Law and Development  
Legal Studies 158  
Spring 2013

Lecture: Monday, Wednesday, Friday, 2-3 (160 Kroeber)  
Sections: Monday 3-4 (205 Dwinelle), Wednesday 12-1 (140 Barrows),  
Wednesday 4-5 (140 Barrows), Friday 12-1 (106 Wheeler)  
4 units

Professor Jamie O’Connell  
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joconnell@law.berkeley.edu

Office hours: Tuesdays, 3:30-5:00,  
Wednesdays 3:15-3:45 (Sign up on sheet linked from “Resources:Administrative” folder on bSpace.)

Graduate Student Instructors:  
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COURSE DESCRIPTION

Focusing on developing countries, this course studies the relationship between law and development. Efforts to change law in order to promote development are its core concern. These efforts have been conducted for centuries by national and local leaders. In the last twenty years, however, international organizations, foreign aid agencies, and local and international non-governmental organizations have become extraordinarily active, spending 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 key tensions between theory and practice that researchers and development practitioners have identified. The key actors involved in law-related development work will become familiar, and we will see specifically what they do. The clashes of interests that arise in development work will loom large in the course. Finally, by the end of the term, we will understand how practitioners’ and analysts’ views of the relationship between development and law have changed, especially over the last fifty years.
COURSE REQUIREMENTS

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

- Lecture: attendance and occasional participation 10%
- Discussion section 20
- Short written assignments for lecture (due Friday, February 15 and Monday, April 15) 10
- Midterm exam (Wednesday, March 13, in class) 20
- Final exam (Tuesday, May 14, 11:30 a.m. – 2:30 p.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 bSpace.

The book at the ASUC Bookstore (Thomas Carothers, ed., Promoting the Rule of Law Abroad: In Search of Knowledge (2006)) is NOT required. It was previously required, and does contain plenty of interesting material that you may find valuable, but we will not be reading enough from it to justify requiring you to purchase it.

The easiest way for you to figure out what to read for each class is to check the “Resources” section of the course website on bSpace. All readings for each session are listed in a folder for that session. (Readings for the first few weeks of the semester are posted already; we will post the rest well in advance of the week for which they are assigned.) Readings in the reader will be flagged as [IN READER]", and the rest can be accessed electronically from the site. Reading assignments may occasionally be modified from what is listed below, and any such modifications will be reflected on bSpace.

Attendance and participation in lecture
We will take attendance at lectures. If necessary, you may miss up to three lectures without penalty. For each additional absence, your lecture attendance and participation grade (10% of your course grade) will be reduced by one percentage point.

There will be some opportunities for participation during lecture sessions – e.g., collective discussion, question and answer time, participatory exercises. One or two points – depending on how many opportunities arise – of your final grade (out of the 10% for lecture attendance and participation) 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 Friday, February 15 and Monday, April 15. 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 Wednesday, March 13. Lecture on Monday, March 11 will be devoted to an informal, optional review session.

The final exam will be held Tuesday, May 14, from 11:30 to 2:30 p.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 reasonably 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.

Conflicts with extracurricular activities (including athletics)

If you participate in any extracurricular activity that may interfere with their 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 second week of the semester. Please note that 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.)

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.

**Electronic device use**

You may use a laptop or other electronic device to take notes during lecture, but you must turn off all wireless communication from the device – wifi, cellular data, etc. (Essentially, this is “airplane mode.”) While accessing online resources or communicating electronically with others during class may feel like it increases your efficiency, it is distracting to your colleagues. Furthermore, in the experience of all three instructors, the benefits of connecting during class or meetings – saving time by multitasking, clarifying a lecturer’s point by instant messaging, gratifying one’s wandering mind by reading Perez Hilton or ESPN – are much smaller than they seem in the moment, and the costs – missing particular points, losing the thread of a complex argument, being put on the spot when called on – are much greater. Finally, jumping from one task to another and back both undermines deep thinking and is hugely inefficient. (Don’t ask how many times I checked email while writing this page.)

This may go without saying, but you may not send or view text messages or otherwise communicate with the help of a phone or other electronic device during class.

**ADDITIONAL RESOURCES**

The websites of the World Bank (www.worldbank.org), its Justice for the Poor program (http://go.worldbank.org/SMIKY7M6O0), the United Nations Development Program (www.undp.org), the American Bar Association’s Rule of Law Initiative (http://apps.americanbar.org/rol/) 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.
# READINGS

## I. Introduction

<table>
<thead>
<tr>
<th>Date</th>
<th>Readings</th>
</tr>
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<tbody>
<tr>
<td>Fri, Jan. 25</td>
<td><strong>AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).</strong> READ: 3-11. [online]</td>
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<tr>
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<td>United Nations Development Program, “Human Development Index (HDI)”</td>
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<td>(n.d.), at <a href="http://hdr.undp.org/en/statistics/hdi/">http://hdr.undp.org/en/statistics/hdi/</a>. Read: From top of page to just before “To learn more,” then skip to “Highlighting uneven development: comparing relative levels of HDI and per capita income” and read that section. You can stop reading before the FAQ. Make sure you understand the diagram, “Components of the Human Development Index”. [online]</td>
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<td>United Nations Development Program, “What does the Human Development Index (HDI) tell us?” (n.d.), at <a href="http://hdr.undp.org/en/statistics/gni/">http://hdr.undp.org/en/statistics/gni/</a>. Optional: Choose a few countries that interest you and see how their GNI/capita ranking – development measured purely by average income – compares to their HDI ranking: compared to other countries, do they convert their income into more human development (HDI ranking is higher than GNI ranking) or less? Are you surprised by any of the results? [online]</td>
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<td><strong>JOHN VENTURA, LAW FOR DUMMIES (1996).</strong> Read: 9-15. [reader and online]</td>
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<td><strong>ARJAN DE HAAN, HOW THE AID INDUSTRY WORKS: AN INTRODUCTION TO INTERNATIONAL DEVELOPMENT (2009).</strong> Read: 63, 69-83. [reader and online]</td>
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<tr>
<td>Date</td>
<td>Read for Mon., Jan. 28:</td>
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<th>Read for Fri., Feb. 1:</th>
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<td>Johnson v. M’intosh, 21 U.S. 543 (1823). Read: Excerpt. [online]</td>
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### II. The Evolution (?) of Law and Development

#### 3. Becoming “modern”

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<th>Date</th>
<th>Topics</th>
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| Weds., Feb. 6 | Read for Mon., Feb. 4:  
Handout with a few aids. [reader]  
KENNETH G. HENSHALL, A HISTORY OF JAPAN: FROM STONE AGE TO SUPERPOWER (2d ed. 2004). Read: Excerpts from 73-85, 96-100. [reader] |
| Fri., Feb. 8   | Read for Weds., Feb. 6:  
MERYLL DEAN, JAPANESE LEGAL SYSTEM (2d ed. 2002). Read: 61-69. [reader]  
|             | Read for Fri., Feb. 8:  
KENNETH G. HENSHALL, A HISTORY OF JAPAN: FROM STONE AGE TO SUPERPOWER (2d ed. 2004). Read: Excerpts from 86-91. [reader]  
### 4. The Law and Development Movement: Vision and activities

Topics: Linear model of economic growth coupled with political and social "modernization." Law as a tool of state-led development. Legal change driven by outside development agencies and foundations (such as Ford Foundation).

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<tr>
<th>Date</th>
<th>Activity</th>
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| Mon., Feb. 11 | Reading assignment: 
WALTER ROSTOW, THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO (1960). Read: Graphic facing 1 and 4-12. [reader] |
| Weds., Feb. 13| Reading assignment: 
| Fri., Feb. 15 | Reading assignment: 
| Mon., Feb. 18: NO CLASS (President’s Day) | 
| Weds., Feb. 20 | Reading assignment: 
| Fri., Feb. 15: FIRST WRITING ASSIGNMENT DUE | 
Read for Fri., Feb. 15: 
Keith S. Rosenn, The Reform of Legal Education in Brazil, 21 J. LEGAL EDUC. 251 (1968-69). Read: Excerpts. [online] 
David M. Trubek, “Reforming Legal Education in Brazil: From the Ceped Experiment to the Law Schools at the Getulio Vargas Foundation,” Univ. of Wisconsin Legal Studies Research Paper No. 1180 (n.d., approx. 2011). Read: 4-5. [online] |
| Mon., Feb. 25 | 
Read for Mon., Feb. 25: 
JAMES GARDNER, LEGAL IMPERIALISM (1986). Read: 8-12, 239-246. [reader] |

### 5. The Law and Development Movement: Disappointment, critique, and decline


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<th>Date</th>
<th>Activity</th>
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| Fri., Feb. 22 | Reading assignment: 
| Mon., Feb. 25 | Reading assignment: 
JAMES GARDNER, LEGAL IMPERIALISM (1986). Read: 231-235, 282-88. [reader] 
## 6. Neoliberal growth and the revival of law and development

Topics: Neoliberal economic model – growth driven by market, with minimal state involvement. 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. Example of neoliberal overhaul of national intellectual property laws.

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<th>Read for Weds., Feb. 27:</th>
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REVIEW AND MIDTERM WEEK (no additional reading assigned)

Fri., Mar. 8: Overview of first half of course
Mon., Mar. 11: Review session
Weds., Mar. 13: Mid-term exam

7. Promoting good governance and the rule of law: Orthodox law and development today

Topics: Major institutions’ turn to “good governance” and the “rule of law” as key influences on economic growth, with many programs aiming to achieve distributional and social development goals as well. The World Bank as a key actor in law and development. Limits and criticisms of present-day orthodox law and development, including failure to address incentives and power relations, vague and multiple definitions, limited knowledge of contexts and of fundamental causal relationships, and possible regressive distributive impacts.

Fri., Mar. 15
Mon., Mar. 18
Weds., Mar. 20
Fri., Mar. 22

Read for Fri., Mar. 15:


SPRING BREAK

Mon, Apr. 1
Weds., Apr. 3
Fri., Apr. 5
Mon., Apr. 8

Read for Mon., Mar. 18:


UNITED NATIONS DEVELOPMENT PROGRAM, STRENGTHENING THE RULE OF LAW IN CRISIS-AFFECTED AND FRAGILE SITUATIONS: IN BRIEF (2011). Read: 6-7. Browse to get a sense of the range of activities: 8-11 (blue boxes may be especially helpful). [online]

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


World Bank, AFRICA: REGIONAL JUSTICE NOTE: A REVIEW AND LESSONS LEARNED (2010). Read 1-12 quickly as an example of technocratic reform. [online]
Read for Weds., Mar. 20:


Read for Fri., Mar. 22:


**SPRING BREAK!**

Read for Mon., Apr. 1: **Guest Lecture: Stephen A. Rosenbaum, Lecturer at University of California, Berkeley, School of Law, Stanford Law School, and University of Washington School of Law, consultant to American Bar Association Rule of Law Initiative and U.S. Department of State.**


Read for Weds., Apr. 3:


Read for Fri., Apr. 5:


Read for Mon., Apr. 8:


III. Bottom-Up Models of Law and Development

8. **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 strategy.

Weds., Apr. 10
Fri., Apr. 12
Mon., Apr. 15

Read for Weds., Apr. 10:


Recommended: 47-56. [online]

Robert Smith, *Food Trucks Seek “That Mystical Spot”*, NATIONAL PUBLIC RADIO (online), May 4, 2012. [online]

MON., APR. 15:
SECOND WRITING ASSIGNMENT DUE

Read for Fri., Apr. 12:


**WORLD BANK, DOING BUSINESS 2013 (2012). Read: 56-57. [online]**


For Mon., Apr. 15:


9. **The Access to Knowledge ("A2K") movement**

Topics: Critiques of traditional intellectual property rights as favoring interests of developed rather than developing countries. Opposition by “Access to Knowledge” ("A2K") movement comprising a range of actors from developing and developed worlds and various positions, including governments, international organizations, and NGOs. Creative A2K advocacy that combines use of existing intellectual property rights, efforts to change them, and legal alternatives to them. Successes and failures of A2K movement.

Weds., Apr. 17
Fri., Apr. 19

Readings to be announced and distributed.
10. Non-state law and legal empowerment

Topics: 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. Maximizing role of the disadvantaged themselves in design and execution of social change initiatives. Case study of Timap for Justice, a Sierra Leonean NGO. Overview of non-state legal systems and processes. Terminological and conceptual distinctions (e.g., “non-state” vs. “informal” vs. “customary” vs. “traditional”). Common objections to non-state legal systems. Strategies for promoting change. Challenges of designing change strategies. The roles of “insiders” and “outsiders.”

Mon., Apr. 22
Weds., Apr. 24
Fri., Apr. 26
Mon., Apr. 29
Weds., May 1

Read for Mon., Apr. 22: Introduction to Sierra Leone
Jamie O’Connell, Here Interest Meets Humanity: How to End the War and Support Reconstruction in Liberia, and the Case for Modest American Leadership, 17 HARV. HUM. RTS. J. 207 (2004). Read: Excerpt. [online]
Recommended: Pamela Dale, Barriers to Justice in Sierra Leone for the Poor (2007). (Four-page summary of obstacles to accessing justice for poor Sierra Leoneans.) [online]

Read for Weds., Apr. 24: Legal Empowerment.
Stephen Golub, What is Legal Empowerment?, in LEGAL EMPOWERMENT: PRACTITIONERS’ PERSPECTIVES 93 (Stephen Golub ed., 2010). Read: Excerpt. [online]
Stephen Golub, Non-state Justice Systems in Bangladesh and the Philippines (Jan. 2003). Read: Excerpt from 3-12. [online]

Read for Fri., Apr. 26: 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]
WORLD BANK, FORGING THE MIDDLE GROUND: ENGAGING NON-STATE JUSTICE IN INDONESIA (2008). Read: Excerpt from 41-47. [online]
Review Pa Lansana case from Monday’s reading

Read for Mon., Apr. 29: Timap for Justice: Activities
Refresh your memory of situation in Sierra Leone from Maru excerpt assigned for last Monday:
Read for Weds., May 1: Timap for Justice: Analysis


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Course conclusion

Fri., May 3 No new readings.