
University of California, Berkeley, Legal Studies Department

LS135 “LAW, JUDICIAL POLITICS AND RIGHTS IN LATIN AMERICA”

Tuesdays and Thursdays, 12:30pm – 1:59pm

Professor: Dr. Mónica Castillejos-Aragón

Email: m_castillejosa@berkeley.edu

GSI: Jorge Cortés-Monroy

Office Hours with Professor Castillejos:

Wednesdays: 12:00pm to 2:00pm by appointment (via Zoom)

COURSE DESCRIPTION

This course presents the study of comparative constitutional law and law and society in Latin America. It prepares students to acquire substantial training on the existing legal traditions in the world: the common law and civil law systems. It also develops early skills proper of the Socratic method, such as presenting and identifying issues and questions, joining class discussions, and the study of case-law with highly specialized academic readings.

This course discusses how political, social, and historical dynamics shape the work of state actors, such as the executive, legislative, judicial powers, as well as the legal profession, and civil society groups to mobilize legal and social change. And how courts are limiting politics through judicial opinions and institutional changes, to better understand how legal systems in Latin America function.

Students will become familiar with major and newly created legal institutions, recent legal and constitutional developments, modern legal challenges, landmark reforms, and legal procedures unique to Latin American legal systems. At the end of the semester, students will be able to comprehend various theoretical approaches to understanding not only the politics behind those developments, but also a historical legal account on how domestic jurisdictions and international human rights institutions have cooperated to consolidate democratic principles in Latin America.

COURSE GRADING:

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

- **Mid-term and Final Exam**

These will be in a group of five short-answer essay format. A minimum of two-paragraphs and discussion on each response is required.

Mid-term: **Thursday, March 17, 2022**

Final exam: **TBD**

The **final exam** should be emailed to Professor Castillejos and posted on bCourses on **TBD**

Term Paper

This term paper will analyze a specific question, theme or judicial opinion discussed during the course. The length of the paper should not exceed five pages or 2500 words. Once the students become familiar with the introductory portion of the course, the GSI will provide further guidelines for the topic selection, format, and completion of this assignment.

The term paper should be posted on bCourses on **TBD**

Late submissions are not acceptable.

- **Class Participation**

Attendance, preparation, and participation in class and in discussion sections are fundamental for the final grade.

Each student will select **two readings** and write a short reaction response posing **two or three questions** to be discussed in class. The reaction response should be posted on bCourses on **Mondays and Wednesdays at 11:00 am**. Those students writing a reaction response will be also responsible for providing a brief introduction of the topic to the class. All students are expected to read and prepare all the materials as well. From time to time, there will be one or two pop quizzes to help students to stay current with the assigned readings.

Special Assignment: For the class of Judicial Reform in Mexico (**Thursday, February 17**), students are expected to watch in advance the Documentary “1994” on Netflix (5 episodes, 50 minutes each), and write a **one-page** reaction paper regarding challenges and opportunities of the 1994 judicial reform, considering the context of the documentary.

The reaction paper should be posted on bCourses on **Wednesday, February 16 at noon**.

- **Required Reading Materials**

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

Most of the reading assignments are written in English language. The seminar will also cover a small number of materials in Spanish language. An unofficial translation in English will also be provided on bCourses.

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

- **Documentaries**

To support the content of the assigned materials, this course includes a few documentaries to be watched either at home or in class. The professor will provide in advance a link and password for students to access

the films. The content might be subject of questions in both the mid-term and final exams. Thus, note taking during the screening is highly recommended for exam' purposes.

- **Final Evaluation**

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

35% Final Exam

30% Term Paper

20% Mid-term

15% Participation, attendance, class presentations and critiques

READING ASSIGNMENTS

<u>Class 1</u> Tuesday, January 18	Introduction to the study of comparative law in Latin America <ul style="list-style-type: none"> • Class Presentation • Recent challenges in Latin America
<u>Class 2</u> Thursday, January 20	Introduction to the Civil Law tradition <ul style="list-style-type: none"> • AJGM Sanders, <i>The characteristic features of the Civil Law</i>, the Comparative and International Law Journal, Vol. 14, No. 2, July 1981, pp. 196-207.
<u>Class 3</u> Tuesday, January 25	Adversarial and Inquisitorial Systems <ul style="list-style-type: none"> • Maximo Langer, <i>The Long Shadow of the Adversarial and Inquisitorial Categories</i>, Markus D. Dubber and Tatiana Höernle (eds) Handbook of Criminal Law (Oxford University Press), pp 1-27.
<u>Class 4</u> Thursday, January 27	From the Inquisitorial to the Adversarial system <ul style="list-style-type: none"> • Azul América Aguilar, <i>Institutional Changes in the Public Prosecutor's Office: The Cases of Mexico, Chile and Brazil</i>, Mexican Law Review, Vol. 4, No.2 México January/June. 2011, pp 261-280.
<u>Class 5</u> Tuesday, February 1	Amparo Writ in the Civil Law Tradition <ul style="list-style-type: none"> • Hector Fix Zamudio, <i>The writ of Amparo in Latin America</i>, Lawyer of the Americas, Vol. 13, No. 3 (Winter, 1981), pp. 361-391.
<u>Class 6</u>	Legal Institutions: The Executive Power

<p>Thursday, February 3</p>	<p>Presidentialism in Latin America</p> <ul style="list-style-type: none"> • Tom Ginsburg, Jose Antonio Cheibub, and Zachary Elkins, <i>Latin American Presidentialism in Comparative and Historical Perspective</i>, 89 Texas Law Review 1707 (2010), pp 1707-1731.
<p><u>Class 7</u> Tuesday, February 8</p>	<p>Mexican Presidentialism (1929-2000)</p> <ul style="list-style-type: none"> • Alicia Hernández Chávez, <i>Mexican Presidentialism: A Historical and Institutional Overview</i>, Mexican Studies/Estudios Mexicanos, Vol. 10, No. 1 (Winter, 1994), pp. 217-225. • Op. Ed, “<i>México es la dictadura perfecta</i>”, El País, September 1, 1990, pp. 1-3. • Short Video: Mexico’s PRI Regime (<i>in Spanish with a transcript in English</i>)
<p><u>Class 8</u> Thursday, February 10</p>	<p>The Rule of Law and why it matters?</p> <ul style="list-style-type: none"> • Brian Z. Tamanaha, <i>The History and Elements of the Rule of Law</i>, Singapore Journal of Legal Studies, December 2012, pp. 232-247. • Discussion: Documentary on Chile.
<p><u>Class 9</u> Tuesday, February 15</p>	<p>Legal Institutions: The Legislative Power</p> <p>Constitutional Reform in Latin America</p> <ul style="list-style-type: none"> • Michael Dodson, <i>Assessing Judicial Reform in Latin America</i>, Latin American Research Review, Volume, 37 number 2, 2002, pp 200-220. (El Salvador, Guatemala, Perú and Brazil)
<p><u>Class 10</u> Thursday, February 17</p>	<p>Judicial Reform in Mexico</p> <ul style="list-style-type: none"> • Jodi Finkel, <i>Judicial Reform as Insurance Policy: Mexico in the 1990s</i>, Latin America Politics and Society, Vol. 47, Issue 1, December 2008, pp. 87-113. • Discussion: Documentary “1994”.
<p><u>Class 11</u> Tuesday, February 22</p>	<p>Legal Institutions: The Judicial Power</p> <p>Courts and Allies</p> <ul style="list-style-type: none"> • Monica Castillejos-Aragon, <i>The transformation of the Mexican Supreme Court into an arena for political contestation in Consequential Courts: Judicial Roles in Global Perspective</i>, Diana Kapiszewski, Gordon Silverstein, and Robert A. Kagan (eds.) Cambridge: Cambridge University Press, (2013), pp. 138-160.
<p><u>Class 12</u> Thursday,</p>	<p>Democratization of the Judicial Decision-Making Process</p>

<p>February 24</p>	<ul style="list-style-type: none"> • Leticia Barrera, <i>Performing the Court: Public Hearings and the Politics of Judicial Transparency in Argentina</i>, Political and Legal Anthropology Review, Vol. 36. No. 2, pp 326-340. • Álvaro Herrero and Gaspar López, <i>Access to Information and Transparency in the Judiciary</i>, Governance Working Papers Series, World Bank, 2010. pp. 13-34.
<p><u>Class 13</u> Tuesday, March 1</p>	<p>Judicial Independence</p> <ul style="list-style-type: none"> • Owen Fiss, <i>The Right Degree of Independence</i>, in Transition to Democracy in Latin America: The Role of the Judiciary, Irwin P. Stotzky (ed), San Francisco: Westview Press, 55-72.
<p><u>Class 14</u> Thursday, March 3</p>	<p>Judicial Councils</p> <ul style="list-style-type: none"> • Linn Hammergren, <i>Do Judicial Councils further judicial reform? Lessons from Latin America</i>, Democracy and Rule of Law Project, Carnegie Endowment, June 2002, pp. 1-20. • Excerpts of <i>Recurso de Inconstitucionalidad 696-12</i> of the Supreme Court of Honduras, pp. 1-10. (<i>In Spanish with an English Translation</i>) • Honduras <i>Judicial Council and Judicial Career Law</i>. (excerpts) pp 1-12. Special emphasis to Articles 1, 2, 3 and 4. (<i>In Spanish with an English Translation</i>)
<p><u>Class 15</u> Tuesday, March 8</p>	<p>Legal Change and Social Change</p> <ul style="list-style-type: none"> • Sandra Botero, <i>Agents of Neoliberalism? High courts, Legal Preferences, and Rights in Latin America since the left turn</i>, (Tulia G. Falletti and Emilio A. Parrado eds), University of Pennsylvania Press, 2018.
<p><u>Class 16</u> Thursday, March 10</p>	<p>Corruption</p> <ul style="list-style-type: none"> • Charles H. Blake and Stephen D. Morris, <i>Political and Analytical Challenges of Corruption in Latin America</i>, in Corruption and Democracy in Latin America, United States of America: University of Pittsburg Press, 2009, pp. 1-19.
<p><u>Class 17</u> Tuesday, March 15</p>	<p>International Commission Against Impunity (CICIG)</p> <ul style="list-style-type: none"> • Günther Maihold, <i>Intervention by Invitation? Shared Sovereignty in the Fight against Impunity in Guatemala</i>, European Review of Latin American and Caribbean Studies / <i>Revista Europea de Estudios Latinoamericanos y del Caribe</i>, No. 101 (April 2016), pp. 5-31.
<p><u>Class 18</u> Thursday,</p>	<p style="text-align: center;">MID-TERM EXAM</p>

March 17	
Monday, March 21–Friday, March 25, 2022	SPRING BREAK
<u>Class 19</u> Tuesday, March 29	<p>What is transitional justice?</p> <ul style="list-style-type: none"> Ezequiel A. González Ocantos, <i>The Politics of Transitional Justice in Latin America</i>, Cambridge University Press, 2020, pp. 2-19.
<u>Class 20</u> Thursday, March 31	<p>Transitional Justice in El Salvador</p> <ul style="list-style-type: none"> Discussion: Documentary on El Salvador. Analysis of Amnesty Law and Excerpt of the judicial opinion issued by the Constitutional Court in El Salvador. Decreto No. 486 de 1993 - <i>Ley de Amnistía General para la Consolidación de la Paz. (In Spanish)</i> <i>Ley de Reconciliación Nacional de 1992. (In Spanish)</i>
<u>Class 21</u> Tuesday, April 5	<p>Peace Process in Colombia: Analysis of <i>Jurisdicción Especial para la Paz</i></p> <ul style="list-style-type: none"> Ted Piccone, <i>Peace with Justice. The Colombian Experience with Transitional Justice with Transitional Justice</i>, Foreign Policy at Brookings, July 2019, pp. 2-23. Discussion: Documentary on Colombia.
<u>Class 22</u> Thursday, April 7	<p>Law and Violence, I</p> <ul style="list-style-type: none"> Remote Screening: Documentary on Mexico
<u>Class 23</u> Tuesday, April 12	<p>Law and Violence, II</p> <ul style="list-style-type: none"> Juan D. Lindau, <i>The Drug War's Impact on Executive Power, Judicial Reform and Federalism in Mexico</i>, Political Science Quartely, Vol. 126, No. 2, summer 2011, pp. 177-200.
<u>Class 24</u> Thursday, April 14	<p>The role of prosecutors in Mexico and Argentina</p> <ul style="list-style-type: none"> Andrés José D'Alessio, <i>The Function of the Prosecution in the Transition to Democracy in Latin America</i>, in the Transition to Democracy in Latin America: The Role of the Judiciary, Irwin P. Stotzky (ed) San Francisco: Westview Press, 1993, pp 187-201.

<p><u>Class 25</u> Tuesday, April 19</p>	<p>Regional Human Rights Bodies</p> <ul style="list-style-type: none"> • Thomas Buergenthal, <i>The Inter-American Court of Human Rights</i>, <i>The American Journal of International Law</i>, Vol. 76, No. 2, pp. 231-245, Cambridge University Press.
<p><u>Class 26</u> Thursday, April 21</p>	<p>The Inter-American Court of Human Rights: Landmark decisions</p> <ul style="list-style-type: none"> • <i>Velásquez Rodríguez v. Honduras</i>, July 29, 1988 • <i>Case of the Caracazo v. Venezuela</i>, November 11, 1999 • <i>Barrios Altos v. Perú</i>, March 14, 2001
<p><u>Class 27</u> Tuesday, April 26</p>	<p>Prosecuting Gender and Sexual-Based Violence (GSBV) - Colombia</p> <ul style="list-style-type: none"> • Introduction to Gender and Law • Film Screening (in class)
<p><u>Class 28</u> Thursday, April 28</p>	<p>Access to Justice of Women Victims of Violence in the Americas</p> <ul style="list-style-type: none"> • <i>Maria da Pehna Maia Fernandes v. Brazil</i> (Commission) • <i>Guzmán Albarracín y otras v. Ecuador</i> (Court)
<p><u>TBD</u></p>	<p>FINAL EXAM AND TERM PAPER DUE</p>