

**“FROM HAIR STYLES TO ABORTION AND DIVORCE”: THE
ROLE OF CONSTITUTIONAL LITIGATION IN LATIN AMERICA.**

Responsible Faculty Instructor:

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Assistant Professor JGLS

Credits: 4

Credits Type:

Cross-registration:

Pre-requisites:

COURSE DESCRIPTION (COURSE VISION):

This course explores the theory and practice of constitutional litigation across Latin America. Focusing on key legal mechanisms such as *amparo*, *tutela*, and other constitutional remedies, students will examine how courts enforce constitutional rights and shape public policy, having an impact on issues that range from the students' right to pick their own hairstyle to the decriminalization of abortion. The course provides a comparative law perspective, highlighting regional variations and landmark decisions from the courts of Mexico, Colombia, Brazil, and Argentina. By the end of the course, students will be equipped to critically assess the impact of constitutional litigation on climate change disputes, reproductive rights, justice, and human rights across Latin America. The students will be able to assess the effectiveness and limitations of strategic constitutional litigation as a tool for advancing human rights and social justice from a global perspective, and apply doctrinal, theoretical, and comparative approaches to craft legal arguments and critique decisions in constitutional cases.

TEACHING METHODOLOGY:

INTENDED LEARNING OUTCOMES:

1. Explain the historical development, theoretical foundations, and procedural aspects of constitutional litigation in Latin America, with particular emphasis on *amparo*, *tutela*, and related remedies.
2. Assess the role of constitutional courts in shaping public debate and policy, including their influence on sensitive social issues such as abortion, freedom of expression, and minority rights.
3. Analyze landmark decisions from regional constitutional courts and assess their influence on public policy and protection of fundamental rights (e.g., reproductive rights, climate change, education, equality).

4. Compare and contrast constitutional litigation mechanisms across Mexico, Colombia, Brazil, and Argentina, identifying key similarities, differences, and innovations.
5. Evaluate the effectiveness and limitations of strategic constitutional litigation as a tool for advancing human rights, social justice, and systemic reform in Latin America.
6. Critique constitutional court decisions by engaging with their reasoning, social impact, and broader implications for democratic governance and separation of powers.
7. Engage critically with global perspectives on constitutional litigation, situating Latin American developments within broader transnational human rights discourse.

READING LIST (up to 10 select readings):

1. Oquendo, A. R. (2009). Upping the ante: collective litigation in Latin America. *Columbia Journal of Transnational Law*, 47(2), 248-291.
2. Brinks, D. M., & Forbath, William. (2011). Social and economic rights in Latin America: constitutional courts and the prospects for pro-poor interventions. *Texas Law Review*, 89(7), 1943-1956.
3. Délton Winter de Carvalho, Rafaela Santos Martins da Rosa, Climate Constitutionalism as a Foundation for Climate Litigation in Latin America, *Journal of Human Rights Practice*, Volume 16, Issue 1, February 2024, Pages 71–88.
4. Cabal, L., Roa, M., & Sepúlveda-Oliva, L. (2003). What Role Can International Litigation Play in Promoting and Advancement of Reproductive Rights in Latin America? *Health and Human Rights*, 7(1), 50–88.
5. Gargarella, R. (2018). Constitutional Changes and Judicial Power in Latin America. In T. G. Falleti & E. A. Parrado (Eds.), *Latin America Since the Left Turn* (pp. 189–213). University of Pennsylvania Press.
6. Auz, Juan, Human Rights-Based Climate Litigation: A Latin American Cartography (February 17, 2022). *Journal of Human Rights and the Environment*, Volume 13: Issue 1.
7. Using International Litigation to Promote Reproductive Rights in Latin America. (2004). *Reproductive Health Matters*, 12(24), 210–211.
8. Brinks, D. M., & Forbath, W. (2013). The Role of Courts and Constitutions in the New Politics of Welfare in Latin America.
9. Navia, P., & Ríos-Figueroa, J. (2005). The Constitutional Adjudication Mosaic of Latin America. *Comparative Political Studies*, 38(2), 189-217.
10. Rodríguez-Garavito, Cesar. (2011). Beyond the courtroom: the impact of judicial activism on socioeconomic rights in Latin America. *Texas Law Review*, 89(7), 1669-1698.

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
MODULE 1: INTRODUCTION TO THE LATIN AMERICAN LEGAL LANDSCAPE <ul style="list-style-type: none"> During this module the students will explore the key aspect of the Latin America legal context, with a specific emphasis in the role that precedent plays nowadays in civil law countries. 	1-2
MODULE 2: INTRODUCTION TO CONSTITUTIONAL LITIGATION <ul style="list-style-type: none"> This module will answer the question of what constitutional litigation is and its relevance for the advancement of civil, social, and human rights. 	2-3
MODULE 3: CONSTITUTIONAL REMEDIES <ul style="list-style-type: none"> This module will consist of a detailed study of the constitutional remedies such as <i>Amparo</i> and <i>Tutela</i> and the scope of their application. It will also address the relevance of their procedure to their effectiveness. 	4-5
MODULE 4: CONSTITUTIONAL COURTS AND SOCIAL RIGHTS <ul style="list-style-type: none"> This module will explore the role of constitutional litigation in healthcare, housing, and education. 	6-7
MODULE 4: REPRODUCTIVE AND SEXUAL RIGHTS <ul style="list-style-type: none"> Through the study of relevant precedents from the courts of Mexico, Colombia, and Argentina this module will explore the role of constitutional litigation in the protection sexual and reproductive rights. 	7-9
MODULE 5: FREEDOM OF EXPRESSION AND RELIGION <ul style="list-style-type: none"> This module will study how constitutional litigation has been a key scenario for the protection of freedom of expression. It will also explore the clash between the protection of freedom of expression and religious rights. 	10 - 11
MODULE 6: CLIMATE CHANGE AND ENVIRONMENTAL PROTECTION	12 - 13

<ul style="list-style-type: none">• This module will explore the current role of constitutional litigation in the protection of the environment and the fight against climate change.	
REVISION WEEK	Week 14