

**Law & Policy in the Americas**  
**LAW 6930**  
Foreign Enrichment: 2 Credits  
Instructors: Jon Mills & Meredith Fensom  
Spring 2006

**17 January – 1 February**

Visiting Professor: Jorge Santistevan de Noriega, former Ombudsman of Peru

**06 February – 22 February**

Visiting Professor: Carlos Patrón, Attorney at Law, Payet, Rey & Cauvi; Professor of Law, Pontificia Universidad Católica del Perú

**10 April – 19 April**

Visiting Professor: Mauricio Duce, Advisor to the Chilean Minister of Justice; Professor of Law in the Legal Research Center of the Diego Portales University School of Law; Director of Training, Justice Studies Center of the Americas (CEJA), Santiago, Chile.

**Tuesday, January 17<sup>th</sup>: Class 1**

Discussion: The Latin-American tradition of Presidents of the Republic - from dictatorial to elected *caudillos*?

- \* Alejandro M. Garro article, On Some Practical Implications of the Diversity of Legal Cultures for Lawyering in the Americas.
- \* Rett R. Ludwikowski article, Latin American Hybrid Constitutionalism: The United States Presidentialism in the Civil Law Melting Pot.
- \* Paul C. Scondrol article, Intellectuals, Political Culture and the Roots of the Authoritarian Presidency in Latin America.

**Wednesday, January 18<sup>th</sup>: Class 2**

Discussion: Latin American congresses, political parties and political participation.

- \* Peter Smith article, Cycles of Electoral Democracy in Latin America, 1900-2000.
- \* *Economist* article, Redrawing the Political Map.

**Thursday, January 19<sup>th</sup>: Class 3**

Discussion: The judiciary in Latin America, including judicial reform.

- \* Felipe Sáez García article, The Nature of Judicial Reform in Latin America and Some Strategic Considerations.

**Monday, January 23<sup>rd</sup>-Class 4**

Discussion: An open constitutional framework for protecting human rights in the region.

\* Paolo G. Carozza article, From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights.

**Tuesday, January 24<sup>th</sup>-Class 5**

Discussion: The Latin American Ombudsman.

\* Fredrik Uggla article, The Ombudsman in Latin America.

**Wednesday, January 25<sup>th</sup>-Class 6**

Discussion: Democracy and free speech: the ongoing legal constraints in the region.

\* Montserrat Solano Carboni article, Free Speech in the Americas: From Verbitsky to Herrera Ulloa.

**Monday, January 30<sup>th</sup>-Class 7**

Discussion: Property rights and accessibility to them in Latin America.

\* Hernando de Soto article, Bringing Capitalism to the Masses.

**Tuesday, January 31<sup>st</sup>-Class 8**

Discussion: Investment protection in Latin America: the growing space for arbitration.

\* Omar E. García-Bolívar and Jon Schmid article, The Rise of International Investment Arbitration in Latin America.

\* Claudia Frutos-Peterson article, International Commercial Arbitration in Latin America: As Healthy as It Could Be?

**Wednesday, February 1<sup>st</sup>-Class 9**

Discussion: Free Trade Agreements.

\* Inter-American Dialogue article, Free Trade in the Americas: Getting There from Here.

**Monday, February 6<sup>th</sup>-Class 10**

Discussion: Trends in Latin American Politics and Economy.

\* Jonathan Hartlyn and Arturo Valenzuela, Democracy.

### **Tuesday, February 7<sup>th</sup>: Class 11**

Discussion: Political and Macroeconomic Populism in Latin America.

- \* Rudgier Dornbusch and Sebastian Edwards, The Macroeconomics of Populism in Latin America.
- \* Ricardo Lago, The Illusion of Pursuing Redistribution Through Macropolicy: Peru's Heterodox Experience, 1985-1990.

### **Wednesday, February 8<sup>th</sup>: Class 12**

Discussion: Latin America's Shift Towards Economic Orthodoxy and Democracy in the 1990s.

- \* Eduardo Silva article, Authoritarianism, Democracy and Development.
- \* Victor Bulmer-Thomas, Chapter 11 (Debt, adjustment, and the shift to a new paradigm) of *The Economic History of Latin America Since Independence*.
- \* Robert Gwynne and Cristóbal Kay, Latin America transformed: globalization and neoliberalism.

### **Monday, February 13<sup>th</sup>: Class 13**

Discussion: Judicial Reform and Technocratic Institutional Developments: Peruvian Case Study.

- \* Patricio Silva, The New Political Order: Towards Technocratic Democracies?
- \* Javier De Belaúnde, Justice, Legality and Judicial Reform.
- \* Carlos A. Patrón, "Building Competitive Markets In Peru: The Case For INDECOPI" (Draft; to be distributed).
- \* Francisco Durand and Rosemary Thorp, Tax Reform: The SUNAT Experience.

### **Tuesday, February 14<sup>th</sup>: Class 14**

Discussion: Empowering the Poor through Property Rights: Peruvian Case Study.

- \* Hernando de Soto, *The Other Path*, Chapters 1 & 2.
- \* Hernando de Soto, *The Mystery of Capital*, Chapter 3.

### **Wednesday, February 15<sup>th</sup>: Class 15**

Discussion: Redefining the Role of the State Through Privatization & PPP: Peruvian Case Study.

- \* Luigi Manzetti, *Privatization South American Style* (1999), pp. 1-31 (The Political Economy of Privatization); 232-293 (Peru).

### **Monday, February 20<sup>th</sup>-Class 16**

Discussion: Authoritarianism and Corruption.

- \* John Crabtree, Neo-populism and the Fujimori Phenomenon.
- \* Luigi Manzetti, Market Reforms Without Transparency.

### **Tuesday, February 21<sup>st</sup>-Class 17**

Discussion: Globalization and its Discontents: Free Trade and Neo-Nationalist Populism.

- \* The Economist, "Uncle Sam visits his restive neighbours," November 3, 2005.
- \* The Economist, "All power to chavismo," December 8, 2005.
- \* The Economist, "A champion of indigenous rights and of state control of the economy," December 14, 2005.
- \* The Economist, "Rise of another outsider," December 14, 2005.
- \* Warwick E. Murray and Eduardo Silva, The political economy of sustainable development.

### **Wednesday, February 22<sup>nd</sup>-Class 18**

Discussion: What Does the Future Hold in Store: Capitalism or Democracy?

- \* Rosemary Thorp chapter, Progress, Poverty and Exclusion: Performance and Policymaking Under the New Paradigm.

### **Monday, April 10<sup>th</sup>-Class 22**

Discussion: Analysis of Criminal Procedure in Comparative Perspective.

- \* Mirjan Damaska, The Faces of Justice and State Authority: A Comparative Approach to the Legal Process
- \* Máximo Langer, From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure
- \* John Henry Merryman, The Civil Law Tradition

Suggested readings:

- Nico Jörg, Steward Field and Chrisje Brants, Are Inquisitorial and Adversarial Systems Converging?, in Criminal Justice in Europe: A Comparative Study (edited by Fennel, Harding, Jörg and Swart), Clarendon Press, 1995, pp. 41- 56.
- Mathieu Deflem and Amanda J. Swygart, Comparative Criminal Justice, in Handbook of Criminal Justice Administration, Penn State University, 2001, pp. 51-68.

- Francois Tulkens, Criminal Procedure: Main Comparable Features of the National Systems, in *The Criminal Process and Human Rights* (edited by Mireille Delmas-Marty), Martinus Nijhoff Publishers, 1995, pp. 5-13.

### **Tuesday, April 11<sup>th</sup>: Class 23**

Discussion: The Inquisitorial System in Latin America.

\* Mauricio Duce, Criminal Procedural Reform and the *Ministerio Público*: Towards the Construction of a New Criminal Justice System in Latin America: What Are We Reforming?: Toward a Historical Understanding of the Criminal Procedure in Latin America

Suggested readings:

- Stephen C. Thaman, *Comparative Criminal Procedure*, Carolina Academic Press, 2002, pp. 14-18.
- Morris Ploscowe, The Development of Present-Day Criminal Procedures in Europe and America, *Harvard Law Review* Vol. 48, 1935, pp. 441-465 (excerpts)
- Rudolf Schlesinger, *Comparative Law* (5<sup>th</sup> edition), 1988, p. 475-490, in Marie Ann Glendon, *Comparative Legal Traditions*, 1994, p. 180-188.
- Mirjan Damaska, *The Faces of Justice and State Authority*, Yale University Press 1986, pp. 47-66.

### **Wednesday, April 12<sup>th</sup>: Class 24**

Discussion: Judicial Reform in Latin America: Context, Currents Trends and Results.

\* Jorge Correa, *Judicial Reforms in Latin America: Good News for the Underprivileged?*

\* Justice Studies Center of the Americas, *Report on Judicial Systems in the Americas 2004-2005*

Suggested readings:

- Hugo Frühling, *Judicial Reform and Democratization in Latin America*, in Felipe Agüero and Jeffrey Stark (editors), *Fault Lines of Democracy in Post-Transition Latin America*, North South Center Press University of Miami 1998, pp. 237-262.
- Linn Hammergren, *The Politics of Justice and Justice Reform in Latin America*, Westview Press, 1999, pp. 3-39.
- Joseph Thome, *Heading South but Looking North: Globalization and Law Reform in Latin America*, *Wisconsin Law Review* 2000 (Special Issue), p. 691-712.
- Justice Studies Center of the Americas, *Report on Judicial Systems in the Americas 2004-2005*, available in full at [www.cejamericas.org](http://www.cejamericas.org).

### **Monday, April 17<sup>th</sup>: Class 25**

Discussion: Criminal Justice Reform Latin America: From Inquisitorial to Adversarial Procedures.

\* Mauricio Duce, Criminal Procedural Reform and the *Ministerio Público*: Towards the Construction of a New Criminal Justice System in Latin America: The Reform of the Criminal Procedure in Latin America

\* Justice Studies Center of the Americas, Challenges of The Public Prosecutor's Office in Latin America

Suggested readings:

- Linn Hambergren, The Politics of Justice and Justice Reform in Latin America, Westview Press, 1999, pp. 205-232 (cases of El Salvador and Costa Rica).
- Margaret Popkin, Peace Without Justice, The Pennsylvania State University Press, 2000, pp. 11-79 (extensive analysis of El Salvador).
- Steven Hendrix, Innovation in Criminal Procedure in Latin America: Guatemala's Conversion to the Adversarial System, 5 SW. J.L & Trade Am. 365 (1998).
- Mauricio Duce and Rogelio Perez Perdomo, Citizen Security and Reform of the Criminal Justice System in Latin America, in Crime and Violence in Latin America (edited by Frühling, Tulchin and Golding), Woodrow Wilson Center Press and The Johns Hopkins University Press, 2003, pp. 69-91.

### **Tuesday, April 18<sup>th</sup>: Class 26**

Discussion: Continuation and assessment of the reform process.

\* Cristián Riego, Criminal Procedure Reform in Latin America: Results of the Follow-up Study

Suggested readings:

- Mauricio Duce (editor), Criminal Procedure Reforms in Latin America: Experiences in Innovation, Justice Studies Center of the Americas, Santiago 2005, 101 pp.

### **Wednesday, April 19<sup>th</sup>: Class 27**

Discussion: Assessment of the Reforms and the Criminal Justice Reform in Chile as Successful Case to Study.

\* *Ministerio Público* and Vera Institute of Justice, Charting Justice Reform in Chile: A Comparison of the Old and New Systems of Criminal Procedure

Suggested readings:

- Rodrigo De la Barra, Adversarial vs. Inquisitorial Systems: The Rule of Law and Prospects for Criminal Procedure Reform in Chile, 5 SW. J.L. & Trade Am. 323, 326 (1998).
- See generally Vera Institute of Justice, [www.vera.org](http://www.vera.org).