
University of California, Berkeley, Legal Studies Department

Legal Studies 190 Seminar:

“COMPARATIVE LEGAL SYSTEMS IN LATIN AMERICA”

Course Syllabus

Spring 2020

Tuesdays and Thursdays, 11:00am to 12:30pm

Room: TBD

Instructor: Dr. Mónica Castillejos-Aragón

Email: m_castillejosa@berkeley.edu

Office Hours: Tuesdays 1:30pm-3:00pm at **TBD** or by appointment.

Preliminary Syllabus

The instructor is currently revising this version and new materials might be included. The final version will be available in January 2020

Feel free to email the instructor if you have further questions about the seminar

COURSE DESCRIPTION

This course introduces the study of comparative constitutional law and different justice systems in Latin America. The seminar also aims to study how political dynamics shape courts, the legal profession and civil society (including justice reforms and recent court decisions) and how courts, in turn, shape politics (including the social impact of institutional rules and decisions). To better understand how the legal system in Latin America functions, the instructor will introduce and discuss recent developments of the two main systems of law in the world (civil law and common law) and the primary theoretical approaches to understanding politics, judicial proceeding, and how domestic and international institutions and various agents have interacted to consolidate democratic principles in Latin America, including Mexico, Colombia, El Salvador and Guatemala.

During the last three decades, the law –particularly constitutional law has been changing in Latin America. It has become more widespread and powerful. Thus, the instructor will discuss relevant constitutional reforms on the executive, legislative and judicial powers, as well as landmark judicial decisions and international human rights cases to consolidate democracy and the rule of law in the region.

COURSE GRADING:

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

- **Mid-term and Final Exams:**

These will be in a group of short-answer essay format.

Mid-term: **March 19, 2020**

Final Exam: **May 14, 2020**

- **Term Paper:**

Due on **April 7, 2020** at noon. The paper will analyze aspects of the theme of the course. The length of the paper should not exceed five pages or 2500 words.

- **Participation:**

Preparation and participation in class will be fundamental on the students' final grade. Each student *will select two assigned readings and write critiques* for the respective class. Each student will also be responsible to introduce the topic to the class. Please bring a copy of the assigned readings for the day of each class. From time to time, there will be one or two pop quizzes.

- **Required Reading Materials:**

Course reader available at Copy Central.

The majority of the reading assignments are written in English language. However, the seminar will also cover a small number of materials in Spanish language.

- **Final Evaluation:** Your final grade for this course will be determined as follows:

40% Final Exam

35% Term Paper

15% Mid-term

10% Participation, class presentations and pop quizzes

PRELIMINARY CLASS SCHEDULE AND READING ASSIGNMENTS

<u>January 21, 2020</u>	Introduction to the study of legal systems in Latin America
<u>January 23, 2020</u>	Evolution and the current political scene in Latin America <ul style="list-style-type: none"> • Vanden and Prevost, <i>The Politics of Latin America, The Power Game</i>, Oxford University Press, July 2017. (excerpts TBD) • Walter Mignolo, <i>The idea of Latin America</i>, Blackwell Publishing, 2005. (excerpts TBD)
<u>January 28, 2020</u>	Procedural Law: Adversarial v. Inquisitorial Systems <ul style="list-style-type: none"> • Robert A. Kagan, <i>Adversarial Legalism: The American Way of Law</i> by Robert A. Kagan (excerpts TBD)
<u>January 30, 2020</u>	Introduction to the Civil Law System vis-à-vis the Common Law System <ul style="list-style-type: none"> • John Henry Merryman and Rogelio Perez-Perdomo, <i>The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America</i>, 2007. (excerpts TBD)
<u>February 4, 2020</u>	The Civil Law System and the history of <i>Juicio de Amparo</i> in Latin America
<u>February 6, 2020</u>	Transition from inquisitorial to an adversarial system in Latin America <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>, Mex. law rev vol.4 no.2 México ene./jun. 2011.
<u>February 11, 2020</u>	Legal Institutions: The Executive Power a. <i>Presidentialismo</i> in Latin America

	<ul style="list-style-type: none"> • Alejandro Bonvecchi and Carlos Scartascini, <i>The Organization of the Executive Branch in Latin America: What We Know and What We Need to Know</i>, Latin American Politics and Society, Vol. 56, No. 1 (Spring 2014), pp. 144-165.
<u>February 13, 2020</u>	<p>Legal Institutions: The Executive Power, II</p> <p>b. <i>Dictadura Perfecta</i>: The case of the Mexican Presidencialismo (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 • Short Clip: Mexico's PRI Regime
<u>February 18, 2020</u>	<p>Legal Institutions: The Legislative Power</p> <p>a. <i>Constitutions in Authoritarian Regimes</i></p> <ul style="list-style-type: none"> • Tom Farer, <i>Consolidating Democracy in Latin America: Law, Legal Institutions and Constitutional Structure</i>, American University International Law Review, Volume 10, Issue 2, 1995.
<u>February 20, 2020</u>	<p>Legal Institutions: The Legislative Power, II</p> <p>b. Democratizing Latin America through Judicial Reform</p> <p>a. Chile's constitutional reforms</p> <p>b. Mexico's judicial reform</p> <ul style="list-style-type: none"> • Excerpts in Spanish of landmark constitutional reforms and reading assignment TBD.
<u>February 25, 2020</u>	Spring Break
<u>February 27, 2020</u>	Spring Break
<u>March 3, 2020</u>	<p>Legal Institutions, Judicial Power</p> <p>a. Constitutional Regimes and Courts in the midst of political instability</p> <ul style="list-style-type: none"> • Monica Castillejos-Aragon, <i>The transformation of the Mexican Supreme Court into an arena for political contestation</i> in Consequential Courts: Judicial Roles in Global Perspective, Diana Kapiszewski, Gordon Silverstein and Robert A. Kagan (eds.) Cambridge: Cambridge University Press, (2013)
<u>March 5, 2020</u>	<p>b. Judicial Activism and Restraint in Latin American constitutional courts</p> <ul style="list-style-type: none"> • Ansolabehere, Karina (2007). <i>La política desde la justicia. Cortes Supremas, gobierno y democracia en Argentina y México</i>. México D.F., FLACSO-Fontamara.
<u>March 10, 2020</u>	<p>c. Democratization of the Judicial Decision-Making Process in Latin America: Argentina and Mexico</p> <ul style="list-style-type: none"> • Excerpts of the <i>Mexican Law of Transparency and Access to Information</i>.
<u>March 12, 2020</u>	<p>d. Contemporary Challenges on the Independence of Judges in Latin America</p>

	<ul style="list-style-type: none"> • Margaret Popkin, <i>Iniciativas para mejorar la Independencia Judicial en América Latina: una perspectiva comparada</i>, Due Process of Law Foundation, 2002
<u>March 17, 2020</u>	<p>e. Judicial Independence and Judicial Accountability: The Role of Judicial Councils</p> <ul style="list-style-type: none"> • Analysis of landmark decisions of the Supreme Court of Honduras and the Judicial Council Law. (excerpts in Spanish)
<u>March 19, 2020</u>	MID-TERM
<u>March 24, 2020</u>	<p>Legal and Social Mobilization</p> <ul style="list-style-type: none"> • Henry Veltmeyer (1997) <i>New social movements in Latin America: The dynamics of class and identity</i>, <i>The Journal of Peasant Studies</i>, 25:1, 139-169 <p>Reproductive Rights</p> <ul style="list-style-type: none"> • Andrzej Kulczycki, <i>Abortion in Latin America: Changes in Practice, Growing Conflict, and Recent Policy Developments</i>, <i>Studies in Family Planning</i>, Vol. 42, No. 3 (SEPTEMBER 2011), pp. 199-220
<u>March 26, 2020</u>	<p>Same Sex Marriage</p> <ul style="list-style-type: none"> • Javier Corrales, <i>The Politics of LGBT Rights in Latin America and the Caribbean</i>: <i>Revista Europea de Estudios Latinoamericanos y del Caribe</i>, No. 100, 50th Anniversary Special Issue: New Directions in Latin American and Caribbean Studies (December 2015), pp. 53-62
<u>March 31, 2020</u>	<p>The Legal Profession in Latin America</p> <p>a. The role of the legal profession and bar associations in promoting social and legal change in Latin America</p> <ul style="list-style-type: none"> • Rule of Law and Lawyers in Latin America, Rogelio Pérez-Perdomo, <i>The Annals of the American Academy of Political and Social Science</i>, Vol. 603, Law, Society, and Democracy: Comparative Perspectives (January 2006), pp. 179-191
<u>April 2, 2020</u>	<p>Criminal Process</p> <p>a. Roles of prosecutors, defense attorneys and judges in the inquisitorial and adversarial systems in Latin America</p> <ul style="list-style-type: none"> • Film and Discussion
<u>April 7, 2020</u>	<p>Corruption and the State failure to control violence in Mexico and Central America</p> <ul style="list-style-type: none"> • William Ratliff and Edgardo Buscaglia, <i>Judicial Reform: The Neglected Priority in Latin America</i>, <i>The Annals of the American Academy of Political and Social Science</i> Vol. 550, NAFTA Revisited: Expectations and Realities (March 1997), pp. 59-71 • Analysis of landmark cases on corruption. (excerpts TBD)
<u>April 9, 2020</u>	<p>Anti-Corruption Agencies:</p> <p>a. Guatemala</p> <p>b. El Salvador</p>

<u>April 14, 2020</u>	<p>Regional Human Rights Bodies in Latin America</p> <p>a. The Inter-American Court and Commission of Human Rights</p> <ul style="list-style-type: none"> • William Burke-White, <i>Human Rights in the Inter-American System I</i> Int'l Stud. J. 33 (2004)
<u>April 16, 2020</u>	<p>Regional Human Rights Bodies in Latin America</p> <p>b. Incorporation of International Law into Domestic Jurisdictions</p> <ul style="list-style-type: none"> • Documentary and Discussion: <i>Radilla Pacheco v. Estados Unidos Mexicanos, 2010 (Inter-American Court of Human Rights)</i> (excerpts TBD)
<u>April 21, 2020</u>	<p>Internal Armed Conflicts and Transitional Justice: El Salvador ¿Dónde están?</p> <ul style="list-style-type: none"> • Short Documentary: • Analysis of <i>Leyes de Amnistía</i> and the Constitutional Court's response
<u>April 23, 2020</u>	<p>Justicia Especial de Paz and the role of Procurator General in Colombia</p> <ul style="list-style-type: none"> • Readings TBD
<u>April 28, 2020</u>	<p>Transitional Justice in Latin America and landmark jurisprudence of the Inter-American Court of Human Rights</p> <ul style="list-style-type: none"> • Honduras • Venezuela
<u>April 30, 2020</u>	<p>Transitional Justice in Latin America and landmark jurisprudence of the Inter-American Court of Human Rights</p> <ul style="list-style-type: none"> • Perú • Guatemala