



SCHOOL OF LAW

INDIANA UNIVERSITY

Bloomington

Center for Constitutional Democracy

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Ph.D. PROGRAM IN LAW AND DEMOCRACY

Center for Constitutional Democracy

The doctoral degree is granted by the law school and is administered by the Center for Constitutional Democracy (CCD). The Center studies and promotes constitutional democracy in countries marked by ethnic, religious, linguistic, and other divisions. The Center provides hands-on support for constitutional reformers in such countries, and it offers students a unique opportunity to work directly and regularly with foreign reform leaders to support constitutional democracy.

More information about the center is available at our website:

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Program Description

This program provides students with a deep and broad education in the way that law structures democracy. No subject is more vital to the peace and prosperity of the globe, and yet until recently, scholars have devoted surprisingly little attention to it, and students have had very limited opportunity to study it. The Law and Democracy PhD Program uniquely allows students to learn about the role of law in new and fragile democracies through coursework and experience in the field, training in the law and the social sciences, and comparative analyses of the experience of the United States and other countries.

Law is necessary to democracy in two ways:

Law creates democracy: First, democracy commonly refers to a set of rules and institutions that allows the people a hand in their own government: elections, referenda, legislatures, and the like. These rules and institutions are themselves legal creations: unless they are formalized in law, they will be unstable, obscure, and inaccessible to the people. Sometimes, a written constitution establishes these rules and institutions so that they are difficult to change and come to be regarded

as integral to the experience of the country. In other cases, these rules and institutions are the product of statutes created by legislatures or regulations issued by executive or administrative agencies. Either way, the rules and institutions are “constitutional” in the broad sense that they fundamentally constitute the democratic order. The first dimension of the program therefore addresses the way that this fundamental legal ordering creates democracy through shaping the structure and operation of government.

Law limits democratic majorities: Second, to be successful, democracy cannot refer merely to a contest for power through elections. Instead, a well established democracy must rest on a culture rooted in the rule of law. In this sense, law provides norms that limit the power of those who win elections: winning allows the victors only certain legally defined prerogatives; losing does not subject the losers to the untrammelled will of the majority. Again, the constitution creates some of these limits, but even these depend on the cultural disposition of the citizenry to follow the rules. Other limits are purely cultural. Democracy works best when the citizens broadly embrace a rich web of norms regarding the limits of political power. The second dimension of the program addresses the way that fundamental legal ordering limits democracy through shared culture and legal restrictions.

Both dimensions grow from the same basic phenomenon: for democracy to work, citizens must generally support the constitutional regime even when they lose particular political battles. Their most fundamental commitment, in other words, is to the law that both creates and limits democracies.

The Four Pillars: An interdisciplinary degree

The program is therefore about the relationship between law and democracy. It trains students to work in this area of the law with the skills and professional orientation characteristic of the best lawyers. The program rests on the view that to explore these conditions, law cannot be understood in isolation from the rest of human culture, and this close relationship is especially significant in the ways that societies craft their fundamental legal order. For this reason, students will learn about the relationship between law and democracy not only through legal scholarship, but also from the perspectives of political science, anthropology, and area studies – the four pillars that support the program. This interdisciplinary approach equips the student with the range of knowledge, theories and methods required to understand the dynamic and complex nature of democracy and law.

New or Struggling Democracies: A cross-cultural degree

Additionally, though all students will be exposed to the American constitutional tradition, they must also study and research the experience of other countries by completing substantial course work in the languages, cultures, and histories of an area of the world in which they wish to do work. The program addresses the relationship between democracy and law in a specific setting: new or struggling democracies or non-democratic countries that have a pro-democracy movement. Students will study such countries not only through library research but through direct exposure to the reform process on the ground.

Degree Candidates: Those who want to change the world

The program is appropriate for all persons who are interested in the subject and who possess sufficient background. The program is, however, specifically designed to provide training and education to seven categories of persons:

- *Reformers from other countries:* These students will likely enroll in the program so as to study how they might best promote democracy through law in their home countries.
- *Members of the United States Armed Forces:* Over the course of their careers, many military personnel are likely to be involved in reconstruction in conflict-ridden countries. As the military knows, however, it has traditionally trained people to fight the nation's wars, not to reconstruct countries. The degree program would allow interested persons to consider how they might play a helpful role in establishing constitutional democracy in foreign countries.
- *Doctoral students in other disciplines:* Many doctoral students in disciplines other than law (such as anthropology, history, or political science) find that they need an advanced understanding of the rule of law in order to complete their work in those other disciplines. This program offers a graduate minor in law or a dual doctorate to such students.
- *Lawyers working on reconstruction issues abroad:* The world has discovered that lawyers have a vital role to play in constructing democracies. More and more lawyers have taken up this work, and more and more law students desire to take it up as a career. The Ph.D. program would therefore be appropriate for practicing lawyers who wish to gain a more thorough grounding; and the J.D./Ph.D. program would be appropriate for law students who wish to seek out opportunities to do this sort of work in the future.
- *Donor organization personnel:* Increasingly, the process of democratization is being shaped by the choices of donor organizations about which projects to fund. It is therefore vital that program directors in such organizations have an excellent substantive grounding in the legal foundations of democracy.
- *Future Teachers:* The Ph.D. program will prepare students to teach in university level programs on law and democracy. We believe that over the next several decades, democracy studies will increasingly become its own discipline, and this program will offer students especially good preparation for helping to craft the discipline.
- *Foreign Law Professors:* The degree will also provide specialized training for persons from outside the United States in the skills and knowledge required to be a successful academic at a law school in their home country. Good law schools and professors are a vital part of establishing democracy and the rule of law.

Components of the Degree

The doctoral degree consists of eight components: (1) course work in law; (2) course work in anthropology and political science; (3) course work in a culture area; (4) a mastery of the core scholarship in the field; (5) a language requirement; (6) fieldwork overseas; (7) an internship at the Center for Constitutional Democracy as a Graduate Fellow; and (8) a doctoral dissertation with a focus on a new or struggling democracy or on a pro-democracy movement in a non-democratic country. Students will complete ninety hours of graduate credit, including 69 hours of course credit and 21 hours of dissertation credit. Courses taken as part of a masters program may count toward satisfaction of up to 30 credits of the Ph.D. program's requirements with approval of the student's advisor. Students may enter the doctoral program directly or after earning a masters degree or completing one year in a J.D. program.

Degree Requirements:

- **Advisory Committee.** Upon matriculation, each student will be assigned a primary faculty advisor. This advisor, along with the Directors of the Center, will form the advisory committee for that student. While it is expected that most students in the program will fulfill the requirements below, any specific requirement may be waived or modified for a particular student by that student's advisory committee with the approval of the Director of Graduate Legal Studies.
- **Course Requirements.** The course work requirements are designed to expose the student to the fields of law, anthropology, political science, and area studies. Additionally, students will take Directed Graduate Research Credits as they are working on their dissertation. In the future, the degree committee may designate particular courses as required, but at the present time each student may choose the courses to satisfy the distribution requirements below in consultation with the student's faculty advisor.
 - **Law (30 hours minimum).** Students must take 30 credit hours of courses in the law school curriculum related to constitutionalism and democracy. They will work with their advisors to develop a course package that provides both a broad grounding in these areas and a focus on particular legal issues of interest to the student
 - **Anthropology and Political Science (21 hours minimum).** Students must take a minimum of fifteen hours of course work in one of these two fields, and at least six hours in each, to total twenty-one hours minimum. One course must be on the subject of research methodologies.
 - **Area Studies (15 hours minimum).** Students must take at least fifteen hours of course work related to his or her geographical area of study. At least one course must concern the history of the region the student will study.
 - **Minor.** 15 hours of coursework in Anthropology, Political Science, or Area Studies shall satisfy the requirements of the candidate's academic advisory committee for designation as a Minor.
 - **Capstone/Dissertation Course (3 hours).** Students will take this required course upon completion of all other course requirements, immediately before beginning work on their dissertations. Readings and discussion will review the latest literature on law and democracy, and students will discuss their dissertation plans.
 - **Directed Graduate Research Credit (21 hours).**
- **Core Scholarship Readings.** Students will receive a list of the developing canon of articles and books on democracy and the rule of law. The student must work with his or her advisor to make sure these readings are either covered in class or read separately. In some instances some articles or books may be deleted or substituted, depending on the particular research interests of the student.
- **Language Requirement.** Students must demonstrate intermediate proficiency, both oral and written, in a language of the region of their area of study, either through course work or language proficiency exams. This requirement may be waived if the student is from the region that he or she is studying.

- **Fieldwork.** Students will generally conduct fieldwork overseas for a minimum of three months. The fieldwork will usually occur after they have completed their coursework, preferably during the summer. Students may choose to return to their fieldwork site for further research. In some cases, the Center may be able to provide students with overseas contacts; in other cases, it will help students to develop their own contacts. Center personnel will also assist students in finding funding sources for their fieldwork.

Center personnel will also explain the Center's ethical norms for providing consultation work abroad. Because the work is new and unique, it has no widely shared ethical code, so the Center is in the process of developing its own. Students will play a part in this process: on their return from work abroad, they will meet with the other members of the Center to discuss the ethical issues that they confronted. Those discussions will allow the Center to revise and expand its internal set of ethical norms.

- **Internship.** Students will participate as graduate fellows in the Center for Constitutional Democracy for at least two years. All internships will involve leading a research team of JD Affiliates, and, when applicable, supporting the Center's foreign partners in their efforts to promote democracy and the rule of law. The time commitment for graduate fellows is approximately four hours per week (and in some cases it may be more).

The Center's work is unique in its emphasis on helping foreign reformers in the way that a lawyer serves clients. First, the Center provides consultation to reformers over the course of many years, building relationships rooted in trust and a shared history. Second, the Center works only at the invitation of clients abroad, and our commitment is to them, rather than to an international body or NGO. Third, the Center seeks to help its clients to determine their own best interests rather than to promote a certain set of ideas about reform. While a lawyer can and should influence a client's perceptions of his own best interests, the ultimate goal is to serve the client, not an ideology or a theory. Finally, the Center is composed of academic lawyers, who bring the ideas and resources of the academy directly into the field. The opportunity to engage in this work is a unique and central feature of the program, and a primary goal of the program is to train students to perform this sort of work, not only through book learning but through doing it.

- **Qualifying Examination.** In order to be nominated to candidacy for the Ph.D. degree, the student must have grades reported for all required courses and must pass a qualifying examination. Students are usually expected to complete necessary coursework and take the qualifying examination within three years of residence. The aim and scope of the qualifying exam are to test a student's mastery of the discipline in relation to his or her dissertation research. The format of the exam shall be decided by the dissertation committee in consultation with the student from among the following options: (1) a take-home exam, or (2) a proctored in camera exam, or (3) an exam combining elements of these two.
- **Doctoral Dissertation and Defense.** The dissertation will be the result of fieldwork and library research. The topic and general outline of the proposed dissertation must be approved by the candidate's dissertation committee. Students shall keep the committee chair apprised of expected dates of completion of partial or full drafts.

To fulfill this requirement the student must:

- Select a dissertation committee during the second year of course work consisting of three faculty members. The chair of the committee must be a faculty member affiliated with the Center. The chair of the student's dissertation committee will submit a report each subsequent semester noting the student's progress towards the degree. The student will present and defend his or her dissertation topic to this committee during the last semester of course work.
- Write and submit a dissertation, read and approved by all members of the dissertation committee, which must:
 - Be a minimum length of 200 pages.
 - Follow MLA or Chicago Manual of Style regarding all style and formatting issues.
 - Focus on a new or struggling democracy or on a pro-democracy movement in a non-democratic country.
 - Demonstrate an understanding of the culture area they have chosen within the doctoral program, even if the thesis is comparative in approach.
 - Be defended orally by the student before the committee.
- **Annual Review.** Students will be reviewed near the end of every academic year by their advisors.
- **Expected Progress to Ph.D. Degree.** Each student must submit a dissertation no later than six years after the beginning of graduate study. Postponements may be approved by the committee chair. Failure to submit a dissertation by the end of the seventh year will result in academic probation and will require revalidation of expired coursework, as described in the Graduate Bulletin.
- **Residency.** The student will generally be required to be resident at the School of Law for at least three academic years after they have enrolled in the program. This requirement may be waived under extraordinary circumstances.