Constitutionalism and Gender
Isabel C. Jaramillo Sierra (U. de los Andes, Colombia)
Francisca Pou Giménez (ITAM, Mexico)
Proposed dates: June 21-30, 2021

Overview

Exploration of the intersections between constitutionalism and gender has considerably evolved and enlarged its reach in recent times. On the one hand, since the mid-1990’s, there has been a large consensus regarding the importance of mainstreaming gender to achieve gender equality. This strategy demands an ample appropriation of gender as an analytical category and a massive production of information to make the category speak in a wide range of legal debates and practices. On the other, the conviction that inherited constitutional texts are profoundly gendered, though not new, has gained center-stage, leading to the emergence of a new sub-field within constitutional law, with an ever-growing body of companion literature. While 20th century constitutions have all clauses prohibiting sex discrimination, which were the basis for pioneering analysis centered on their interpretation and development by courts, current scholarship emphasizes the need to enlarge gender-based scrutiny to many other dimensions of constitutionalism: constitution-making, constitutional design (division of power models, federalism, the declaration of rights, etc.) and constitutional practice (where the performance of the constitutional system with regards specific problems like violence, resource distribution or political status is being tested).

This course will provide students an opportunity to familiarize with these debates and collaborate in the task of gender mainstreaming by providing basic tools about the use of gender in constitutional law. It invites students to become familiar with feminist critiques of the constitution, with (successful) feminist legal reforms, with gender-based analysis of institutional choices and with topic-centered debates. It is supported on readings and a set of cases that speak to a global audience, and will hopefully allow for a stimulating, informative and mutually enriching experience in the context of the GLSL Summer School.

Specific objectives

By the end of the course students are expected to be able to: 1) provide an account of gender as a category of legal analysis; 2) identify ways in which the law may become an obstacle to gender equality; 3) identify and participate in contemporary debates on gendered constitutional design; 4) integrate gender in the analysis of particular cases.

Methodology and evaluation

The course will be taught in eight sessions of four hours a day each, split in two sections with a break in the middle. It will combine theoretical discussions and case studies. Students will be graded on the basis of two separate products: 1) One three-page reaction paper (50%); 2) One individual re-elaboration of an in-class group assignment (50%). Reaction papers will discuss one of the readings assigned for the course (freely elected by the student) and will be submitted the day before the class for which the reading is assigned. Reaction papers need to be emailed to both professors: Isabel Jaramillo (ijaramil@uniandes.edu.co) and Francisca Pou (pougimenez@yahoo.es). Individual re-
workings of in-class group assignments will be completed at the time provided for the final examination.

Readings

The readings will be available either at the links below, or inside a dedicated Dropbox provided by the School.

Session 1: The basics: gender as a category of analysis and the mainstreaming project

- S.V. v. Italy (application no. 55216/08), European Court of Human Rights

Session 2: Gender equality law, anti-discrimination law, constitutionalism and gender

- Siobhán Mullaly, “Cedaw reservations and the contested claims of culture”, in Rebecca Cook, Frontiers of Gender Equality, 2021 (pp. TBA).
- Meghan Campbell, “Like Birds of a Feather? ICESCR and Women Socio-economic Equality’ in Rebecca Cook, Frontiers of Gender Equality, 2021 (pp. TBA)

Session 3: Drafting constitutions and inventing a new social contract

- United States v. Morrison, 529 U.S. 598.
- Susan H. Williams, “Religion, custom and legal pluralism”, in Helen Irving (ed.), Constitutions and Gender, pp. 221-251.
- Shilubana and Others v Nwamitwa (CCT 03/07) [2008], Constitutional Court of South Africa, ZACC 9; 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC) (4 June 2008)
Session 4: Freedom of expression and political participation

- American Booksellers v. Hudnut 475 US 1001 (1986), Supreme Court of the United States. Available at: https://cyber.harvard.edu/vaw00/hudnut.html
- Regina v Butler [1992], 1 S.C.R. 452. Supreme Court of Canada. Available at: https://www.humanities.mcmaster.ca/~walucho/3Q3/Butler.htm

Session 5: Gender equality and gender violence

- González et al v. México, Inter-American Court of Human Rights (2009)
- S v Baloyi and Others (CCT29/99) [1999], Constitutional Court of South Africa, ZACC 19; 2000 (1) BCLR 86; 2000 (2) SA 425 (CC) (3 December 1999)
- The Chairman, Railway and ors v Mrs Chandrima Das and ors, 28, 01, 2000, Supreme Court of India

Session 6: Me Too, Ni una menos, Ni una más: sexual violence as structural violence

- Rita Laura Segato, La guerra contra las mujeres, Madrid: Traficantes de Sueños, 2016

Session 7: Gender equality and distribution

Session 8: Work, care, proactive measures and prefiguration

- Sandra Fredman, “Challenging the frontiers of gender equality: women at work”, in Rebecca Cook, Frontiers of Gender Equality, 2021 (pp. TBA).

General references:


Irving, Helen (ed.), Constitutions and Gender, Edward Elgar, 2017. Rubio Marín, Ruth, and Beverly Baines


About the Professors

Isabel Cristina Jaramillo Sierra is full professor of law at Universidad de los Andes, Bogotá. She holds a lawyer degree from Universidad de los Andes (Cum Laude, 1997) and an SJD from Harvard Law School (LLM waived, 2000, 2007). Her academic work has centered on the question of feminist legal reform: how is it imagined; how is it pursued; how may we think about what is gained and lost in reform. Her books on the reform of abortion law (with Tatiana Alfonso, Mujeres, Cortes y Medios, Bogotá, Universidad de los Andes, 2008) and the influence of family law in producing families, poverty and exclusion (Derecho y Familia en Colombia. Historias de Raza, Sexo y Propiedad, 1580-1990, Bogotá, Universidad de los Andes, 2013) are recognized as critical contributions to the field in Latin America. She has also been consultant to the Colombian government on issues of sexual and reproductive rights, and institutional reform for the transition. In 2015 and 2017 she acted as AD HOC Justice to the Colombian Constitutional Court and the State Council. She was nominated in 2017 to the Colombian Constitutional Court by President Juan Manuel Santos.

Francisca Pou Giménez teaches Constitutional Law and Comparative Constitutional Law at ITAM Law School (Mexico). She holds a JSD and an LLM from the Yale Law School (USA) and a Law Degree from Pompeu Fabra University (Spain), where she also obtained a Graduate Research Certification in Public Law. Her research focuses on constitutional amendment and other modalities of constitutional
change; the comparative analysis of Latin American constitutionalism; judicial review and courts; and fundamental rights protection, with a special interest in antidiscrimination law and gender issues. She is part of several international academic networks, such as the Seminar in Latin America of Legal and Constitutional Theory (SELA), the International Society of Public Law, the American Society of Comparative Law, or the RedAlas, an academic network committed to the transformation of legal education as a part of a general gender and sexual equality-reinforcing agenda. Professor Pou clerked in the Mexican Supreme Court for seven years before joining the ITAM faculty and is widely familiar with contemporary rights adjudication dynamics. These past years she has also deployed an intense activity as academic editor and translator.