

LEGAL AND JUDICIAL REFORMS IN THE DEVELOPING WORLD

Term 2 Winter 2020

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Contents

Course Description.....	3
Course Objectives.....	3
Required Materials and Texts	3
Class Format.....	3
Course Evaluation – Overview	3
Course Evaluation – Details.....	4
Assignment 1: Research Paper worth 50 % (10% + 40 %), due March 9.	4
Assignment 2: End-of-Term Examination worth 40 %.	4
Assignment 3: Class participation worth 10 %.....	5
Weekly Course Schedule and Required Readings	5
Week 1: January 6 & 8.	5
Week 2: January 13 & 15.	5
Week 3: January 20 & 22.	6
Week 4: January 27 & 29.	6
Week 5: February 3 & 5:.....	6
Week 6: February 10 & 12.....	7
Week 7: February 17-23. Mid-term Recess.....	7
Week 8: February 24 & 26.....	7
Week 9: March 2 & 4.	8
Week 10: March 9 & 11.	8
Week 11: March 16 & 18.	8
Week 12: March 23 & 25.	9
Week 13: March 30 & April 1.....	9
Week 14: April 6.	9
Course Policies	9

Submission of Assignments	9
Grades.....	9
Late Assignments.....	10
Absences, Missed Work, Illness.....	10
Avenue to Learn	10
Turnitin.com.....	10
Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)	11
University Policies	11
Academic Integrity Statement.....	11
Academic Accommodation of Students with Disabilities.....	11
Faculty of Social Sciences E-mail Communication Policy	12
Course Modification.....	12

Course Description

The course examines the causes, nature, scope, and objectives of legal and judicial reforms taking place in developing countries. Whether because of national initiatives or as the result of guidelines, pressures, and demands from international aid organizations, the international business/financial community, academia, or through bilateral mechanisms (USAID, CIDA, IDRC), a process of standardization of the rule of law and judicial reforms can be seen unfolding across different so-called 'emergent democracies'. This process is neither one-directional nor is it exempt from roll backs. In either case, emergent democracies in Latin America and Africa have had little choice but to address the need for a renewed rule of law i.e. political constitutions that ensure respect for human rights and legal accountability, on the one hand, while entrenching protection for the 'sound economic environment' demanded by foreign investors, i.e. legal protection of private property, intellectual property, and property rights on the other hand. Topics to be addressed from a Comparative Politics perspective include *inter alia* the correlation between globalization, democratization and constitution-making processes; legal and judicial reforms in post-conflict societies; corruption and accountability in new democracies; truth and reconciliation commissions and their connection to the rule of law and principles of justice; judicial system reforms; anti-democratic legislation, and development of a culture that respects, promotes, and enforces the rule of law and democratic values.

Course Objectives

By the end of the course students should be able to (1) identify the reasons behind legal and judicial reforms in post-conflict societies; (2) understand the correlation between said reforms and globalization processes; (3) assess the progress and weaknesses of these national and international processes, and (4) develop a meaningful comparison between long-established democracies and emergent ones in the developing world.

Required Materials and Texts

Required readings will be made available online through McMaster Library system and through uploads in Avenue to Learn.

Class Format

This is a lecture course; class attendance and participation and discussion are encouraged though. Relevant films will be shown during regular classes.

Course Evaluation – Overview

1. Research paper (worth 50% of course grade: 10 + 40)
2. In-class end-of-term examination (worth 40% of course grade)
3. Class participation (worth 10% of course grade)

Course Evaluation – Details

Assignment 1: Research Paper worth 50 % (10% + 40 %), due March 9.

This assignment is due in class on March 9. It should examine and discuss one of the topics listed below by using supplementary, primary and/or secondary, sources pertinent and relevant to the argument. The paper cannot be solely based on the course's required readings and/or class lectures. The assignment has two components, and both will be reflected in the grade assigned to it. First, an Outline of the proposed research is due on January 27 for the instructor's approval. It must include the research question, thesis, or hypothesis, along with preliminary evidence, causes, and tentative bibliography. This outline must be about three-to-four pages long, double spaced. It will count for 10 % of the course grade. Second, the fully edited final version of the research paper, including all preliminary work with the instructor's comments, must be submitted on March 9, during the regular class time. It will count for 40 % of the course grade.

Format of Research Paper: Length of the assignment is between 15-20 pages, not including title page and bibliographical references. Follow the APA or the Chicago Manual of Style guidelines for the writing of academic papers. Standard use of bibliographical sources is a must. The paper must be typed; have a Title Page; all pages must be numbered; lines must be double spaced, and standard margins must be left for comments. The Outline and the Research Paper must include the Statement on Plagiarism. An electronic copy of the Outline and the final version of the paper must be sent to the instructor on the due date, at gallequi@mcmaster.ca.

The Topic of Research: Choose your own topic of research by focusing on a case study of a developing country (other than those discussed in the course) and examine the origins, process, and outcomes regarding legal and judicial reforms during their democratic transition/consolidation. Start by developing and submitting (1) the Outline of the Research Paper on the due date. (2) This Outline should include a research question (main and secondary ones, if needed) stated in a question form. (3) Follow that with a declaratory sentence that states the objective(s) of the research; (4) indicate the preliminary evidence that supports the research question; (5) list the probable causes of the problem; and (6) add a preliminary bibliography of academic sources that will be used in the research. Receive the instructor's approval before embarking on the research and writing of this assignment.

Assignment 2: End-of-Term Examination worth 40 %.

This end-of-term examination will be held in class on March 30. All required readings and class lectures/discussions must be used in answering the corresponding questions. No aids allowed. The examination comprises two sections: part 1 asks to identify, explain the meaning, and discuss the significance of some of the concepts, notions, and definitions introduced in class and readings. It counts for 45 % of the

examination. Part 2 is a compulsory essay question that counts for 55 % of the examination. Duration of the examination is 1 hour and 50 minutes.

Assignment 3: Class participation worth 10 %.

It comprises (1) regular attendance and (2) active engagement in class discussions. Grade for this assignment is at the Instructor's discretion. No substitute assignments for missing classes will be granted. Only one class absence will not be considered in the determination of the grade for this assignment.

Weekly Course Schedule and Required Readings

Week 1: January 6 & 8.

Introduction. Course Organization. Assignments.

Required readings:

Davis, Kevin & Mariana Mota Prado, "Law, Regulation, and Development", Chapter 12 in *International Development. Ideas, Experience, & Prospects*, edited by Bruce Carrie-Alder, Ravi Kanbur, David Malone, & Rohinton Medhora: Oxford University Press, 2014. (A2L)

Recommended readings:

Carothers, Thomas. 2006. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington DC: Carnegie Endowment for International Peace.

World Bank. 2004. *Initiatives in Legal and Judicial reform*. Washington, DC: The World Bank.

Messick, Richard. 199. "Judicial Reform and Economic Development: A Survey of the Issues", in *The World Bank Research Observer*, Vol. 14, No 1 (February 1999), pp. 117-136 (available online).

Week 2: January 13 & 15.

Development & Underdevelopment: A Review of Main Theories of Development.

Required readings:

Lipset, Seymour M. 1959. "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," in *American Political Science Review* 53 (available online).

Valenzuela, Samuel & Arturo Valenzuela.1978. "Modernization and Dependency: Alternative Perspectives in the Study of Latin American Underdevelopment," in *Comparative Politics*, vol. 10, 4, July (available online).

Recommended Readings

Randall, Vicky & Robin Theobald. 1998. Eds. 2nd edition. "Towards a Politics of Modernization and Development", *Political Change and Underdevelopment*: Duke University Press. pp. 17-44.

Week 3: January 20 & 22.

Liberalism. Liberal Democracy. The Liberal Tradition in Latin America. Constitution-Making in Latin America. Path Dependency.

Required readings

Ríos-Figueroa, Julio & Andrea Pozas-Loyo. 2010. "Enacting Constitutionalism: The Origins of Independent Judicial Institutions in Latin America", in *Comparative Politics*, vol. 42, No 3 (April 2010), pp. 293-311. (available online).

Navia, Patricio & Julio Ríos-Figueroa. 2005. "The Constitutional Adjudication Mosaic of Latin America", in *Comparative Political Studies*, 38 (February 2005), pp. 189-217. (available online).

Recommended readings

Gargarella, R. 2013. *Latin American Constitutionalism, 1810-2010: The Engine Room of the Constitution*. New York: Oxford University Press.

Domingo, Pilar & Rachel Sieder, eds. 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. London: University of London.

Week 4: January 27 & 29.

Democratization in Latin America. The Legal and Judicial Challenges in Post-Conflict Societies.

Required readings

Foweraker, Joe & Roman Krznaric. 2002. "The Uneven Performance of Third Wave Democracies: Electoral Politics and the Imperfect Rule of Law in Latin America", in *Latin American Politics and Society*, vol 44, Issue 3 (Fall 2002), pp. 29-60. (available online).

Note: [Outline of research paper worth 10 % due in class 27 January]

Week 5: February 3 & 5:

Democratization & International Agencies Push for Legal and Judicial Reform.

Required readings

Pasara, Carlos. 2012. "[International Support for Justice Reform in Latin America: Worthwhile or Worthless](#)". Wilson Center.

Recommended readings

Staats, Joseph, & Shaun Bowler, & Jonathan Hiskey. 2005. "Measuring Judicial Performance in Latin America", in *Latin American Politics and Society*, Vol. 47, No. 4 (Winter), pp.77-106 (available online).

Kapiszewski, Diana & Matthew Taylor. 2008. "Doing Courts Justice? Studying Judicial Politics in Latin America", in *Perspectives on Politics*, Vol. 6, No 4, (December 2008), pp. 741-767 (available online).

Week 6: February 10 & 12.

Case Study: Chile: Constitutional and Judicial Reform

Required readings

Galleguillos, Nibaldo. 1999. "From Confrontation to Friendly Persuasion: An Analysis of Judicial Reform and Democratization in Post-Pinochet Chile," in *Canadian Journal of Latin American and Caribbean Studies*, volume 23, No. 46, pp. 161-192.

Huneeus, Alexandra. 2010. "Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn", in *Law & Social Inquiry*, Vol. 35. No 1 (Winter, 2010), pp. 99-135 (available online).

Recommended readings

Barros, Robert. 2002. *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution*. New York. Cambridge University Press.

Week 7: February 17-23. Mid-term Recess.

No Classes Held.

Week 8: February 24 & 26.

Case Study: Mexico

Required readings:

Ingram, Matthew. 2012. "Crafting Courts in New Democracies: Ideology and Judicial Council Reforms in Three Mexican States", in *Comparative Politics*, Vol. 44, No. 4 (July 2012), pp. 439-458 (available online).

Beer, Caroline. 2006. "Judicial Performance and the Rule of Law in the Mexican States", in *Latin American Politics and Society*, Vol. 48, No. 3 (Autumn 2006), pp. 33-61 (available online).

Recommended readings

Cornelius, Wayne & David Shirk. 2007. *Reforming the Administration of Justice in Mexico*. Notre Dame, IN. University of Notre Dame Press.

Week 9: March 2 & 4.

Case Study: Brazil

Required readings:

TBA

Week 10: March 9 & 11.

Case Study: Argentina

Required readings:

Gonzalez Ocantos, Ezequiel. 2014. "Persuade Them or Oust Them: Crafting Judicial Change and Transitional Justice in Argentina", in *Comparative Politics*, Vol. 46, No 4 (July 2014), pp. 479-498 (available online).

Finkel, Jodi. 2004. "Judicial Reform in Argentina in the 1990s: How Electoral Incentives Shape Institutional Change", in *Latin American Research Review*, Vol. 39, No 3, pp. 56-80 (available online).

Note: Final version of research paper is due on class March 9. Penalties will apply for late submission.

Week 11: March 16 & 18.

Truth and Reconciliation Commissions: What Kind of Justice?

Required readings:

Gibson, James. 2004. "Does Truth Lead to Reconciliation? Testing the Causal Assumptions of the South African Truth and Reconciliation Process". In *American Journal of Political Science*, Vol. 48. No 2, April 2004, pp. 201-217 (available online).

Lerche III, Charles. 2000. "Truth Commission and National Reconciliation: Some Reflections on Theory and Practice". In *Peace and Conflict Studies*. Vol. 7: No1. Article 1 (available online).

Recommended readings:

Minow, Martha. 1998. "Between Vengeance and Forgiveness: South Africa's Truth and Reconciliation Commission", in *Negotiation Journal*, October 1998, pp. 319-355 (available online)

Week 12: March 23 & 25.

Corruption and Impunity in New Democracies: Is the Rule of Law Working in Latin America?

Required readings:

TBA

Week 13: March 30 & April 1.

March 30: In class end-of-Term Examination worth 40 % of final grade.

April 1: No Class

Week 14: April 6.

Review. State of the Art in Legal and Judicial Reform in Latin America.

Instructor-led discussion.

Course Policies

Submission of Assignments

Outline of research paper is due in class on January 27, 2020. Research paper is due in class on March 9, 2020. The instructor assumes no responsibility whatsoever for assignments left under his office door, faxed, texted, or delivered in any other form other than in class. The final version of the paper must attach the original outline with the instructor's comments and feedback. Each hard-copy submission must be accompanied by an electronic copy, in Word format, addressed to gallegui@mcmaster.ca. Each submission must as well include the following statement on academic integrity: "I (name of student) attest that this work is original, and that no plagiarism has been committed in its preparation and delivery". Followed by the student's signature.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C

MARK	GRADE
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

Late submission of the Outline of the research paper will be penalized with one point deducted for each day of delay (1:10). Late submission of the research paper will be penalized with one sub-letter grade deduction for each day of delay, up to a maximum of one week (see sub-letter grades above). After one week, the instructor may refuse to accept a late paper unless medical certification stating a prolonged inability to fulfill academic responsibilities is provided. Medical notes will be verified for authenticity. Marks for papers accepted by the instructor after one week of lateness will be subject to a one letter grade deduction from the actual mark.

A make-up examination for missing the end-of-term exam will be granted only for legitimate reasons and at the instructor's discretion; the make-up exam may include different questions to those in the original exam.

Absences, Missed Work, Illness

In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar "Requests for Relief for Missed Academic Term Work". Only one class absentia will not be considered in the determination of class participation.

Avenue to Learn

In this course Avenue to Learn will be used. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If students have any questions or concerns about such disclosure please discuss this with the course instructor, or the University Technological Services (UTS).

Turnitin.com

In this course a web-based service (Turnitin.com) will be used to reveal authenticity and ownership of student submitted work. Students will be expected to submit their work electronically either directly to Turnitin.com or via Avenue to Learn (A2L) plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty. Students who do not wish to submit their work through A2L and/or Turnitin.com must still submit an electronic and/or hardcopy to the instructor.

No penalty will be assigned to a student who does not submit work to Turnitin.com or A2L. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, other software, etc.). For more information please refer to the [Turnitin.com Policy](#).

Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the RISO policy. Students requiring a RISO accommodation should submit their request to their Faculty Office normally within 10 working days of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests

University Policies

Academic Integrity Statement

Students are expected to exhibit honesty and use ethical behavior in all aspects of the learning process. Academic credentials students earn are rooted in principles of honesty and academic integrity.

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behavior can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is the student's responsibility to understand what constitutes academic dishonesty. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#).

The following illustrates only three forms of academic dishonesty

- Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
- Improper collaboration in group work.
- Copying or using unauthorized aids in tests and examinations.

Academic Accommodation of Students with Disabilities

Students who require academic accommodation must contact [Student Accessibility Services \(SAS\)](#) to make arrangements with a Program Coordinator. Academic accommodations must be arranged for each term of study. Student Accessibility Services can be contacted by phone 905-525-9140 ext. 28652 or e-mail

sas@mcmaster.ca. For further information, consult McMaster University's Policy for [Academic Accommodation of Students with Disabilities](#).

Faculty of Social Sciences E-mail Communication Policy

Effective September 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student's own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student's responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

Course Modification

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the students to check their McMaster email and course websites weekly during the term and to note any changes.