

Washington College of Law  
American University  
Spring 2007

**RULE OF LAW AND THE ADMINISTRATION OF JUSTICE  
(LAW-898-001)**

**Syllabus**

**Professors Scott N. Carlson and Andrew Solomon**

**Wed. 6:00-7:50 p.m.  
2/3 Credit Hours**

This seminar explores the administration of justice and rule of law promotion in developing countries, emerging democracies, and post-conflict environments. In addition to examining various conceptions of the rule of law and its cultural underpinnings, the seminar addresses legal and judicial reforms and technical assistance programs aimed at strengthening the formal, institutional dimensions of the rule of law, e.g., constitutions, courts, the legal profession, law enforcement, etc. This includes discussion of the context, legal bases, and strategies for rule of law interventions by international actors. Other topics of discussion include: transitional justice mechanisms, customary law, and peacekeeping operations. Rule of law promotion is rapidly becoming a specialized field of legal practice and a well-trained and experienced cadre of legal professionals is needed to support these efforts in legal systems around the world. This seminar is designed to prepare lawyers for this role.

**COURSE REQUIREMENTS:**

The provision of legal technical assistance in the renovation or reconstruction of legal systems is now a specialized subset of the practice of law. It requires a mixture of legal, cultural, linguistic, and project management skills. The class will introduce the guiding international standards and best practices that are being employed by today's practitioners. The field remains a dynamic one and students will be expected to ask questions and participate in class to develop their ideas for their seminar papers. The professors have a combined practical experience of over 20 years working in this profession, and they can direct you to a wide array of materials that are beyond the scope of this introductory course.

Paper: For the paper (30 pages, double-spaced or 40 pages double-spaced for the Upper Level Writing Requirement), a concise description of approximately one page of your proposed topic is due before the sixth class. A carefully considered outline of 3-5 pages must be submitted no later than the seventh class. The paper is due no later than May 02, 2007.

Office Hours: As adjunct professors, we do not have office hours at the WCL, but we will be available for consultations by appointment. We can be contacted via email at: [scarlson@chemonics.org](mailto:scarlson@chemonics.org) and [asolomon@asil.org](mailto:asolomon@asil.org). Please identify yourself as a WCL student in the subject line.

Suggested Potential Paper Topics: Non-Western Notions of the Rule of Law; Case Studies in Rule of Law Promotion in Peacekeeping Operations; Comparative Approaches to Judicial Appointment and Selection; Professionalization of Rule of Law Promotion and Technical Assistance; Comparative Administrative Law as to Transparency and Public Participation in Regulatory Rule-Making.

Participation: While the final paper will be the bulk of your grade, active participation in class may be weighed in your favor in determining the final grade. While normal participation in class will never reduce a grade, the professors reserve the right to distribute short, written graded exercises that will be no more than 10% of the final grade. So, failure to attend class or collect handouts from a colleague is responsibility of the student.

**CLASS I Introduction: Class Overview on Rule of Law Promotion**

**January 10, 2007**

Required Reading:

Thomas Carothers (ed)., *The Rule of Law Revival*, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (Carnegie Endowment for International Peace, January 2006), available at: <http://www.carnegieendowment.org/files/CarothersChapter11.pdf>

**CLASS II Make-up Class/Activity TBD. Professors on ROL field assignments.**

**January 17, 2007**

**CLASS III The Problem of Knowledge and Understanding the Rule of Law**

**January 24, 2007**

Required Reading:

“What is the Rule of Law: A Pragmatic Definition and Synergistic Approach,” pp. 56-84, in CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS (Cambridge University Press, 2006).

Suggested Reading:

Kleinfeld, Rachel, Competing Definitions of the Rule of Law Orthodoxy in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (Carnegie Endowment for International Peace, January 2006), available at: <http://www.carnegieendowment.org/files/CP55.Belton.FINAL.pdf>

**CLASS IV Operational Definitions and Use of International Standards in Rule of Law Promotion**

**January 31, 2007**

Required Reading:

*United Nations Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <http://www.ohchr.org/english/law/indjudiciary.htm>

*United Nations Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <http://www.ohchr.org/english/law/lawyers.htm>

*United Nations Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <http://www.ohchr.org/english/law/prosecutors.htm>

*International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, available at: <http://www.ohchr.org/english/law/ccpr.htm#art14>

*Brussels Declaration on Criminal Justice Systems*, MC.DOC/4/06, adopted by the Ministerial Council of the Organization for Security and Cooperation in Europe, December 5, 2006, available at: [http://www.osce.org/documents/mcs/2006/12/22538\\_en.pdf](http://www.osce.org/documents/mcs/2006/12/22538_en.pdf)

Suggested Reading:

International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers, and Prosecutors: A Practitioner's Guide* (2004), available at: <http://www.mafhoum.com/press7/230S24.pdf>

**CLASS V      Alphabet Soup: International Organizations as Standard Bearers**

***February 07, 2007***

Required Reading:

"Interventions and International Law: Legality and Legitimacy" pp. 18- 55, in CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS (Cambridge University Press, 2006).

David R. Tolbert with Andrew Solomon, "United Nations Reform and Supporting the Rule of Law in Post Conflict Societies," *Harvard Human Rights Law Journal*, 2006, available at: <http://www.law.harvard.edu/students/orgs/hrj/iss19/tolbert.shtml>

Suggested Reading:

Legal Vice Presidency, *Initiatives in Legal and Judicial Reform, 2004 Edition* (World Bank, 2004) Introduction, pp. 1-16

Organization for Security and Cooperation in Europe (OSCE), *Criminal Justice Systems in the OSCE Area: Reform Challenges and ODHIR Activities*, (2006), pp. 1-8, available at: [http://www.osce.org/publications/odihr/2006/05/18864\\_617\\_en.pdf](http://www.osce.org/publications/odihr/2006/05/18864_617_en.pdf)

**CLASS VI      Rule of Law Blueprints: Constitutions, Codes, and Beyond**

***February 12, 2007***

Required Reading:

"Blueprints for Post-Conflict Governance," pp. 85-133, in CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS (Cambridge University Press, 2006).

Vivien Hart, *Democratic Constitution Making* (2003), USIP SPECIAL REPORT 107 available at: <http://www.usip.org/pubs/specialreports/sr107.html>

Suggested Reading:

Wendy Betts, Scott Carlson, & Gregory Gisvold, *The Post-Conflict Transitional Administration of Kosovo and the Lessons-Learned in Efforts to Establish a judiciary and the Rule of Law*, 22 MICH. J.I.L. 371 (2001)

Model Codes for Post-Conflict Criminal Justice Project, info available at: <http://www.usip.org/ruleoflaw/projects/codes.html>

Jonathan Morrow, *Iraq's Constitutional Process II: An Opportunity Lost* (2005), USIP SPECIAL REPORT 155 available at: <http://www.usip.org/pubs/specialreports/sr155.html>

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, CONSTITUTION MAKING AS AN INSTRUMENT OF DEMOCRATIC TRANSITION (Science and Technique of Democracy, No. 3)(1992)

## **CLASS VII     The Judicial System: Independence, Accountability, and Efficiency**

**February 21, 2007**

### Required Reading:

“The Challenge of Justice System Reform,” pp. 226-245, in CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS (Cambridge University Press, 2006).

ABA/CEELI, JUDICIAL REFORM INDEX FOR KOSOVO, VOL. II (2004), available at:  
[http://www.abanet.org/ceeli/publications/jri/jri\\_kosovo\\_2004.pdf](http://www.abanet.org/ceeli/publications/jri/jri_kosovo_2004.pdf)

THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002), available at:  
[http://www.unodc.org/pdf/corruption/bangalore\\_e.pdf](http://www.unodc.org/pdf/corruption/bangalore_e.pdf)

### Suggested Reading:

*United Nations Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <http://www.ohchr.org/english/law/indjudiciary.htm>

International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers, and Prosecutors: A Practitioner’s Guide* (2004), available at:  
<http://www.mafhoum.com/press7/230S24.pdf>

Wendy Betts, Scott Carlson, & Gregory Gisvold, *The Post-Conflict Transitional Administration of Kosovo and the Lessons-Learned in Efforts to Establish a Judiciary and the Rule of Law*, 22 MICH. J.I.L. 371 (2001)

*Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges and the Relevance of its Standards and any Other International Standards of the Current Problems in These Fields*, available at:  
[https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2001\)OP1&Sector=secDG1&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2001)OP1&Sector=secDG1&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)

## **CLASS VIII     The Executive: Transparency & Fairness in Rulemaking/Enforcement**

**February 28, 2007**

### Required Reading:

“The Challenge of Justice System Reform,” pp. 212-226, in CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS (Cambridge University Press, 2006).

COUNCIL OF EUROPE, THE ADMINISTRATION AND YOU: A HANDBOOK, pp. 9-36 (1996). (Photocopies to be provided)

### Suggested Reading:

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, available at: <http://www.un.org/documents/ga/res/43/a43r173.htm>

*United Nations Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www.ohchr.org/english/law/prosecutors.htm>

*Recommendation No. R (80) 2, Concerning the Exercise of Discretionary Powers by Administrative Authorities*, available at: [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/administrative\\_law\\_and\\_justice/texts\\_documents/Conv\\_Rec\\_Res/Recommendation\(80\)2.asp](http://www.coe.int/t/e/legal_affairs/legal_cooperation/administrative_law_and_justice/texts_documents/Conv_Rec_Res/Recommendation(80)2.asp)

## **CLASS IX      The Legislature: Legislative, Political, and Electoral Processes**

***March 7, 2007***

### Required Reading:

National Democratic Institute, *Strengthening Legislative Capacity in Legislative-Executive Relations*, Legislative Research Series, pp. 4-18, available at: [http://www.accessdemocracy.org/library/980\\_gov\\_legcapacity.pdf](http://www.accessdemocracy.org/library/980_gov_legcapacity.pdf)

Organization for Security and Cooperation in Europe (OSCE/ODHIR), *Existing Commitments for Democratic Elections in OSCE Participating States*, (2003), pp. 7-26, available at: [http://www1.osce.org/documents/odhr/2003/10/772\\_en.pdf](http://www1.osce.org/documents/odhr/2003/10/772_en.pdf)

International Institute for Democracy and Electoral Assistance (IDEA), *Effective Electoral Assistance: Moving from Events Based Support to Process Support. Conference Report and Conclusions*, (2006), Introduction and Background, pp. 6-9 and Summary of Conference Conclusions and Recommendations, pp. 28-30, available at: <http://www.idea.int/publications/eea/upload/Inlay%20FINAL.pdf>

### Suggested Reading:

*Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers*, Commemorated October 27, 2005 at the United Nations, New York, available at: <http://www.un.org/Depts/dpa/declar-principles-05.pdf>

ACE Electoral Knowledge Network, <http://www.aceproject.org>

**NOTE: Spring Break (March 11-18); NO class on March 14.**

## **CLASS X      International and Non-State Justice Mechanisms**

***March 21, 2007***

### Required Reading:

"Accountability for Atrocities," [sections on international and hybrid tribunals and domestic rule of law] pp. 263-285, 305-309, in *CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* (Cambridge University Press, 2006).

Thomas Barfield, Neamat Nojumi, and J. Alexander Thier, *The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan*, United States Institute for Peace, pp. 1-6, November 2006, available at: [http://www.usip.org/ruleoflaw/projects/clash\\_two\\_goods.pdf](http://www.usip.org/ruleoflaw/projects/clash_two_goods.pdf)

Suggested Reading:

Maya Goldstein Bolocan, "Rwandan Gacaca: An Experiment in Transitional Justice," *Journal of Dispute Resolution*, 2004, pp. 355-400.

**CLASS XI      ROL Practitioner: The Context**

**March 28, 2007**

Required Reading:

Scott N. Carlson, *Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study*, available at:

<http://pbpu.unlb.org/pbpu/library/ROL%20Lessons%20Learned%20Report%20%20March%202006%20FINAL.pdf>

"Enhancing Rule of Law Efforts: Planning, Funding, and Local Ownership," pp. 347-387, in *CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* (Cambridge University Press, 2006).

Suggested Reading:

Legal Vice Presidency, *Initiatives in Legal and Judicial Reform, 2004 Edition* (World Bank, 2004) Introduction, pp. 1-16

Organization for Security and Cooperation in Europe (OSCE), *Criminal Justice Systems in the OSCE Area: Reform Challenges and ODHIR Activities*, (2006), pp. 1-8, available at:

[http://www.osce.org/publications/odihhr/2006/05/18864\\_617\\_en.pdf](http://www.osce.org/publications/odihhr/2006/05/18864_617_en.pdf)

Organization for Security and Cooperation in Europe (OSCE), *Fact sheet for the OSCE Office of Democratic Institutions and Human Rights*, pp. 1-4, available at:

[http://www.osce.org/publications/odihhr/2004/11/13555\\_54\\_en.pdf](http://www.osce.org/publications/odihhr/2004/11/13555_54_en.pdf)

Council of Europe Directorate General of Legal Affairs, *Results 2005*, (January 2006), available at:

[http://www.coe.int/t/dg1/overview/activities/Results2005-DGI\(2006\)2E.pdf](http://www.coe.int/t/dg1/overview/activities/Results2005-DGI(2006)2E.pdf)

Council of Europe, *Building Europe Together on the Rule of Law* (March 2006), available at:

[http://www.coe.int/t/dg1/overview/documentation/Brochure\\_DGI\(2006\)E.pdf](http://www.coe.int/t/dg1/overview/documentation/Brochure_DGI(2006)E.pdf)

Organization of American States, *Website of the Office of Legal Cooperation, Department of International Legal Affairs*, [http://www.oas.org/DIL/departament\\_office\\_legal\\_cooperation.htm](http://www.oas.org/DIL/departament_office_legal_cooperation.htm)

**CLASS XII      ROL Practitioner: Tools of the Trade**

**April 4, 2007**

Required Reading:

Scott N. Carlson, et. al., *Primer for Justice Components in Multidimensional Peace Operations: Strengthening the Rule of Law*, available at:

<http://pbpu.unlb.org/pbpu/library/ROL%20Lessons%20Learned%20Report%20%20March%202006%20FINAL.pdf>

Suggested Reading:

World Bank Thematic Group on Law and Justice Institutions, *Performance Measures Topic Brief*, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20756997~menuPK:2025688~pagePK:210058~piPK:210062~theSitePK:1974062,00.html>

Julie Broome and Molly Inman, "Using International Standards as Tools for Judicial Reform," *Law in Transition 2005* (European Bank for Reconstruction and Development, 2005), pp. 88-95, available at: <http://www.ebrd.com/pubs/legal/lit051.pdf>

United States Agency for International Development, *Handbook for Democracy and Governance Program Indicators* (August 1998), available at: [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnacc390.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacc390.pdf)

Hector Chayer and Sandra Elena, "Defining the Impact of ROL Programs," *Democracy at Large*, Vol. 3., No. 1, 2006, pp. 18-20.

**CLASS XIII    ROL Practitioner: Case Study 1**

***April 11, 2007***

Required Reading:

TBD

**CLASS XIV    ROL Practitioner: Case Study 2**

***April 18, 2007***

Required Reading:

TBD