Professor Jamie O’Connell
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Office hours: Wednesdays 3:30-5:00 and Fridays 11:30-1:30. You are welcome to drop in unannounced, or reserve a slot in advance by signing up on the Google document linked from the top of the course home page on bCourses.

Graduate Student Instructors:
Ms. Mayra Feddersen
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LECTURE: Monday, Wednesday, Friday, 10-11 (150 Goldman School of Public Policy)
SECTIONS: Wednesday, 8-9 (122 Latimer), Wednesday 11-12 (237 Cory), Friday 11-12 (237 Cory), Friday 1-2 (78 Barrows)

COURSE DESCRIPTION

Focusing on developing countries, this course studies the relationship between law and development. Initiatives to change law in order to promote development are its core concern. National and local leaders have led such efforts for centuries. In the last fifty years, however, international organizations, foreign aid agencies, and local and international non-governmental organizations have become extraordinarily active. Since 1990 their activities have intensified, and they now spend hundreds of millions of dollars every year.

The conceptions of development that underlie those efforts are diverse — development may be seen as growth or improvement in, among other things, income, education, health, and human rights. We will take a similarly expansive view of “law,” recognizing that in many contexts it blurs into politics, governance, and social custom. We will devote roughly equal time to activities that attempt to affect law at elite levels — for example, by rewriting Japan’s national legal codes — and those that address its operation at the grassroots — for example, by influencing how traditional chiefs resolve local disputes in Sierra Leone.

Analyzing these initiatives will involve surveying theories of the role of law in development. We also will consider tensions between theory and practice that researchers and development practitioners have identified. The key actors in international law-related development work will become familiar, and we will learn concretely what they do. The clashes of interests that arise in development work loom large in the course, as does the proper role of technical experts in policymaking. Finally, by the end of the term, we will understand how practitioners’ and analysts’ views of the relationship between development and law have changed over the last fifty years.
COURSE REQUIREMENTS

GRADING
You will be responsible for all material covered in assigned readings, lectures, and discussion sessions. Your grade for the course will be determined as follows:

- Lecture: attendance 8%
- Lecture: occasional participation 2%
- Discussion section 20%
- Short written assignments for lecture (due Wednesday, September 24 and Friday, November 7) 10%
- Midterm exam (Friday, October 17, in class) 20%
- Final exam (Monday, December 15, 8:00 a.m. – 11:00 a.m.) 40%

100%

READINGS
You are responsible for reading all assigned readings before the class for which they are listed.

The course reader is available from Copy Central on Bancroft Way. In order to minimize the cost of the reader, all readings that are available to you free, either through the UC Berkeley libraries or as a member of the public, are posted on or linked to from bCourses.

The easiest way for you to figure out what to read for each class session is to check the section of the course homepage for that date on bCourses. (You also can use this syllabus.) If all readings are in the reader, you will see a comment to that effect. For most some or all of the readings are posted online. For those, you will find on bCourses a PDF file with list of all readings for the session (including any in the reader) and all of the online readings. We highly recommend that you do the readings in the order in which they are listed, even when that requires skipping back and forth between reader and electronic packet, since in many cases the sequence will aid your comprehension.

ATTENDANCE AND PARTICIPATION IN LECTURE
We will take attendance at lectures. To facilitate that, at our third class meeting, on Friday, September 5, you will choose a seat for the semester. You may miss up to three lectures without penalty. That allowance allows you to determine which conflicting needs justify missing class, and which are not important enough. For example, these “free” absences are meant to cover illness, job interviews, travel to spend time with family or friends, etc. You do not need to notify Professor O’Connell or your GSIs when you will be using your three excused absences, let alone explain why you are gone. For each absence beyond three, however, your lecture attendance and participation grade (10% of your course grade) will be reduced by one percentage point. If exceptional circumstances require you to miss more than three lectures, we will consider excusing additional absences.

There will be opportunities for participation during lecture session, by asking questions and engaging in collective discussion. Two points of your final grade will be determined by how much and how thoughtfully you engage these opportunities.

DISCUSSION SECTION
Detail on requirements will be distributed in section.
SHORT WRITTEN ASSIGNMENTS

Short essays will be due on Wednesday, September 24, and Friday, November 7, at the beginning of lecture. A specific topic will be assigned for each, involving a combination of synthesis and analysis related to particular facts, arguments, or problems addressed in the readings and lectures.

MIDTERM AND FINAL EXAMS

The midterm exam will be given in class on Friday, October 17. Professor O’Connell will review the first half of the semester during lecture on Monday, October 13. Lecture on Wednesday, October 15 will be a less formal review session.

The final exam will be held Monday, December 15, from 8:00 a.m. to 11:00 a.m. One or more review sessions will be scheduled during RRR week.

The midterm and final exams will assess your knowledge of and ability to analyze facts, dilemmas, arguments, and interpretations covered in the course. They may employ multiple-choice, fill-in-the-blank, short essay, or other formats; the final exam may include one or more longer essays. The final exam will cover material from the entire term, but will emphasize material from the weeks after the midterm.

POLICIES

ACCOMMODATIONS: DISABILITY AND RELIGION

In accordance with University policy, the Americans with Disabilities Act (ADA), the California Education Code, and the inclusive social vision underlying them, the requirements of this course will be adapted to meet the particular needs of the students in it. Practically speaking, this means two things:

- We will provide the accommodations specified by the Disabled Students Program (DSP) on an individual-by-individual basis. If you need accommodation, please provide a copy of your DSP letter to your GSI, if at all possible during the first two weeks of the semester.

- If any student’s religious beliefs forbid him or her to take an examination on the scheduled date, then we will permit him or her to take the examination on an alternative date, provided that would not impose an undue hardship that could not reasonable be avoided. If your religious beliefs forbid you to take either the mid-term or final exam on the scheduled date, please notify Professor O’Connell and your GSI, if at all possible during the first two weeks of the semester.

LIFE CHALLENGES

Every semester, many UC Berkeley students confront severe life challenges that interfere with their learning and academic performance. These challenges take many forms, including acute depression and other mental health issues, serious illness, addiction, and family and personal financial difficulties.

We want each of you to learn and perform in this course up to your full potential. A severe life challenges can unfairly disadvantage the student grappling with it. If you are dealing with a severe challenge – whether one of the examples given above or something else – that may be affecting your performance in this course, please consider sharing it with Professor O’Connell or your GSI, so that we can try to help you overcome any disadvantage it creates.


**CONFLICTS WITH EXTRACURRICULAR ACTIVITIES (INCLUDING ATHLETICS)**

If you participate in an extracurricular activity that may interfere with your ability to fulfill the requirements of this course – such as ones involving travel – you should review this syllabus promptly and carefully. Under University policy, you are responsible for notifying Professor O’Connell and your GSI in writing of any potential conflicts and recommending a solution by the end of the second full week of the semester (September 12). An earlier deadline or date of examination may be the most practicable solution. It will be your responsibility to inform yourself about material you miss because of any absence.

**ACADEMIC INTEGRITY**

Nearly all of you always work to the highest standards of academic integrity. Only a few students cheat or commit plagiarism, but on a large campus, many incidents occur every year. Misrepresenting others’ work as one’s own undermines one’s own education and development, corrodes trust within the UC Berkeley community, risks reducing the value of a UC Berkeley degree, and dishonors a great institution of which we all can be proud to be part. Both UC Berkeley generally and the instructors of this course are very tough on these offenses.

Violations of principles of academic integrity can be caused by ignorance or bad faith. While inadvertent violations may be less wrong in a moral sense, it can be very difficult to distinguish them from ones caused by bad faith. Prudence, as well as principle, should motivate you to know the applicable standards and to observe them scrupulously.

The UC Berkeley Center for Student Conduct and Community Standards provides the following examples of cheating and plagiarism, but notes that they are “not exhaustive.” (See [http://campuslife.berkeley.edu/conduct/integrity/definition](http://campuslife.berkeley.edu/conduct/integrity/definition).)

**Cheating**

Cheating is defined as fraud, deceit, or dishonesty in an academic assignment, or using or attempting to use materials, or assisting others in using materials that are prohibited or inappropriate in the context of the academic assignment in question, such as:

- Copying or attempting to copy from others during an exam or on an assignment.
- Communicating answers with another person during an exam.
- Preprogramming a calculator to contain answers or other unauthorized information for exams.
- Using unauthorized materials, prepared answers, written notes, or concealed information during an exam.
- Allowing others to do an assignment or portion of an assignment for you, including the use of a commercial term-paper service.
- Submission of the same assignment for more than one course without prior approval of all the instructors involved.
- Collaborating on an exam or assignment with any other person without prior approval from the instructor.
- Taking an exam for another person or having someone take an exam for you.
Plagiarism
Plagiarism is defined as use of intellectual material produced by another person without acknowledging its source, for example:

• Wholesale copying of passages from works of others into your homework, essay, term paper, or dissertation without acknowledgment.
• Use of the views, opinions, or insights of another without acknowledgment.
• Paraphrasing of another person’s characteristic or original phraseology, metaphor, or other literary device without acknowledgment.

Any time you use others’ words or ideas in your work for this course, you must properly attribute them. That means fully identifying the original source and the extent of your use of words or ideas from it, usually using a footnote. **The format of the source does not affect this requirement:** it applies to material taken from books, academic journal articles, popular magazines, campus publications, websites, emails, blog posts, even tweets and text messages.

Do not be shy if you feel uncertain about what the instructors feel academic honesty requires, generally or in a specific case: the smart thing to do is ask.

**Additional Resources**

The websites of the World Bank (www.worldbank.org), its Justice for the Poor program (http://go.worldbank.org/SMIKY7M6Q0), the American Bar Association’s Rule of Law Initiative (http://www.americanbar.org/advocacy/rule_of_law.html), the United Nations Development Program (www.undp.org), the legal empowerment NGO Namati (http://www.namati.org), and many other intergovernmental and nongovernmental organizations offer resources for learning more about development in general and law and development in particular. You will learn most from these if you approach them with both an open mind and a critical eye.

If you are statistically, or graphically, minded, Google Public Data Explorer (http://www.google.com/publicdata/directory) allows you to track countries’ development over time and compare them to each other, based on a wide range of statistics. The World Bank’s World Development Indicators, United Nations Development Program’s Human Development Indicators, and OECD Factbook may be especially interesting.
1. Course overview, fundamental concepts, and basic vocabulary

Topics: Introduction to course. Overview of concepts of development and strategies for promoting development. Structure of development industry. Basic elements of formal legal systems.

Fri., Aug. 29

Read for Fri., Aug. 29:

NO CLASS MON., SEP. 1: LABOR DAY

Wed., Sep. 3

Read for Wed., Sep. 3:
Amartya Sen, Development as Freedom (1999). Read: 3-11. [reader and online]
LS158 Handout: Human Development Index [online]

Fri., Sep. 5

Read for Fri., Sep. 5:

Devices in the classroom: Questions to discuss. [online]
Ban laptops in class, Chron. (Duke University’s equivalent of the Daily Cal), Feb. 27, 2013. [online]
Rebecca Schuman, In Defense of Laptops in the Classroom, Slate, June 15, 2014. [online]
Dan Rockmore, The Case for Banning Laptops in the Classroom, New Yorker, June 6, 2014. [online]
Hector Quesada, Professors Should Permit Laptop Use in Classroom, Collegiate Times, Sep. 19, 2012. [online]
Robinson Meyer, To Remember a Lecture Better, Take Notes by Hand, Atlantic (online), May 1, 2014. [online]
2. Colonial rule

Topics: Law as a tool of power, for controlling social, political, and economic life. Colonial uses of law. Resistance by those law attempts to control.

Mon., Sep. 8
Wed., Sep. 10
Fri., Sep. 12

Read for Mon., Sep. 8:

Read for Wed., Sep. 10:

Read for Fri., Sep. 12:

Julie Cohn, *Tiny Village Where Women Chose to Be Single Mothers*, N.Y.TIMES, Feb. 15, 2013. [online]

### II. The Evolution of Law and Development

#### 3. Becoming “modern”: Japan in the Meiji period

Topics: Case study of transformation of Japanese legal system during the Meiji Restoration. “Modernization” of legal norms and institutions by local leaders based on unidirectional ideas of progress in law, government, economic activity, and social life. Transplantation and adaptation of foreign models. Interplay of distributions of power and development processes.

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Read for Mon., Sep. 15:
- Handout with a few aids. [reader]

Read for Wed., Sep. 17:
- TURAN KAYAÇLĐLI, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (2010). Read: Excerpts from 92-98. [reader]

Read for Fri., Sep. 19:
4. Modernization and the Law and Development Movement


Mon., Sep. 22
Read for Mon., Sep. 22:


Mon., Sep. 29
Read for Mon., Sep. 29:
Keith S. Rosenn, The Reform of Legal Education in Brazil, 21 J. LEGAL EDUC. 251 (1968-69). Read: Excerpts. [online]

Read for Fri., Sep. 26:
JAMES GARDNER, LEGAL IMPERIALISM (1986). Read: 6-8, 12-15, excerpts from 35-50 (about nine pages), 215-217. [reader]

Wed., Oct. 1
Read for Wed., Oct. 1:


JAMES GARDNER, LEGAL IMPERIALISM (1986). Read: 8-12, 239. [reader]
5. Neoliberal growth and the revival of law and development

Topics: The neoliberal economic model. Law as a framework for private transactions and restraint on state intervention. Legal change through transplantation, with a focus on private law. Foreign technical experts as key actors. Resistance to development policies.

Read for Fri., Oct. 3:


World Bank, “About Us” (as of Feb. 2011). [online]

Read for Mon., Oct. 6


Read for Wed., Oct. 8:


Read for Fri., Oct. 10:

REVIEW AND MIDTERM WEEK (no additional reading assigned)

Mon., Oct. 13: Overview of first half of course

Wed., Oct. 15: Review session

FRI., OCT. 17: MID-TERM EXAM

6. Promoting “good governance” and the “rule of law”: Orthodox law and development today

Topics: Changing views of role of the state. Major institutions’ turn to “good governance” and the “rule of law” as key influences on economic growth and ends in themselves. Broadening of conceptions of development to include political/legal criteria. The World Bank as a key actor in law and development. Analyzing causal connections between law and development projects and their goals. Common patterns in orthodox law and development programming, and limits and criticisms of it. The “technocratic temptation” and high modernist ambition in law and development. Intellectual property rights to medicines as an example of competing interests in law and development.

Mon., Oct. 20

Read for Mon., Oct. 20:


THOMAS CAROTHERS & DIANE DE GRAMONT, DEVELOPMENT AID CONFRONTS POLITICS: THE ALMOST REVOLUTION (2013). Read: Excerpts from 55-60, 63-64, 66-70. [reader]

Read for Wed., Oct. 22:


Fri., Nov. 7: SECOND WRITING ASSIGNMENT DUE

Fri., Nov. 7

Read for Fri., Nov. 7: SECOND WRITING ASSIGNMENT DUE

Hassane Cissé, Should the Political Prohibition in Charters of International Financial Institutions Be Revisited?: The Case of the World Bank, 3 WORLD BANK L. REV. 59 (2012). Read: 59-60. [online]


World Bank, “What is Governance?” (n.d.). [online]

RACHEL KLEINFELD, ADVANCING THE RULE OF LAW ABROAD (2012). Read: Excerpts from 21-23, 26-27. [reader]
Read for Fri., Oct. 24:
Liu Shenjun, Rights Lawyer: “No True Rule of Law in China”, DEUTSCHE WELLE (online), Apr. 25, 2014 (excerpt). [online]
Joseph Kahn, When Chinese Sue the State, Cases Are Often Smothered, N.Y. Times, Dec. 28, 2005. [online]
Recommended:
World Justice Project, Rule of Law Index 2014 (2014). Read: 61 (How to Read the Country Profiles), 80 (China profile). [online]

Read for Mon., Oct. 27:
RACHEL KLEINFELD, ADVANCING THE RULE OF LAW ABROAD (2012). Read: Excerpts from 81-83, 86, 87-89. [reader]

Read for Wed., Oct. 29: Guest speaker: William Davis, co-founder, DPK Consulting
Readings to be announced.

Read for Fri., Oct. 31:
THOMAS CAROTHERS & DIANE DE GRAMONT, DEVELOPMENT AID CONFRONTS POLITICS: THE ALMOST REVOLUTION (2013). Read: 3-5, 8-10, 72-73, 75-81. [reader]
Asia Foundation, China (excerpt describing Foundation’s work in China), Sep. 2013. [online]
Benjamin van Rooij & Alex Wang, China’s Pollution Challenge, N.Y. TIMES, May 19, 2014. [online]

Read for Mon., Nov. 3:
Read for Wed., Nov. 5:


Chan Park & Leena Menghaney, TRIPS Flexibilities: The Scope of Patentability and Oppositions to Patents in India, in Access to Knowledge in the Age of Intellectual Property 415 (Gaëlle Krikorian & Amy Kapczynski eds., 2010) (excerpt). [online]

Recommended:

Very readable analysis of the potential international impact of India’s approach to intellectual property in drug cases: Gardiner Harris, India’s Efforts to Aid Poor Worrying Drug Makers, N.Y. Times, Dec. 29, 2013. [online]

Very good analysis by a UK government-sponsored commission of experts, on international and domestic intellectual property laws and their relationship to development: COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, INTEGRATING INTELLECTUAL PROPERTY RIGHTS AND DEVELOPMENT POLICY (2002). Read: Excerpt from 1-8. [online]

Read for Fri., Nov. 7:


James C. Scott, Two Cheers for Anarchism (2012). Read: 41-49. [reader]

III. ENGAGING INFORMAL AND CUSTOMARY PRACTICES

7. Formalization

Topics: Informal rules and practices as obstacles to economic development and poverty reduction. Formalization of rights and access to formal dispute resolution mechanisms as development strategy. Critiques of formalization strategy.

Mon., Nov. 10
Read for Mon., Nov. 10


Tetra Tech DPK, Annual Report 2012, Box 2, p. 5 (“Iraq: Legal Marriage Secures Rights for a Woman and her Child”). [online]

Wed., Nov. 12
Read for Wed., Nov. 12:

Suzanne Daley, Who Owns This Land? In Greece, Who Knows?, N.Y.TIMES, May 26, 2013. [online]


LS158 Handout: Formalization: OAS Haiti Civil Identity Project. [online]

Fri., Nov. 14
For Fri., Nov. 14:


JAMES C. SCOTT, TWO CHEERS FOR ANARCHISM (2012). Read: 87-88. [reader]


8. **Non-state law and legal empowerment**

Topics: Frequently identified characteristics and objections to non-state legal systems. Terminological and conceptual distinctions between “non-state,” “informal,” “customary,” and “traditional.” Creative use of law to expand economic, social, and political opportunities of people disadvantaged by, for example, poverty or gender discrimination. Use of strategies integrating law, politics, education, and other vehicles for change. Case study of the Sierra Leonean NGO Timap for Justice. The roles of “insiders” and “outsiders.”

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**Mon., Nov. 17**

**Fri., Nov. 21**

Read for Mon., Nov. 17: Customary/Non-State Law: Strengths and Weaknesses

Ewa Wojkowska & Johanna Cunningham, *Justice reform’s new frontier: engaging with customary systems to legally empower the poor*, in *Legal Empowerment: Practitioners’ Perspectives* 93 (Stephen Golub ed., 2010). Read: Excerpt from Part 2. [online]

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**Mon., Nov. 24**

**Mon., Dec. 1**

**Wed., Dec. 3**

NO CLASS ON WEDNESDAY, NOVEMBER 26 – HAPPY THANKSGIVING!

Read for Mon., Nov. 24: Legal Empowerment

**Guest speaker: Stephen Golub, Visiting Professor, Central European University, consultant to World Bank, USAID, United Nations Development Program, and other development agencies.**


Stephen Golub, Non-state Justice Systems in Bangladesh and the Philippines (Jan. 2003). Read: Excerpt from 3-12. [online]

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**Read for Wed., Nov. 19:** Sierra Leone’s Dualist Legal System


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**Read for Fri., Nov. 21:** Timap for Justice: Activities


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**Read for Mon., Nov. 24:** Legal Empowerment

[insert additional readings and details here, if applicable]
No class on Wed., Nov. 26.

Read for Mon., Dec. 1: Timap for Justice: Analysis
  Review previous excerpt by Maru, read for Friday, November 21.

Read for Wed., Dec. 3:
  Readings to be announced.

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**Course conclusion**

Fri., Dec. 5  
No new readings.