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, constitutionalism, judicial reform, and corruption.

The course is divided into the following parts:

I. The Nature of Law
II. The Nature of Development
III. Theoretical Relationships between Law and Development
IV. Land, Property, and Agricultural Development
V. Foreign Investment, Law, and Development
VI Corporate and Firm Governance and Development
VII. Governance, Law, and Development: Constitutionalism
VIII. Governance, Law, and Development: The Judiciary and the Rule of Law
IX. Governance, Law, and Development: The Problem of Corruption
Class Meetings: Monday, 3:20-5:20p.m.
Office hours: Tuesdays, 10:00am – noon (by sign-up sheet) Mugar 250.

READING ASSIGNMENTS AND CLASS SESSIONS

The required readings for the course are available on Trunk. Students are encouraged to form reading groups to allow students to share the reading responsibilities and discuss the key questions in preparation for class. The reading groups will function as the foundation for group exercises and short papers. If you do not form reading groups, the instructor will form groups for the completion of papers on an ad hoc basis.

The teaching method in this course will be based primarily on class discussions, rather than lectures. Therefore, students in the course have the obligation of reading the assigned materials in advance of class. Class participation will be a factor contributing to the course grade. Students will be expected to attend all class sessions.

Law and Development Moments: From time to time, at the beginning of certain class sessions, two students, selected the previous week by the instructor, will individually present a development issue or problem that is attracting current attention in the media and discuss its legal implications. These presentations are meant to be short and informal. That means no Power Points and the duration of the presentation is a maximum of five minutes.

Student Presentations: Periodically, throughout the course, individual students may be assigned by the instructor to present and comment upon cases and readings of particular significance.

DEVELOPMENT PROBLEMS AND PROJECT PAPERS

Discussion in each class will normally focus on a specific development problem in which law may play a significant role. In some cases, students will be divided into “consulting firms” to propose solutions either in oral presentations or in brief “project papers.” In other cases, individual students will be assigned the preparation of a consulting report. The papers should be 12-point-font, 1.5 spaced, with 1-inch margins, in Times New Roman, and two pages in length unless otherwise specified. Please use footnotes, not endnotes.

Due dates and topics for project papers:

September 21: Yesufu Case
September 28: Consulting Problem on 21st Century Fund for Development
October 12: FGC Case

FINAL EXAMINATION, ASSESSMENT, AND GRADING

The final examination will take the form of a closed-book, self-scheduled, take-
home exam. Students will be required to pick up the examination questions from the Registrar’s Office at 9:00 a.m. and return their completed answer by 5:00 p.m. on a day during the period for self-scheduled exams.

In lieu of examination, students may opt to write a paper of not more than 30 pages in length, double-spaced in 12-point type, on a subject approved by the instructor. Students wishing to write a paper in lieu of an examination must obtain permission to do so by October 9, at the latest and must submit completed papers to the instructor no later than December 10. The final grade for the course will be composed of the following elements:

1. Examination/final paper - 65%
2. Written reports and class assignments - 25%
3. Participation in class discussions - 10%

SYLLABUS AND READING LIST

I. THE NATURE OF LAW (September 14-21)

A. Questions for Discussion

1. 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?

2. 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 is “customary law”?

3. 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?

4. What is a legal system? How are legal systems classified? How does culture influence a country’s legal system?

5. What does it mean to say that something is “legal?” Why does it matter that something is legal or illegal?

6. Are there special characteristics of law and legal systems in developing countries? If so, what are they? How do legal systems in developed countries differ from those in developing countries?

7. What is regulation? How do regulations differ from laws? What are the costs and benefits of regulation?

8. What is the difference between law and policy?
9. What is “legal pluralism”? How does legal pluralism influence development in developing nations and countries in transition?

B. Required Readings

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

C. Optional Recommended Reading


II. THE NATURE OF DEVELOPMENT (September 28)

Class Assignment: Consulting Problem on 21st Century Fund for Development

A. Questions for Discussion

1. 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?
2. 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?
3. What models of development have been prominent in the world since 1945?
4. 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?

5. What is modernization? Does it differ from development?

B. Required Readings


C. Optional Recommended Readings


III. THEORETICAL RELATIONSHIPS BETWEEN LAW AND DEVELOPMENT (October 5-12)

Class Assignment: FGC Problem

A. Questions for Discussion

1. 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?

2. Is law “autonomous”? If so, in what sense is it autonomous? What are the implications of “autonomous law”?

3. What lessons do the readings teach about the use of law as an instrument of social change?

4. What is your theory of how social change occurs?
5. What is the field of law and development? When and in what context do issues of law and development arise?

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

7. 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?

B. Required Readings
1. Machiavelli, Nicolo, The Prince, “Chapter 19, Concerning New Principalities that are Acquired by One’s Own Arms and Ability”.


IV. LAND, PROPERTY, AND AGRICULTURAL DEVELOPMENT (October 19--26)

A. Questions for Discussion
1. What is meant by “property?” Do you agree with Hernando De Soto’s argument that property rights are essential for development?

2. In what ways do land tenure laws relate to development?

3. What are the principal problems posed by existing land tenure systems in many developing countries?

4. What is “land reform”? What are the methods by which it is accomplished? What role do law and legal institutions play in land reform?

5. What are the necessary elements of an effective land tenure system?

6. Current development thinking emphasizes the importance of secure property rights to economic development and civil society? Do you agree?

7. How do land tenure systems affect the environment?
8. What is intellectual property? What role does it play in development?

**B. Required Readings**


**C. Optional Recommended Reading**


**V. FOREIGN INVESTMENT, LAW, AND DEVELOPMENT**

**(November 2 - 9)**

**A. Questions for Discussion**

1. What is “investment”? What forms does it take? What are the various roles that investment may play in development strategies and policies?
2. What are the various meanings of the term “foreign investment”? What is the difference between direct foreign investment and portfolio foreign investment? Who are foreign investors? Why do they invest abroad?
3. Why do countries seek to attract foreign investment?
4. What are the costs and benefits of foreign investment to both the investor and the host country?
5. What effect does foreign investment have on the host country and its legal system?
6. What role does law play in the process of making foreign investments? How does international law affect investment in developing countries?

7. Refer to the Case of the Democratic Republic of Agraria. How should Agraria go about preparing its investment code? What provisions should its code contain?

B. Required Reading


C. Optional Recommended Reading


VI. CORPORATE AND FIRM GOVERNANCE AND DEVELOPMENT (November 16)

A. Questions for Discussion

1. What are the legal characteristics of the corporation? What is “corporate governance”? What are its implications for economic development? How does law affect corporate and firm governance?

2. What are the sources of corporate governance? What are the models of corporate
governance? What influences the choice of the model in particular countries or firms?

3. What legal forms of enterprise are available to foreign investment projects?

4. Why did the organizers of the Ruritanian Refrigerator Company choose to organize it the way they did?

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

6. What is the social responsibility of the corporation? Is it enough that corporations obey the law?

B. Required Readings


C. Recommended Reading


VII. GOVERNANCE, LAW, AND DEVELOPMENT: CONSTITUTIONALISM (November 23)

Class Assignment: What is Good Governance?

A. Questions for Discussion

1. What is good governance? What particular factors influence good governance? Scan 2014 Ibrahim Index of African Good Governance. Do you think it focuses on the essential elements of good governance?

2. What functions do constitutions serve in fostering good governance? What role do
1. Do you agree that Africa during the last three decades has been a case of “constitutions without constitutionalism”? Why has constitutionalism had such difficulty in Africa?

2. What are the elements necessary for effective constitutionalism?

3. How can a sense of constitutionalism be created in countries?

4. How important is the judiciary to constitutionalism and development?

5. What lessons does the South African case teach about constitution making?

6. To what extent should international financial institutions, like the World Bank and the I.M.F., take account of the governance of a developing country in making loans and providing assistance?

7. Would a Constitutional Court strengthen constitutionalism and good governance in African countries?

B. Required Reading


C. Optional Recommended Reading

1. Kaufman, Daniel and Aart Kraay, Good Governance Indicators: Where are we, Where Should We Be Going? (World Bank).


VIII. GOVERNANCE, LAW, AND DEVELOPMENT: THE JUDICIARY AND THE RULE OF LAW (November 30)

A. Questions for Discussion
1. What role do the courts play in development?
2. What elements are necessary for an effective judiciary?
3. What have been the goals of judicial reform in developing countries? How have they sought to accomplish judicial reform?
4. Should judicial reform go beyond issues of improved procedures and structures to deal with the kinds of cultural and attitudinal problems raised in Spatz’s article below?

B. Required Reading

C. Optional Recommended Reading
IX. GOVERNANCE, LAW, AND DEVELOPMENT: THE PROBLEM OF CORRUPTION (December 7)

A. Questions for Discussion

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

2. What are the causes of corruption? Why did Siemens engage in corruption?

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

4. How does regulation and the “regulatory state” relate to governmental corruption?

5. What policies may be effective to reduce corruption? What role does law play in reducing corruption? How may states use international law to combat corruption? Compare the UN and OECD conventions in this regard.

6. What are the problems of implementing anti-corruption policies? What problems did Tanzania fail in this regard? What theories explain these problems?

B. Required Reading


C. Optional Recommended Reading


8/5/2015