

## **Laws 101 Syllabus: Law and Development in the Americas**

James Cooper, Visiting Professor, Earl Warren College, UCSD  
Institute Professor, California Western School of Law  
Classes will be held on Tuesdays, 6:30 p.m. to 9:20 p.m. at Thurgood Marshall College,  
Peterson Hall 102

**Office Hours:** Thursdays 2:30 – 4:30 p.m. (except as noted by \*) or by appointment (email: [jcooper@cwsj.edu](mailto:jcooper@cwsj.edu)), Small Conference Room in Warren Building (EBUIIB/Computer Science and Engineering Room 1125). Cindy Schairer, the Teaching Assistant in the course, will hold her office hours on Wednesdays from 2-4 p.m. (or by appointment) in her office in SSB (Social Science Building) in Room 453.

**Grading Policy:** There will be two in class examinations. The first in class examination, in Week 5, which may be in the form of a take-home examination at the end of class on October 28, 2008 and is to be typewritten, double-spaced with a maximum limit of ten pages. Instructions concerning the manner in which to submit the examination to Cindy Schairer, the course Teaching Assistant, shall be supplied at that time. The second and final examination, to be held on December 9, 2008 at 7 p.m. (room to be announced), will be written (double-spaced) in bluebooks. The first examination shall be worth 50% of the final grade and the second examination shall be worth 50% of the final grade.

There may be extra credit projects such as mock trials, debates, small group discussion leaders, simulations, and other voluntary assignments. There may be discussion periods during some classes, wherein students are divided into smaller groups.

### **Law and Development in the Americas: From Uncle Sam to Uncle Hugo?**

This intensive course will examine the history and dynamics of the law reform process in Latin America. We will explore the role that competing legal traditions (civil law tradition and common law tradition) have played in the legal reform process throughout Latin America and in which areas of the law each legal tradition has dominated. We will also reflect on the role that law plays in the global economy in which Latin America now finds itself as a result of the free trade agreements with the United States and other partners and in the negotiations leading towards a Free Trade Agreement of the Americas or some network of free trade agreements. Within the context a new “Left” regimes governing much of the continent, resistance to the so-called “Washington Consensus”. We look at challenges like property rights, securitization, intellectual property rights, and shareholder rights in this emerging era. The course will have a comparative approach and detail the differing processes that are being offered by European, Japanese the U.S. and other governments as well as the role that rule of law plays in consolidating democratic governance.

### **Course Outline:**

The course shall be comprised of nine classes and each class shall be three hours in duration. The provisional course outline is below.

#### **1. Course Introduction and Themes – September 30, 2008**

Natural Law/Positivist Law  
 Caudillismo  
 Industrial and Post-Industrial (Consumerist) Revolutions  
 Corporatist Governance/Clientelism/Cronyism  
 Uti possidetis, State Sovereignty, and the Doctrine of Non-Intervention  
 Modernization Theory/Dependency Theory  
 Washington Consensus, Neoliberalism, and Free Trade  
 Harmonization/Convergence  
 Monoculture, King Sugar, and Import Substitution Industrialization  
 MNCs, LDCs, and other acronyms (CIA, DoJ, APRA, FARC, FBI, USAID, JFK/LBJ, IMF, XML, GDP)  
 The Rule of Law, Judicial Independence and Democratic Governance

#### **Required Reading:**

REID, chapter 1 (1 – 29).

Tulio Halperin Donghi, *Two Centuries of South American Reflections on the Development Gap between the United States and Latin America*, 11 in *FALLING BEHIND* (edited by Francis Fukuyama) (Oxford University Press 2008).

#### **2. The Washington Consensus: The Party's Over? – October 7, 2008**

Legal Structuring as Architecture of the Global Trading Regime  
 An Introduction to the Global Trading Regime  
 The Race for Legal Harmonization as Part of Economic Reforms  
 Privatization and the Rule of Law  
 Seattle 1999 and The End of the Millennium Round  
 The Multilateral Agreement on Investment and the Free Trade Agreement of the Americas, Not!  
 The Emergence of the Caracas Consensus  
 The WTO Hits a Snag: Doha is Dead!

#### **Required Reading:**

REID, chapter 6 (124-158).

Medea Benjamin, *Interview: Subcomandante Marcos*, FIRST WORLD, HA HA HA! THE ZAPATISTA CHALLENGE 57 - 70 (edited by Elaine Katzenberger) (1995).

Paul W. Drake, *The Hegemony of U.S. Economic Doctrines*, in LATIN AMERICA AFTER NEOLIBERALISM: TURNING THE TIDE IN THE 21<sup>ST</sup> CENTURY 26-48 (2006) (edited by Eric Hershberg & Fred Rosen).

ALVARO VARGAS LLOSA, LIBERTY FOR LATIN AMERICA 34 - 61 (2005).

\*Office Hours: Friday, October 10, 2008, 2:30-4:30 p.m.

### 3. The Rule of Law in History – October 14, 2008

Democratic Governance, Separation of Powers

The Rule of Law

Codification: The Ten Commandments

Trial by Ordeal and The Spanish Inquisition

The Hammarabi Code, the Magna Carta and the Universal Declaration of Human Rights

The National Period of Latin America and Legal Transplantation: German Models in Chile

Lessons of Napoleon and Colonialism's Infrastructure

Constitutionalism, Separation of Powers

The Merging of Common Law and Civil Law Traditions in the Era of Globalization:

The Inquisitorial versus the Adversarial System: The Presumption of Innocence

Legal Design, Legal Transplantation and the Laying the Infrastructure for the Global Economy

Transplantation and Occupation: U.S. Constitutional Influences: Latin America,

Germany, Japan, Afghanistan, and Iraq

The Proliferation of Dispute Resolution, the Globalization of Legal Education, and the Surveillance Society/Prison Industrial Complex

#### Required Reading:

Jorge Correa Sutil, *Judicial Reforms in Latin America: Good News for the Underprivileged?*, in THE (UN)RULE OF LAW & THE UNDERPRIVILEGED IN LATIN AMERICA 255-277 (Juan E. Méndez, Guillermo O'Donnell, & Paulo Sérgio Pinheiro eds, 1999).

JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA 20 - 38 (3d ed., 2007).

ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 22-27 (2<sup>nd</sup>, edition, 1993).

\*Office Hours: Friday, October 17, 2008, 2:30 to 4:30 p.m.

#### **4. Usos y Costumbres: Traditional Legal Systems – October 21, 2008**

*A Guest Lecture by Professor Lilia Velasquez, California Western School of Law*

##### **Required Reading:**

REID, chapter 11 (264 - 292).

BENJAMIN DANGL, *THE PRICE OF FIRE: RESOURCE WARS AND SOCIAL MOVEMENTS IN BOLIVIA* 35 - 54 (AK Press, 2007).

Chief Justice Thomas J. Moyer, *Mediation as a Catalyst for Judicial Reform in Latin America*, 18 OHIO J. ON DISP. RESOL. 619 (2003).

#### **5. Dictatorship and Its Discontents - October 28, 2008**

Joelito Filartiga Case

Justice Before Investment?: The Legal Legacy of Human Rights Cases

Transnational Human Rights Litigation – Outsourcing Outrage?

Human Rights Violations in Chile during Pinochet Regime and Privatization

Villa Grimaldi, DINA and Collective Memory

Living on Two Dollars a Day and the Right to a Dignified Wage

Human Rights Today: Second Generation, Peoples' Rights (Self-Determination)

Democratic Governance: More than Free and Fair Elections

##### **Required Reading:**

REID, chapter 5 (106 – 123).

GREG GRANDIN, *THE EMPIRE'S WORKSHOP* 159 – 175 (2007).

PETER KORNBLUH, *THE PINOCHET FILE: A DECLASSIFIED DOSSIER ON ATROCITY AND ACCOUNTABILITY*, chapters 1 and 3 documents (2003-2004).

\*Office Hours: Monday, November 3, 2008, 2:30 to 4:30 p.m.

#### **6. The Role of Corruption - November 4, 2008**

The Anti-Rule of Law

The Gonzalez Macchi Case

“C”orruption or “c”orruption?

Nationalization and Economic Nationalism

Rent Seeking Behaviors and Other Transaction Costs

The Spanish legacy – Creoles versus Peninsulares

Noquis in Buenos Aires and other Rent-Seeking Behavior

The Privatization Process and the Kleptocracy

The Oil Business: From PEMEX to PdVSA

The Vlamidiro Montesino Tapes: Peru 2001

The Danny Lopez Affair: General Pinochet and the Riggs Ban Scandal

### **Required Reading:**

REID, 193 – 198.

MARIA GONZALEZ DE ASIS, ANTICORRUPTION REFORM IN RULE OF LAW PROGRAMS, World Bank Institute (2006).

Steven E. Hendrix, *New Approaches to Addressing Corruption in the Context of U.S. Foreign Assistance with Examples from Latin America and the Caribbean*, 12 SW. J.L. & TRADE AM. 1 (2005).

### **Veterans’ Day Holiday- November 11, 2008**

\*Office Hours: Monday, November 17, 2008, 2:30 to 4:30 p.m.

### **7. The Illicit/Informal Economy - November 18, 2008**

Off the Books Accounting – Off Balance Sheet Items

The Informal Economy

The Ten Trillion Dollars Locked Up: De Soto

Regularization and The Bureaucratization of Legitimacy

The Response to Monoculture

Scenes from the War on Drugs

The Andean Trade Preferences and Drug Eradication Act

Pablo Escobar’s Philanthropy and the Economic Boom of Drugs

MS-13, FARC and the Connection to Terrorism

Plan Colombia, The Mérida Initiative, and Plan México

The Global Numbers of Intellectual Property Piracy: \$250 Billion Lost Annually?

The Chill on Innovation: IP as California’s Economic Base

Connection to Terrorism and Organized Crime

The Threat to Public Health and Safety

Traditional Knowledge and Indigenous Peoples

Is Property is Theft?: On the Robin Hood Mentality

Patrimony, Sovereignty, Economic Base, Tax Revenue

Free Trade Agreements: From TRIPs to NAFTA to US-Peru FTA

**Required Reading:**

REID, pp. 246 – 263.

MOISES NAIM, *ILLCIT* 65-85, 109-130 (2006).

James M. Cooper, *Piracy 101*, CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL (Special Edition) 89 (2005).

HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 153-205 (2000).

**8. Legal Transplantation – November 25, 2008**

The Focus on Sovereignty, Non-Intervention and Territorial Integrity

System Friction: The End of the Cold War to the Gulf War II

The Contest Begins: European Legal Systems vs. U.S. Legal System

Legal Modeling and Legal Transplants

Law Reform in the Post-Dictatorship Era: Modernization or Judicial Imperialism?

The Oral Trial System and other Judicial Innovations

Nobody expects the Spanish Inquisition

Napoleonic Codes and Other Adaptations

The Sinai Complex and Judicial Slot Machine

From Papal Encyclicals to Canonist Laws

Popular Culture and the Fighter/Litigator: Ali McBeal and CSI Miami

Stories from the Field: Chile

From Pinochet to a State of Rights (El Estado de Derecho)

The Role of Civil Society and the Media

Academic Impulses and Non-Governmental Groups

From Los Chicago Boys to the Post-Lagos Reform Agenda

**Required Reading:**

REID, pp. 179– 193.

James M. Cooper, “*Seen and Not Seen*”: *System Friction and the Battle Over Corporate Governance*, in *TRENDS IN WORLD TRADE POLICY: ESSAYS IN HONOR OF SYLVIA OSTRY* (2006), edited by Alan Alexandroff.

James M. Cooper, *Proyecto ACCESO: The Use of Popular Culture to Build the Rule of Law in Latin America*, 5 RUTGERS J. L & PUB. POL. 378 (2008)

JAMES A. GARDNER, *LEGAL IMPERIALISM* 27-34 (1980).

## 9. The Future of the Americas: From Washington Consensus to Caracas Consensus – December 2, 2008

The Party's Over: After the Washington Consensus

Hugo and the Bolivarians: The Caracas Consensus Emerges

ALBA and Collective Self-Defense

Tropicapitalista Aymara Petroleo

Bilateral and Regional Free Trade Agreements (NAFTA, CAFTA-DR, Chile, Peru, Colombia?)

Bolivia 2008: Secession and Regionalism in Latin America?

*Uti possidetis Revisited*

### Required Reading:

REID, chapter 7 (159 – 178); chapter 12 (292 - 315).

Laura Carlsen, *Timely Demise for Free Trade Agreement of the Americas*, 68-73

DISPATCHES FROM LATIN AMERICA: ON THE FRONTLINES AGAINST NEOLIBERALISM (South End Press, 2006) (edited by Vijay Prashad & Teo Ballvé).

BENJAMIN DANGL, *THE PRICE OF FIRE: RESOURCE WARS AND SOCIAL MOVEMENTS IN BOLIVIA 75-90* (AK Press, 2007).

### Course Textbook:

MICHAEL REID, *THE FORGOTTEN CONTINENT: THE BATTLE FOR LATIN AMERICA'S SOUL* (Yale University Press, 2007)

### Reader Bibliography:

Laura Carlsen, *Timely Demise for Free Trade Agreement of the Americas*, 68-73

DISPATCHES FROM LATIN AMERICA: ON THE FRONTLINES AGAINST NEOLIBERALISM (South End Press, 2006) (edited by Vijay Prashad & Teo Ballvé).

James M. Cooper, "Seen and Not Seen": *System Friction and the Battle Over Corporate Governance*, in *TRENDS IN WORLD TRADE POLICY: ESSAYS IN HONOR OF SYLVIA OSTRY* (2006), edited by Alan Alexandroff.

James M. Cooper, *Proyecto ACCESO: The Use of Popular Culture to Build the Rule of Law in Latin America*, 5 RUTGERS J. L & PUB. POL. 378 (2008)

James M. Cooper, *Piracy 101*, CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL (Special Edition) 89 (2005).

Jorge Correa Sutil, *Judicial Reforms in Latin America: Good News for the Underprivileged?*, in THE (UN)RULE OF LAW & THE UNDERPRIVILEGED IN LATIN AMERICA 255-277 (Juan E. Méndez, Guillermo O'Donnell, & Paulo Sérgio Pinheiro eds, 1999).

BENJAMIN DANGL, *THE PRICE OF FIRE: RESOURCE WARS AND SOCIAL MOVEMENTS IN BOLIVIA* (AK Press, 2007).

HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 3, 153-205 (2000).

Tulio Halperin Donghi, *Two Centuries of South American Reflections on the Development Gap between the United States and Latin America*, 11 in *FALLING BEHIND* (edited by Francis Fukuyama) (Oxford University Press 2008).

Paul W. Drake, *The Hegemony of U.S. Economic Doctrines*, in *LATIN AMERICA AFTER NEOLIBERALISM: TURNING THE TIDE IN THE 21<sup>ST</sup> CENTURY* 26-48 (2006) (edited by Eric Hershberg & Fred Rosen).

JAMES A. GARDNER, *LEGAL IMPERIALISM* 27-34 (1980).

MARIA GONZALEZ DE ASIS, *ANTICORRUPTION REFORM IN RULE OF LAW PROGRAMS*, World Bank Institute (2006).

Steven E. Hendrix, *New Approaches to Addressing Corruption in the Context of U.S. Foreign Assistance with Examples from Latin America and the Caribbean*, 12 *SW. J.L. & TRADE AM.* 1 (2005).

PETER KORNBLOH, *THE PINOCHET FILE: A DECLASSIFIED DOSSIER ON ATROCITY AND ACCOUNTABILITY*, chapter 1 and documents (2003-2004).

JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 127-135 (2d ed., 1985).

Chief Justice Thomas J. Moyer, *Mediation as a Catalyst for Judicial Reform in Latin America*, 18 *OHIO J. ON DISP. RESOL.* 619 (2003).

MOISES NAIM, *ILLCIT* (2006).

ALVARO VARGAS LLOSA, *LIBERTY FOR LATIN AMERICA* 34 - 61 (2005).

ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 22-27 (2<sup>nd</sup>, edition, 1993).

