



# new trends in latin american constitutionalism

j.s.d. student conference

april 11 & 12, 2013

Notre Dame Law School

THE J.S.D. STUDENTS AT NOTRE DAME LAW SCHOOL  
WITH SUPPORT FROM THE CENTER FOR CIVIL AND HUMAN RIGHTS  
PRESENT "NEW TRENDS IN LATIN AMERICAN CONSTITUTIONALISM"

CO-SPONSORED BY  
THE KELLOGG INSTITUTE FOR INTERNATIONAL STUDIES & THE PROGRAM ON CONSTITUTIONAL STRUCTURE

## schedule of events

**Thursday, April 11, 2013**

**1130 Eck Hall of Law 5:00pm- 6:00pm**

### Opening Session

César Rodríguez Garavito (Universidad de los Andes)  
Santiago Legarre (Universidad Católica de Argentina)

6:15pm- 7:30pm Reception: Eck Hall of Law Atrium

**Friday, April 12, 2013**

**3140 Eck Hall of Law 8:30am-10:45am**

### Panel One: The Protection of the Individual within the Context of a Community

Roberto Gargarella (Universidad Torcuato Di Tella)  
Paolo Carozza (Notre Dame Law School)  
José Antonio Aguilar Rivera (CIDE)  
Moderator: Pier Paolo Pigozzi (J.S.D. Candidate, Notre Dame Law School)

10:45am- 11:00am Coffee Break

**11:00am- 12:45pm**

### Panel Two: Equality: Exploring Indirect Discrimination

Marisol Peña (Pontificia Universidad Católica de Chile; Judge, Constitutional Court Chile)  
Oscar Vilhena Vieira (Getulio Vargas Foundation)  
Moderator: Soledad Bertelsen (J.S.D. Candidate, Notre Dame Law School)

12:45pm- 2:00pm Lunch

**2:00pm- 4:15pm**

### Panel Three: Legal Pluralism in Human Rights

Agustín Grijalva (Universidad Andina Simón Bolívar)  
Manuel Nuñez (Universidad Católica de Valparaíso)  
Fernando Toller (Universidad Austral)  
Moderator: Pablo González (J.S.D. Candidate, Notre Dame Law School)

4:15pm- 4:30pm Coffee Break

**4:30pm- 5:45pm**

### Closing Session

César Rodríguez Garavito (Universidad de los Andes)  
Santiago Legarre (Universidad Católica de Argentina)

## conference overview

In Latin America, constitutional change happens frequently in order to meet the demands for the effective protection of human rights, and the consolidation of democracy and the rule of law. Nevertheless, opposing doctrines provide opposing answers to the main questions related to these general topics. This conference creates the space for prominent scholars with divergent philosophical viewpoints to engage in creative dialogue around the pressing issues of Latin American constitutional structure.

## panel topics

### Panel One: The Protection of the Individual within the Context of a Community

The first panel will analyze the protection of indigenous peoples and minorities in constitutional law. The panelists will discuss the legitimacy of granting special protection to members of specific social groups. At a foundational level, the discussion will be focused on the possibility and feasibility of affirming the protection of communities within the current individualistic human rights discourse.

### Panel Two: Equality: Exploring Indirect Discrimination

The second panel will analyze the content and reach of equality clauses. The panelists will discuss the role that the law and the state should play regarding the protection of individuals and groups against discrimination. At a foundational level, the panel will analyze whether equality clauses should only include protection against non-arbitrary discrimination, or whether it should also require the state to act positively in favor of marginalized groups.

### Panel Three: Legal Pluralism in Human Rights

The third panel will analyze the notion of legal pluralism - the coexistence of different legal systems within one state. The panelists will explore how the constitutional recognition of indigenous law and the openness towards the incorporation of international law at a domestic level are leading to the creation of pluralistic legal systems. The panel will discuss the reasons for legal pluralist systems to exist and the reasons to require margins of discretion in order to be operational.



## j.s.d. student organizers

**Soledad Bertelsen** is in her second year of the J.S.D. in International Human Rights program at Notre Dame Law School. She specializes in the role of domestic jurisdictions in the interpretation of international human rights instruments. Her dissertation topic focuses on the doctrine of the margin of appreciation in the European and Inter-American Systems for the protection of human rights.

**Pablo González** is in his second year of the J.S.D. in International Human Rights program at Notre Dame Law School. He specializes in the implementation of international human rights norms and standards by municipal judiciaries, with a regional focus in Latin America. His dissertation focuses on the doctrine of conventionality control of the Inter-American Court of Human Rights.

**Pier Paolo Pigozzi** is in his first year of the J.S.D. in International Human Rights program at Notre Dame Law School. His doctoral studies focus on the transformation of the Latin American tradition of human rights in light of recent constitutional modifications in that region.

## conference participants



**José Antonio Aguilar** is a professor and researcher in political science at the Centro de Investigación y Docencia Económica (CIDE), and joined the Kellogg Institute for the 2012-2013 academic year. He holds a PhD from the University of Chicago. His research focuses on electoral processes and voter behavior, liberalism, multiculturalism, and republicanism.

**Paolo Carozza** is the Director of the Kellogg Institute for International Studies, an interdisciplinary, university-wide research institute focusing primarily on the themes of democracy and human development. In the Law School, he is Director of the Center for Civil and Human Rights, including its J.S.D. program in International Human Rights Law. From 2006 to 2010 he was a member of the Inter-American Commission on Human Rights and served as its President in 2008-09. Professor Carozza's expertise is in the areas of comparative law, human rights, and international law, and his extensive writings in these areas have been published in Europe and Latin America as well as in the United States.

**Roberto Gargarella** is Professor of Law at the University of Torcuato Di Tella (Buenos Aires, Argentina) and Associate Professor of Law at Universidad de Buenos Aires. He has held positions as a visiting scholar at Columbia University, Universidad Pomeu Fabra, New York University, University of Bergen, and University of Chicago. Professor Gargarella holds a J.S.D. and an LL.M. from the University of Chicago, a Ph.D. from the University of Buenos Aires, a B.A. in Sociology and an LL.B, both from the University of Buenos Aires, and he completed his postdoctoral studies at Balliol College at Oxford. His research focuses on constitutional theory and political philosophy.

**Agustín Grijalva** is Professor of Law at the Universidad Andina Simón Bolívar (Ecuador). He holds a Ph.D. in Political Science from the University of Pittsburgh, an LL.M. from the University of Kansas, and an LL.B. from the Pontifical Catholic University of Ecuador. His research focuses on constitutional interpretation, fundamental rights, and international human rights.

**Santiago Legarre** is Professor of Law at the Pontificia Universidad Católica Argentina (Buenos Aires, Argentina) and Researcher (CONICET, Argentina). He holds a Ph.D. in Law from the Universidad de Buenos Aires, an M.St. from Oxford and LL.B. from the Pontificia Universidad Católica Argentina. He has been visiting professor in several American universities, including Louisiana State University, Valparaiso University School of Law (Indiana) and Notre Dame Law School. His research interests lie in constitutional law and jurisprudence.

**Manuel Nuñez** is Professor of Public Law at the Universidad Católica de Valparaíso (Chile). He is also Council Member of the Instituto Nacional de Derechos Humanos (Chile). He holds a Ph.D. in Law from Universidad de Santiago de Compostela (Spain) and a LL.B. from Universidad Católica de Valparaíso. Professor Nuñez has a longstanding interest in human rights, margin of appreciation and indigenous peoples law. He is currently conducting research on the national and international regimes for indigenous land rights.

**Marisol Peña Torres** is a judge of the Constitutional Court of Chile since 2006. She is also Professor of Constitutional and International Law, and the Director of the Department of Public Law at Pontificia Universidad Católica de Chile. She has a B.A. in law from Pontificia Universidad Católica de Chile, and a M.A. in International Studies from Universidad de Chile. Professor Peña has published a number of articles in the field of public law in several law journals.

**César Rodríguez Garavito** is Professor of Law and founding Director of the Program on Global Justice and Human Rights at Universidad de los Andes (Colombia), and a founding member of the Center for Law, Justice, and Society (Dejusticia). He is a visiting professor at Stanford Law School, and has held visiting appointments at Brown University, the University of Pretoria (South Africa), Fundação Getulio Vargas (Brazil), the Åbo Academy of Human Rights (Finland), and the Universidad Andina Simón Bolívar (Ecuador). He serves on the Editorial Board of the Annual Review of Law and Social Science. He holds a Ph.D. and an M.S. (Sociology) from the University of Wisconsin-Madison, an M.A. from NYU's Institute for Law and Society, an M.A. (Philosophy) from Universidad Nacional de Colombia, and a J.D. from Universidad de los Andes (Colombia). His areas of research and publication include law and society, constitutional law, social movements, and globalization.

**Fernando Toller** is Professor of Law at the Universidad Austral (Buenos Aires, Argentina), where he directs the Jurisprudence and Constitutional Law Department. He holds a J.D. from Pontificia Universidad Católica Argentina, and a Ph.D. in Law from University of Navarra (Spain), both with Honors. He has published several books and law review articles regarding Constitutional Law, Human Rights, Jurisprudence and Legal Education. Professor Toller is Visiting Professor in Law Schools of Spain and Latin America, and gave classes and presentations in several American Law Schools. He does an extensive work as consultant and litigator in Public Interest Law, both in the national and Inter-American levels.

**Oscar Vilhena Vieira** is the Dean of the School of Law of Fundação Getulio Vargas (FGV/SP). He is a professor in Constitutional Law and Human Rights. He was the founder and co-director of Conectas Human Rights and the Pro Bono Institute. He has a B.A. in law from the Pontificia Universidade Católica de São Paulo; LL.M. from Columbia University; M.A. and Ph.D. in political science from the Universidade de São Paulo, and post-doctoral studies at the Centre for Brazilian Studies, at Oxford University. He has written several books and academic articles on constitutional law, human rights and law and development. Professor Vilhena is member of several civil society organizations and academic programs advisory boards, including OSI - Human Rights board, Pro Bono Institute, FIESP legal counsel, ANDI; he is the co-president of the Law School's Global League. Since 2004, he has been Ashoka Global Fellow and Avina Leader. Professor Vilhena has also been an active pro bono lawyer in several human rights cases at the Brazilian Supreme Court.

# new trends in latin american constitutionalism

j.s.d. student conference

organized with the support of

THE CENTER FOR  
CIVIL & HUMAN RIGHTS  
UNIVERSITY of NOTRE DAME · THE LAW SCHOOL

co-sponsored by



The Notre Dame Program  
on Constitutional Structure