

McGill University

POLI: 422-001: Comparative Politics of Developing Areas
Winter 2014

DEMOCRACY AND THE RULE OF LAW IN LATIN AMERICA

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Class meets: T-Th 2.35PM-3.55PM
Class location: MAASS 10
Office hours: T-Th: 4PM-5PM
TA: Lorenzo Daieff

Course Description:

This course explores many of the challenges and improvements to the rule of law across Latin America and their connection to democracy. The first few classes will conceptualize and examine the relationship between rule of law and democracy. Then, we will look at a series of issues in which we will assess the strength or weakness of the rule of law in the region. Rather than focusing on one country at a time or a few countries in depth, we will draw from different events and systems in various countries as illustrations of important themes. Lastly, we will assess possible consequences of these challenges for democracy and possible solutions.

As a course designed for advanced undergraduate students, its main purpose is to provide the tools to understand and analyze the relationship between rule of law and democracy. The readings are a collection of recent research on these issues and require the students to read prior to each class session and to engage the readings critically. On some units we will also read newspaper or magazine articles (which will be assigned week by week), and in others we will watch movies related to the issues under study.

The class will be a combination of lecture and discussion. There will also be conferences directed by the TA, Lorenzo Daieff. In each class I will briefly place the readings in a broader context and propose a couple of critiques that we will discuss afterwards. I will not repeat what is found in the materials; students should come to class prepared.

By the end of the semester you will have acquired some basic information about Latin American political and legal systems, and some basic concepts about the different ways the law works in that part of the world. More importantly, however, you will have a greater understanding of what a robust democracy should look like, and where different countries fall short. You should be able to engage in a discussion about the role courts and laws do play, should play and can play in the (democratic) political systems of Latin America, and the potential for improvement. The various essays and assignments will help you think about these issues and test how well you are acquiring the basic concepts and information needed.

Course Requirements:

The final grade will be determined as follows:

Three Analytical Essays	50%
In Class Quizzes, Participation, Attendance	20%
Final Exam (during finals week)	30%

Attendance and Participation: Attendance and participation in class discussions and conferences is required and students are expected to keep up with the readings. While speaking in class is important, please keep in mind that it is not just quantity that matters, but also quality. Conferences will take place on Fridays, and they will be set up once the semester begins.

Quizzes: At the beginning of each class period, I will run the quiz lottery. The lottery generates random numbers between 0 and 10. If the last number is 5 or less, the quiz question will pop up, so that every class there is a 50% chance that your preparation will be tested. The question is a single question meant to determine whether you have done the readings. The question should be fairly obvious if you have read for class, but hard if you have not. If you are absent, you get a 0, if you are present but don't know the answer, you earn a 1, if you answer accurately, you get a 3. At the end of the semester I drop the lowest score and average the rest. The quiz lottery seeks to ensure that you come to class prepared. I use the quiz lottery in order to ensure that you do not fall behind in the readings.

Analytical Essays: Throughout the semester you will be assigned to write three short essays (max 4 page, double space, regular font and margins) following the movies we will watch. These essays will have to respond to a set of questions (see questions on class schedule). We will watch four movies, and you can choose for which of these you will write. You cannot write for more than three. If you do, we will only grade the first three.

Final Exam: During finals week there will be a final, cumulative exam. It will test your knowledge and understanding of the issues and readings for class. Early or late exams will not be given.

Course and University Policies:

Integrity: McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/integrity for more information).

Special Needs: If you have a disability, please contact the instructor to arrange a time to discuss your situation. It would be helpful if you contact the Office for Students with Disabilities at 514.398.6009 before you do this.

Language: In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Note that this right applies to ALL written work that is to be graded, from one-word answers to dissertations.

Course-Evaluations: End-of-term course evaluations are one of the ways that McGill works towards maintaining and improving the quality of courses and the students' learning experience. You will be notified by e-mail when the evaluations are available on Mercury.

MyCourses: This course has its own website on *MyCourses*. It will be updated regularly, so you are required to check the *MyCourses* course page regularly as well. **ANALYTICAL ESSAYS MUST BE TURNED IN THROUGH THE ASSIGNMENTS TOOL IN MYCOURSES.**

Note: In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme in this course is subject to change. **The privilege of additional work will not be granted.**

SCHEDULE AND READING ASSIGNMENTS

WEEK 1

Tuesday, January 7th

NO CLASS!

Thursday, January 9th

NO CLASS!

WEEK 2

Tuesday, January 14th

Introducing the course: What is democracy?

Thursday, January 16th

Definitions of Democracy. Overview of Democracy and Rule of Law.

- ❖ Mainwaring, Scott and Anibal Pérez-Liñán (Forthcoming). The Emergence, Survival, and Fall of Democracies and Dictatorships: Latin America since 1900 (Chapters 3 and 8).
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WEEK 3

Tuesday, January 21st

What is the rule of law; how is it related to democracy?

- ❖ O'Donnell, Guillermo. 2010. The State as Law: Contributions and Ambivalences. In *Democracy, agency, and the state: theory with comparative intent* by Guillermo O'Donnell. Oxford: Oxford University Press. 93-113

Thursday, January 23th

Key Issues in Rule of Law in Latin America today

- ❖ Brinks, Daniel. 2011. A tale of two cities. In *Routledge Handbook of Latin American Politics* edited by Peter Kingstone and Deborah Yashar. Taylor & Francis.

➤ **Watch Movie on your own time:** *Tropa de Elite*.

Questions for Essay: How does *Tropa de Elite* raise questions about accountability, effectiveness, rule of law and democracy? How does the elite squad's own vision of their role raise those questions? Can you extend that to judges and other members of the legal system? Is the law an unalloyed good for democracy, or is there a danger in it too?

WEEK 4

Tuesday, January 28th

Judicialization of Politics. What is it? What explains it?

- ❖ Domingo, Pilar. 2010. Novel Approaches and the Law in Pursuit of Political and Social Change in Latin America. In *Cultures of legality: judicialization and political activism in Latin America*, edited by Javier Couso, Alexandra Huneeus, and Rachel Sieder. Cambridge: Cambridge University Press. 254-278.

- ❖ Domingo, Pilar, "Judicialization of Politics or Politicization of the Judiciary? Recent Trends in Latin America," in *Democratization* 11: 1 (February 2004): 104-126.

Suggested readings:

- ❖ Couso, Javier, "The Judicialization of Chilean Politics: The Revolution that Never Was." In Sieder, Rachel, Line Schjolden, and Alan Angell (eds.). *The Judicialization of Politics in Latin America*. 105-123

ESSAY DUE! (on MyCourses, by Noon)

Thursday, January 30st

Gender and the Rule of Law

- ❖ Htun, Mala. 2003. Sex and the State in Latin America and Conclusion. In *Sex and the State. Abortion, Divorce, and the Family Under Latin American Dictatorships and Democracies* by Mala Htun. Cambridge University Press. 1-28, 172-182.

Suggested readings:

- ❖ Baldez, Lisa. 2011. The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A New Way to Measure Women's Interests. *Politics and Gender* 7(3). 419-423.

WEEK 5

Tuesday, February 4th

Crime and Insecurity

- ❖ Lederman, Daniel, Pablo Fajnzylber, and Norman Loayza. 2002. Inequality and Violent Crime. *Journal of Law and Economics* 45 (1). 1-39.
- ❖ Gaviria, A. & Pagés, C. 2002. "Patterns of Crime Victimization in Latin American Cities." *Journal of Development Economics*. 67, 181-203.

Suggested readings:

- ❖ Bowden, Charles. 2010. *Murder City: Ciudad Juarez and the Global Economy's New Killing Fields*: Nation Books. (Two chapters: Murder Artist and one on police/army involvement).

Thursday, February 6th

Punishment and Prison Conditions

- ❖ Ungar, Mark. 2003. "Prisons and Politics in Contemporary Latin America." *Human Rights Quarterly*, Vol. 25, No. 4 (Nov., 2003), pp. 909-934
- ❖ One more article to be assigned.

➤ **Watch Movie on your own time:** Bus 174

Questions for Essay: What, in your view, are the key causes of the failure of the rule of law? Does Bus 174 help you think about that? Where is inequality? Is there something else going on? Where is the state? How strong is the state? What about culture and institutional design?

WEEK 6

Tuesday, February 11th

Corruption

- ❖ Morris, Stephen and Charles Blake. 2010. "Corruption and Politics in Latin America." 1-28.
- ❖ Power, Timothy and Matthew Taylor. "Accountability Institutions and Political Corruption in Brazil." 1-28.

ESSAY DUE! (on WebCT, by Noon)

Thursday. February 13th

Violence and Narcos in Colombia

- ❖ Aviles, William. 2006. Paramilitarism and Colombia's Low-Intensity Democracy. *Journal of Latin American Studies*. 38. 379-408.
- ❖ Eaton, Kent. 2006. The Downside of Decentralization: Armed Clientelism in Colombia. *Security Studies*. 15:4. 533-562.

Suggested readings:

- ❖ Bilal Y. Saab and Alexandra W. Taylor. 2009. "Criminality and Armed Groups: A Comparative Study of FARC and Paramilitary Groups in Colombia," *Studies in Conflict & Terrorism*, 32 (2009), 455 — 475.
- ❖ Gutiérrez Sanín, F. 2004. Criminal rebels? A discussion of civil war and criminality from the Colombian experience. *Politics & Society* 32(2): 257-285.

WEEK 7

Tuesday. February 18th

Transitions to Democracy and Memories of State Repression

- ❖ Acuña, Carlos and Catalina Smulovitz. 1996. Adjusting the Armed Forces to Democracy. Successes, Failures and Ambiguities of the Southern Cone Experiences. In *Constructing Democracy. Human Rights, Citizenship and Society in Latin America* edited by Elizabeth Jelin and Eric Hershberg. Boulder, Colorado: Westview Press. 13-38.
- ❖ Jelin, Elizabeth. 2007. Public Memorialization in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America. *The International Journal of Transitional Justice*. Vol. 1. 138-156.

Thursday. February 20th

Transitional Justice: The Justice Cascade and Truth Commissions

- ❖ Lutz, Ellen and Kathryn Sikkink. 2001. The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law* Vol. 2, No. 1. 1-33.
- ❖ Grandin, Greg. 2005. The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala. *The American Historical Review*, Vol. 110, No. 1. 46-67.

Suggested readings:

- ❖ Mayorga, René Antonio. 1997. Democracy Dignified and an End to Impunity: Bolivia's Military Dictatorship on Trial. In *Transitional Justice and the Rule of Law in New Democracies*, edited by A. James McAdams. University of Notre Dame Press. 61-92.

WEEK 8

Tuesday. February 25th

The Children of the Disappeared

- ❖ Oren, Laura. 2001. Righting Child Custody Wrongs: The Children of the "Disappeared" in Argentina. *The Harvard Human Rights Journal* 14. 123-195.
- ❖ Arditti, Rita. 1999. *Searching for life: the grandmothers of the Plaza de Mayo and the disappeared children of Argentina*. University of California Press. (Excerpts).

Thursday, February 26th

- **Clip in Class: To be Assigned**
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WEEK 9

STUDY BREAK!

No Class.

WEEK 10

Tuesday, March 11th

Judicial independence and Autonomy: empowering the courts

- ❖ Brinks, Daniel. 2005. "Judicial reform and independence in Brazil and Argentina: The beginning of a new millennium?" *Texas International Law Journal* 40: 595-622. (28p)
- ❖ Santiso, Carlos. 2003. "Economic Reform and Judicial Governance in Brazil: Balancing Independence with Accountability." *Democratization*, 10(4) (Winter): 161-180. (19p)

Suggested readings:

- ❖ Domingo, Pilar. 2000. "Judicial independence: The politics of the Supreme Court in Mexico." *Journal of Latin American Studies* 32 (3): 705-35. (30p)

Thursday, March 13th

NO CLASS, ATTEND CONFERENCE ON TRUTH COMMISSIONS ORGANIZED BY ISID. More info later.

WEEK 11

Tuesday, March 18th

Informal Institutions

- ❖ Helmke, Gretchen and Steven Levitsky. 2006. *Informal institutions and Democracy*. Intro. 1-30.
- ❖ Brinks, Daniel. 2003. "Informal Institutions and the Rule of Law." *Comparative Politics*.

Thursday, March 20st

Reforming Criminal Procedures

- ❖ Langer, Maximo. 2007. Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery. *The American Journal of Comparative Law* 55 (4). 617-676.

- **Watch Movie on your own time: *Presunto Culpable***

Questions for Essay: Do you think the new effectiveness of courts we have seen so far is the result of cultural, institutional, or political changes? And, do you think the institutional changes will be enough to change legal reality for all social groups, some social groups, no social groups? What does "Presunto Culpable" suggest about which reforms are needed and what are the limits of legal reform, if any?

WEEK 12

Tuesday, March 25th

Who is using the new courts?

- ❖ Smulovitz, Catalina. 2010. Judicialization in Argentina: legal Cultures or Opportunities and Support Structures? In *Cultures of legality: judicialization and political activism in Latin America*, edited by Javier Couso, Alexandra Huneeus, and Rachel Sieder. Cambridge: Cambridge University Press. 234-253.

ESSAY DUE! (on MyCourses, by Noon)

Thursday, March 27th

Who is using the new courts II?

- ❖ Stavenhagen, Rodolfo. 2002. Indigenous Peoples and the State in Latin America: an Ongoing Debate. In Sieder, Rachel, ed. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*: Palgrave Macmillan. 24-44
- ❖ Skjaevestad, Anne. 2010. The Mapuche People's Battle for Indigenous Land: Litigation as a Strategy to Defend Indigenous Land Rights. In Couso, Javier, Alexandra Huneeus, and Rachel Sieder, eds. *Cultures of legality: judicialization and political activism in Latin America*. Cambridge: Cambridge University Press.

WEEK 13

Tuesday, April 1st

Ethnic Politics

- ❖ Madrid, Raúl. 2012. The Rise of Ethnic Politics in Latin America. Chapter 1. 1-34.

Suggested readings:

- ❖ Madrid, Raúl. 2012. The Rise of Ethnic Politics in Latin America. Chapters 5 and 6. 146-184.

Thursday, April 3rd

Race and Justice

- ❖ Fischer. 2004. "Quase Pretos de Tão Pobres? Race and Social Discrimination in Rio's Criminal Courts." *Latin American Research Review*. Vol 39. No. 1.

Suggested readings:

- ❖ Fry, Peter. 1999. "Color and the Rule of Law in Brazil" In *The (Un)Rule of Law and the Underprivileged in Latin America*, ed. J. E. Méndez. Notre Dame, IN: University of Notre Dame Press.
- ❖ Htun, Mala. 2004. "From Racial Democracy to Affirmative Action: Changing State Policy on Race in Brazil." *Latin American Research Review*. Vol 39. No. 1.

➤ **Watch movie on your own time:** *Crude*

Questions for Essay: What are the crucial factors that affect the chances of success for indigenous groups seeking to secure their rights through law and courts? If you were advising an indigenous group in Guatemala, what would be your advice? How does *Crude* confirm/contradict what we read in the articles?

WEEK 14
Conclusions

Tuesday. April 8th

Consequences and Conclusions

❖ Readings to be defined

ESSAY DUE! (on MyCourses, by Noon)

Thursday. April 10th

Revision session for Final Exam