
University of California, Berkeley, School of Law
Spring 2025
Legal Studies Department
LS190: CHALLENGES OF JUDICIAL INDEPENDENCE: A GLOBAL PERSPECTIVE
Room: Hearst Annex B1
Mondays and Wednesdays, 5:00pm – 6:29pm

Professor: Dr. Mónica Castillejos-Aragón
Email: m_castillejosa@berkeley.edu

Office Hours with Professor Castillejos-Aragón:
Mondays: 11:00 am to 12:30 pm (Zoom)

COURSE DESCRIPTION

Judicial independence is critical to maintaining the integrity of the judiciary. Judges must feel free to fairly evaluate matters before them based on the evidence presented and the relevant law, secure from external pressures. Recent developments show that this is not always the case. Increasingly, nonetheless, judges are subject to outside interference and pressures that reduce their independence. Common threats to judicial independence include very public political attacks on the judiciary, as currently seen in the United States, Poland, Turkey, and Mexico, and often involving personal threats against individual judges or their decisions.

This seminar incorporates a worldwide perspective to reflect on and discuss the greatest challenges of the principle of judicial independence, which is as a crucial tenet that protects democracy and the rule of law around the world. From a regional perspective, this seminar will address ways in which the judiciary and external actors protect and promote the principle judicial independence; various challenges and threats experienced while upholding the rule of law and protecting the rights and liberties of citizens around the world, as well as factors that can lead to the survival of judicial independence in the face of sustained political attacks.

This seminar analyzes and discusses a variety of case studies from North America, the Americas, Asia, Europe, Africa, and the Middle East, where the principle has been undermined and, even, eroded.

COURSE GRADING:

The course grade will be based upon several forms of evaluation described below:

MID-TERM AND FINAL EXAM

The exams will include five short-answer essay formats. A minimum of three paragraphs and discussion on each response is required. Please bring three blue books for each exam. No electronic devices are allowed during the exam, including laptops, smartphones or tablets.

- Mid-term: Wednesday, March 19, 2025, from 5:00 pm to 6:25 pm. (In class)
- Final exam: Friday, May 16, 2025, from 3:00pm to 6:00 pm (In class)

TERM PAPER

The term paper will analyze a specific supreme court or constitutional tribunal, theme or judicial opinion discussed during the course. The length of the paper should not exceed six pages with 1.0 paragraph spacing. Once the students become familiar with the introductory portion of the course, the instructor will provide further guidelines for the topic selection, format, and completion of this assignment.

Late submissions are not acceptable.

ATTENDANCE AND CRITIQUES

Attendance and participation in class are essential factors for the final grade.

The instructor will assign **two readings** to each student and will be responsible for writing a short reaction response posing **two questions** to be discussed in class.

Please see the list of the assigned readings on bCourses.

The response should be posted on bCourses on **Mondays and Tuesdays at 8:00 am.**

REQUIRED READING MATERIALS

All the assigned readings and materials will be posted on bCourses.

Please bring either hard copies or an electronic version of the assigned readings to class.

CLASS PRESENTATIONS

At the end of the semester, each student will be responsible for presenting the outcome of their term paper before the class. Each presentation should include a brief summary of the selected judiciary and context, two research questions and main findings. Prior to the presentation, students will circulate a one-page summary of the research project for advance reading and peers' preparation. Each presentation will be followed by a short Q&A session among students to provide further feedback. After the presentations, students will revise their draft term paper and incorporate their peers' feedback when appropriate.

The final version of the term paper should be posted on bCourses on the day of the final exam at 8:00 am.

FINAL EVALUATION

The final grade for this course will be determined as follows:

- 35% Final Exam
- 20% Term Paper
- 15 % Mid-term
- 15% Final class presentations
- 10% Attendance
- 5% Critiques

CLASS READINGS

<p><u>Class 1</u></p> <p>Wednesday, January 22</p>	<p>Introduction to the Comparative Analysis of Judicial Independence</p> <p>Class Presentation</p> <p>Contemporary Challenges of the Independence of Justice</p>
<p><u>Class 2</u></p> <p>Monday, January 27</p>	<p>What is judicial independence?</p> <p>Shimon Shetreet, The Significance of the Independence of the Judiciary Creating a Culture of Judicial Independence: The Practical Challenge and the Conceptual and Constitutional Infrastructure, Shimon Shetreet and Christopher Forsyth (Editors), Brill Nijhoff, 15-67.</p> <p>Universal Standards of Judicial Independence: The UN Basic Principles on the Independence of the Judiciary</p> <p>Diego Garcia-Sayan, <i>Report presented before the United Nations General Assembly</i> on 16 July 2019. 1-21.</p>
<p><u>Class 3</u></p> <p>Wednesday, January 29</p>	<p>Scope of judicial independence</p> <p>Lisa Hilbink, The origins of Positive Judicial Independence, <i>World Politics</i>, October 2012, Vol. 64, No. 4 (October 2012), pp. 587-621 Published by: Cambridge University Press.</p>
<p><u>Class 4</u></p> <p>Monday, February 3</p>	<p>Contemporary Challenges of the Independence of Justice</p> <p>Judicial Independence: New Challenges in Established Nations Author(s): Martin Shapiro Source: <i>Indiana Journal of Global Legal Studies</i>, Vol. 20, No. 1 (2013), pp. 253-277 Published by: Indiana University Press.</p>
<p><u>Class 5</u></p> <p>Wednesday, February 5</p>	<p>Consolidation of Judicial Independence in New Democracies</p> <p>Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, <i>The American Journal of Comparative Law</i>, Autumn, 1996, Vol. 44,</p>

	No. 4 (Autumn, 1996), pp. 605-626 Published by: Oxford University Press.
<u>Class 6</u> Monday, February 10	Judicial Independence in North America: United States of America Gerald N. Rosenberg, Judicial Independence and the Reality of Political Power, <i>The Review of Politics</i> , Summer, 1992, Vol. 54, No. 3, Special Issue on Public Law (Summer, 1992), pp. 369-398.
<u>Class 7</u> Wednesday, February 12	Judicial Independence in North America: Canada Morton, F. L., and Dave Snow, eds. "Judicial Independence, Ethics, and Discipline." In <i>Law, Politics, and the Judicial Process in Canada, 5th Edition</i> , NED-New edition, 5., 220–86. University of Calgary Press, 2024.
<u>Class 8</u> Wednesday, February 19	Judicial Independence in the Americas: Mexico Keith S. Rosenn, The Protection of Judicial Independence in Latin America, <i>The University of Miami Inter-American Law Review</i> , Fall, 1987, Vol. 19, No. 1 (Fall, 1987), pp. 1-35
<u>Class 9</u> Monday, February 24	Judicial Independence in the Americas: Argentina Chávez, Rebecca Bill. "The Appointment and Removal Process for Judges in Argentina: The Role of Judicial Councils and Impeachment Juries in Promoting Judicial Independence." <i>Latin American Politics and Society</i> 49, no. 2 (2007): 33–58.
<u>Class 10</u> Wednesday, February 26	Judicial Independence in Europe Andenas, Mads. "A European Perspective on Judicial Independence and Accountability." <i>The International Lawyer</i> 41, no. 1 (2007): 1–20.
<u>Class 11</u> Monday, March 3	Judicial Independence in Eastern Europe Pedro C. Magalhães, The Politics of Judicial Reform in Eastern Europe, <i>Comparative Politics</i> , Oct. 1999, Vol. 32, No. 1 (Oct. 1999), pp. 43-62 Published by: Comparative Politics, Ph.D. Programs in Political Science, City University of New York.
<u>Class 12</u> Wednesday, March 5	Judicial Independence in Europe: Hungary and Poland Freeberg, Jonathan, "Don't Judge Me: Declining Judicial Independence in Hungary and Poland" (2022). 601, p. 1-42.
<u>Class 13</u> Wednesday, March 10	Judicial Independence in Asia Gillespie, John. "Rethinking the Role of Judicial Independence in Socialist-Transforming East Asia." <i>The International and Comparative Law Quarterly</i> 56, no. 4 (2007): 837–69.

<p style="text-align: center;"><u>Class 14</u></p> <p style="text-align: center;">Monday, March 12</p>	<p>Judicial Independence in Asia: South Korea and Taiwan Neil Chisholm, The Faces of Judicial Independence: Democratic versus Bureaucratic Accountability in Judicial Selection, Training, and Promotion in South Korea and Taiwan <i>The American Journal of Comparative Law</i>, Vol. 62, No. 4 (2014), pp. 893-949</p>
<p style="text-align: center;"><u>Class 15</u></p> <p style="text-align: center;">Wednesday, March 17</p>	<p>Judicial Independence in Africa Tabeth Masengu. "The Vulnerability of Judges in Contemporary Africa: Alarming Trends." <i>Africa Today</i> 63, no. 4 (2017): 3-19.</p>
<p style="text-align: center;"><u>Class 16</u></p> <p style="text-align: center;">Monday, March 19</p>	<p>Midterm (In-Class)</p>
<p style="text-align: center;"><u>Class 17</u></p> <p style="text-align: center;">Wednesday, March 31</p>	<p>Judicial Independence in Africa: Kenya Mutua, Makau. "Justice under Siege: The Rule of Law and Judicial Subservience in Kenya." <i>Human Rights Quarterly</i> 23, no. 1 (2001): 96-118.</p>
<p style="text-align: center;"><u>Class 18</u></p> <p style="text-align: center;">Monday, April 7</p>	<p>Judicial Independence in Africa: Ethiopia Mariam, Alemayehu G. "Human Rights Matters in the New Millennium: The Critical Need for an Independent Judiciary in Ethiopia." <i>International Journal of Ethiopian Studies</i> 3, no. 2 (2008): 123-42.</p>
<p style="text-align: center;"><u>Class 19</u></p> <p style="text-align: center;">Wednesday, April 9</p>	<p>Judicial Independence in the Middle East: Egypt Moustafa, Tamir. "Law versus the State: The Judicialization of Politics in Egypt." <i>Law & Social Inquiry</i> 28, no. 4 (2003): 883-930. http://www.jstor.org/stable/1215790.</p>
<p style="text-align: center;"><u>Class 20</u></p> <p style="text-align: center;">Monday, April 14</p>	<p>Judicial Independence in the Middle East: Israel Shetreet, Shimon. "Judicial Independence and Accountability in Israel." <i>The International and Comparative Law Quarterly</i> 33, no. 4 (1984): 979-1012.</p>
<p style="text-align: center;"><u>Class 21</u></p> <p style="text-align: center;">Wednesday, April 16</p>	<p>Inter-American Standards of Judicial Independence: Inter-American Court of Human Rights. Buergenthal, Thomas. "The Inter-American Court of Human Rights." <i>The American Journal of International Law</i> 76, no. 2 (1982): 231-45. Inter-American Court of Human Rights Case of the <i>Constitutional Court v. Peru</i> Judgment of September 24, 1999 (Competence)</p>

<p style="text-align: center;"><u>Class 22</u></p> <p style="text-align: center;">Monday, April 21</p>	<p>Regional European Standards of Judicial Independence: European Court of Human Rights</p> <p>Villiger, Mark E. "The European Court of Human Rights." <i>Proceedings of the Annual Meeting (American Society of International Law)</i> 95 (2001): 79–82.</p> <p>Mastracci, Matteo, Judicial Independence: European Standards, ECtHR Criteria and The reshuffling plan of the judiciary bodies in Poland, <i>Journal of the Indian Law Institute</i> 61, no. 1 (2019): 118–43.</p>
<p style="text-align: center;"><u>Class 23</u></p> <p style="text-align: center;">Wednesday, April 23</p>	<p>Class Presentations</p>
<p style="text-align: center;"><u>Class 24</u></p> <p style="text-align: center;">Monday, April 28</p>	<p style="text-align: center;">Class Presentations</p>
<p style="text-align: center;"><u>Class 25</u></p> <p style="text-align: center;">Wednesday, April 30</p>	<p>Class Presentations</p>
<p style="text-align: center;">Friday May 16, 2025, 3:00 pm - 6:00 pm</p>	<p style="text-align: center;">Final Exam and Term Paper Submission</p>