

POLITICS, DEMOCRACY, AND CONSTITUTIONALISM
- global approaches at a hard time -

ECE (M) – ECE (D) – 2021/2
Profª Drª Eneida Desiree Salgado
Prof. Dr. Emerson Gabardo
3 credits / 45 hours

This course provides an analysis of the main problems of our constitutional democracy through the participation of scholars from different parts of the world and diverse research fields. The objective is to combine categories, theoretical insights, and political diagnoses to sharpen possible reforms to our institutional design. The course has two aims: to foster an appreciation of our democratic challenges from multiple points of view and to provoke critical responses to our normative and political problems.

We will have ten work weeks. The first and the last weeks will not require previous readings. For each of the eight other weeks, the students will have to read a paper discussing the participating scholar's approach to the assigned topic. The classes will be conducted online via Zoom, on Thursdays, usually at 6.30 pm (Brazilian time). The grade will be based on the discussion and engagement every week (50%) and a paper (between 8,000 and 10,000 words) on two or more themes of the course (50%). The student can write it alone or with a colleague and must send the text (in English or Portuguese) in pdf to desiree@ufpr.br by December 19, 2021.

Course schedule:

- September 2, 6.30 pm. Presentation of the main themes and rules, assessments, and readings. Academic Hosts: Prof. Eneida Desiree Salgado and Prof. Emerson Gabardo.
- September 16, 6.30 pm. Visiting Speaker: **Mila Versteeg**. *Small-c Constitutional Rights*. [Mandatory reading: Chilton, Adam and Versteeg, Mila, Small-c Constitutional Rights (July 30, 2019). Virginia Public Law and Legal Theory Research Paper No. 2019-67, University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 894].
- September 23, 6.30 pm. Visiting Speaker: **Rosalind Dixon**. *Responsive Judicial Review*. [Mandatory reading: book fragment].
- September 30, 6.30 pm. Visiting Speaker: **Michele Goodwin**. *Constitutional Exceptionalism*. [Mandatory reading: Goodwin, Michele and Whelan, Allison, Constitutional Exceptionalism (September 29, 2016). 2016 U. Ill. L. Rev. 1287 (2016), UC Irvine School of Law Research Paper No. 2016-50].
- October 7, 6 pm*. Visiting Speaker: **Tarun Khaitan**. *Political Parties in Constitutional Theory*. [Mandatory reading: Khaitan, Tarunabh, Political Parties in Constitutional Theory (November 24, 2019). Current Legal Problems (2020)].
- October 14, 6.30 pm. Visiting Speaker: **Russell Dalton**. *Political Action, Protest, and the Functioning of Democratic Governance*. [Mandatory reading: Dalton, Russell J. "Political Action, Protest, and the Functioning of Democratic Governance." American Behavioral Scientist, (June 2021)].
- October 21, 6.30 pm. Visiting Speaker: **Tom Daly**. *Political Parties against Democracy*. [Mandatory reading: Daly, Tom and Jones, Brian Christopher, Parties versus Democracy: Addressing Today's Political-Party threats to Democratic Rule (April 11, 2019)].

- October 28, 6.30 pm. Visiting Speaker: **Tom Ginsburg**. *The Comparative Constitutional Law of Presidential Impeachment*. [Mandatory reading: Aziz Z. Huq, Tom Ginsburg & David E. Landau, "The Comparative Constitutional Law of Presidential Impeachment," 88 *University of Chicago Law Review* 81 (2021)].
- November 4, 6.30 pm. Visiting Speaker: **Yasmin Dawood**. *Electoral Fairness and the law of democracy: a structural rights approach to judicial review*. [Mandatory reading: Dawood, Yasmin, *Electoral Fairness and the Law of Democracy: A Structural Rights Approach to Judicial Review* (October 15, 2012). 62 *University of Toronto Law Journal* 499-561 (2012)].
- November 11, 6.30 pm. Discussion about the research proposals and debate on the course themes. Academic Hosts: Prof. Eneida Desiree Salgado and Prof. Emerson Gabardo.

Supplemental texts:

DALTON, Russell. Political Equality as the Foundation of Democracy. In. Russell Dalton, *The Participation Gap: Social Status and Political Inequality*. (Oxford: Oxford University Press, 2017).

DALY, Tom. Understanding Multi-Directional Democratic Decay: Lessons from the Rise of Bolsonaro in Brazil. Vol. 14, *Law and Ethics on Human Rights*, 'Democratic Backsliding and Human Rights' (2020).

DIXON, Rosalind; GINSBURG, Tom. The forms and limits of constitutions as political insurance. *International Journal of Constitutional Law*, Volume 15, Issue 4, October 2017, Pages 988–1012.

GABARDO, Emerson; SALGADO, Eneida Desiree; VIANA, Ana Cristina Aguilár . The Brazilian Anti-corruption Law: a new way to control the relationship between public administration and the private sector. *The Indonesian Journal of International & Comparative Law*, v. VI, p. 397-421, 2019.

ISSACHAROFF, Samuel. Democracy's Deficits. New York University, School of Law - Public Law & Legal Theory Research Paper Series. *Working Paper nº 17-34*, September 2017.

ISSACHAROFF, Samuel. The Corruption of Popular Sovereignty (March 6, 2020). *ICON*, NYU School of Law, Public Law Research Paper No. 20-02, NYU Law and Economics Research Paper No. 20-02.

MACKINNON, Catharine A. *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press, 1989. Capítulo 8: The Liberal State, p. 157-170.

MEYER, Emilio Peluso Neder. Judges and courts destabilizing constitutionalism: The Brazilian Judiciary Branch's Political and Authoritarian Character. *German Law Journal*, v. 19, n. 4, 2018.

O'DONOGHUE, Aoife; HOUGHTON, Ruth. Can Global Constitutionalisation be Feminist?. In Sarah Harris Rimmer and Kate Ogg (eds). *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019).

OKLOPCIC, Zoran. *Beyond the people*. Oxford University Press, 2018. Chapter 4.

PAL, Michael. Electoral Management Bodies as a Fourth Branch of Government (2016) 21:1 *Review of Constitutional Studies* 87.

PERSILY, Nathaniel. The 2016 U. S. Election: Can democracy survive the internet? *Journal of Democracy*, Volume 28, Number 2, April 2017, pp. 63-76.

SALGADO, Eneida Desiree. A series of unfortunate events or some kind of karma? 2018 Election and Brazil's persistent conservative alignment. *Workpaper*. UC Irvine: Center for the Study of Democracy, v. 2021, p. 1-22, 2021.

SALGADO, Eneida Desiree. Brazilian Legislators at Work: Constitutional Amendments as Electoral Strategy. *Election Law Journal: Rules, Politics, and Policy*, v. 16, p. 325-333, 2017.

SALGADO, Eneida Desiree. Essay on the constitutional promises of democracy and republic. *Revista de Investigações Constitucionais*, v. 4, p. 85, 2017.

SALGADO, Eneida Desiree. Intra-party democracy index: a measure model from Brazil. *Revista de Investigações Constitucionais*, v. 7, p. 107-136, 2020.

SCOTTI, Valentina Rita. Constitutional amendments and constitutional core values: the Brazilian case in a comparative perspective. *Revista de Investigações Constitucionais*, Curitiba, vol. 5, n. 3, p. 59-76, set./dez. 2018.

Visiting Speakers:

- **Michele Goodwin** is a Chancellor's Professor at the University of California, Irvine (USA) and Founding Director of the Center for Biotechnology and Global Health Policy. She is the recipient of the 2020-21 Distinguished Senior Faculty Award for Research, the highest honor bestowed by the University of California. She is also the first law professor at the University of California, Irvine to receive this award. She has won national awards for excellence in scholarship, outstanding teaching, and committed community service. Gov. Paul Patton of Kentucky commissioned her a Colonel, the state's highest title of honor for her outstanding contributions to K-12 education. In 2019 she received the Be The Change Award. In 2018 she was bestowed the Sandra Day O'Connor Legacy Award by the Women's Journey Foundation. That same year, Professor Goodwin was named Teacher of the Year by the Thurgood Marshall Bar Association and received a commendation from the United States House of Representatives for Outstanding Teaching.
- **Mila Versteeg** is Director of Human Rights Program at University of Virginia School of Law (USA). She holds a LL.M. from Harvard Law School (2007), D.Phil. from University of Oxford (2011) and "Meester in Rechten" from Tilburg University (2006). She was Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law and Andrew Carnegie Fellow 2017-2019. In 2017, she was named an Andrew Carnegie Fellow, which provided her with a funding award to expand her research into the world's constitutions to better understand how constitutional rights are enforced in different countries. She has been a visiting professor at the University of Chicago Law School, Columbia Law School, the Hebrew University, the University of Hamburg, Tel Aviv University, and IDC Herzliya. Her new book *How Constitutional Rights Matter* (Oxford University Press) is one of the biggest highlights of 2020.
- **Rosalind Dixon** is a Professor of Law, at the University of New South Wales, Faculty of Law (Australia). She earned her BA and LLB from the University of New South Wales and was an associate to the Chief Justice of Australia, the Hon. Murray Gleeson AC, before attending Harvard Law School, where she obtained an LL.M and SJD. She is a Manos Research Fellow, Director of the Gilbert + Tobin Centre of Public Law, Deputy Director of the Herbert Smith Freehills Initiative on Law and Economics, Co-Director of the UNSW New Economic Equality Initiative (NEEI), and academic co-lead of the Grand Challenge on Inequality at UNSW. She previously served as an assistant professor at the University of Chicago Law School and has been a visiting professor at the University of Chicago, Columbia Law School, Harvard Law School, and the National University of Singapore. She was recently elected as co-president of the International Society of Public Law.
- **Russell Dalton** was founding Director of the Center for the Study of Democracy at University of California, Irvine (USA), and the Survey Research Center at Florida State University. He received the Developing Scholar Award by Florida State University, a Fulbright Research Fellowship, a Scholar-in-Residence at the Barbra Streisand Center, a German Marshall Fund Research Fellowship, a POSCO Fellowship at the East West Center, and the UCI Emeriti Award for Faculty Mentorship. He is also author of the highly cited Citizen Politics that compares political behavior in the US, Britain, France, and Germany. A related research program focuses on comparative electoral politics. This includes Political Realignment (Oxford 2018), The Apartisan American (CQ Press 2013), Citizens, Choice and Context (Oxford 2011), and Political Parties and Democratic Linkage (Oxford 2011), which won the GESIS-Klingemann Prize and the Brian Farrell Prize. He is currently one of the six most important and cited political scientists in the world.

- **Tarunabh Khaitan** is a Professor of Public Law and Legal Theory at Wadham College and a Vice Dean at the Faculty of Law – University of Oxford (United Kingdom). He is also a Professor & Future Fellow at Melbourne Law School. He is the founding General Editor of the *Indian Law Review*, founder and Chief Advisor of the Junior Faculty Forum for Indian Law Teachers, and an Affiliate of the Bonavero Institute of Human Rights and an Associate of the Oxford Human Rights Hub. He completed his undergraduate studies (BA LLB Hons) at the National Law School (Bangalore) in 2004 as the 'Best All-Round Graduating Student'. He then went to Oxford as a Rhodes Scholar and completed his postgraduate studies (BCL with distinction, MPhil with distinction, DPhil) at Exeter College. Before joining Wadham, he was the Pennington's Student (Fellow) in Law at Christ Church. He has also been a Global Visiting Professor of Law at NYU Law School.
- **Tom Daly** is Deputy Director of the University of Melbourne School of Government and Director of the global online research platform *Democratic Decay & Renewal* (Australia). He is Co-Convenor of the *Constitution Transformation Network* (Melbourne), and Associate Director of the *Edinburgh Centre for Constitutional Law*. As well as extensive experience in the university sector (at Melbourne, Edinburgh, and Copenhagen universities), he has worked in a variety of roles in government and international organizations, including running the Office of the Chief Justice of Ireland for over 6 years and working on judicial education at the *Judicial Studies Institute*. As a consultant he has worked on a range of EU, Council of Europe, African Union, International IDEA, and Irish government projects concerning public law, human rights, and democracy-building. Among his publications, the book *The Alchemists: Questioning Our Faith in Courts as Democracy-Builders* (Cambridge University Press, 2017) stands out.
- **Tom Ginsburg** is a Leo Spitz Professor of International Law, Ludwig and Hilde Wolf Research Scholar, and Professor of Political Science at the University of Chicago (USA). He holds BA, JD, and Ph.D. degrees from the University of California, Berkeley. He was Professor of Law at The University of Chicago Law School (2008-2011). He was Visiting Professor at several universities, among which the following stand out: University of Trento (Fulbright Award), Tel Aviv University, Seoul National University, The University of Pennsylvania Law School, Interdisciplinary Centre Herzliya Israel, and Kyushu University. He currently co-directs the "Comparative Constitutions Project", an effort funded by the National Science Foundation to gather and analyze the constitutions of all independent nation-states since 1789. He is a member of the American Academy of Arts and Sciences. His latest book, *How to Save a Constitutional Democracy* (The University of Chicago Press, 2018), was written with Aziz Z. Huq and it is one of the most important works of current Constitutional Law.
- **Yasmin Dawood** is the Canada Research Chair in Democracy, Constitutionalism, and Electoral Law, and an Associate Professor at the Faculty of Law – University of Toronto (Canada). She received a Ph.D. in Political Science from the University of Chicago, a J.D. from Columbia Law School, and an Honors B.A. in Political Science from the University of Toronto. She was named a member of the Royal Society of Canada College of New Scholars, Artists, and Scientists in 2018. She was awarded the Mewett Award for Teaching Excellence by the Graduating Class of 2020. In addition, she was a co-recipient of the 2020 Legal Excellence Award from the South Asian Bar Association. She was awarded a four-year Social Sciences and Humanities Research Council (SSHRC) grant for her research on democracy and election law. Her research has been funded by the Social Sciences and Humanities Research Council, the Connaught Foundation, and the Mellon Foundation. She serves as a Vice-President of the American Society for Political and Legal Philosophy (NOMOS).