Law & Policy in the Americas Seminar
LAW 6936 Section 0345/LAS 6938 Section 2D92
Spring 2018
Instructor: Timothy McLendon
Tuesdays, 3:00 – 4:40 PM
Holland Hall, Room 350

SYLLABUS

Professor: Timothy McLendon
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Office Hours: Mondays, 9.30-10.30am
Wednesdays, 9.30-10.30am
Thursdays, 4.00-5.00pm

Description:
The Law & Policy in the Americas Seminar, LAW 6936/LAS 6938, is an interdisciplinary,
cross-listed course taught at the law school but offering credit to both law students and graduate
students from the Center for Latin American Studies. The seminar evaluates the development of
legal systems in the Americas and includes a comparative analysis. Topics include constitutional
comparisons, trade and commercial development, alternative dispute resolution mechanism use
and development, citizen security and human rights, property rights, and a review of regional
judicial reform efforts focusing on efforts to improve access, efficiency and transparency in
justice systems as a means to promote democratic consolidation and economic growth. Readings
are theoretical and applied, and they focus on differing legal cultures, distinguishing features of
the civil and common law systems, the informal economy and access to property rights. We will
utilize current periodicals to follow regional political developments and trade agreement
negotiations. Additional suggested readings are provided for each unit to provide perspective
and background material, and to serve as a starting point for deeper research.

Meaningful individual participation during all of the class meetings is expected. Note: In order
to inform the current events discussion at the beginning of each class, students must read a
newspaper or weekly news magazine in preparation for the course. As the focus of the class is
Latin America, students should read sources with good Latin America coverage: e.g., the New
York Times, Wall Street Journal, Miami Herald, Financial Times, The Economist, or some other
such publication (all of which are available online, or via WestLaw or Lexis/Nexis). Foreign
publications are acceptable given the scope of the class. It is important every student be
prepared and class participation will be considered in grading.

The seminar will include an advanced written research paper and oral presentation to the class
addressing some topic of law or policy relevant to the subject matter covered by the syllabus.
For the paper and presentation, each student will choose a subject area from the course syllabus to explore in more detail. Per UF regulation, this professor has no financial interest in whether students purchase the course pack. Course materials will be available for purchase at Book iT, 1250 W. University Ave. (N.W. 13th St. & University Ave.-in the Holiday Inn Building, right next to Piesano’s), ph.# 352-371-9588. Students are also free to download the materials themselves. Additional materials are available on TWEN and a few items may be placed on reserve in the Law Library.

Course Goals & Objectives:
The goal of this seminar is to introduce students to selected legal and policy issues affecting Latin America, including aspects of its political and economic development, Inter-American organizations, its legal structure, human rights and trade policies, and the relationship between the United States and Latin America.

By the end of this course, students should be able to:

- Appreciate the historical development of the Latin American states, and how the United States has understood and related to Latin America;
- Explain the role of the various Inter-American organizations, and their institutions, and the degree to which they have fostered hemispheric integration;
- Recognize some of the trends in the political development of Latin American states, including the periods of authoritarian rule and return to democratic governance;
- Explain some of the differences between the Civil Law operative in Latin America, and the Common Law systems operative in Anglo-American countries;
- Describe the structures of prominent Latin American judicial systems, including the types of courts, prosecutors and organs which supervise the judiciary and prosecution;
- Appreciate the organizations within the Inter-American system that protect human rights, and evaluate the degree to which this system has succeeded in developing a culture that respects human rights in various Latin American states;
- Compare the ways certain Latin American states have dealt with human rights violations committed during times of civil war or military dictatorship;
- Evaluate the protection for private property rights in Latin America, including both the development of these protections, and the degree to which alternative approaches, such as communal property rights, are accepted;
- Describe the role of multi-lateral trade organizations such as NAFTA, CAFTA, Mercosur or the Pacific Alliance etc. in encouraging trade within the hemisphere, and articulate opportunities and threats to free trade within the Americas; and
- Examine the recent foreign policy relationship between the United States and Latin America, and identify some of the key interests of the United States in Latin America.

Grades:
Grades in the seminar will be based on: 1) the quality of the paper submitted (60%); 2) the oral presentation (30%); and 3) attendance and participation in class discussion (10%).
Grade Values for Conversion

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<th>B+</th>
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The law school grading policy is available at: [http://www.law.ufl.edu/students/policies.shtml#9](http://www.law.ufl.edu/students/policies.shtml#9).

**Important Note about the 3-Credit LAS course:**
The 3-credit LAS version of this course includes all of the same requirements as the 2-credit LAW version of the course, with the following additional requirements:

1. **Mandatory tutorial on legal research.** This will take place at a time to be determined, with a series of 2-3 follow-up meetings focusing on international legal research, using LEXIS, internet sources, and resources available through the Legal Information Centre.

2. **Additional writing requirement.** This may be fulfilled either through expansion of the seminar paper from 25 pages to 35-40 pages (exclusive of footnotes or references), OR by the submission of a second 15-page essay focusing on some other area of law or policy relevant to Latin America. (In the event a 2nd paper is submitted, the 2nd paper will count for 20% of the final grade, while the main seminar paper will count for 40% of the final grade.)

3. **Class discussion requirement.** LAS students will identify one day of the syllabus from week 3 forward in which they will lead class discussion for one hour of the seminar.

**Class attendance & participation policy:**
Attendance will be taken at each class meeting. Students are allowed 2 absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course.

Student participation in class is encouraged, and will be considered in assigning a final grade. The degree of student participation will doubtless affect the quality and interest of class discussions. Students are expected to be prepared for each class.

**Seminar Paper Deadlines:**
2. Outline & initial Bibliography – Class 7, 20. February
3. Initial Draft – Class 10, 20. March
4. Completed Paper – Thursday, 26. April (last day of law school reading period)

**Statement regarding accommodations for students with disabilities:**
Students with disabilities requesting accommodations should first register with the UF Disability Resource Center (tel: 352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) providing appropriate documentation. After registering, students will receive an accommodation letter to give to the instructor when requesting any
accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

**Evaluations:**
Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at: [https://evaluations.ufl.edu](https://evaluations.ufl.edu). Evaluations are typically open during the last two or three weeks of the semester, and students will be informed when they are open. Summary results of these assessments are available to students at: [https://evaluations.ufl.edu/results/](https://evaluations.ufl.edu/results/).

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**-Introduction-**

**Tuesday, January 9th: Class 1**


* Christopher Sabatini, Rethinking Latin America: Foreign Policy is more than Development, FOREIGN AFFAIRS, March/April 2012, at 8. (TWEN)

* John Rapley, The New Middle Ages, FOREIGN AFFAIRS, May/June 2006, at 95. (Coursepack)


**SUGGESTED:**


* John Henry Merryman et al., The Civil Law Tradition: Europe, Latin America, and East Asia 351-99 (1994), Ch. 4: Law in Pre-Colonial Latin America & Development of the Law in Colonial Latin America  (TWEN)

* Alexis Okeowo, A Mexican Town Wages its own War on Drugs, NEW YORKER, Nov. 27, 2017, available online at: https://www.newyorker.com/magazine/2017/11/27/a-mexican-town-wages-its-own-war-on-drugs


* Alma Guillermoprieto, Mexico: ‘We are not sheep to be killed’, THE NEW YORK REVIEW OF BOOKS, Nov. 15, 2014, available online at: http://www.nybooks.com/daily/2014/11/05/mexico-not-sheep-to-be-killed/


* Fidel Castro, History Will Absolve Me, in THE CUBAN READER (Philip Brennan et al., eds.,1989). (TWEN)

Tuesday, January 16th: Class 2


Internationalism:

* Charter of the Organization of American States, available online at: http://www.oas.org/juridico/English/charter.html (Coursepack)

* Introduction – Basic Documents relating to the Inter-American legal order, available online at: http://www.cidh.oas.org/Basicos/English/Basic1.%20Intro.htm (Coursepack)
* Dexter S. Boniface, *The OAS Mixed Record, in Promoting Democracy in the Americas* (Thomas Legler et al., eds., 2007). (Coursepack)


SUGGESTED:

**Basic Documents Relevant to the Inter-American Court of Human Rights:**

* American Declaration of the Rights and Duties of Man, available online at: [http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm](http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm) (Coursepack)


* Statute of the Inter-American Court on Human Rights, available online at: [http://www.corteidh.or.cr/estatuto.cfm](http://www.corteidh.or.cr/estatuto.cfm) (Coursepack)

* Statute of the Inter-American Commission on Human Rights, available online at: [http://www.cidh.oas.org/Basicos/English/Basic17.Statute%20of%20the%20Commission.htm](http://www.cidh.oas.org/Basicos/English/Basic17.Statute%20of%20the%20Commission.htm) (Coursepack)


* Brigitte Weiffen et al., *Overlapping regional security institutions in South America: The case of OAS and UNASUR, 16 INT’L AREA STUD. REV. 370 (Dec. 2013), available online at: [http://ias.sagepub.com/content/16/4/370](http://ias.sagepub.com/content/16/4/370)

* Daniela Segovia, *Latin America and the Caribbean: Between the OAS and the CELAC, 95 EUR. REV. LATIN AM. & CARIBBEAN STUD. 97 (2013), available online at: [http://www.academia.edu/6002331/Latin_American_and_the_Caribbean_between_the_OAS_and_CELAC](http://www.academia.edu/6002331/Latin_American_and_the_Caribbean_between_the_OAS_and_CELAC)

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**Political**

**Tuesday, January 23rd: Class 3**


**SUGGESTED:**

  - Ch. 1: An Introduction to Latin America in the 21st Century
  - Ch. 2: Early History
  - Ch. 3: Democracy, Dictators and Tío Sam: A Historical Overview from Independence to the Present Day


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- Judicial & Legal -
Tuesday, January 30th: Class 4

* Rogelio Pérez-Perdomo, Rule of Law and Lawyers in Latin America, ANNALS AM. ACAD. POL. & SOC. SCI., January 2006, at 179. (Coursepack)


SUGGESTED:


* Pilar Domingo, Judicialization of Politics or Politicization of the Judiciary? Recent Trends in Latin America, DEMOCRATIZATION, Feb. 2004, at 104. (TWEN)


**Human Rights**

**Tuesday, February 6th: Class 5**


* Inter-American Commission on Human Rights Resolution No. 12/85, Case No. 7615 (Brazil) - provides an overview of the decision concerning the Yanomami Indians of Brazil, available online at: [http://www.cidh.org/annualrep/84.85eng/brazil7615.htm](http://www.cidh.org/annualrep/84.85eng/brazil7615.htm) (Coursepack)


**SUGGESTED:**


* OAS, Note 000125 from the Bolivarian Republic of Venezuela, announcing its decision to denounce the Inter-American Convention on Human Rights in accordance with Article 78 of the Convention (delivered Sept. 12, 2012), available online at: [http://www.oas.org/dil/Nota_Rep%C3%BAblica_Bolivariana_Venezuela_to_SG.English.pdf](http://www.oas.org/dil/Nota_Rep%C3%BAblica_Bolivariana_Venezuela_to_SG.English.pdf)

* UNITED NATIONS ECON. COMM’N FOR LATIN AMERICA & THE CARIBBEAN, GUARANTEEING INDIGENOUS PEOPLE’S RIGHTS IN LATIN AMERICA: PROGRESS IN THE PAST


* Regional reports of Human Rights Watch, available online at: http://www.hrw.org/doc/?t=americas_pub

**Tuesday, February 13th: Class 6**

**US Law relevant to Human Rights in the Americas:**

* Alien Tort Claims Act (ATCA), 28 U.S.C. § 1350. (Coursepack)


* *Filarita v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). (Coursepack)

* *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. __, 133 S.Ct. 1659 (2013). (Coursepack)


* *Cardona v. Chiquita Brands Int’l, Inc.*, 760 F.3d 1185 (11th Cir. 2014). (Coursepack)

**SUGGESTED:**

* *Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016).


* *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005).

* *Ford ex rel. Estate of Ford v. Garcia*, 289 F.3d 1283 (11th Cir. 2002).

* *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233 (2d Cir. 2003).

-Property Rights-

**Tuesday, February 20th: Class 7**

* HERNANDO DE SOTO, THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD 3-57 (June Abbott, trans., 1989), Chapters 1 & 2. (Coursepack)


**SUGGESTED:**


- Latin American Economics -

**Tuesday, February 27th: Class 8**


**SUGGESTED:**


* Oscar Arias, *Culture Matters: The Real Obstacles to Latin American Development*, FOREIGN AFFAIRS (Jan./Feb. 2011) (TWEN)


**Tuesday, March 6th: Spring Break – No Class**

-Trade and Commercial Development-
Tuesday, March 13th: Class 9


* Lamb v. Phillip Morris, Inc., 915 F.2d 1024 (6th Cir. 1990). (Coursepack)

NAFTA – trucking cases
* In the Matter of Cross-Border Trucking Services, Case No. USA-MEX-98-2008-01 (NAFTA Arbitral Panel, 2001). (Coursepack)


SUGGESTED:


* Jorge G. Castañeda, NAFTA’s Mixed Record: The View From Mexico, FOREIGN AFFAIRS (Jan./Feb. 2014). (TWEN)


* Organization of American States Foreign Trade Information System, available online at: http://www.sice.oas.org/
There has never been a better time for Latin American integration, THE ECONOMIST, Mar. 23, 2017, available online at: https://www.economist.com/news/americas/21719478-fractured-region-needs-pull-together-trade-there-has-never-been-better-time-latin

-U.S. Policy in the Region-

Tuesday, March 20th: Class 10

* Gordon Connell-Smith, Latin America in the Foreign Relations of the United States, 8 J. LAT. AM. STUD. 137 (1976). (TWEN)


* Myles Frechette, Rethinking Latin America: A New Approach in United States Foreign Policy, 28 HARV. INT’L REV., Summer 2006, at 28. (TWEN)


SUGGESTED:


* BETTER THAN YOU THINK: REFRAMING INTER-AMERICAN RELATIONS (Brookings Inst., Mar. 2015), available online at: https://www.brookings.edu/research/better-than-you-think-reframing-inter-american-relations/

* Mark Weisbrot, Obama’s Latin America Policy: Continuity Without Change, 38 LAT. AM. PERSP. 63 (2012). (TWEN)


**Tuesday, March 27th: Class 11**

Film in class.

**Tuesday, April 3rd: Class 12**

**Tuesday, April 10th: Class 13**

**Tuesday, April 17th: Class 14**

Student Presentations in class