
University of California, Berkeley, Legal Studies Department

**SEMINAR ON TOPICS IN LAW AND SOCIETY
“JUDICIAL POLITICS IN LATIN AMERICA”**

Thursdays, 2:00pm – 4:59pm.
Online

Instructor: Dr. Mónica Castillejos-Aragón

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Office Hours: Wednesdays: 9:00 am 11:00am or by appointment

COURSE DESCRIPTION

This course introduces the study of comparative constitutional law in Latin America. This class prepares pre-law students to acquire substantial training on the existing legal traditions in the world: The common law and the 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 aims to study 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. This class also discusses 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 Exams:**

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

Take home mid-term: **Thursday, March 11, 2021**

Take home final exam: **Monday, May 10, 2021 at 11:30am - 2:30pm**

The **final exam** should be emailed to Professor Castillejos and posted on bCourses on **Monday, May 10, 2021 by 2:30 pm**

- **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 section of the course, the instructor will provide further essay guidelines in **Class 7 (Thursday, March 4, 2021)**.

The **term paper** should be emailed to Professor Castillejos and posted on bCourses on **May 10, 2021 by 9:00 am**.

Late submissions are not acceptable.

- **Class Participation:**

Attendance, preparation, and participation in class are fundamental for the final grade. Each student will select **two assigned readings** and write a short reaction response or critique posing **three questions** to be discussed in class. The reaction response should be posted on bCourses on **Wednesdays at noon**. Those students writing a reaction response or critiques for respective session will be also responsible for providing a short introduction of the topic to the class. All students are expected to read and prepare for each topic 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 18**), 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 documentary context. The reaction paper should be posted on bCourses on **Wednesday, February 17 by noon**.

- **Required Reading Materials:**

The assigned readings 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 posted on bCourses.

- **Final Evaluation:** Your 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

CLASS SCHEDULE AND READING ASSIGNMENTS

<p><u>Class 1</u></p> <p>Thursday, January 21</p>	<p>Introduction to the study of comparative law in Latin America</p> <ul style="list-style-type: none"> • Class Presentation • Current challenges in Latin America
	<p>Introduction to the civil law tradition</p> <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.
<p><u>Class 2</u></p> <p>Thursday, January 28</p>	<p>Adversarial and Inquisitorial Systems</p> <ul style="list-style-type: none"> • Maximo Langer, <i>Strength, Weakness or Both? On the Endurance of the Adversarial-Inquisitorial Systems in Comparative Criminal Procedure</i>, in Research Handbook on Comparative Criminal Procedure (Jacqueline Ross and Stephen Thaman eds., Edward Elgar Publishing, 2016), pp 1-31.

	<p>Transition from Inquisitorial to the Adversarial system in Latin America</p> <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.
<p><u>Class 3</u></p> <p>Thursday, February 4</p>	<p>El Juicio de Amparo in the Civil Law Tradition</p> <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.
	<p>Legal Institutions I: The Executive Power</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 4</u></p> <p>Thursday, February 11</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 (In Spanish/English Translation)
	<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’s Dictatorial Regime.
<p><u>Class 5</u></p> <p>Thursday, February 18</p>	<p>Legal Institutions II: 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>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” directed by Diego Enrique Orsono.
<p><u>Class 6</u></p> <p>Thursday, February 25</p>	<p>Legal Institutions III: The Judicial Power</p> <p>Building synergies: The case of the Mexican Supreme Court</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)
	<p>Democratization of the Judicial Decision-Making Process</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. 9-34.
<p><u>Class 7</u></p> <p>Thursday, March 4</p>	<p>Topics on 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>Judicial Councils in Latin America</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. (In Spanish/English Translation) • Honduras <i>Judicial Council and Judicial Career Law</i>. (excerpts) pp 1-12. Special emphasis to Articles 1, 2, 3 and 4. (In Spanish/English Translation) • <u>Term paper guidelines</u>
<p><u>Class 8</u></p> <p>Thursday, March 11</p>	<p>MID-TERM EXAM</p>

<p><u>Class 9</u></p> <p>Thursday, March 18</p>	<p>Legal Change and Social Change: The Politics of Abortion and LGBT rights</p> <ul style="list-style-type: none"> • Sandra Botero, <i>Agents of Neoliberalism? High courts, Legal Preferences, and Rights in Latin America in Latin America since the left turn</i>, (Tulia G. Falletti and Emilio A. Parrado eds), University of Pennsylvania Press, 2018.
	<ul style="list-style-type: none"> • Class discussion
<p>Thursday, March 25</p>	<p style="text-align: center;">SPRING BREAK</p>
<p><u>Class 10</u></p> <p>Thursday, April 1</p>	<p>Corruption in Latin America</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 <i>Corruption and Democracy in Latin America</i>, United States of America: University of Pittsburg Press, 2009, pp. 1-19.
	<p><i>Comisión Internacional contra la Impunidad en Guatemala (CICIG)</i></p> <ul style="list-style-type: none"> • Günther Maihold, <i>Intervention by Invitation? Shared Sovereignty in the Fight against Impunity in Guatemala</i>, <i>European Review of Latin American and Caribbean Studies / Revista Europea de Estudios Latinoamericanos y del Caribe</i>, No. 101 (April 2016), pp. 5-31.
<p><u>Class 11</u></p> <p>Thursday, April 8</p>	<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>
	<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>, <i>Foreign Policy at Brookings</i>, July 2019, pp. 1-23. • Discussion: Documentary on Colombia.

<p><u>Class 12</u> Thursday, April 15</p>	<p>Violence Crisis and the War on Drugs in Mexico, I</p> <ul style="list-style-type: none"> • Discussion: Documentary on Mexico
	<p>Violence Crisis and the War on Drugs in Mexico, 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 Quarterly, Vol. 126, No. 2, summer 2011, pp. 177-200.
<p><u>Class 13</u> Thursday, April 22</p>	<p>The role of prosecutors in Mexico and Argentina</p> <ul style="list-style-type: none"> • Film and Discussion: • 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>Regional Human Rights Bodies in Latin America</p> <ul style="list-style-type: none"> • Goldman, Robert K. "<i>History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights</i>" Human Rights Quarterly 31 (2009): 856-887.
<p><u>Class 14</u> Thursday, April 29</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>The place of international law in domestic legal systems</p> <ul style="list-style-type: none"> • Karina Ansolabehere, <i>One Norm, Two Models. Legal Enforcement of Human Rights in Mexico and the United States</i>, Mexican Law, Revista del Instituto de Investigaciones Jurídicas de la UNAM.
<p>Monday, May 10</p>	<p>FINAL EXAM AND TERM PAPER DUE</p>