POLS 385: Comparative Constitutional Law and Politics in Latin America

Emory University
Spring 2017

Meeting room: Tarbutton 105
Meeting times: Tuesday, Thursday and Friday, 9:00am–9:50am

Instructor: Jeffrey K. Staton
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Office hours: TBA (after consultation with students) and by appointment

Course Description

The goals of this course is to introduce students to key concerns in the study of constituitonalism and to connect those concerns to broader questions of democratic quality and stability. The course introduces students to the goals of constitutionalism and the challenges presented to those goals by the political nature of institutional design, constitutional interpretation, and policy implementation. We consider the role that constitutional courts and supreme courts play in shaping the meaning of the constitution, and we ask how underlying political processes in states influence constitutional interpretation and by implication constitutionalism itself. The course blends historical and legal theoretical accounts with positive political theory and modern empirical techniques.

Grading

Your final grade is a weighted average of the following components:

Participation/Homework (15%) I expect you to be present. I expect you to be prepared. Preparation means that you have read the assignment before class and that you are ready to discuss it. In the event that you do not understand all that you have read, you need to be prepared to ask questions. For selected classes, there will be homework assignments that will help prepare you to discuss the subject. I will release these assignments in advance of class. You are required to complete the assignment prior to the start of the class on the day it is assigned.

Exams (each worth 25%) You will take a midterm exam and a final on the subjects we cover in class.

Research paper (25%) You will write a 15–20 page research paper on a question concerning comparative law and politics. Each paper must contain the following elements: 1) a research question, 2) an argument that answers your question, 3) an empirical test of some implication of your argument, 4) a conclusion. We will discuss the research paper in detail early in class. You are encouraged to show me an outline of the paper idea. You are also encouraged to turn in a rough draft.
Research presentation (10%) You will give a 15 minute research presentation to the class, in which you will summarize your question, argument, data and findings.

Readings
The readings for this class are all available via the library for free.

Incomplete Grades
No incomplete grades will be given unless there is an agreement between the instructor and the student prior to the end of the course. The instructor retains the right to determine legitimate reasons for an incomplete grade.

Integrity of Scholarship
I will follow the guidelines established by Emory College, which can be found at http://www.college.emory.edu/current/standards/honor_code.html. In short, dont cheat. The benefits are small. Even if the probability of getting caught is tiny, the costs of getting caught are huge.

Students with Disabilities
Students requiring any type of academic accommodation should consult with the Office of Disability Services (http://www.ods.emory.edu/ or 404-727-6016) and discuss the issue with the instructor within the first week of class.

Final Course Grades
Final course letter grades will reflect the Department of Political Sciences grading standard, detailed below. Clearly, it is impossible for each assessment to reflect the standard exactly. Instead, the assessments, taken as a whole, are designed to produce a final grade that reflects the departments standards.

A Exceptional Performance Consistently outstanding work on all course-related tasks at a level that distinguishes the student from other members of the class. A comprehensive and incisive command of the issues, literature, and substantive information relevant to the course. A frequently demonstrated exceptional capacity for original, creative, critical and logical thinking. The ability to master and integrate large amounts of factual material and abstract theories. An outstanding ability to discuss effectively course subject matter using both written and oral communication skills.

A- Excellent Performance Consistently strong work on all course-related tasks. A comprehensive command of the issues, literature, and substantive information relevant to the course. A clearly demonstrated capacity for original, creative, critical and logical thinking. Understands well and can integrate the relevant factual and theoretical material central to the course. A strong ability to discuss effectively course subject matter using both written and oral communication skills.
**B+ Very Good Performance**  Consistently above average work on all course-related tasks. A very good grasp of the issues, literature, and substantive information relevant to the course. A generally demonstrated capacity for original, creative, critical, and logical thinking. A very good command of factual and theoretical material, and some capacity to integrate the two. A solid ability to discuss effectively course subject matter using both written and oral communication skills.

**B Good Performance**  Good and generally consistent work on all course-related tasks. A general understanding of the issues, literature, and substantive information relevant to the course. Modest evidence of the capacity for original, creative, critical and logical thinking. A good understanding of factual and theoretical material, but limited evidence of the capacity to integrate the two. A basic ability to discuss effectively course subject matter using both written and oral communication skills.

**B- Satisfactory Performance**  Satisfactory work on course-related tasks. A reasonable understanding of the issues, literature, and substantive information relevant to the course. An infrequently demonstrated capacity for original, creative, critical and logical thinking. Understands at a basic level the facts and theories related to the course, but demonstrates weak integration skills. A limited or inconsistent ability to discuss effectively course subject matter using both written and oral communication skills.

**C+/C/C- Adequate Performance**  Adequate performance on course-related tasks. An understanding of the basic elements of the issues, literature, and substantive information relevant to the course. A rarely demonstrated capacity for original, creative, critical and logical thinking (C+). An inability to go beyond a recitation of basic factual material related to the class (C). Demonstrated weaknesses in the ability to discuss effectively course subject matter using both written and oral communication skills (C-).

**D/D+ Minimal Passing Performance**  Barely acceptable work on course-related tasks. A generally superficial and often inconsistent familiarity with the issues, literature, and substantive information relevant to the course. A failure to demonstrate the capacity for original, creative, critical and logical thinking related to course content (D+). An uneven understanding of basic factual material related to the course; no evidence of fact/theory integration. Demonstrates significant gaps in the ability to discuss effectively course subject matter using both written and oral communication skills (D).

**F Unacceptable Performance**  Fails to meet minimum course expectations. Unable to understand even the most basic elements of the issues, literature, and substantive information relevant to the course. Demonstrates an inability to engage in coherent written or oral discussion of course material. Does not satisfy specific course expectations with respect to attendance, deadlines, participation, etc.

**Integrity of Scholarship**
The honor code is in effect throughout the semester. By taking this course, you affirm that it is a violation of the code to cheat on exams, to plagiarize, to deviate from the teachers instructions
about collaboration on work that is submitted for grades, to give false information to a faculty member, and to undertake any other form of academic misconduct. You agree that the teacher is entitled to move you to another seat during examinations, without explanation. You also affirm that if you witness others violating the code you have a duty to report them to the honor council. http://catalog.college.emory.edu/academic/policies-regulations/honor-code.html

Access, Disability Services and Resources

Emory University is committed under the Americans with Disabilities Act and its Amendments and Section 504 of the Rehabilitation Act to providing appropriate accommodations to individuals with documented disabilities. If you have a disability-related need for reasonable academic adjustments in this course, provide the instructor(s) with an accommodation notification letter from Access, Disabilities Services and Resources office. Students are expected to give two weeks’ notice of the need for accommodations. If you need immediate accommodations or physical access, please arrange to meet with instructor(s) as soon as your accommodations have been finalized.

Class schedule

January 10: Class Introduction  What are the goals of our course? What are your responsibilities? What are mine? What will we learn about about?

January 12 and 13: No class

January 17: The Law and the Rule of Law?  What is law? What does it mean to say that a country is characterized by the rule of law?

Readings:


Notes: In Pound, only read “II The End of Law.”

January 19 and January 24: Measuring the (un)rule of law  In what sense have the states of Latin America been characterized by the rule of law? How would we know? Readings:


January 20: No class
January 26: The (Un)rule of Law in Action

Readings:


Notes: Watch Presunto Culpable

January 27: Constitutions

What is a constitution? What are the goals of constitutions? In so far as constitutional rules are supposed to bind individuals that control coercive sources of state authority, under what conditions do we expect rules to bind?


January 31: Research Paper Discussion

February 2 and 3: No class

February 7: Historical Successes and Failures?

Rosenn argues that the U.S. Constitution has largely been a success while Latin American constitutions have consistently failed. What does he mean and do you find his explanation persuasive? Do you worry about the robustness of the U.S. Constitution to changing political, economic and social conditions in the United States? Can the U.S. learn from the Latin American experience? If so, how?

Readings:


February 9: Modern Latin American Constitutions

What if anything has changed since the Rosenn article was published? Do the rights provisions of modern Latin American constitutions change Rosenn’s core argument?

Readings:


February 10: Drafting Constitutions  Thinking about constitutions as coordinating devices, under what conditions should we expect constitutional terms to be clear? When should they be vague? When should they rely on unwritten understandings and when should they clearly articulate their meaning?


February 14: Authoritarian Constitutions  If we typically envision constitutions as constraining devices, why do authoritarian leaders draft constitutions? Are they “sham” documents? If not, for what purpose are they designed? Readings:


Pages to be determined later.

February 16: Legal Traditions  There is considerable variation across states in their legal traditions. What are these traditions? In what ways do they matter for the questions that animate political science?

Readings:


Pages to be determined later.

February 17: Judicial Power  What powers of constitutional review do the courts of Latin America possess? Readings:


February 21: Expanding Judicial Power  Why would a powerful political coalition expand the powers of the judiciary?

Readings:


February 23: General Questions of Constitutional Interpretation: The Scalia - Breyer Debate
Video: The Scalia and Breyer Debate
https://www.youtube.com/watch?v=_4n8g0UzZ8I

February 24: Latin American Innovations: The link between international and domestic law in Costa Rica
How should international human rights commitments be understood in light of domestic constitutional commitments? How might domestic commitments be influenced by international commitments?
Readings: Medellín v. Texas, 552 U.S. 491 (2008); I will send you an excerpt of the opinion.

February 28: Latin American Innovations: Constitutional Law for a violent society
Colombia experienced a long and traumatic period of civil conflict. At the same time it developed a constitutional jurisprudence that has come to be understood as transformative. How has that been possible?
Readings: León, Juanita, Country of Bullets: Chronicles of War, selected readings
Readings:

March 2: Review
March 3: Exam
March 7, 9 and 10: SPRING BREAK
March 14: Paper Workshop
March 16: Paper Workshop
March 17: The Tradeoff between Judicial Independence and Judicial Accountability
What does judicial independence mean? Do we want fully independent courts? If so, why? If not, why not? Readings:


XXX New Schedule Follows XXX

March 24: Measuring Judicial Independence
How can judicial independence be measured? What are the core challenges of its measurement? How can these challenges be overcome? Readings:


March 28: The link between de jure and de facto independence
What institutions do we believe enhance judicial independence? What do empirical tests of their effectiveness tell us? What do these results tell us about institutional design for judicial independence? Readings:


March 30: Political Competition, Political Fragmentation and Deference
What are the political determinants of judicial independence? What do these findings suggest about our ability to build independent courts? More generally, how do political pressures influence judicial decision making? Readings:


March 31: Judges and the Public
How do judges use the media to influence their power? Readings:

**April 4: Judicial Appointments**  Political actors control judicial appointments. Let’s consider how that simple fact influences judicial independence. Readings:


**April 6: Judicial Councils**  What are judicial councils? Why should they influence judicial independence? Do they? Readings:


**April 7: Judicial Career**  Judges are workers after all. How do career incentives influence judicial behavior? Readings:


**April 11: Law and Social Change**  How have judges influenced social change in Latin America? Readings:


**April 13: Compliance**  To meaningfully affect public policy outcomes we can assume that judicial decisions should be enforced in practice. Under what conditions is that possible? Readings:


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**April 18: Research Presentations**
April 20: Research Presentations

April 21: Research Presentations

April 27: Exam (3:00 p.m. - 5:00 p.m.)