

ILO L250: LAW AND DEVELOPMENT
Professor Ganson
Summer 2009

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Hours: Immediately following class
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This course examines the role of law and the legal system in economic and social development, particularly in less developed countries, emerging markets and nations in transition. It will explore how law, in its various forms, may bring about or impede development, however defined, and how development may affect or change the legal system of the country concerned.

The course first considers the nature of law, with particular reference to developing countries, and then examines various theories and concepts of development. It next probes the theoretical relationships between law and development. The remainder of the course addresses the role of law in development through a series of cases on such crucial issues as land tenure, capital formation and foreign investment, corporate governance, the rule of law and good governance, corruption, judicial reform, and the environment, as follows:

- The Nature of Law
- The Nature of Development
- The Theoretical Relationships between Law and Development
- The Practical Relationships between Law and Development
- Land, Property, and Agricultural Development
- Foreign Investment, Law, and Development
- Corporate and Firm Governance and Development
- Governance, Law, and Development: Constitutionalism
- Governance, Law, and Development: The Judiciary and the Rule of Law
- Governance, Law, and Development: The Problem of Corruption

READING ASSIGNMENTS AND CLASS SESSIONS (35% of course grade)

The required readings for the course are available in your reading packets. In addition to required readings, you will find a variety of supplemental materials (articles, cases, etc.) on the Tufts University Blackboard course site.

The teaching method in this course will be based primarily on class discussions, rather than lectures. Students therefore have the obligation of mastering the assigned materials *in advance of class*. Additionally, questions for discussion are included as part of the syllabus and reading list, below. Students should come prepared with well-formulated ideas and points of view with regard to each question posed.

Class participation is a significant factor contributing to the course grade. Students will be expected to attend and actively participate in all class sessions.

FINAL EXAMINATION (65% of course grade)

The final examination will take the form of a self-scheduled, take-home exam. Students will be required to pick up the examination questions and return their completed answer on a day scheduled for the exam.

CLASS SESSIONS, READINGS AND QUESTIONS FOR DISCUSSION

I. Wednesday, August 17

I.A. The Nature of Law

Readings:

Berman, H.J., Greiner, W.R., and Saliba, S.N., *The Nature and Functions of Law*, (5th ed., Foundation Press, 1996); pp. 1-34.

Vago, S., *Law and Society* (5th ed.), Prentice Hall, (1997), pp. 1-30.

Questions for discussion:

What is law? Is it simply a body of rules? Must law be created by the state?

Does law require sanctions? If law is ignored by most people in a society, does it cease to be law?

What are the functions of law within a society? What are the different types of law? How does the concept of “natural law” differ from “positive law”?

What are the sources of law? Do the sources of law differ from country to country? What factors most influence the content of the law?

What is a legal system? How are legal systems classified? How does culture influence a country's legal system?

Are there special characteristics of law and legal systems in developing countries?

I.B. The Nature of Development

Readings:

Corbridge, S. "Thinking About Development", Development Studies: A Reader (Edward Arnold, 1995); pp. 1-16

Lele, S., "Sustainable Development: A Critical Review" 19 World Development, pp. 607-621 (1991).

Sen, A., Development as Freedom (New York: Alfred A. Knopf, 1999); pp. 1-11.

Questions for discussion:

What is development? To what extent has the concept of development changed over time? Does it matter that the definition of development has changed over time?

Can one measure development? If so, what are the various elements of development to be measured? Does the concept of "human development" help or hinder our understanding of development?

What models of development have been prominent in the world since 1945?

How do these models translate into policies? How do these policies translate into laws? What has been the record of successes and failures of development policies since 1945?

What is modernization? Does it differ from development?

II. Wednesday, August 25

II.A. The Theoretical Relationships between Law and Development

Readings:

Bradlow, D., "Development Decision Making and the Content of International Development Law," Boston College International and Comparative Law Journal, Vol. 27, No. 2, p. 195 (2004).

De Soto, H., "The Costs and Importance of Law" (Ch. 5), *The Other Path* (Harper & Row, 1989), pp. 131-187.

Salacuse, J. "From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World," 33 *The International Lawyer*, pp.875-890 (2000).

Questions for discussion:

Is there a relationship between law and development? Does law precede or follow development in a society? Can one change human behavior by changing law?

Is law "autonomous"? If so, in what sense is it autonomous? What are the implications of "autonomous law"?

What is your theory of how social change occurs? What are the limits of law as an instrument of social change?

What is the field of law and development? When and in what context do issues of law and development arise?

Who are the practitioners of law and development? Does law really matter in the process of economic and social development?

II.B. The Practical Relationships between Law and Development

Readings:

Landau, J.M. (ed.), *Ataturk and the Modernization of Turkey* (Boulder Colorado: Westview Press, 1984).

Massell, G., "Law as an Instrument of Revolutionary Change in a Traditional Milieu: The Case of Soviet Central Asia," *Law and Society Review*, Vol. II, #2, February 1968, pp. 179-228.

Nonkululeko Letta Bhe et al. vs. the Magistrate, Khayelitsha et al. The High Court of South Africa, (September 25, 2003).

Questions for discussion:

In Massell's case study, what assumptions did the Soviet authorities make about the relationship of law to development? Compare the Soviet's efforts at law reform in Islamic central Asia with those of Ataturk in Turkey. What explains the different results?

In the South African law case, the High Court denounces the former judicial approach under Section 11(1) of the Black Administration Act, which enjoined a court to apply

African Customary Law, provided it was not “repugnant to public policy or natural justice” (p. 6), as this approach “reduces African law (which is practiced by the vast majority in this country) to foreign law – in Africa!” (p. 12). The Court prefers to test African Common Law “against the values enshrined in the Constitution” (p. 12). Is there, however, any meaningful difference between the former and the latter approach, particularly from the point of view of the disputants?

III. Wednesday, September 2

III.A. Land, Property, and Agricultural Development

Readings:

Borras Jr., Saturnino, The Underlying Assumptions, Theory, and Practice of Neoliberal Land Policies, in Peter Rosset, P., Patel, R & Courville, M. (eds.), *Promised Land: Competing Visions of Agrarian Reform* (2006) Ch. 5 pp. 99-128

Dam, Kenneth W. “Land, Law, and Economic Development, John M. Olin Law & Economics Working Paper No. 472, University of Chicago, January 2006.

The World Bank, *World Development Report 2002: Building Institutions For Markets*, pp.31-53 (Washington, D.C.: The World Bank, 2002)

Questions for discussion:

What is meant by “property?” Current development thinking emphasizes the importance of secure property to economic development and civil society. Do you agree with the argument that property rights are essential for development?

In what ways do land tenure laws relate to development? What are the principal problems posed by existing land tenure systems in many developing countries? What are the necessary elements of an effective land tenure system?

The World Bank report puts land ownership issues in the context of the larger framework of agricultural economics. What is the relative importance of land ownership to other issues of making farms profitable?

Borras argues neoliberal land policies do not address redistribution of wealth: market-based mechanisms pay the rich for their land, trading one asset for another. To what extent is this desirable or undesirable? What are the alternatives?

III.B. Foreign Investment, Law, and Development

Readings:

Moran, TH, Graham, EM, and Blomstrom, M (eds.), Does foreign direct investment promote development? (2006). Introduction.

Salacuse, J.W., "Direct Foreign Investment and the Law in Developing Countries," 15 ICSID REVIEW Foreign Investment Law Journal 382 –400 (2000).

Sornarajah, M., The International Law on Foreign Investment, pp. 1-30, pp. 269-314 (2nd ed. 2004).

Questions for discussion:

Why do countries seek to attract foreign investment?

What are the costs and benefits of foreign investment to both the investor and the host country?

How does (or should) law influence the process of making foreign investments?

How does (or should) foreign investment influence the host country and its legal system?

IV. Wednesday, September 9

IV.A. Corporate and Firm Governance and Development

Readings:

Claessens, Stijn, "Corporate Governance and Development," The World Bank Research Observer 91-122 (2006).

Iskandar, M.R. and Nadereh Chamlou, Corporate Governance: A Framework for Implementation pp. 1-49

Oman, C. and Blume, D., Corporate Governance: A Development Challenge. OECD Policy Insights No. 3 (2004).

Policy Brief: The OECD Principles of Corporate Governance, (Paris: The OECD, 2004).

Questions for discussion:

What is "corporate governance?" What are its implications for economic development?

How does law affect corporate and firm governance?

What factors should developing countries and emerging markets consider in creating a regime for corporate governance?

IV.B. **Governance, Law, and Development: Constitutionalism**

Readings:

UNDP, Human Development Report 2002: Deepening Democracy in a Fragmented World, Chapter 2, “Democratic Governance for Human Development,” pp. 51-61, and Chapter 3, “Deepening Democracy By Tackling Democratic Deficits, pp. 63-79 (New York: UNDP, 2002)

Jackson and Kushnet, Constitutions and Constitutionalism. Comparative Constitutional Law (1999) Chapter 3

Leftwich, A., “Governance, Democracy and Development in the Third World”, Corbridge, S., (ed) Development Studies: A Reader, pp. 427 - 438 (1995).

Okoth-Ogendo, H.W.O, “Constitutions Without Constitutionalism: Reflections on An African Political Paradox” in Constitutionalism & Democracy - Transitions in the Contemporary World (Greenberg, et al., eds.), pp. 65-82 (1993).

Questions for discussion:

What is good governance?

What functions do constitutions serve in fostering good governance?

How do we explain “constitutions without constitutionalism”? Why has constitutionalism had such difficulty in Africa?

To what extent can governance of a developing country be promoted from the outside?

v. Wednesday, September 16

V.A. **Governance, Law, and Development: The Problem of Corruption**

Readings:

Transparency International: Corruption Perceptions Index 2008; Global Corruption Barometer 2009; Bribe Payers Index 2008.

“Restraining Arbitrary State Action and Corruption,” The State in A Changing World (World Development Report 1997) pp.99-109.

Tanzi, V., and H. Davoodi, Roads To Nowhere: How Corruption in Public Investment Hurts Growth (IMF, 1998)

Johnston, M, The International Setting. Syndromes of Corruption: Wealth, Power and Democracy (2006) Chapter 2 pp. 16-35.

Klitgaard, R, Policy Measures. Controlling Corruption (1991) pp. 52-97.

Independent Panel Review of the World Bank Group Department of Institutional Integrity (“Volcker Report”) (2007) pp. 1-13.

Questions for discussion:

What exactly is “corruption”? What specified forms does it take? Can one justifiably distinguish among various types of corruption?

What are the causes of corruption?

What are the effects of corruption, particularly on economic and social development?

What policies may be effective to reduce corruption? What role does law play in reducing corruption?

What is the role of international institutions in reducing corruption?

V.B. **Governance, Law, and Development: The Judiciary & the Rule of Law**

Readings:

Kleinfeld, Rachel. “Competing Definitions of the Rule of Law,” in Thomas Carothers, Promoting the Rule of Law Abroad 31-73 (2006).

Messick, R., “Judicial Reform and Economic Development: A Survey of the Issues,” 14 The World Bank Research Observer pp. 117-36 (February 1999)

World Bank, *World Development Report 2002: Building Institutions for Markets*, Ch. 6 The Judicial System, pp.117-132 (Washington, DC: World Bank, 2002)

Buscaglio, E., "Obstacles To Judicial Reform in Latin America" in Justice Delayed: Judicial Reform in Latin America, pp. 15-30 (1998).

“Monitoring the EU Accession Process: Judicial Independence,” (Budapest, Open Society Institute, 2001); pp.13-26.

Questions for discussion:

What role do the courts play in development?

What elements are necessary for an effective judiciary?

What are the goals of the international rule of law movement? Why has its effectiveness been limited?

How would you prioritize rule of law efforts?