

**TRADE & HUMAN RIGHTS IN THE AMERICAS SEMINAR  
UNIVERSITY OF FLORIDA COLLEGE OF LAW**

SYLLABUS<sup>1</sup>

LAW 6936, Section 3637  
Spring 2005  
Monday 3:00 - 5:50  
Room 355D Classroom Tower

Berta E. Hernández-Truyol<sup>2</sup>  
Stephen J. Powell<sup>3</sup>

**Paper Deadlines:**

*Topic Selection:* Submit your paper theme to the TWEN Assignment Drop Box by Noon on Monday, February 7 (Class 5).

*Paper Due:* Submit your final research paper in electronic form to the TWEN Assignment Drop Box no later than 3:00 pm on Monday, April 18 (last class). **Only** exception is for presenters on April 18; those papers are due by 3:00 pm on Friday, April 22. **No** extensions.

**Course Description**

Although human rights law and trade law have developed well-established regimes through a series of negotiations on parallel tracks since World War II, there is increasing criticism from a variety of fronts that international trade rules are insensitive to basic human rights and that globalization has done little to alleviate the gap between rich and poor. Must trade and human rights regimes necessarily conflict? This seminar will explore the premises of the trade and human rights debate from the perspectives of both free trade advocates and human rights activists, with the purpose of imparting a better understanding of the rationales for both systems of law and the ways each is attempting to avoid a clash that could have profound impact on the protection of human rights and on the global market. Using actual examples from the 35 nations of the Hemisphere, the seminar will examine in depth such human rights policies in the Americas as those involving conscripted child labor, sustainable development, health promotion, equality of women, trafficking, indigenous peoples, poverty, citizenship, and economic sanctions.

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<sup>3</sup> Room 230 Bruton-Geer Hall, 392-2237, [powells@law.ufl.edu](mailto:powells@law.ufl.edu). Office Hours: Tues. 9:00 - 10:30 (other times by appointment). Secretary: Barbara Sieger, Room 230 Bruton-Geer Hall, 392-2237, [sieger@law.ufl.edu](mailto:sieger@law.ufl.edu).

## **Course Materials**

Students should purchase:

1. Berta E. Hernández-Truyol, *Moral Imperialism: A Critical Anthology* (NYU Press 2002).
2. Andreas F. Lowenfeld, *International Economic Law* (Oxford Univ. Press 2002).

Both are available at Wilbert's and other local bookstores. Additional course materials are available as pdf files, at the Internet address given, or will be distributed as class handouts. A copy of the additional materials is available from the Library Reserve Desk, temporarily located in Media Services, 2d floor Bruton-Geer Hall. The reading assignments for each class, and their location, are listed in the "Class Schedule" below.

## **Course Web Site, "TWEN"**

Students must register as Course Participants on our web site, which is listed under Professor Powell's name on The West Education Network <http://lawschool.westlaw.com/twen> (password is Trade&HR). If you are a law student and do not have a Westlaw password, or if you experience problems with your Westlaw account, contact your Westlaw class representative immediately. If you are **not** a law student and do not have a Westlaw password, contact as soon as possible the secretary, Cindy Zimmerman in Room 340 Holland Hall, 392-2211, [zimmerca@law.ufl.edu](mailto:zimmerca@law.ufl.edu), to have a Westlaw password issued. We will use the web site to post important messages and material and you will use it for essential class communications.

Please note due to continuing problems with some ISPs (aol, hotmail, msn), you are required to have a functioning ufl.edu e-mail address. Also very important is to not set "forwarding" on the ufl.edu address to one of those ISPs.

## **Grading**

Fifty percent of your grade for the seminar will be based on class participation and discussion, including your leading of the class discussion during your assigned class and presentation of your research to the class, and 50% on your research paper.

## **Class Participation and Discussion**

Read and think about the materials before class, then join in the discussion we will have to learn the concepts at issue. Each student will choose one class in which to prepare questions and otherwise lead the discussion. Normally, this choice will reflect the student's research paper topic. Discussion leaders will use 50 minutes of that class to present the results of their research. Part of the discussion leader's responsibility is to develop and post on the course website **before class** a list of questions that critically probe findings made by the assigned materials. Students may use computer slides such as Microsoft PowerPoint or Corel Presentations for either or both class segments.

## Research Paper

Research papers will address one of the many topics of current importance involving the intersection of human rights law and international trade law. The best place to find a topic of interest is your course materials—this method not only guarantees a relevant subject, but also ensures you will have a head start on the research and be well prepared to lead your classmates during the class you are discussion leader. We will help you choose a topic during class or in individual discussions, as you prefer. Paper themes are due after the two reading periods provided for your initial research (due by Noon, February 7). Final papers are due by 3:00 pm on April 18. **Only** exception is for presenters on April 18; those papers are due by 3:00 pm on April 22. **No** extensions.

Papers must be at least 25 pages in length, but not more than 50 pages. Papers should be typed on 8½ x 11 inch paper using a 12-point font with numbered pages, double-spaced lines, and one-inch margins all around. All lengths are exclusive of title page, table of contents, and footnotes or endnotes. Your research should include relevant and substantively rich sources and include primary sources. If you are a law student, the majority of your sources are likely to be cases as well as legal journals or texts and you should use The Bluebook as your citation format. If you are a non-law student, you are expected to use the appropriate sources and consistent citation format. Your paper grade will be based on the quality of your analysis, the depth and breadth of your research, and style and organization.

### Paper Deadlines:

*Topic Selection:* Submit your paper theme to the TWEN Assignment Drop Box by Noon on Monday, February 7 (Class 5).

*Paper Due:* Submit your final research paper in electronic form to the TWEN Assignment Drop Box no later than 3:00 pm on Monday, April 18 (last class). **Only** exception is for presenters on April 18; those papers are due via TWEN by 3:00 pm on Friday, April 22. **No** extensions.

## Class Schedule

### Class 1: Monday, January 10

After review of the syllabus, guidelines for research papers, and other course procedures, we will present an overview of the relationship between human rights and international trade, including how globalization both promotes and harms human rights causes and the philosophical differences in the approach of the two disciplines. Basic concepts of international trade will be discussed and the history of trade pacts in the Western Hemisphere explored.

### Reading Assignments:

(a) *Introduction to Trade and Human Rights in the Americas*

Stephen J. Powell, "The Place of Human Rights Law in World Trade Organization Rules," [16 Fla. J. Int'l L. 219](#) (2004)

Diana Bronson & Lucie Lamarche, "[Considerations Towards] A Human Rights Framework for Trade in the Americas" (International Centre for Rights & Democracy, 2001), pp. 1-7, through section on Trade and Development, and including Apps. I-II, available as [pdf](#) and at <http://www.dd-rd.ca/frame2.iphtml?langue=0&menu=m078&urlpage=store/> (use "search" function to locate paper)

"Globalisation and Its Critics," The Economist, Sept. 29, 2001, at 3, available as [pdf](#) and at [http://www.economist.com/surveys/PrinterFriendly.cfm?Story\\_ID=795995](http://www.economist.com/surveys/PrinterFriendly.cfm?Story_ID=795995)

(b) *Basic Concepts of International Trade*

Lowenfeld, pp. 3-8 & 21-44

(c) *Trade in the Americas*

First Summit of the Americas, "Declaration of Principles" (Miami, Florida 1994), available as [pdf](#) and at <http://www.summit-americas.org/miamidec.htm>

International Centre Rights & Democracy, "Human Rights and the Free Trade Area of the Americas: Backgrounder" (2001), available as [pdf](#) and at <http://www.dd-rd.ca/frame2.iphtml?langue=0&menu=m078&urlpage=store/> (use "search" function to locate paper)

**Class 2: Friday, January 21 (Monday class rescheduled)**

*Basic Concepts and Legal Regimes of Human Rights Law in the Americas*

In this class we will explore the human rights legal regime, focusing on the inter-American regime, both in terms of existing rights as well as the structures available for their enforcement. The discussion will include taking a look at the sources and origins and sources of human rights norms, their historical development, and their present state. We also will consider the universality/relativism debate as it becomes significant in the trade and globalization discourses on trade and human rights in particular as it pertains to labor standards and environmental protections.

Reading Assignments:

Berta E. Hernández-Truyol, "Human Rights through a Gendered Lens: Emergence, Evolution, Revolution," *Women and International Human Rights Law*, Vol. 1 (K. Askin & D. Koenig, eds., 1999), pp. 5-29, available as [pdf](#)

Universal Declaration of Human Rights, available as [pdf](#) and at <http://www.un.org/Overview/rights.html>

United Nations Charter, available as [pdf](#) and at <http://yale.edu/lawweb/avalon/un/unchart.htm>

American Declaration of the Rights and Duties of Man (1948), available as [pdf](#) and at <http://www.cidh.oas.org/Basicos/basic2.htm>

American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), available as [pdf](#) or at <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>

Americas Policy Group, "Canada in the Americas: Putting Human Rights First" (Canadian Council for International Cooperation, 2004), available as [pdf](#) and at [http://www.ccic.ca/e/docs/003\\_apg\\_ipr\\_recs.pdf](http://www.ccic.ca/e/docs/003_apg_ipr_recs.pdf)

Canadian Council for International Cooperation, "Post-Cancun Reflections and Directions: Conference Report" (2003), available as [pdf](#) and at [http://www.ccic.ca/e/docs/002\\_trade\\_2003-10\\_post\\_cancun\\_conference\\_report.pdf](http://www.ccic.ca/e/docs/002_trade_2003-10_post_cancun_conference_report.pdf)

Choike.org (a portal on Southern civil societies), "FTAA: A New Colonialism?," available as [pdf](#) and at [http://www.choike.org/nuevo\\_eng/informes/791.html](http://www.choike.org/nuevo_eng/informes/791.html)

Americas Policy Group, "APG Background Paper" (Appendix A) of "Report from the Americas Policy Group Roundtable: Human Rights in Mexico at the 10th Anniversary of NAFTA—Opportunities and Challenges for Canada" (Canadian Council for International Cooperation, Jan. 2004), pp. 6-30, available as [pdf](#) and at [http://www.ccic.ca/e/docs/003\\_apg\\_mexico\\_nafta\\_roundtable\\_report.pdf](http://www.ccic.ca/e/docs/003_apg_mexico_nafta_roundtable_report.pdf)

Barbara Crossette, "Kofi Annan's Astonishing Facts!," *New York Times*, Sept. 27, 1998, available as [pdf](#) or at [http://www.nytimes.com/learning/general/featured\\_articles/980928monday.html](http://www.nytimes.com/learning/general/featured_articles/980928monday.html)

## **Classes 3 & 4: Monday, January 24 & 31**

NO CLASS: Reading Period -- Selection of Paper Topic and Initial Research

## **Class 5: Monday, February 7 \*\*Paper theme due via TWEN by Noon\*\***

### Trade and Citizenship

Globalization is changing the nature of citizenship. What used to be considered a legal status now becomes more of a social bond; what used to be a particular relationship of an individual to the state, can now be a relationship of an individual to multiple states; a status that once defined belonging, can now signify marginalization. Moreover, the power that used to lie in individuals to define the political, social, and cultural landscape now has been shifted to corporate entities. This class will explore the meaning of citizenship in this era of globalization.

### Reading Assignments:

#### *Moral Imperialism:*

- Saskia Sassen, "Economic Globalization and the Redrawing of Citizenship," ch. 7
- Claire Moore Dickerson, "The Recognition of the Individual: A Human Rights Perspective for International Commerce," ch. 8
- Berta E. Hernández-Truyol, "Human Rights, Globalization, and Culture-Centering Personhood in International Narrative," ch. 20

## **Class 6: Monday, February 14**

### Trade and Labor

After discussing what labor standards may properly be characterized as fundamental human rights, we will discuss the extent to which existing trade agreements have been used successfully to protect core labor rights. In particular we will look at experience under the labor side agreement of the North American Free Trade Agreement and whether the U.S.-Chile and US-Central American Free Trade Agreements may become models for addressing the role of labor rights in future trade pacts.

### Reading Assignments:

*Moral Imperialism:* Tim Connor, "Rerouting the Race to the Bottom?," ch. 9

Juan Forero, "In Ecuador's Bananas Fields, Child Labor Is Key to Profits," New York Times, July 13, 2002, available as [pdf](#) or at [http://www.globalexchange.org/campaigns/bananas/20020715\\_236.html](http://www.globalexchange.org/campaigns/bananas/20020715_236.html)

Thomas J. Manley & Amb. Luis Lauredo, "International Labor Standards in Free Trade Agreements of the Americas," [18 Emory Int'l L. Rev. 85](#) (2004)

## **Class 7: Monday, February 21**

### Trade and Trafficking

In this class we will look at a different type of trade – the trade in persons. Some of such "trade" is inextricably linked to the trade regimes, bolstered by their demand for cheap labor. This class will look at the phenomenon of trafficking and its reasons for emerging as, what in some instances is called a modern form of slavery.

### Reading Assignments:

Andrew Cockburn, "21<sup>st</sup> Century Slaves," National Geographic, Sept. 2003, available as [pdf](#)

Abigail Goldman, "Sweat, Fear and Resignation Amid All the Toys," Los Angeles Times, Nov. 26, 2004, available as [pdf](#)

David Shirk & Alexandra Webber, "Slavery Without Borders: Human Trafficking in the U.S.-Mexican Context," Hemisphere Focus (CSIS), Jan. 23, 2004, available as [pdf](#) or at [http://www.csis.org/americas/pubs/hf\\_v12\\_05.pdf](http://www.csis.org/americas/pubs/hf_v12_05.pdf)

John Bowe, "Nobodies: Does Slavery Exist in America?," The New Yorker, April 21, 2003, available as [pdf](#) or at [http://www.rfkmemorial.org/human\\_rights/2003\\_CIW/2003\\_New\\_Yorker\\_Article\\_on\\_CIW\\_4-03.pdf](http://www.rfkmemorial.org/human_rights/2003_CIW/2003_New_Yorker_Article_on_CIW_4-03.pdf)

*Moral Imperialism:* Berta E. Hernández-Truyol & Jane E. Larson, "Both Work and Violence: Prostitution and Human Rights," ch. 10

## **SPRING BREAK: FEBRUARY 28 – MARCH 4**

## **Class 8: Monday, March 7**

### Trade & Women

As written, trade laws are gender neutral. However, in so far as they effect migrations from rural to urban areas in the search for labor, they have impact on families. In addition, trade laws result in the creation of jobs, many of which are

filled by women. This class explores the impact of the trade regime on women and labor, as well as the gendered issues raised by the work.

Reading Assignments:

Hannah L. Meils, "A Lesson from NAFTA: Can the FTAA Function as a Tool for Improvement in the Lives of Working Women?," [78 Ind. L.J. 877](#) (2003)

Inter-American Development Bank, "Women in the Americas," ch. 1, *Women in the Americas: Bridging the Gender Gap* (1995) (class handout)

Judy Whitehead, "Women and Trade Policies in the Caribbean," *Women's Empowerment and Economic Justice: Reflecting on Experience in Latin America and the Caribbean* (L. de Pauli ed., UNIFEM 2000), pp. 27-37, available as [pdf](#) or at <http://www.unifem.undp.org/resources/eemplac/index.html>

Maria Patricia Fernández Kelly, "Maquiladoras: The View from the Inside," *The Women, Gender, & Development Reader* (N. Visvanathan et al., eds., Univ. Press, 1997) (class handout)

**Class 9: Monday, March 14**

*Trade & Indigenous Populations*

The trade regime, in promoting certain types of work, has consequences on indigenous populations ranging from changing their life styles, to invading or appropriating their cultural knowledge. This session explores the relationship of trade to indigenous populations as well as trade's impact on such populations.

Reading Assignments:

*Moral Imperialism:*

-- Kathryn Scantlebury et al., "Imperial Knowledge: Science, Education, and Equity," ch. 12

-- Eric K. Yamamoto et al., "Indigenous Peoples' Human Rights in U.S. Courts," ch. 17

Rosemary J. Coombe, "The Recognition of Indigenous Peoples' and Community Traditional Knowledge in International Law," [14 St. Thomas L. Rev. 275](#) (2001)

*Lowenfeld*, § 5.6, pp. 98-108

Terence N. D'Altroy, "Reinventing Unchanged Andean Traditions," [12 Cardozo J. Int'l & Comp. L. 83](#) (2004)



Marcos A. Orellana, "Indigenous Peoples, Energy, and Environmental Justice: The *Pangué/Ralco* Hydroelectric Project in Chile's Alto BíoBío" (July 2004), available as [pdf](#) and at [http://www.ciel.org/Publications/Ralco\\_Brief\\_22Jul04.pdf](http://www.ciel.org/Publications/Ralco_Brief_22Jul04.pdf)

Marcos A. Orellana, "Indigenous Peoples, Mining, and International Law" (International Institute for Environment and Development: MMSD, Jan. 2002, No. 2), available as [pdf](#) or at [http://www.iied.org/mmsd/mmsd\\_pdfs/002\\_orellana\\_eng.pdf](http://www.iied.org/mmsd/mmsd_pdfs/002_orellana_eng.pdf)

Jennifer A. Amriott, "Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of *Awas Tingni v. Nicaragua*," [32 Env'tl. L. 873](#) (2002)

### **Class 10: Monday, March 21**

#### *Trade and the Environment*

The right to a healthy and sustainable environment has increasingly faced limitations from trade rules that seek unconditional non-discrimination and distinguish products based on their physical characteristics, not on whether their production or harvesting methods cause environmental damage. We examine the present state of this debate, one that inevitably takes center stage when developed countries consider economic arrangements with smaller nations.

#### Reading Assignments:

*Lowenfeld*, "The Environment and International Economic Law," ch. 11

Carmen Gonzalez, "Trade Liberalization, Food Security and the Environment: The Neoliberal Threat to Sustainable Rural Development," (forthcoming), available as [pdf](#)

Marie-Claire C. Segger, "Sustainable Development in the Negotiation of the FTAA," [27 Fordham Int'l L.J. 1118](#), 1118-1133 (2004)(note page nos. to read)

### **Class 11: Monday, March 28**

#### *Trade and Health*

The World Trade Organization has the potential to make the benefits of movement of goods, services, and knowledge available to an unprecedented degree. But concerns about the health impact of international trade, particularly in the poorest nations and as to food safety, environmental toxins, and access to life-saving medicines have fed doubts about the value of globalization. With Brazil's AIDS crisis close in mind, we look at whether trade rules may continue accurately to be blamed for world health concerns.

### Reading Assignments:

Margo A. Bagley, "Legal Movements in IP: TRIPS, Unilateral Action, Bilateral Agreements, and HIV/AIDS," Emory Univ. School of Law Public Law & Legal Theory Research Paper Series (2003), available as [pdf](#) or at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=448941](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=448941)

Senator José Serra, Minister of Health of Brazil, "Lessons from the Brazilian AIDS Program," keynote address at AIDS 20 Years Later: An International Health Conference (2001), available as [pdf](#) and at <http://www.pih.org/calendar/011013aids/keynote.html>

M. Gregg Bloche & Elizabeth R. Jungman, "Health Policy and the WTO," [31 J.L. Med. & Ethics 529](#) (2003)

### **Class 12: Monday, April 4**

#### *Economic Sanctions*

The United States has long used economic sanctions to express its displeasure with government-sanctioned human rights abuses. Critics have questioned both the legal validity of such measures and their effectiveness in correcting the miscreant behavior. We will examine these issues in particular reference to the Helms-Burton legislation punishing Cuba economically for acts of terrorism and will contrast this result with the opposite outcome of recent Congressional debate over China's entry into the WTO.

### Reading Assignments:

*Lowenfeld*, Part VII, Introduction; ch. 22, Part B (§§ 8-11); ch. 23 §§ 1,2, 5 (a,b,d,e,f)

Berta E. Hernández-Truyol, "Sanctions and Sovereignty," [2/20/96 NYLJ S4, Col. 1](#)

### **Class 13: Monday, April 11**

#### *Trade and Poverty*

Part of the promise of a trade system was the spread of capitalism and capital so as to effect an improvement in the standards of living. Yet it is unclear whether indeed there has been such an improvement in wealth. This session reviews literature to generate a discussion on whether the trade regime as it has evolved has in fact met its promise or instead had deleterious effects in perpetuating poverty.

### Reading Assignments:

WTO Secretariat, "Free Trade Helps Reduce Poverty, Says New WTO Secretariat Study"

-- Report Summary, available as [pdf](#) and at [http://www.wto.org/english/news\\_e/pres00\\_e/pr181\\_e.htm](http://www.wto.org/english/news_e/pres00_e/pr181_e.htm)

-- Study (in 3 parts):

----- Chapter One: Trade, Income Disparity and Poverty: An Overview, [pdf](#)(1),

----- Chapter Two: Trade, Growth and Disparity Among Nations, [pdf](#)(2),

----- Chapter Three: Trade and Poverty: Is There a Connection?, [pdf](#)(3)

(these chapters are also available through above link)

Anup Shah, "Causes of Poverty" (updated 8/26/02), available as [pdf](#) and at <http://www.globalissues.org/TradeRelated/Poverty.asp>

Oxfam International, "Make Trade Fair in the Americas -- Agriculture, Investment and Intellectual Property: Three Reasons to Say No to the FTAA" (Briefing Paper, No. 37, 2003):

-- Summary, available as [pdf](#) and at

[http://www.oxfam.org.uk/what\\_we\\_do/issues/trade/bp37\\_trade\\_americas.htm](http://www.oxfam.org.uk/what_we_do/issues/trade/bp37_trade_americas.htm)

-- Report, as [pdf](#) and through link at above cite

Canadian Council of International Cooperation, "Balancing Global Relations: The New Realities of International Trade," Conference Report (Feb. 2004), available as [pdf](#) and at [http://www.ccic.ca/e/docs/002\\_trade\\_2004-02\\_workshop\\_report.pdf](http://www.ccic.ca/e/docs/002_trade_2004-02_workshop_report.pdf)

Kristin Wintersteen, "Poverty, Trade & Development and the WTO" (International Faculty Council, University of Washington, 1999), available as [pdf](#) and at <http://www.washington.edu/wto/issues/poverty.html>

*Moral Imperialism:* M. Patricia Fernández Kelly, "Immigration, Poverty and Transnationalism: The Changing Terms of Citizenship in a Global Economy," ch. 19

### **Week 14: Monday, April 18**

*The Future of Trade and Human Rights: Visions and Solutions*

### Reading Assignment:

Robert Howse & Makau Mutua, "Protecting Human Rights in a Global Economy, Challenges for the World Trade Organization" (International Center for Rights & Democracy, 2000), available as [pdf](#) and at <http://www.dd->

[rd.ca/frame2.iphtml?langue=0&menu=m07&urlpage=store/](http://rd.ca/frame2.iphtml?langue=0&menu=m07&urlpage=store/) (use “search” function to locate paper)

**⚡ Research papers are due by 3:00 pm today, April 18. Papers from today’s presenters are due by 3:00 pm on Friday, April 22. No extensions. Submit papers in electronic form to the TWEN Assignment Drop Box.**