

UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

LAW 692 §I

LAW AND ECONOMIC DEVELOPMENT

Fall Semester, 2005

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The relationship between law and economic development has been one of the central concerns of both modern social theory and of the development profession. This course will explore how, if at all, one might structure the legal system or implement particular policies so as to foster national economic growth. Our first topic will be a survey of the various theories that seek to explain the process of development. Then we will turn to a discussion of the role that law might have played in the development of the Western European countries from the 14th to the 20th centuries and that it might play in the development plans of currently developing nations. Of particular interest will be the impact that law might have on the nations that are at an especially low level of well-being—where the annual per capita income is \$2 per day or less. We shall conclude with a discussion of the impact that international trade law, international human rights law, and the law of other international organizations might have on the development process; a discussion of three modern case studies of development; and a discussion of the impact of development on matters of gender equity and income and wealth distribution.

Class schedule

The class will meet on Mondays and Tuesdays from 9 to 10:15 am. There may be times when both of us will be out of town. We will notify you of those times early in the semester and will schedule make-up classes as soon as possible. There will be several guest speakers in the class.

Requirements

You will be expected to attend class, to do all the class readings, to participate in class discussions, and to take and pass the final examination (or its substitute). 20 percent of your final grade will depend on class attendance and participation.

The final examination will be a take-home exam. You will have 48 hours in which to complete the exam; roughly speaking, you may pick up the exam any time between the end of classes and the final day of the examination period, but the completed exam must be turned in by 5 pm on the final day of the examination period. We will distribute details of the arrangements for the final examination well before the Thanksgiving Break.

You may, as an alternative to taking the final examination, petition to write a paper of approximately 20 pages on a topic related to the course's themes. You may also choose to extend the paper to 30 pages so as simultaneously to satisfy the course requirement and your upper-level writing requirement. We'll discuss the terms and conditions of the petition during an early class.

Readings

We have arranged for most of the readings to be photocopied and bound for purchase in the SBA Bookstore. Some of the readings—those marked with an R* before the reading—are on reserve in the Albert Jenner Law Library under our course number and title.

Part I: Theories of Development

Week 1, August 22-23. What is Development?

HUMAN DEVELOPMENT REPORT 2003: MILLENNIUM DEVELOPMENT GOALS: A COMPACT AMONG NATIONS TO END HUMAN POVERTY (2003).

R* WILLIAM EASTERLY, *THE ELUSIVE QUEST FOR GROWTH: ECONOMISTS' ADVENTURES AND MISADVENTURES IN THE TROPICS* (2001), Prologue and Part I.

The Economist (March 11, 2004), "Global Inequality: More or Less Equal?"

R* AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999), pp. 1 – 8.

Optional: WORLD DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT, Ch. 1 draft.

Why are some countries poor and others rich? Theories Of The Role Of Law In Development

Week 2, August 29-30. Classical Social Theory (Marx, Maine, Weber)

HENRY SUMNER MAINE, *ANCIENT LAW* 161-65 (1864).

KARL MARX, *THE COMMUNIST MANIFESTO* and *PREFACE TO A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY*, excerpts.

R* Max Weber, *MODERN Capitalism* from MAX WEBER ON CHARISMA AND INSTITUTION BUILDING, ed. S.N. Eisenstadt 140-65 (1968).

David Trubek, "Max Weber on Law and the Rise of Capitalism" 1972 *Wisconsin Law Review* 720, 727-31.

Week 3, Tuesday September 6. Neo-Classical Economics and its Progeny

R* EASTERLY, THE ELUSIVE QUEST 21 – 86 (2001).

Week 4, September 12-13. Culture

David Landes, "Culture Makes Almost All the Difference," in LAWRENCE E. HARRISON & SAMUEL P. HUNTINGTON, EDS., CULTURE MATTERS (2001).

R* FRANCIS FUKUYAMA, TRUST 13-41 (1995).

R* *Skim*: Robert Putnam, "Measuring Institutional Performance" and "Explaining Institutional Performance" in PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 63 – 120 (1993).

Week 6, September 26-27. Institutional Theories

Daren Acemoglu, "Root Causes: A Historical Approach to Assessing the Role of Institutions in Economic Development," *Finance and Development* (June, 2003).

Jeffrey D. Sachs, "Institutions Matter, But Not for Everything: The Role of Geography and Resource Endowments in Development Shouldn't Be Underestimated," *Finance and Development* (June, 2003).

Dani Rodrik and Arvind Subramanian, "The Primacy of Institutions (And What This and Does and Does Not Mean)," *Finance and Development* (June, 2003).

Part II: The Role of Law in Economic Development

Week 7, October 3-4. Introduction

Frank Cross, "Law and Economic Development," 80 *Texas L. Rev.* 1737 (2002).

Richard A. Posner, "Creating a Legal Framework for Economic Development," 13 *World Bank Research Observer* 1 (1998).

Paul G. Mahoney, "The Common Law and Economic Growth: Hayek Might Be Right," 30 *J. Legal Stud.* 503 (2001).

Optional: Rafael La Porta, Florencio Lopez-De-Silanes, Andrei Schleifer, and Robert W. Vishny, "Law and Finance," NBER Working Paper W5661 (1996). (Subsequently published as "Law and Finance," 106 *Journal of Political Economy* 1113 (1998).)

Week 8

October 10: The Law & Development Movements: The Role of Transplants

Brian Tamanaha, "The Lessons of Law and Development Studies," 89 *American Journal of International Law* 470 (1995).

Daniel Berkowitz, Katarina Pistor, and Jean-Francois Richard, "The Transplant Effect," 51 *Am. J. Comp. L.* 163 (2003).

October 11: The Informal Sector & Development

R* Hernando de Soto, "The Costs and Importance of the Law," in *THE OTHER PATH* (1996), p. 131-187.

Avner Greif, "Contracting, Enforcement and Efficiency: Economics Beyond the Law," *Annual World Bank Conference on Development Economics 1996*.

Part III: Topics in Law and Development

Week 9, October 17-18. Administrative Law and Corruption

Transparency International Corruption Ratings, available at <http://www.transparency.org/cpi/2003/cpi2003.en.html>.

Jon Quah, "Controlling Corruption in City-States: A Comparative Study of Hong Kong and Singapore," 22 *Crime Law and Social Change* 395 (1995).

Democracy and the Constitution

Tom Ginsburg, "Democracy, Markets and Doomsaying: Amy Chua's *World on Fire*," *Berkeley Journal of International Law*, Winter 2004.

R* ADAM PRZEWORSKI, MICHAEL E. ALVAREZ, JOSE ANTONIO CHEIBUB, FERNANDO LIMONGI, *Democracy AND DEVELOPMENT: POLITICAL INSTITUTIONS AND WELL-BEING IN THE WORLD, 1950-1990* (2000), Ch. 3 ("Political Regimes and Economic Growth"), pp. 142 – 186.

Week 10, October 24-25: Transplanting Legal Institutions in the former Soviet Union (guest lecture by Keith Rosten)

Democracy discussion continued

Week 11, October 31 - November 1. Trade and Investment

R* MARTIN WOLF, *WHY GLOBALIZATION WORKS* (2004), Chs. 6 (“The Market Crosses Borders”) and 10 (“Traumatized by Trade”), pp. 77 – 93 and 173 – 218.

Week 12, November 7 – 8. Gender and Distributive Justice

November 7: Guest lecture by Professor Gale Summerfield.

R* AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999), Chapter 8, “Woman’s Agency,” pp. 189 – 203.

Nicholas Kristof, Articles on women in Southeast Asia, *New York Times*. (Available on the course webpage.)

JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION* (2004), Ch. 7, “Women: Harmed or Helped?,” pp. 73 – 91.

No class Monday, November 21.

Weeks 13 – 14 November 14 – 15 and 28 – 29. Case Studies: Successes and Prospects

ARAB HUMAN DEVELOPMENT REPORT 2002, Executive Summary.

ARAB HUMAN DEVELOPMENT REPORT 2003, Executive Summary.

Timur Kuran, “Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation,” 18 *J. Econ. Persp.* 71 (2004).

Ian Ayres & Jonathan Macey, “Institutional and Evolutionary Failure and Economic Development in the Middle East,” *Yale Journal of International Law*, May, 2005.

Bernard Black & Anna Tarassova, “Institutional Reform in Transition: A Case Study of Russia,” 10 *Supreme Court Economic Review* 211 (2003).

Tom Ginsburg, “Does Law Matter for Economic Development? Evidence from East Asia,” 34 *Law and Society Review* 829 (2000).

Donald Clarke, "Economic Development and the Rights Hypothesis: The China Problem," 51 *Am. J. Comp. L.* 89 (2003).

Partial List of related web-sites

The following list is by no means comprehensive.

The Law and Development initiative of the Asian Development Bank is a useful resource. It contains a bibliography of publication organized by country and topic, a bulletin describing various legal technical assistance projects in the region, and other resources such as a report from a conference of Chief Justices in the region. It can be found at <http://www.asiandevbank.org/law/menlaw.html>.

The Centre for Legal Studies at the University of Sussex has a Law and Development page, containing links to many other relevant pages. It can be found at <http://www.sussex.ac.uk/CLS/Undergrad/devt.html>

On trade and development, see the UNCTAD site at www.unctad.org.