European Union Law and Politics
Political Science 395, Fall 2011
Wednesday 10:55-1:55, Center for European Studies, Seminar Room

Professor Kelemen
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Course Description and Objectives: In this course, we will analyze the politics, institutions and policies of the European Union (EU). Throughout the course we will focus on the relationship between law and politics, examining both how politics influences the law and how the law influences politics. In particular, we will analyze the central role that European law has played in supporting the process of European integration. We will review the basic structure and operation of the EU and introduce the dominant political science theories used to explain European integration in general, and the process of legal integration in particular. We will also examine a number of areas of EU law and public policy, including the basic principles of EU (constitutional) law, the internal market, social policy, equal treatment of the sexes, and human rights.

The course will provide students with an understanding of the structure and operation of the EU and its legal system and will introduce them to a number of salient policy issues facing the EU. Students will gain understanding of why the EU came into being, how it has evolved, how it works and gain an appreciation for a number of the most pressing issues facing the EU today. Examining the interaction of law and politics in the EU will provide students with more general insights into the role of courts in democratic political systems.

Course Requirements:

- **6 Brief Reaction Essays (60%)**: Over the course of the semester, students must write six brief reaction essays (of 1000-1200 words):
  - Each essay must respond to one of the questions posed on the syllabus (in italics below) concerning a particular week's readings (students must include the question at the top of their essay).
  - Students **must** bring a hard copy of their essay with them to the relevant class session. (They may also submit an electronic copy via Sakai for other students to read the night before class, but this is not obligatory.)
  - Essays must demonstrate familiarity with the readings for the week (i.e. make reference to the readings, agree or disagree with arguments made in them)
  - Essays should answer the question the student selects, while demonstrating understanding of the readings for the week. The essays should not provide a summary of the readings, but should instead engage (ie analyze/ agree or disagree) with the arguments made in the readings.

- **Participation (40% of final grade)**: Active participation is vital to the success of this seminar. Participation takes many forms:
  - The first element of participation is attendance. Absences will impact your participation grade. If you expect to miss any class, please use the University absence reporting website [https://sims.rutgers.edu/ssra/](https://sims.rutgers.edu/ssra/) to indicate the date and reason for your absence. An email is automatically sent to me.
  - Second, all students are expected to contribute to seminar discussions and other in-class activities (debates etc). To contribute, you must be prepared. You are expected to do all the reading before class and to come to class prepared to discuss the week’s materials. In other words, think about the discussion questions listed below and come prepared to discuss them and other questions you may have. I will regularly call
on students to ask them about their views of points raised in the assigned readings. If you are unprepared to answer questions/discuss readings, this will impact your participation grade.

- Third, we will set up a discussion board module on the course sakai site. Throughout the week, students will be able to exchange their questions and comments on the readings with one another. Also, Professor Kelemen will regularly post brief news articles and discussion questions about EU current events there. Students will be encouraged to comment on these on the discussion board throughout the week, so that we have some interaction between course meetings.

Readings:
The two required books for the course are available at the Rutgers bookstore:
- All other readings will be available on the course sakai site.

1. Introduction to European Integration    Sept 7
   - No Readings

2. Deepening: From ECSC to EU     Sept 14
   Readings:
   - Dinan, Intro and Part I (on History)
   - Weiler materials – p.1-22 (on Sakai)

   Questions:
   - What was the initial purpose of European integration? Has the purpose of integration changed over the years?
   - What differences stand out when comparing the preambles to the EU’s successive treaties? How should we interpret these differences?
   - The Treaty of Rome provided the foundation of the EU and subsequent EU Treaties (the Single European Act, the Maastricht Treaty, Treaty of Amsterdam, Treaty of Nice, or Lisbon Treaty) have reformed EU institutions and enhanced the EU’s powers. Which Treaty (after the Treaty of Rome) seems to you to have made the most important amendments/revisions to EU institutions and policies? Explain why.
   - Has the EU ‘deepened’ to the point that it resembles a federal state?
   - French President Charles de Gaulle blocked Britain’s initial application to join the European Community warning that UK membership would lead to a break up of the EC. While that did not happen, what sort of impact has UK membership had on the EU? Is the UK a particularly ‘troublesome’ member state, or an indispensible one? Or both?

3. EU Institutions and Policy-making     Sept 21
   Readings:
   - Dinan, Part II - Institutions
   - Hix and Hoyland, Chapter 1.
   - Kelemen, EU Institutions after Lisbon
   - Analytica Brief on the Impact of Lisbon Treaty
   - CEPS Brief on the Impact of the Lisbon Treaty
Questions:
- Does it make more sense to think of the EU as an international organization or as a 'domestic-type' political system? Explain.
- Does the EU's institutional structure resemble that of the US? Discuss major similarities and differences between the two systems.
- Does the increasing power of the European Parliament (relative to other EU institutions) in recent years mean that the EU is becoming more 'democratic'?
- How has the Treaty of Lisbon changed the institutional structure of the EU?

4. Widening: from 6 to 27 (and beyond?) Sept 28
Readings:

Questions:
- Why did the EU expand into post-communist Europe?
- Is there a trade-off between widening and deepening? Should we expect the increased diversity (more countries, different views, etc) of an enlarged EU to lead to gridlock and paralysis of EU institutions, or may enlargement actually strengthen them?
- Are there territorial limits to further EU’s enlargement? What are they and why?

5. Theories of European Integration Oct 5
Readings:
- Moravcsik & Schimmelfennig, Liberal Intergovernmentalism.
- Risse, Social Constructivism and European Integration. In Wiener and Diez, European Integration Theory (Oxford University Press 2004).

Questions:
- Which theoretical perspective – Liberal Intergovernmentalism or neofunctionalism (aka supranational governance) – provides a more convincing explanation for what drives the process of European integration?
- What is the EU? Is it best described as international organization, a nascent federation or simply a unique system of governance?
- Explain the social constructivist perspective on European integration. How do social constructivist explanations differ from more "rationalist" perspectives?

6. Theories of European Legal Integration I Oct 12
Readings:
  - Also Recommended: If you feel you need a broader overview of the literature, also have a look at,
    - Conant, “Judicial Politics” In SAGE Handbook on EU Politics.
Questions:
- What role has the European Court of Justice played in promoting ‘deeper’ European integration? In what sense did the ECJ ‘constitutionalize’ the Treaty of Rome?
- What is it about judicial institutions like the ECJ that makes them so difficult for politicians to control?
- Is it more accurate to think of the ECJ as a servant (aka agent) of the EU member states, or as the master of the EU treaties?
- What role have national courts played in the development of the EU legal system and what explains their willingness to cooperate with the ECJ?

7. Basic Principles of EU Constitutional Law  Oct 19
Readings:
- Craig and De Búrca, EU Law, pp. 268-279, 328-334, 344-353
- Key cases discussed in those readings:

Questions:
- Why are the concepts of supremacy and direct effect so important for the EU’s legal system? How do they differentiate the EU from other international organizations?
- By establishing the principles of direct effect and supremacy, did the ECJ extend its powers beyond what member states who signed the Treaty had intended?
- In the EU, member states are subject to the principle of ‘state liability’ as established in Francovich. In the US, state governments enjoy ‘sovereign immunity’ under the 11th Amendment (ie they cannot be sued in Federal court by citizens of another state). Is that puzzling? Does that mean that EU law binds EU states more than Federal law binds US states?

8. Theories of European Legal Integration II  Oct 26
Readings:
- Kelemen, Eurolegalism, Chapters 1-4 and 7
- Kagan – American and European Ways of Law: Six Entrenched Differences

Questions:
- Explain the link between deregulation and re-regulation. Why do efforts to create ‘freer markets’ often lead to the imposition of ‘more rules’?
- Why are policies framed as rights attractive to a political system like the EU? Are there downsides to framing policies in terms of enforceable rights?
- Kagan emphasizes a number of impediments to the spread of American legal style in Europe, while Kelemen suggests that these impediments are gradually eroding? Which account do you find more convincing and why? (and don’t be afraid to challenge your Professor!!)

Readings:
- Dinan, "The Internal Market and Monetary Union"
Questions:

- Some critics of the EU complain that the single market simply helps big business, while other critics complain that EU regulations strangle business. How do you explain this contradiction?
- Why did creating a common market in the EU involve more than deregulation and liberalization? What does the EU experience teach us about the concept of the 'free market'?
- Why is competition policy (antitrust) an important part of creating a common market for Europe?
- Why did Jacques Delors seize on the idea of the “Single Market” when he tried to revive the European Economic Community in the 1980s?

10. EU Gender Equality Law

Readings:

- Alter and Vargas, Explaining variation in the use of European litigation strategies: European community law and British gender equality policy, Comparative Political Studies, 2000.
- Kreil vs. Germany, Case C-285/98 [2000] ECR I-0069

Questions:

- What equality rights has the ECJ established for women in the EU and how do these compare to women’s rights in the US?
- How have interest groups made use of ‘European litigation strategies’ in the realm of gender equality law?
- Which theoretical perspective (of those we discussed in earlier weeks) would seem to offer the best explanation of the development of EU law in the field of gender equality?

11. Social Policy

Readings:

- Leibfried, "Social Policy" in Wallace, Pollack and Young.
- Kelemen, Eurolegalism Chapter 6
- Blauberger, With Luxembourg in Mind... The Remaking of National Policies in the Face of ECJ Jurisprudence
- Roman Herzog and Lüder Gerken, "Stop the European Court of Justice"
- Review info on:  http://www.lavalvikingruffert.eu/ (for critical perspectives on the cases from labor unions)

Questions:

- Given that the EU has a very small budget, how has it managed to have an influence in the area of social policy?
- Has the European Court of Justice prioritized businesses' rights of "free movement" over the collective action rights of unions?
- According to Blauberger, how have EU member countries reacted to the ECJ's highly controversial rulings affecting social policy?

NOVEMBER 23 – THANKSGIVING – NO CLASS
12. The ECJ, the ECHR and Fundamental Rights

Readings:
- Case study materials on Lautsi v. Italy
  - Recommended further reading:
  - De Búrca, Gráinne, “Beyond the Charter”

Questions:
- What explains the origins of the European Convention on Human Rights and its European Court of Human Rights?
- The ECHR become far more powerful than the states that created it anticipated. What explains this?
- Is Stone Sweet correct in describing the ECHR as a constitutional court?
- Did the European Court of Human Rights (ECHR) make the right decision in Lautsi v. Italy? Did political considerations influence its judgment?

13. Is the ECJ too powerful? The role of judges in a democracy

Readings:

Questions:
- Does the ECJ have too much power? Should it show greater deference to elected officials?
- What role should judicial review play in a democracy? Should the role of judicial review by the ECJ be any different than the role of judicial review by constitutional courts at the national level?
- Who makes a more convincing argument with regard to the proper role of judges in a democracy - Waldron or Barak?
- According to Kelemen, how is the growing power of courts (aka judicialization) in Europe like to change the character of democracy? Are these changes desirable or undesirable?