LAW AND DEVELOPMENT
PROFESSOR DAVID KENNEDY
FALL 2010

Course Description:
This course will deal with past and present debates over the role of the legal order in economic development. We will explore the relationships among economic ideas, legal ideas and the development policies pursued at the national and international level in successive historical periods. We will focus on the potential for an alliance of heterogenous traditions from economics, law and other disciplines to understand development.

Readings:
We will aim to cover one assignment per class.


GERALD M. MEIER, Biography of a Subject: An Evolution of Development Economics (Oxford University Press, 2005)


HA-JOON CHANG, Rethinking Development Economics (Anthem Press, 2003)

RAFAEL KAPLINSKY, Globalization, Poverty and Inequality (Polity Press, 2005)


Exam:
The take home exam will be available on the last day of the course and will be due at the Registrar’s office on the last day of the exam period. Evaluation may rest in part on work done during the course.
Part I: Introduction and History: What is “Development?”

Assignment 1

A. Measuring National Economic Development

Required: Cypher and Dietz, Chapter 2: Measuring Economic Growth and Development, pp. 30-63

David Kennedy, What is ‘Development?’ Issues That Have Divided the Profession

Gunnar Myrdal, Prologue, Asian Drama: An Inquiry Into the Poverty of Nations (Pantheon, 1968), pp. 5-35

Ian Parker, The Poverty Lab: Transforming Development Economics, One Experiment at a Time, The New Yorker (17 May 2010), pp. 78-89

Recommended: Meier: Chapter 1, pp. 3-14
ASSIGNMENT 2

B. THE WORLD HISTORY OF DEVELOPMENT AS SOCIAL TRANSFORMATION: 
THE INDUSTRIAL REVOLUTION AS MODEL AND THE LEGACY OF 
COLONIALISM

Required: CYPER and DIETZ, Chapter 3: Development in Historical Perspective, pp. 73-103


J. S. FURNIVAL, Progress and Welfare in Southeast Asia: A Comparison of Colonial Policy and Practice (1941), Contents, and pp. 3-84


WALT ROSTOW, How it All Began: Origins of the Modern Economy (1975)
C. THE HISTORY OF DEVELOPMENT: THE INITIAL SITUATION

Required:  
ERIC WOLFF, Europe and the Peoples without History, (1982)  
Chapter 11: The Movement of Commodities, pp. 310-353

VICTOR BULMER-THOMAS, Chapter 5: Export-led Growth and the Non-export Economy, pp. 117-151


Background:  


Assignment 4

A. Growth: Neo Classical and Keynesian Theories of Development

Required: Cypher and Dietz, Chapter 4: Classical and Neoclassical Theories, pp. 109-132, and Chapter 5: Developmentalist Theories of Economic Development, pp. 140-164

David Kennedy, Modest Interventionism: Key People and Key Concepts


Recommended: Meier: Chapter 2: The Heritage of Classical Growth Economics, pp. 15-40; Chapter 4: Early Development Economics 1: Analytics, pp. 53-67; and Chapter 5: Early Development Economics 2: Historical Perspectives, pp. 68-80


Walt Rostow, Politics and Stages of Growth (1971);

Gilbert Rist, The History of Development: From Origins to Global Faith (1997), pp. 80-103 (Bandung, the institutionalization of Rostow)

Albert Hirschman, The Strategy of Economic Development (1958)

Ragnar Nurkse, Problems of Capital Formation in Underdeveloped Countries (1953)


W. Lewis, Economic Development with Unlimited Supplies of Labor, in Manchester School of Economic and Social Studies (1954)
ASSIGNMENT 5

B. HETERODOX ECONOMIC THEORIES OF DEVELOPMENT: THE LEFT, WORLD SYSTEMS, DEPENDENCY AND SELF RELIANCE

Required: CYPER and DIETZ, Chapter 6: Heterodox Theories of Economic Development, pp. 168-196


Background: GUNNAR MYRDAL, Economic Theory and Underdeveloped Regions (Harper Torchbooks, 1971)


FERNANDO HENRIQUE CARDOSO and ENZO FALETTI, Dependency and development in Latin America (University of California Press, 1979) (translation by Marjory Mattingly Urquidi)

PETER EVANS, Dependent Development: The Alliance of Multinational, State and Local Capital in Brazil (Princeton University Press, 1979)


SAMIR AMIN, Alternative Development for Africa and the Third World, in Maldevelopment: Anatomy of a Global Failure (1990);

The Club of Rome’s Project on the Predicament of Mankind, The Limits to Growth (Universe Books, 1972, 1974)

Paul Baran, The Political Economy of Growth (Modern Reader Paperbacks, 1957)


H.W. Arndt, pp. 115-147 (radical viewpoint, the left)
ASSIGNMENT 6

C. NATIONAL IMPORT SUBSTITUTION INDUSTRIALIZATION: THE POLICY PROGRAM AND ITS POLITICS

Required: CYPFER and DIETZ, Chapter 9: The Initial Structural Transformation: Initiating The Industrialization Process, pp. 271-303

ALICE AMSDEN, Statistical Table on ISI results

VICTOR BULMER-THOMAS, Chapter 9: Inward-looking Development in the Postwar Period, pp. 268-312


Background: MAURICE GIRGIS, Industrialization and Trade Patterns in Egypt, pp. 5-53
D. THE LEGAL ELEMENT IN IMPORT SUBSTITUTION INDUSTRIALIZATION: THE ANTI-FORMALIST SOCIAL

**Required:**

DAVID KENNEDY, 'The 'Rule of Law,' Political Choices, and Development Common Sense, in TRUBEK and SANTOS, pp. 95-128

DUNCAN KENNEDY, Three Globalizations of Law and Legal Thought 1850-2000, in TRUBEK and SANTOS, pp. 19-73


**Background:**


ROBERTO UNGER, Law and Modernization (1977)

LAWRENCE FRIEDMANN, Legal Culture and Social Development (1964)
Part III: Transition 1965-1980

**Assignment 8**

**A. Adjusting Strategy in Light of Disappointments and Problems of Implementation**

**Required:**

CYPHER and DIETZ, *Chapter 10: Strategy Switching and Industrial Transformation*, pp. 308-334

ALICE AMSDEN, *The Rise of “The Rest” – Challenges to the West from Late Industrializing Economies* (Oxford University Press, 2001)

*Chapter 1: Industrializing Late*, pp. 1-28, and *Chapter 6: Speeding Up*, pp. 125-160


**Background:**


Assignment 9

B. Disappointments, Problems of Implementation, Unintended Consequences and the Rise of Critique: Public Choice and Rent-seeking Analytics

Required: MEIER: Chapter 6, pp. 81-94


ASSIGNMENT 10

C. ENGAGING A CHANGING INTERNATIONAL CONTEXT: THE SEARCH FOR GLOBAL POLITICAL ALTERNATIVES, ENERGY SHOCK, DEBT CRISIS

Required: CYPHER and DIETZ, Chapter 16: The Debt Problem and Development, pp. 529-549


VICTOR BULMER THOMAS, Chapter 11: Debt, Adjustment, and the Shift to a New Paradigm, pp. 353-391

Declaration on the Establishment of a New International Economic Order, adopted by the UN General Assembly on 1 May 1974

Background: CYPHER and DIETZ, Chapter 15: Microeconomic Equilibrium: the External Balance, pp. 502-523

WOLFGANG FRIEDMANN, The Relevance of International Law to the Processes of Economic and Social Development, 60 ASIL Proceedings 8 (1966)

MOHAMMED BADJAOUI, Towards a New International Economic Order, (UNESCO 1979), Table of Contents, pp. 97-115

OSCAR SCHACHTER, Dag Hammarskjold and the Relation of Law to Politics, 56 American Journal of International Law 857 (1965)
Part IV. Economic Theories and Development: 1980-2000:
The Rise of the Washington Consensus

ASSIGNMENT 11

A. THE INTELLECTUAL FRAMEWORK FOR NEO-LIBERALISM AND THE
WASHINGTON CONSENSUS

Required: WILHELM RÖPKE, Economic Order and International Law; 86 Recueil des
Cours 203-71 (1954) (excerpts)

DAVID KENNEDY, Turning to Market Democracy: A Tale of Two

Recommended: DAVID KENNEDY, The International Style in Postwar Law and Policy, 94
Utah Law Review 7 (1994)

Background: JOHN JACKSON, The World Trade Organization: Constitution and
Jurisprudence (Routledge, 1998)

DAN TARULLO, Beyond Normalcy in the Regulation of International Trade,

FINGER and WINTERS, What Can the WTO Do for Developing Countries,
with comment by Alan Hirsch, in ANNE KRUEGER (ed), The WTO as an
International Organization (1998), pp. 365-400

ANTONY ANGHIIE, Imperialism, Sovereignty, and the Making of
International Law (Cambridge University Press, 2005), Chapter 2:
Finding the Peripheries: Colonialism in Nineteenth Century Law, pp. 32-114.

B. THE NATIONAL POLICY PROGRAM: EFFICIENCY, GETTING PRICES RIGHT
AND INTEGRATION INTO THE WORLD ECONOMY

Required: TOM HEWITT, HAZEL JOHNSON and DAVE WELD, Neo Liberal Theory,
in Industrialization and Development (1992)

Recommended: CYPFER and DIETZ, Chapter 17: International Institutional Linkages: The
IMF, the World Bank and Foreign Aid, pp. 555-597

MEIER, Leading Issues in Economic Development (Oxford
C. THE LEGAL ELEMENT IN NATIONAL NEOLIBERAL POLICY MAKING: FORMALIZATION, STANDARDIZATION, PRIVATIZATION AND TRANSPARENCY

Required:  DAVID KENNEDY, The ‘Rule of Law,’ Political Choices and Development Common Sense, in TRUBEK and SANTOS, pp. 128-150

ALVARO SANTOS, World Bank’s Uses of the ‘Rule of Law’ Promise in Economic Development, in TRUBEK and SANTOS, pp. 253-300


DAVID KENNEDY, Some Caution about Property Rights as a Recipe for Development (DRAFT), for publication in KENNEDY and STIGLITZ (eds), New Policy Approaches to Chinese Economic Development, (forthcoming 2010)


DUNCAN KENNEDY, Hale and Foucault, in Sexy Dressing (1993)

PART V: AFTER NEO-LIBERALISM: THE CONSENSUS CHASTENED

ASSIGNMENT 13

A. SECOND THOUGHTS ABOUT MARKET SHOCK AND STRUCTURAL ADJUSTMENT: THE EMERGENCE OF CRITIQUE

Required: GABRIEL PALMA, The ‘Three Routes’ to Financial Crisis: Chile, Mexico and Argentina [1]; Brazil [2]; and Korea, Malaysia and Thailand [3], in HA-JOON CHEN, pp. 347-377

JOSEPH STIGLITZ, Whither Reform? Ten Years of Transition, (World Bank Annual Bank Conference on Development Economics: Keynote Address, April 28-30, 1999) (Stiglitz was Chief Economist for the Bank in the late 1990s)

CYPFER and DIETZ, Chapter 7: The State as a Potential Agent of Transformation: From Neo-liberalism to Embedded Autonomy, pp. 203-238

HA-JOON CHEN, The Market, the State and Institutions in Economic Development (excerpt concerning Neoliberal Reaction and its Limits), in HA-JOON CHEN, pp. 46-57

Recommended: CARLOS HEREDIA AND MARY PURCELL, Structural Adjustment and the Polarization of Mexican Society, in MANDER and GOLDSMITH (eds), The Case Against the Global Economy and For a Turn Toward the Local (Sierra Club Books, 1997), pp. 273-284

WALDEN BELLO, Structural Adjustment Programs: Success for Whom?, in MANDER and GOLDSMITH (eds), The Case Against the Global Economy and For a Turn Toward the Local (Sierra Club Books, 1997), pp. 285-293


ASSIGNMENT 14

B. The “New Development Economics:” Market Failures, Path Dependence and Institutions

Required: MEIER: Chapter 7: Modern Growth Theory, pp. 95-117, and Chapter 8: The New Development Economics, pp. 118-128


The Barcelona Development Agenda (2004)


Recommended: DANI RODRIK, Rethinking Growth Policies in the Developing World (Manuscript 2004)


DANI RODRIK, Industrial Policy for the Twenty-First Century (September 2004)
ASSIGNMENT 15

C. “SOCIAL DEVELOPMENT,” HUMAN RIGHTS AND DEMOCRACY AS STRATEGIES OF DEVELOPMENT

Required:  

KERRY RITTICH, Second Generation Reforms and the Incorporation of the Social, in TRUBEK and SANTOS, pp. 203-252


Recommended:  
MEIER, Chapter 9: Culture, Social Capital, Institutions, pp. 129-143

CYPHER and DIETZ, Chapter 12: Population, Education and Human Capital, pp. 351-376, and pp. 522-587 (foreign aid)

Background:  
AMARTYA SEN, Resources, Values and Development (Harvard University Press, 1984)


ASSIGNMENT 16

D. THE NEW DEVELOPMENT ECONOMICS AND TRANSNATIONAL STRATEGIES

Required:  
RAPHAEL KAPLINSKY, *Chapter 5: The Global Dispersion of Production – Three Key Sectors*, pp. 122-159


JOSE ANTONIO OCAMPO, *Development and Global Order*, in HA-JOON CHANG, pp. 83-104


MEIER, *Chapter 11: Global Trade Issues*, pp. 161-179

Recommended:  

DANI RODRIK, *How to Make the Trade Regime Work for Development* (Manuscript, February 2004)


DEEPAK NAYYAR, *Globalization and Development*, in HA-JOON CHANG, pp. 61-82

Background:  


JOSEPH STIGLITZ and ANDREW CHARLTON, Fair Trade for All: How Trade Can Promote Development (Oxford University Press, 2005)
E. Heterogeneity Revisited: Poverty and the Global Economy, or Rents and the Potential for Local, National or International Strategies to the Left of Stiglitz, Rodrik or Sen

Required:


Roberto Unger, What Should The Left Propose? (2005), The Developing Countries: Growth with Inclusion, pp. 64-82, and Globalization and What To Do About It, pp. 133-148

Roberto Unger, Free Trade Reimagined: The World Division of Labor and the Method of Economics (Princeton University Press, 2007), pp. 77-109


Gustavo Esteva, Regenerating People’s Space, 198 Alternatives XII (1987), pp. 125-152

Background:


Gustavo Esteva and Madhu Suri Prakash, Grassroots Postmodernism: Remaking the Soil of Cultures (1998)

Mander and Goldsmith (eds), The Case Against the Global Economy and For a Turn Toward the Local (1996), pp. 393-514 (various authors on self-reliant community based development strategies),

ASSIGNMENT 18

F. THE LEGAL ELEMENTS IN POST-WASHINGTON CONSENSUS PROGRAMS

Required: 

DAVID KENNEDY, The ‘Rule of Law,’ Political Choices and Development Common Sense, in TRUBEK and SANTOS, pp. 150-173

KARL POLANYI, Chapter 7: Speenhamland 1795, Chapter 8: Antecedents and Consequences, Chapter 9: Panperism and Utopia, and Chapter 10: Political Economy and the Discovery of Society (in the 2001 Beacon Press edition, this is pp. 81-135)

Recommended: 


BARBARA HARRISS-WHITE, Institutions and Economic Development in Historical Perspective, in HA-JOON CHANG, pp. 481-498

Background: 


FRANCIS BOTCHWAY, Good Governance: The Old, the New, the Principle and the Elements, XII:2 Florida Journal of International Law 159 (Spring 2001)
JAMES GATHII, Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-Corruption Strategy in Kenya, 14:2 Connecticut Journal of International Law 407 (Fall 1999)

JOHN OHNESORGE, Asia’s Legal Systems in the Wake of the Financial Crisis: Can the Rule of Law Carry any of the Weight? (Manuscript for UNRISD conference in Bangkok, May 2000)

PART VI: CASE STUDIES

ASSIGNMENT 19

A. PUTTING THE STORY TOGETHER AND SETTING UP THE CASE STUDIES


ASSIGNMENT 20

B. NATIONAL DEVELOPMENT: LAW AND DEVELOPMENT IN CHINA

Required:


White Paper on Rural China’s Poverty Reduction (2001)

JOSEPH STIGLITZ, Remarks on China’s 11th Five-Year Plan: Another Major Step in China’s Transition to a Market Economy (DRAFT, 2009)


Recommended:


ZHIYUAN CUI, Whither China? The Discourse on Property Rights in the Chinese Reform Context

RAPHAEL KAPLINSKY, pp. 205-231 (China is not just a Competitor in External Markets)

Background:


C. SECTORAL DEVELOPMENT: AGRICULTURE

Required:

TERRY BYRES, Agriculture and Development: The Dominant Orthodoxy and an Alternative View, in HA-JOON CHANG, pp. 235-254


CYPHER and DIETZ, Chapter 11: Agriculture and Development, pp. 341-385


Recommended:

LEE J. ALSTON, GARY D. LIBECAP, and BERNARDO MUELLER, Property Rights and Land Conflict: A Comparison of Settlement of the US Western and Brazilian Amazon Frontiers, in Latin America and the World Economy Since 1800, (1998), pp. 55-84

ESTER BOSERUP, Male and Female Farming Systems, in Woman’s Role in Economic Development (1970), pp. 15-36


ASSIGNMENT 22

D. SECTORAL DEVELOPMENT: URBAN POLICY, LAW AND DEVELOPMENT

Required:  
GEORGE PACKER, *The Megacity: Decoding the Chaos of Lagos*, *The New Yorker* (November 13, 2006) pp. 64-75

GEORGE PACKER, *The Megacity: Decoding the Chaos of Lagos*, *The New Yorker* (November 13, 2006) pp. 64-75


Recommended:  


