Nebraska) call the Turks silly, back-ward and insensitive. In this week, you will see why Art 301 (and other seemingly “crazy” legislation) are adopted and persist.

This is a light week – keep reviewing your notes from the previous weeks and memorise your vocabulary lists. If you use the spare time I give you to tour Paris (instead of study), you will suffer in the next weeks. :)

Readings:

Turkey: Article 301: How the law on "denigrating Turkishness" is an insult to free expression, available online

Turkish Daily News, Article 301 and its European cousins, Thursday, October 19, 2006, online.

Do the best you can with this article… remember you can Google words in economics which are unfamiliar to you. It's a complete coincidence that Prof. Acemoglu is Turkish.

Powerpoints -- THE ORIGINS AND CONCEPT OF JUSTICE. Online.

I use his models every day of my working life for the last 10 years. His models have helped save me from professional trouble countless times and help push through reform.
His book is better….(and on the Ukrainian computer where I am writing this syllabus, its all online… thank god for Russian pirates).

Assignment:

I want every student to come to lecture with a list of reasons why Article 301 is a good article. I won’t hear reasons why it is unfair, no-good etc. I’m afraid that the response “I can’t find any good things about it” will show you have not thought about this week’s topic.

I’m not a Bozkurt, but I want you to have the flexibility of mind to understand why people take a position which is different than the one you might have.
Hint: You will need to figure out what “good” is (and for whom).
Session 6: Who Wants to Be a Russian Oligarch? Competition Law, International Free Trade and Remedies

By now, you should have a rough feel for several branches of law, the methods of interpreting legislation and executive-level regulation (with the devolved authority granted by that legislation). You should be able to estimate the social gain (or harm) caused by such laws and even form implementation strategies based on the winners and losers.

In this week, we plunge together into the murky depths of “political economic analysis” (figuring out which groups of people get rich and which get poorer, which gain power and which lose). We also look at the international law which tries to frustrate powerful losers who block reform and promote “Pareto superior outcomes” (notice how I put jargon in quotes as a hint for your vocabulary list).

Readings:

2006 Federal Law on the Protection of Competition., available online.
The citation of foreign laws in Bluebooks is always a pain, particularly when the translation doesn’t give the Official Gazette numbers (and I’m even really sure I could rely on this translation anyway…but let’s assume the translation is perfect).

GATT 1947 text
I’ve not gone crazy by giving you an 100 page legal treaty. Think about the deep principles involved in economic competition and only then fish in the treaty for what you need for the assignment.

Again, don’t read like a Jason Bourne novel… look for what you need to answer the question.

Assignment

In April 2006, Turkcell (the Turkish mobile phone provider, yes Türks again and they have great commercials!) approach you complaining that the Kuban-GSM has been restricting their access into the Russian market. They will not provide you with more details. But they would like a briefing about their possible options – naturally citing black letter law to the extent you can.
Prepare a case, citing the relevant law which they can use to thwart Kuban-GSM.
Prepare a political economic analysis of the case (you may use approximations for market sizes, etc.) The FAS’s previous decisions may motivate you…. FAS decisions.
Session 7: The USA - A Bizarre Legal System: Freedom of Association

We have covered the government sector and the business sector. Now, of course, we turn our attention to the civil society sector (whatever that is). Now that you have seen the relative order of the EU countries’ legal systems (UK apart), you will be taken aback by the splendid and ever-creative complexity of the US system.

This session’s case is pretty vanilla – to give you a chance to catch up on your studying. You should be practicing your interpreting skills, your political economic analysis and your regulatory impact assessment skills in between you travels to Prague or whatever springtime pleasures you find in Paris.

Quite curious for us (them) Europeans, Americans rely heavily on the constitution directly and the dazzling legal doctrines and theories which spin themselves around the threads of judicial precedent. Don’t be afraid to go looking for legal interpretations or court rulings (picking out the main ideas and not getting bogged down in the “legalese”).

Readings:

Hint: What does association mean in today’s world?


Assignment (Seventh Session Party Remix):

In 1992, riots shook South Central Los Angeles, leading to calls in the Congress for legislation which would outlaw assemblies of large numbers of people who could cause havoc. Be ready to discuss a) whether such a law would be overturned by the Supreme Court (and on what grounds), b) the design of such a bill, and c) the costs and benefits of your bill. To inspire you, see, some legislation. To help you think outside the box, see Rebuilding Los Angeles Case.

Hint: You will notice that after 6 sessions, you arguments this time will be much more grounded. Use references to law and don’t be afraid to use the other tools you have learned in the course.

Extra credit: would restriction of Turkcell’s market access violate the right of association? Some Russian administrative decisions.
Session 8: Regulation of Politics: A Primer in New International Economics

In this week, we will look at the regulation of politics and particularly the way that political parties (and their campaigns) are financed.

Try to grab themes which you will need to help you think about law and policy. Again, don’t read like a thriller novel…

IDEA, Funding of Political Parties and Election Campaigns, available online.
Be skeptical…

If anything, look at the way of arguing (and of course thesis statement).

Jānis Ikstens, Daniel Smilov and Marcin Walecki, For some comparisons, see Party and Campaign Funding in Eastern Europe: A Study of 18 Member Countries of the ACEEEO, available online
For international comparative stuff needed for the assignment (maybe).

Assignment

Sorry to keep using European examples… as laws in Latin America are all in Spanish. So we move to a country in the news lately – Georgia. You will find three simple laws on the Central Election Commission’s (CEC) website.

According to article 8.1 of the Election Code of Georgia (the country, not the state), “the entire electoral process, activities of the election administration, the sources and the amount of funding of the election participants and the election-related expenses shall be open and public.”

The CEC has approached you to tell that they have IDEA money (it’s an international NGO dealing with election issues by the way). They would like a small regulation drafted for the CEC which defines the procedures the CEC needs to follow to make “election-related expenses…open and public.” They don’t want a regulation now covering the “entire electoral process.” Instead, they want a 10 page (max) regulation which is highly focused.

Alternatively, you may provide a critique of Transparency International’s Political Parties in Georgia: Issues of Party Financing, available online.
If you do this, political incentive compatibility will be high on your list. Can you design the reforms they propose in such a way that they would be palatable?
Session 9: So You Want to Be Lawmaker (DJ Mishka Remix): Revision of Final Exam

In this session, we will review the material we have gone over together. Please continue studying your notes. In class, I will present a case (like the one for the final exam) and we will tackle it together. I won’t use the previous cases (laws) we’ve looked at – so please don’t try to memorise articles from these laws. We will probably cover the concepts though (administrative law, corruption, political party finance, etc.). So you can draw analogies with material you have seen in previous weeks.

Examples of questions:

1. In the Mexican city of Juarez (where I grew up as a child by the way), the local police were disbanded by Presidential order and replaced by army officers. Was the order legal? Was it wise? (you won’t have Mexican legislation, but you know something about jurisprudence which can guide you).
   Hint: this is a deep week 4 problem.

2. In the small republic of Macedonia (or FYROM or whatever you wish to call it), they are thinking about requiring at all products be sold only with the national language (Macedonian). Any imports must not have any foreign words on them as, as the draft law reads, “an assault to Macedonianess”. Is the proposed bill legal? Is it wise?
   Hint: combine weeks 5 and 6.

3. Corruption restricts free trade. Discuss (concretely).

4. The only thing that saves us from the bureaucracy is inefficiency. An efficient bureaucracy is the greatest threat to liberty (Eugene McCarthy). Discuss with examples.

Session 10: Final Exam: The Legal Opinion

In the spirit of customer-orientation service-mindedness, you have your choice of examination techniques:

a) viva voce: over a two-day period, I will organise a 20 minute viva voce final exam for each student individually (I prefer this method as its fast and easy)

b) cacoethes scribendi: you may give a written legal opinion. I will give you a question to answer (like we have been practicing with all term). You will have 2 days to write a short piece.

c) verba volant, scripta manent: draft regulation. Same deal, just like we practiced.

I will inform you of your final grade at the end of the exam if we do viva voce.

Please study your notes. I will ask each student a different question, like in the practice session we had. Don’t panic, if you can’t do the exam at all, its as bad a reflection on me as it is on you. As they say in Oklahoma, labor omnia vincit.

Good luck!