

Course Syllabus
Law, State & Society in Latin American History

Practical Information

Academic Unit: Facultad de Derecho, Departamento de Ciencias del Derecho, Universidad de Chile

Professor: Marianne González Le Saux (Ph.D. in History, Columbia University, Licenciada en Ciencias Jurídicas y Sociales, Universidad de Chile).

Term: March to July, 2021 (depending on official academic calendar)

Hours: Monday 15:50-16:50; Wednesdays 12:30-13:30 (flexibility to change time)

Credits: 4 credits (20 hours of lecture + 20 hours of preparation for each lecture)

Course Description

This course introduces students to the main processes that have shaped Latin American states and legal systems from the colonial period to the 1990s. It will provide a general survey of the main developments of the history of Latin America in relation to the process of state building and the formation of Latin American legal culture.

The course adopts a social and cultural approach to the study of legal history. This means that legal institutions will be understood in their relationship to social structures and cultural constructs. Particular emphasis will be given to the agency of subaltern groups (such as indigenous people, slaves, women, peasants and workers) in their interaction with the state and the legal system. We will discuss the role of the law in creating colonial hierarchies and domination, but also its use as a mechanism to resist colonial hegemony. We will also analyze to what extent the transition to republican states maintained or transformed social hierarchies through legal devices such as constitutions and civil codes. The course asks to what extent the social movements of the twentieth century—such as workers, peasants and women—introduced changes into the state structure and its legal systems. Finally, we will evaluate what was the role of the law in the civil wars and dictatorial regimes of the 1970s onwards, and how people mobilized through the law in response to state violence.

The course adopts a broad regional perspective, with specific cases studies according to the topics from Argentina, Brazil, Chile, Cuba, Colombia, Mexico and Peru.

Contents

To begin, the course will analyze how between the fifteenth and eighteenth centuries Iberian colonial powers were torn between promoting state centralization and allowing legal pluralism, and how colonial power structures relied on legal mechanisms of both repression and protection of subaltern groups as the means to maintain their hegemony.

The transition to independent nation states in the nineteenth century relied on a mixture of backward-looking and forward-looking arguments, and we will discuss how these tensions gave rise to competing constitutional projects. Latin American modern states emerged from the conflicts and negotiations between these alternative political and juridical projects (federal vs. unitary states, liberals vs. conservatives).

- Gargarella, R. (2013). *Latin American Constitutionalism, 1810-2010 The Engine Room of the Constitution*. Oxford University Press, Chap. 1 & 2, 1-44.

10) Reckoning with Slavery: The Dilemmas of Abolition and Post-Emancipation

- Scott, R. J. (1994). Defining the Boundaries of Freedom in the World of Cane: Cuba, Brazil, and Louisiana after Emancipation. *The American Historical Review*, 99(1), 70–102.
<https://doi.org/10.2307/2166163>

11) Codifying Society: Civil Codes, Family and Property

- Milanich, N. B. (2009). *Children of Fate: Childhood, Class, and the State in Chile, 1850-1930*. Duke University Press, Introduction and Chapter 4, pp. 8-27 and 128-156.

Third Part – Towards the Social State? (20th century)

12) The “Social Question”: Revolution, Reform or Denial

- Knight, A. (1990). Social Revolution: A Latin American Perspective. *Bulletin of Latin American Research*, 9(2), 175–202. <https://doi.org/10.2307/3338469>

13) The Birth of Labor Law and Latin American Welfare States

- French, J. D. (2004). *Drowning in Laws: Labor Law and Brazilian Political Culture*. University of North Carolina Press, Introduction and Chap. 1, 1-23.

14) The Feminist Movement and the Struggle for Women’s Rights

- Lavrín, A. (1995). *Women, Feminism, and Social Change in Argentina, Chile, and Uruguay, 1890-1940*. University of Nebraska Press, Chap. 1 & 2 (selection).

15) Agrarian Reforms and Property Law

- Kay, C. (1978). Agrarian Reform and the Class Struggle in Chile. *Latin American Perspectives*, 5(3), 117–142. <https://doi.org/10.1177/0094582X7800500307>
- Soliz, C. (2017). “Land to the Original Owners”: Rethinking the Indigenous Politics of the Bolivian Agrarian Reform. *Hispanic American Historical Review*, 97(2), 259–296.
<https://doi.org/10.1215/00182168-3824065>

Fifth Part – The Neoliberal Counterrevolution (1970s- 1990s)

16) Laws of Exception: Dictatorship and Civil War

- Pereira, A. W. (2005). *Political (Un)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina*. University of Pittsburgh Press, Chap 1 and Chap 9 (1-15 and 159-173).

17) Transitioning to Democracy: Human Rights and Investors’ Rights

- Kelly, P. (2015). “Magic Words: The Advent of Transnational Human Rights Activism in Latin America’s Southern Cone in the Long 1970s.” In J. Eckel & S. Moyn (Eds.), *The Breakthrough Human Rights in the 1970s*. University of Pennsylvania Press, 1-38.

<h3>Competences and Skills</h3>

1. The students synthesize and organize historiographical arguments, and use them to support their own analysis.
2. The students analyze legal texts and interpret their goals and implications according to their historical context.

CERTIFICO que el presente programa estuvo vigente en el Departamento de Ciencias del Derecho de la Facultad de Derecho de la Universidad de Chile, en el primer semestre año 2021.


Carlos Ruiz Schneider
Director
Departamento de Ciencias del Derecho



Santiago, 11 de noviembre de 2024