“All the evidence suggests that the legal system may be the main explanation for the difference in development that exists between industrial countries and those, like our own, which are not industrial ... The debate about development will therefore have to be reformulated to take the importance of legal systems into account. We cannot continue to close our eyes to the fact that not all of a society’s decisions are determined by its cultural characteristics or economic systems.”

Hernando de Soto
Peruvian Economist
1989

“The world around, both developing countries and former socialist ones, look to law as an instrument of radical social change. That effort undoubtedly constitutes the most massive effort that the world has ever known to use state power instrumentally through law. To learn to use law as an instrument of social engineering presumably requires serious reflection on that experience.”

Ann and Robert Seidman
Boston University Professors
1996

In this seminar, students will:

(1) become familiar with a broad range of international development topics and issues (including family planning, health, gender, land reform, water reform, labor, financial systems, foreign aid, foreign direct investment, international trade, and climate change) and the interrelationship between law and these issues or topics;

(2) learn about the work experiences of attorneys working within at least one field of international development; and

(3) become an “expert” in one self-selected topic of law and international development by researching and writing a major paper on that topic.

Grades will be based on the major paper. There is no exam for this seminar. The seminar sessions listed on this syllabus will take place Winter Quarter. There will be ten scheduled seminar sessions for Winter Quarter. The sessions start at 10:30 AM and will end at 12:20 PM on Wednesdays in room 207, William H. Gates Hall. At the first session, the instructors will hand out a list of possible paper topics; students may select from the list or choose their own topic related to law and development. All topics must be approved. We will probably not meet as a group during Spring Quarter, which is set aside for students to work on their seminar papers. Students will be required to submit an advanced draft of their paper at the beginning of Spring Quarter. The instructors will carefully review the drafts and each student will schedule individual meetings to discuss the draft. After this one thorough edit and discussion of each student’s paper, the student will revise the paper to its final version.

Important dates for the required student papers include:
February 3 | Topic Proposal Due (but earlier is welcome!)
February 10 (week of) | Meetings with Instructors on Paper Topic and Approach
April 4 | Advanced Draft of Paper Due
April 14-18 | Meetings with Instructors to Discuss Advanced Draft
June 13 | Final Paper Due

Evaluation and grading criteria for the papers include the following:

- **Topic.** The topic should involve a significant development issue.
- **Legal Content.** The paper should contain significant legal content.
- **Length.** This does not mean “the longer the better,” but papers of 30 or more pages (double-spaced with 1” margins and single-spaced footnotes) are more likely to receive higher grades.
- **Organization.** Does organization facilitate reader’s understanding of the topic and issues involved? Does reader have a sense of what author is trying to accomplish and how they will accomplish it at an early point in paper (table of contents; roadmap paragraph; good introduction section)? Is the background information logically separated from the analysis?
- **Research and Documentation.** The paper should be well-researched and well-documented. Number of footnotes and sources are an indication. Footnotes should be in blue-book citation form.
- **Analysis and/or Recommendations.** Papers should be more than purely descriptive. We are looking for evidence of thoughtful analysis. This may include, and we would encourage if possible, recommendations from the author.

Please note that this is a three-stage process, with help from the instructor(s) along the way: (1) selection of topic; (2) submission of an advanced draft at the start of spring quarter followed, in a few weeks, by an individual review session with the instructor(s); and (3) submission of the final, revised version at the end of spring quarter.

**Required Materials** (the following required materials will be distributed):

- Law B578 Course Pack (available online at https://canvas.uw.edu/courses/850042)

**Winter Quarter sessions** will involve presentations by the instructors and class discussions on a wide variety of international development topics. Students should carefully read assigned materials related to
the topic(s) before attending the seminar session. The primary objective of these seminar sessions is to familiarize the student with a broad range of international development needs and issues and the role that law can or does play in addressing those needs.

Some of these sessions may also include a presentation by the instructors or guest speakers on various aspects of Landesa’s work in developing countries (which figures prominently in the course book, One Billion Rising). Landesa, formerly known as the Rural Development Institute (RDI), is a non-profit organization of attorneys and other professionals that conducts research and consulting on land reform law and policy and related rural development issues. Landesa has worked in Asia, Latin America, Africa, the Middle East, and Eastern and Central Europe. (Professor Prosterman founded RDI in 1981 as an umbrella for working on land tenure issues, and is presently its chairman emeritus.)

The topics will be organized into seven sessions (there may be some date changes for the later sessions, but you will be told well in advance – in any case, all sessions will be on Wednesdays, starting at 10:30 AM).

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A detailed list of topics and the questions and readings accompanying each topic follows for each session. Note that many sessions have more than one topic. **Students should read the assigned materials before each seminar session and be prepared to discuss them.**

**SESSION 1: “Development” and the Role of Law in Development**

*Measuring Development and Achieving Development*

Questions:

- What is “development”?
• Can development be measured in economic terms? Social terms? In other ways?
• Why is it difficult to measure development?
• What measurement indicators are important?
• How can we assess the “sustainability” of development?
• What is the relationship between or relative importance of economic growth and equitable distribution of benefits?
• Some measures are absolute and others comparative: what is their relative role and importance?
• What countries are “developed”?
• How do countries achieve “development”?
• Has “development” been occurring in recent decades? If so, where and how?

Readings:

• Population Reference Bureau, 2013 World Population Data Sheet


• United Nations, Millennium Development Goals: At a Glance (September 2010)


Suggested Readings:


Questions:

• What is the law and development movement? How has it changed?
• How have “developed world” lawyers helped to shape social and economic development in developing countries? What are the principal criticisms of their role?
• What are the relationships between law and social or economic change?
• Why is a well-designed legal framework important for achieving development goals?
• Can lawyers develop a sufficient legal framework without understanding development processes? How do they gain that understanding?
• How can “traditional” sectors of developing countries be affected by the introduction of “modern” law?
• Should developing countries “import” laws of developed countries? Why or why not?
• What are the relative roles of international law and domestic law in development?
• How does law influence economic behavior?
• How can laws be reformed to make the actions of individuals, private firms, and public authorities more consistent with economic and social development goals?

Readings:


SESSION 2: Family Planning and Health Issues; Human Rights and Development

Family Planning and Development

Questions:

• What is the relationship between population growth and development?
• Should governments encourage or discourage the use of contraceptives, sterilization, or abortion in developing countries? If so, how?
• What are the relevant legal issues to consider?
• What regulation of births, if any, is appropriate?
• Have formal laws and national programs been effective at limiting births? Why or why not?
• To what extent can family planning policy debates be cast in terms of legal rights?
• What changes in the debate may grow out of aging populations and negative population growth in some (even some developing) countries?

Readings:

• Population Reference Bureau, 2013 World Population Data Sheet.

Suggested Reading:

Health and Development

Questions:

- What is the relationship between health and development?
- What are the greatest opportunities for reducing unnecessary deaths?
- How do health issues in developing countries differ from those in developed countries?
- What are the important components of a primary health care program?
- How might developing countries best allocate limited health care resources?
- The “legal content” of some of the family planning issues is fairly evident (see, e.g. the debate over abortion in our own society), but what of the “legal content” of various health issues? What means are available via the legal system for improving the health situation in a developing country?
- How prevalent is HIV/AIDS in developing countries? What unique issues does it present? What domestic or international legal measures might help to address this relatively new epidemic?
- How should the developing countries deal with the “tobacco epidemic”? Is this a health issue that lends itself (more than HIV/AIDS for example) to intervention through the legal system?
- What role can or should international law play generally in preventing or controlling health risks?

Readings:

- Jeffrey D. Sachs, Institutions Matter, but Not for Everything, Finance & Development, 1 June 2003.
- George A. Mensah, et al., Law as a Tool for Preventing Chronic Diseases: Expanding the Spectrum of Effective Public Health Strategies, 1 Preventing Chronic Disease 1 (January 2004).

Suggested Reading for those interested in an in-depth discussion of the new international health regulations:


Suggested Reading for those interested in exploring the UNAIDS website and interactive material:


Suggested Reading for those interested in an assessment of the implementation of the WHO’s FCTC:

Human Rights and Development

Questions:

• What is the relationship between civil and political rights and development?
• Does development lead to free societies or do free societies lead to development?
• What can we learn from a comparative assessment of civil and political liberties?
• How can international and domestic legal measures enhance linkages between human rights and development?

Readings:

• Mary Robinson, Realizing Rights: Fulfilling Humanity’s Promise to Itself, 3 Innovations No. 2 (MIT Press, Spring 2008).
• Suggested Reading:

SESSION 3: Gender and Development

Questions:

• What may be the special significance of women’s role in development, and how can we assess that significance?
• How may women’s role in development be enhanced or facilitated through legal or administrative measures?
• What special disadvantages may be experienced by women in developing countries?
• What legal issues with respect to women’s rights and disadvantages may arise in the context of, or paralleling, the land rights questions?
• To what extent can women’s disadvantages in developing countries be successfully addressed through the legal system? How can lawyers incorporate a gender analysis of law in developing countries?
• To what extent is the issue of sex-selective abortions one that is addressable through the legal system?

Readings:

• One Billion Rising, Ch. 5

Suggested Reading for those interested in an in-depth look at this issue in the specific context of India:


### SESSION 4: Introduction to Land Tenure Reform

#### Land Tenure Reform

**Questions:**

• Why are land resources and land rights so important to most poor families in developing countries? Why are they important to developing country governments?
• What is the significance of secure and transferable land rights in the development process?
• What are the potential legal and administrative measures to address unequal patterns of land distribution?
• What are the potential legal and administrative measures to address insecure land rights?
• What is the proper balance between public and private rights in land?
• What key issues face lawyers who design land-reform programs?
• Has involuntary, expropriatory land reform been successful?
• How do land reform issues in collectivized agricultures differ from those in non-collectivized agricultures?
• Has the land rights debate changed over time? If so, how

#### Land Tenure Reform Legislation

**Questions:**

• What are the principal strengths and weaknesses of the legal measures in this week’s readings? What additional facts would you like to know about the particular country settings in making these judgments?
• How do these legal measures attempt to balance private rights to land (important to encourage investment and efficiency) with public rights to or controls over land (important to address environmental and equity concerns)?
• What issues or needs have the law drafters tried to address?
• Are any of the provisions in these laws likely to lead to behavior which the drafters might not have welcomed or anticipated?
• How can we assess the quality of these legal measures?
• Assume that you had been asked by the government to comment on each of these laws when still in draft form. What questions would you ask about the factual setting? What would be your initial concerns?

Readings:

• (Continue to refer to Ch. 1-3, 4-6,10 from One Billion Rising)
• Philippine Presidential Decree No. 27 (1972).
• China Rural Land Contracting Law (2002).
• Draft Right to Homestead Law 2013 (India)
• Government of Karnataka “Namma Bhoomi – Namma Thota” Micro-Plot Program
• Draft Right to Homestead Law 2013 (India)

SESSION 5: Land Tenure Reform, cont’d; Land Tenure Legislation

Land Tenure Legislation, cont’d

Questions:

• Consider, first, the same set of questions as in session #4.
• What are the key legal and implementation issues for micro-plot distribution? How do these differ from issues in “full-size farm” distribution?
• What are the program-specific issues in El Salvador and what questions would you have as to the factual setting?
• Under what circumstances might it not be a good idea to provide individual land titles to those who may regard land as “theirs” but who lack any documentation?
• Are there ways of protecting customary users of land without providing them with individual land titles or similar individual documentation?

Readings:

• (Continue to refer to Ch. 1-3, 5-6 from One Billion Rising).
• One Billion Rising, Ch. 4, 8
• Government of Karnataka “Namma Bhoomi – Namma Thota” Micro-Plot Program.
• El Salvador Basic Law of Agrarian Reform and Implementing Measures (Decrees 153, 154, 207).
• UN Office for the Coordination of Humanitarian Affairs, Pakistan: Absence of Land Reform Entrenches Poverty – Activists, IRIN (September 28, 2009).
• National Right Homestead Bill (attached)
SESSION 6: Law & Development in South Sudan
Guest lecturer, Professor Christopher Zambakari

- David K. Deng, 'Land belongs to the community' Demystifying the ‘global land grab’ in Southern Sudan, paper presented at the International Conference on Global Land Grabbing, 6-8 April 2011


- Christopher Zambakari, Nation and State-Building in South Sudan: Violence, Development, and Democracy

SESSION 7 & 8: Resource Flows from Developed to Developing Countries; Addressing the Global Financial Crisis

Foreign Aid

Questions:

- What is the relative amount of foreign aid in all resource flows is from developed to developing countries?
- What countries are the leading givers of foreign aid in absolute terms? In relative terms (foreign aid as a percentage of GNP)?
- What is the role of foreign aid in development? Has this role been changing?
- Can aid sometimes do harm? If so, can this be prevented or avoided through legal or administrative measures?
- What have been the relative contributions of foreign aid from the United States and other countries?
- What should be the goal of foreign aid? How can foreign aid legislation be shaped to achieve those goals?
- Should foreign aid donors make aid conditional on certain specified actions by recipient governments? If so, what actions and what are the consequences for national sovereignty?
- If all aid resources were effectively spent, what is the possibility and likely cost of making the world’s poor self-sufficient?
- What is the “legal content” relating to the flow and use of foreign aid?

Readings:

- Steven Radelet, A Primer on Foreign Aid, Working Paper No. 92 (Center for Global Development 2006).
- Millennium Challenge Act of 2003, Public Law 108-199 (2003), Division D, Title VI.
Suggested Reading:


SESSION 9: International Environmental Law

Questions:

- What identifies an environmental problem as suitable for action at the international level?
- How sure do we need to be about the scientific facts concerning and probable consequences of global warming (or other international environmental problems) before taking legal action?
- To what extent and in what ways, if any, is the problem of global warming linked to core issues of development?
- How much is accomplished by the Kyoto Protocol and what is left out? What should be the key considerations in negotiating a follow-up accord?
- What responsibility should developing countries have in dealing with the global warming problem, and how might (or should) the developed countries help the developing countries take appropriate actions?
- What is the role of international forums or organizations in facilitating action on the global warming problem or other international environmental problems?

Readings (quite a few, but mostly short commentaries):

- Pew Center on Global Climate Change, Key Scientific Developments Since the IPCC Fourth Assessment Report (June 2009)
- Pew Center on Global Climate Change, Climate Change 101: Local Action (Jan. 2009 Update)
- Pew Center on Global Climate Change, Climate Change 101: State Action (Jan. 2009 Update)
- Christopher Hayes, Heated Discussion, The University of Chicago Magazine (Aug. 2005)
- Climate Change in Black and White, The Economist, 398.8721, Feb 19, 2011
- Alan Miller, Financing the Integration of Climate Change Mitigation into Development, in8 Climate Policy no. 2: Development Policy as a Way to Manage Climate Change Risks 152 (Bert Metz and Marcel Kok, eds., Earthscan, 2008)
- Copenhagen to Cancun – Lessons, Opportunities, The New Nation, June 28, 2010


SESSION 10: Law Reform in LDCs and Legal Technical Assistance

Questions:

- What is the relationship between civil and political rights and development?
- Does development lead to free societies or do free societies lead to development?
- What can we learn from a comparative assessment of civil and political liberties?
- How can international and domestic legal measures enhance linkages between human rights and development?

Readings:


Suggested Reading:


Seminar Paper Topic Examples

Legal Problems of Economic Development-Law B578

1. The reduction, modification, or elimination of agricultural subsidies as part of the Doha Round on world trade: any remaining chance? Any ideas for new approaches?
2. How is “market value” to be determined, or limits set, in “market-assisted” or market-price based land reform programs, (whether in negotiated acquisition of land or mandatory acquisition)? (Both actual experience and recommendations.)
3. Reform of LDC banking systems in light of the financial crisis; and/or existing strengths and why some/much of them have not experienced a deep crisis (e.g. China, India)?
4. Problems and possible solutions/needs for China’s banking system, including reducing damage from feared real estate “bubble.”
5. Legal guideposts for recovering the ill-got gains of a Mubarak.
6. Tenure, subsidies, performance, and related key issues in the Turkish agricultural sector (any lessons for countries such as Ukraine, which are likely to view Turkish experience as more capable of imitation than that of highly developed W. European countries?).
7. A comparative view of affirmative action experience for disadvantaged groups (looking, e.g., at Malaysian experience—see Far Eastern Economic Review, 5/28/98, re their very sweeping program; perhaps also or alternatively look at India).

8. The 18th and 19th century Danish land reform.

9. The post-World War II Western European experience with currency convertibility.

10. Finnish land reforms, post-WWI and post-WWII.

11. Explain, discuss, and (as appropriate) critique “cap and trade” system for greenhouse gases, including possible improvements (any guidance to be had from the Acid Rain Trading Program? or the paper might focus on the latter and lessons to be learned).

12. Review of the measures that seem to have led to success in reducing the emissions that threatened the “Ozone Layer” (Montreal Protocol, etc.).

13. What are the key revisions needed for a possible successor to the Kyoto Protocol?

14. 19th and early 20th century U.S. experiments with common farming (or agrarian socialism, Fourier-style) through the 1930’s New Deal experiments (Rexford Tugwell book).

15. Assessing development needs of Egypt under a new regime: What should be done?

16. What safeguards are needed to regulate large-scale acquisitions of land for agricultural uses by states or corporations (or equivalent actors)?

17. Litigation and public inquiries as tools for tobacco control in the developing countries.


19. The recent Australian water rights rules and their potential usefulness in less developed country settings.

20. Transmigration experience in Indonesia: a definitive failure? Any present prospects? Implications for “resettlement” programs elsewhere?

21. What might be the role, if any, for “aspirational rules” in the formal legal system—e.g., where very strong (but bad) customary rules adversely impact some disadvantaged group within the society (e.g., women).

22. Women’s property rights in Islamic societies (including, but not limited to, with reference to Shar’ia) and possibilities for reform and improvement (with appropriate examples—Malaysia? Indonesia? etc.).

23. How did Brazil bring down its inflation rate from 400 percent per year in 1980-93?

24. What interventions might China be able to use to bring down its inflation rate (and to keep it from escalating above the current 6.4% year-to-year)?

25. What is the status of, and what needs to be done, to deal with the issues of land reform in South Africa?

26. What are principal features of the land tenure mess that Mugabe will have left behind in Zimbabwe and what are the options for reasonable corrective measures?

27. What is the current status and usability of the proposed Rule of Law Index being developed by the World Justice Project, and how might it be improved?

28. How can/should China and India be brought into active participation in a hoped-for successor agreement to the Kyoto Protocol?

29. What, if any, is the possible need for new rules or institutions at the international level to prevent a repetition of the recent financial and credit crisis that afflicted the U.S. and a number of other countries? (Keep in mind the attempted recent financial system reform measure in the United States.)
30. Review the recent Malaysian experience (and/or one or more others) in reforming the judiciary and increasing the independence of the courts.

31. Provide a comparative overview of the current range of legislative responses in the developing countries to the availability of and conditions or prohibitions governing abortion (not including regulation of pre-conception contraceptive use, but including measures or rules, or lack thereof, relevant from conception – or from the possible presence of conception – onward.)

32. What causes Namibia to have the world’s most unequal distribution of income (see e.g. 2008 World Fact Book – Distribution of Family Income and 2007/08 UNDP Human Development Report), and what legal-system interventions might be relevant for lessening that inequality?

33. Assess the role, size, transaction costs, and positive or negative regulations affecting remittances from those employed in developed countries to relatives and family in their (developing) country-of-origin, including suggestions for legal improvements to facilitate such remittances (one may focus, for example, on rules and/or policies found – or not found – in the US and one other developed country.)

34. What are the possible legal-system options (including any successes or best practices you may find) for dealing with migrants from developing to developed countries who are now illegally present under existing law?

35. Legal issues in, and a legal framework for, the development of water-trading markets (see “Carbon-Trading Pioneer Dips Toe into Water Markets,” in Wall Street Journal, July 18, 2011; also see Australian experience).