

Law 981: Law and Modernization in the Developing World

The seminar will explore changing ideas about law's role in the economy and the development assistance practices these ideas have inspired. The idea that a “modern” legal system is central to economic development can be traced back to the 19th century. In the 1950s, this idea became the basis for organized development assistance. Today, agencies like the World Bank devote substantial resources to “law and development” and the “rule of law”. While billions are being spent, the enterprise rests upon a wealth of assumptions about the definition of law, the relationship of law to market activity, the role of the state in economic governance, the definition of modernity, and the efficacy of external intervention. These assumptions have changed over time and with them have come changes in the policies and practices of the agencies. This seminar examines these changing ideas and practices and explores contemporary experiences in Northeast Asia, Latin America, and the former Soviet Union.

Required Reading: Students are required to purchase the following two books (both available at the Bookmart):

- *The New Law and Economic Development: A Critical Appraisal*, David M. Trubek and Alvaro Santos, eds., Cambridge University Press
- *The Process of Economic Development* by James M. Cypher & James L. Dietz (2nd edition)

Most chapters from both books will be assigned over the course of the semester. Additional reading, as specified in this syllabus, will be available online through e-reserves (directions for how to access e-reserves for this course are included at the end of the syllabus).

Resources: In addition to background and required readings, there will be other resources provided to aid further research.

- Books on reserve at the library:
 - *Promoting the Rule of Law Abroad: In Search of Knowledge*, Thomas Carothers, ed.
 - Joseph Stiglitz, *Globalization and Its Discontents*
 - James A. Gardner, *Legal Imperialism*
 - Rogelio Perez-Pedomo, *Latin American Lawyers: A Historical Introduction*
 - *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions*, Kanishka Jayasuriya, ed.
 - *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, Erik G. Jensen & Thomas C. Heller, eds.
- Useful links:
 - United Nations: <http://www.un.org>
 - Asian Development Bank: <http://www.adb.org>
 - African Development Bank: <http://www.afdb.org>
 - Inter-American Development Bank: <http://www.iadb.org>
 - Transparency International: <http://www.transparency.org>
 - ActionAid: <http://www.actionaid.org>
 - Center for Global Development:
<http://www.cgdev.org/section/topics/globalization>
 - The Brookings Institution: <http://www.brook.edu/>
 - World Bank Globalization page:
<http://www1.worldbank.org/economicpolicy/globalization/index.html>
 - OECD on Climate Change:
http://www.oecd.org/department/0,2688,en_2649_34361_1_1_1_1_1,00.html

- Migration Policy Institute: <http://www.migrationpolicy.org/>
- World Trade Organisation: <http://www.wto.org/>
- Bretton Woods Project: <http://www.brettonwoodsproject.org/>
- Global Policy Forum: <http://www.globalpolicy.org/>

All other required reading, recommended reading, and helpful links will be available through the course e-reserves, with the exception of those chapters selected from the course's two required texts. Instructions for accessing e-reserves will be sent out in the second week of class to the listserv. **Please familiarize yourselves with the World Bank website (<http://www.worldbank.com>).**

Assignments:

- 1) **Response Papers:** Each student will be required to write 3 short response papers over the semester. The papers should be 2-3 pages double-spaced, and raise some questions for the next class discussion. All papers must be submitted, **AT THE LATEST**, by the Monday night before the class assigned, so that all response papers may be distributed Tuesday morning to the rest of the class. Each student will be assigned one class for which he or she **MUST** write a response paper, and may select the two additional classes him-/herself. Finally, the student assigned to a particular class must be responsible for knowing all of that day's class material.
- 2) **Final Paper:** A final paper of no less than 20 pages is required. This paper should be handed in final form on the last day of class (December 6). Students are also required to hand in a brief topic proposal (not exceeding 1 page) and a summarized bibliography (also not to exceed 1 page) in class on October 18.
- 3) **Lecture:** Because we will not be having class on November 22 (the Wednesday before Thanksgiving), we have decided to ask each student to attend at least one lecture being given by one of the various visiting scholars over the fall semester, whose talk touches on the topic of law and modernization in developing countries. The full list of speakers and dates is still being put together and will be made available as soon as possible; below are speakers already confirmed:

Bronwen Morgan, "Law and Politics in Global Governance Struggles Over Access to Water"
Thursday, September 7, 2006 at 12n, Lubar Commons (7200 Law)

Water is a basic necessity, essential to life. Two recent trends have politicised urban water consumption: first, a sharp increase in the commercialisation of water service delivery to household users, including transnational investment by the private sector; secondly, intensified social protest against the commodification of water in both developed and developing countries. Professor Morgan will discuss her recent research, which explores the conflicts catalysed by these trends and traces the global governance dynamics in which they are embedded. She will first situate the research at the intersection of international relations, comparative politics and socio-legal literature on disputing and rights consciousness. She will then summarise the main findings, and provide an illustration from one of the case studies in Tucuman, Argentina involving the transnational water company Vivendi (now Veolia). She argues that the issue of access to water is emblematic of globalised struggles over socio-economic rights that revolve around axes of conflict between national and local control, and between market efficiency and human rights.

Bronwen Morgan is Professor of Socio-legal Studies at the University of Bristol, UK. She was previously Harold Woods Research Fellow in Law at the Centre for Socio-legal Studies and Wadham College, University of Oxford (2002-2005), and Tutorial Fellow and University Lecturer in Law at St Hilda's College, Oxford (1999-2001).

Andres Cuneo, "The Chilean Pension System"
Tuesday, September 12, 2006 at noon, Lubar Commons (7200 Law)

Dean Cuneo will be speaking about the origins, evolution and future prospects of Chile's private pension system, known as AFPs (Administradoras de Fondo de Pensiones). This system was originally instituted during the Pinochet regime, under the direction of Sebastian Piñera, a prominent and very successful entrepreneur (majority owner of LAN Airlines, among other

enterprises), who was the Conservative candidate for President in the last election won by Michelle Bachelet. This pension plan has been very successful in generating large amount of capital which has played a key role in feeding Chile's economic growth during the last 15 or so years, the most impressive in Latin America. As such, it has served as a model for many underdeveloped countries and has even been seriously considered in the United States. However, it also has its negative or controversial aspects and has been criticized as basically useful only for relatively higher paid employees and of marginal benefit to lower paid workers. It also leaves out seasonal workers and other farm or blue-collar workers. Dean Cuneo will discuss both the positive and negative aspects of this retirement system and discuss its future prospects as well.

Andres Cuneo is the Dean of the Law School at the Universidad Diego Portales, in Santiago, Chile. He also has taught at the Law Schools of Catholic University and University of Chile, both in Santiago, Chile. A civil law and social security specialist, he was an active participant of the Law and Development Movement in the 1960s and 1970s. As such, he collaborated with Stanford University Law School in promoting the reform of legal education in Chile, working closely with Professor John Henry Merryman. More recently, he served as General Counsel of the Government Agency body regulating Chile's privately managed pension system (Superintendencia de Administradoras de Fondos de Pensiones

Asha El Hagi Elmi, Annual Soffa Lecture
Wednesday, October 4 at 4 p.m. at the Pyle Center.

Ms. Elmi is chair and co-founder of Save the Somali Women and Children, an organization that has been instrumental in advocating for gender rights and development concerns and crucial to solidifying women's participation in the national peace and political process. Ms. Elmi has chaired the Somalia-National Committee on Female Genital Mutilation and Harmful Traditional Practices (FGM/HPTs), which is incorporated into the Inter African Committee on FGM/HPTs.

In recognition of her exemplary life as a woman of peace, Ms. Elmi has received a variety of awards including being named an Ambassador of Peace (International Federation of World Peace, 2001) and a nomination among the "1000 Women for the Nobel Peace Prize" (2005).

If you know of particular speakers on campus that would be of interest to the class, please share with us, and we will include that on our list.

Please note that the syllabus may change slightly over the course of the semester, and we will notify the class of these changes through e-mail. Please make certain you are receiving e-mails from the listserve.

Please contact Leah Larson-Rabin (lrabin@wisc.edu) with administrative questions, or problems accessing the e-reserves.

Important Dates and Class Assignments:

Sept. 6: *Course introduction; no student assignment.*

Sept. 13: John Buczynski-Carlson

Sept. 20: Collin Fisher

Sept. 27: Freya Katkowsky
Leah Larson-Rabin

Oct. 4: Jill Manske de Azocar

Oct. 11: *Professor Hendley, visiting lecturer*
Lauren McCarthy
Robert Phansalkar

Oct. 18: *Professor Gopal, visiting lecturer.*
Topic proposals due.
Sam Ridders

Oct. 25: Jamisen Rueckert

Nov. 1: Jamal Saleh
Peter Sands

Nov. 8: Bryan Steil
William Sulton

Nov. 15: Claudette Torbey

Nov. 22: Nazik Youssef
Soniya Yunus

Nov. 29: THANKSGIVING

Dec. 6: *Last day of class, papers due.*

Law and Modernization, Fall 2006

(T&S) ⇒ David M. Trubek & Alvaro Santos, *The New Law and Economic Development*

(C&D) ⇒ James M. Cypher & James L. Dietz, *The Process of Economic Development*

(ER) ⇒ Available online under the course e-reserves.

Sept. 6: Introduction

Required:

Introduction (T&S) (pp 1-18)

David Trubek (T&S) (pp 74-94)

Ch. 1 (C&D) (pp 3-27)

Part I: 1960s: ISI/Legal Intervention in Brazil

Sept. 13: Economics I: Neo-Classical Economics & Dependency Theory

Required:

Chs. 4,5,6,9 (C&D) (pp 103-188, 248-279)

Sept. 20: Legal Reform in Latin America and the Capital Market

Required:

David Kennedy (T&S) (pp 95-110)

David Trubek, *Law, Planning and the Development of the Brazilian Capital Market* (pp 7-77) (ER)

David Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement* 18 Fla. St. U. L. Rev. 1 (1990-1991) (pp 12-24) (ER)

Sept. 27: Legal Education Reform in Brazil

Required:

Information about FGV (ER)

Ch. 4, *Latin American Lawyers: A Historical Introduction* (pp 99-136) (ER)

James Gardner, *Legal Imperialism, The Reform of Legal Education in Authoritarian Brazil* (ch. 6) (pp 61-125) (ER)

Henry J. Steiner, *Legal Education and Socio-Economic Change: Brazilian Perspectives* 19 Am. J. Comp. L. 39 (1971) (ER)

David Trubek & Marc Galanter, *Scholars in Self-Estrangement*, 1974 Wis. L.R. 1062-1102 (ER)

Part II: 1970s – 1990s: Neoliberalism, Eastern Europe, and Russia

Oct. 4: Economics II: Neo-Liberal Economic Perspective (The Washington Consensus)

Required:

Ch. 7 (C&D) (191-222) (ER)

World Bank Development Report 1996, “*From Plan to Market*” (ER)

Oct. 11: Russia & E. Europe

Professor Hendley will be teaching; readings TBA.

Part III: Re-Thinking Law & Development

Oct. 18: Prof. Mohan Ghopal

Required:

Mohan Gopal, “*Law-Dependent Public Goods*” (pp 1-11) (ER)

David Kennedy (T&S) (pp 110-150)

Ch. 17 (C&D) (pp 496-532)

Oct. 25: Economics III: Institutionalism

Required:

- Ronald Coase, *The New Institutional Economics* (pp 72-74) (ER)
- Douglass North, *The New Institutional Economics and Development* (pp 1-8) (ER)
- Douglass North, *Institutions Matter* (pp 1-5) (ER)
- Douglass North, *Institutions* (pp 97-112) (ER)
- World Bank Development Report 1997, “*The State in a Changing World*” (ER)

Nov. 1: The East Asian Anomaly

Required:

- East Asian Miracle (WB) (ER)
- John K.M. Ohnesorge, *The Rule of Law, Economic Development and the Developmental States of Northeast Asia* (pp 91-112) (ER)
- Trevor Matthews and John Ravenhill, *Strategic Trade Policy: the Northeast Asian Experience*, in *Business and Government in Industrializing Asia* (pp 29-80) (ER)

Part IV: The Present Moment

Nov. 8: Economics IV: Is There a Consensus for the Post-Washington Consensus?

Required:

- Hernando de Soto, *The Other Path* (Foreword & ch. 5) (ER)
- “Doing Business” on the WB website (ER)
- Joseph Stiglitz, “*Globalization and Its Discontents*” (pp 89-132) (ER)
- James Wolfensohn (CDF) (ER)
- Dani Rodrik, “Goodbye Washington Consensus, Hello Washington Confusion” (pp 1-24) (ER)

Nov. 15: A New Moment: Chastened Neo-Liberalism?

Required:

- David Kennedy (T&S) (pp 150-173)
- Kerry Rittich (T&S) (pp 203-252)
- Alvaro Santos (T&S) (pp 253-300)

Nov. 22: Internationalization of Domestic Law & Policy

Required:

- Bryant G. Garth & Yves Dezalay, Reshaping Global INstitutions and Exporting Law in *The Internationalization of Palace Wars*, (pp 163-250) (ER)
- Duncan Kennedy (T&S) (pp 19-73)

Nov. 29: THANKSGIVING

Dec. 6: Last day of class, papers due.