

THE RULE OF LAW AND LEGAL AND JUDICIAL REFORMS IN THE DEVELOPING WORLD FALL 2021

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Lecture: Monday 9:30-10:20 am &
Thursday 9:30-11:20 am
Room: Virtual Zoom Classroom

Office Hours: Monday 14:00-16:00 via
Zoom Appointments

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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, and development of a culture that respects, promotes, and enforces the rule of law and democratic values vis-à-vis a culture of transgressive individualism or centralized authoritarianism.

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 students' participation and discussion are encouraged and expected. Relevant films will be shown during regular classes.

Course Evaluation – Overview

1. Research paper (worth 50% of course grade: 10 + 40)
2. Take-home 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 Nov. 11, 2021.

This assignment is due on November 11, 2021 by midnight (11:59 pm). Paper must examine and critically discuss the topic indicated 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: First, an Outline of the proposed research is due on September 30, 2021 by midnight (11:59 pm) 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, and double spaced. It will count for 10 % of the course grade. It must be submitted electronically to gallegui@mcmaster.ca. Second, the fully edited final version of the research paper, including all preliminary work with the instructor's comments, must be submitted on November 11, 2021 by midnight (11:59 pm) electronically addressed to gallegui@mcmaster.ca. It will count for 40 % of the course grade.

Format of Research Paper: Length of the assignment is between 15-20 pages, excluding title page and bibliographical references. Follow the APA or the Chicago Manual of Style guidelines for the writing of academic papers. Standard use of academic 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 a Statement on Plagiarism. An electronic copy of the Outline and the final version of the paper (including outline with instructor's comments) must be sent to the instructor on the due dates, at gallegui@mcmaster.ca.

The Topic of Research: Choose your own case-study involving a developing country (other than those discussed in the course). Then, examine in depth, and critically, the origins, processes, and outcomes leading to comprehensive legal and judicial reforms as the country you chose transitions towards a democratic political regime. 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 Take-Home Exam worth 40 % due Dec. 1, 2021

This end-of-term take-home examination will be posted in Avenue to Learn on November 29, at noon time, and must be returned by **December 1** at midnight time (11:59 pm). All required readings and class lectures/discussions must be used in answering the corresponding questions. No aids allowed. The examination is comprised of three sections: part 1 asks to identify, explain the meaning, and discuss the significance of some key concepts, notions, and/or definitions introduced in class and readings. It counts for 30 % of the examination. Part 2 is a compulsory essay question that counts for 40 % of the examination. Part 3 is a choice between two essay questions. It counts for 30 % of the examination.

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 (1) class absence will not be considered in the determination of the grade for this assignment.

Weekly Course Schedule and Required Readings

September 9: Introduction. Course Organization. Explanation of 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)

Pérez-Liñán, Aníbal & Andrea Castagnola, 'Latin America: The Perils of Judicial Reform', in AULA Blog (available online)

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. 1999. "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).

September 13 & 16: 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.

September 20 & 23: 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.

September 27 & 30: 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 on September 30, electronically addressed to gallegui@mcmaster.ca.

October 4 & 7: 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. (available online)

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).

October 11-17 Mid-term Recess. No Class held this Week

October 18-21 Case Study: Chile: Constitutional and Judicial Reforms in the democratic transition.

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. (available online).

Huneus, 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.

October 25 & 28: Case Study: Mexico's Rule of Law Vanishing Act.

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.

November 1 & 4: Case Study: Brazil's Rule of Law and Liberalism.

Required readings

Sorj, Bernardo, 2018. "The Brazilian Dilemma: between civic individualism and transgressive personalism", in *Medium.com*. FHC (available online)

November 8 & 11: Case Study: Argentina's Dilemma: The Persistent Crisis of Liberalism and the Rule of Law.

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 November 11. Include statement on plagiarism. Attach previous Outline. Penalties will apply for late submission.

November 15 & 18: Truth and Reconciliation Commissions: Doesn't the Rule of Law Matter Anymore?"

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)

November 22 & 25: Corruption and Impunity in New Democracies: Does the Rule of Law Function in New Democracies?

Required readings

TBA. South Africa-Brazil-Mexico-Peru

November 29 & December 1: End-of-Term Take-Home Examination worth 40 % of final grade due December 1 midnight (11:59 pm).
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December 6: Review. State of the Art in Legal and Judicial Reform in the Developing World.

Instructor-led discussion.

Course Policies

Submission of Assignments

Outline of research paper is due electronically on September 30, 2021. Research paper is due electronically on November 11, 2021. The instructor assumes no responsibility whatsoever for assignments left under his office door, faxed, texted, or delivered in any other form other than electronically addressed to gallequi@mcmaster.ca. The final version of the paper must attach the original outline with the instructor's comments and feedback and 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
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 out of 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.

Courses with an On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, 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 a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about this disclosure, please discuss this with the course's instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

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 details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

Copyrights and Recordings

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors.

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

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 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.

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

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 behaviour 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. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

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.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the "Code"). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online.**

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students' access to these platforms

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or

sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University's [Academic Accommodation of Students with Disabilities](#) policy.

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 student to check his/her McMaster email and course websites weekly during the term and to note any changes.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.