

Law and Development-- POEC 6366

Class # 27006

Murray J Leaf

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Office: GR 3.128

Office Tel: 2732

Classroom: CB 1.219

email: mjleaf@utdallas.edu

Skype name: murray2508

Time: T 7-9:45

Office Hours: by appointment but I will try to be in my office a half-hour before class.

Scholars, politicians, administrators, and the educated public in general increasingly recognize that long-term societal development must come from within a country or region. It must be "organic." Organic growth, in turn, depends on establishing an effective, responsible, government, rule of law, and effective economic regulation. Moreover, this legal regime cannot be merely national; it must be international. This course reviews the experiences that lie behind this realization, the issues and organizations it involves, and the steps being taken to implement it at international and national levels.

Since this is only the fifth time I have offered this course and the world situation is changing very rapidly, it is still under development. I also expect to adjust it to reflect the interests and backgrounds of those who register.

It is now widely recognized in professional development circles that development is not primarily an economic matter and cannot be brought about simply by economic policies and actions. It cannot be created simply by the transfer of funds (no one but economists ever believed this anyway.) It cannot be created simply by introducing new technologies. It is primarily a matter of institution building, and institution building both involves law and requires law. But law is a large and complex subject, so we have to ask what law, in what order, and by what means? These questions are the concern of this course. The recordings are from the last time the course was offered. I will leave them up for reference until we come to that topic, then replace them. Grading will depend on reports in class (30%) and a substantial paper, at least 20 pages (70%). Since a main purpose of the course is to let students explore whether they want to pursue research in this area, the most likely format for the paper is as a research proposal.

The listing below is not week by week but topic by topic; we will move at whatever pace we can without getting swamped by the material. We may not cover all the topics; and we might add topics in place of those listed. I will update the syllabus to reflect changes we agree on as we proceed.

I will try to remember to record our meetings. Recordings are .mp3 files. To download them, [right click here](#). You should then see an option to "download linked file". Click on

it. When the file is downloaded, add the .mp3 (dot m p 3) to the end of the name. It should then play automatically with a media player like Windows Media Player if you click to open it.

Books to Buy

Required:

Morris, Clarence. *The Great Legal Philosophers*. Pittsburg: U of Pittsburg Press.

Recommended:

Lauren, Paul Gordon. 2003. *The Evolution of International Human Rights*. Philadelphia: U. of Pennsylvania Press. (This is a truly excellent treatment of the topic.)

Possible if you are interested:

Murrell, Peter B. 2000. *Assessing the Value of Law in Transition Economies*. Ann Arbor: The U of Michigan Press. This appears to be available from Barnes and Noble used for \$31.88 and for others for as little as \$1.98. It is an excellent set of studies, although of course events have moved on. We can discuss what to do in class.

Topics

Dates are not included because the time for the section is uncertain.

1. Introduction.

To prepare for our first meeting, look over the websites in unit 5 below, and also the selections in Morris, *The Great Legal Philosophers*. We will discuss them and see if we can agree on a set of priorities for the semester, based on what you already know and what seems most interesting to the group.

Read: Carothers, Thomas. 1998. "The Rule of Law Revival." JSTOR (13 p.)

2. Legal Philosophy

This unit will take three or four weeks, depending in part on class interest and understanding. It is fundamental legal theory--the most important views of what law is and what law does. The readings are in C. Morris. *The Great Legal Philosophers*. We will probably read the selections from Grotius, Montesquieu, Savigny, Ihering; Austin, Ehrlich, Cardozo, and Pound. But look at everything. If something else strikes you, we can add it.

Morris compresses the writing by cutting out what seems to be purely legal digressions, or unnecessary reflections. He does an excellent job of cutting to the main points. Sometimes, however, this makes the argument a bit too condensed for readers who don't know the historical or philosophical background. Dip into a few. If we need to use them, in many cases the original texts are now also available on the web.

Possible presentations:

Grotius--
Hobbes--
Montesquieu--
Rousseau--
Kant--
Savigny--
Hegel--
von Ihering--
Holmes--
Ehrlich--
Cardozo--
Pound--
Dewey--

3. Constitutional Law/ Rule of Law.

The US readings for this were Cardozo, Dewey, and Pound, in the previous section.

The constitution establishes the general system of government. Implicitly or explicitly, it also establishes the relationship between the government in a strict sense and the courts, and the government's role in law making and law-finding. This is crucial.

I assume you have read the US constitution, but in case you have not here is a good online text in a site with lots of background information: <http://www.usconstitution.net/const.html#Preamble>

By Contrast, here is the 1939 constitution of the Soviet Union:
<http://www.departments.bucknell.edu/russian/const/1936toc.html>

What you should look for in comparing these two is the theory of law--what is its relation to political ideology? Is there an independent judiciary? If not, why not?

For another contrast look at the Constitution of India. You won't be able to read the whole thing or understand it. Nobody can. But get a sense of why. Look especially at the treatment of the powers of the President to invoke President's Rule, Fundamental Rights in Part III, paying special attention to Article 31, the powers of the Parliament to amend the constitution, and the Ninth Schedule. <http://lawmin.nic.in/coi.htm>

The Japanese Parliament's account of the development of the present constitution of Japan: <http://www.ndl.go.jp/constitution/e/>

Letter from J. M. Keynes to Franklin Delano Roosevelt on economic policies of the New Deal, in Box.com. This is not really about constitutions but about economic regulation in a pluralistic democracy, which has had many important implications for governmental organizations.

The Helsinki Accords: The Helsinki Final Act. <http://www.hri.org/docs/Helsinki75.html>

4. Corporations and Law of Corporations in Development

Laski article in JSTOR

<http://www.jstor.org.libproxy.utdallas.edu/stable/pdfplus/1326990.pdf>

Schmitthoff article: The Origin of the Joint-Stock Company Author(s): M. Schmitthoff

Source: The University of Toronto Law Journal, Vol. 3, No. 1 (1939), pp. 74-96

Published by: University of Toronto Press Stable URL:

<http://www.jstor.org/stable/824598>

The link to the McInerny article on the IDLO website:

<http://www.idlo.org/Publications/26.pdf>

5. International Law Organizations.

Google the International Development Law Association. Look at the self-description and look at its training programs. The url is:

<http://www.idlo.int/ENGLISH/WHOWEARE/Pages/Home.aspx>

Center for International Sustainable Development <http://www.cisd.org>

Look at the research topics.

International Law Institute. <http://www.ili.org/> Look at logo and the centers of expertise.

The United Nations and the development of international law (this site focuses on international civil and criminal law, but it has a pull down menu for other UN law websites). <http://www.un.org/law/1990-1999/>

In our library website, look at Westlaw. Use the search facility, and look for topics in international law and development law, such as human rights or war crimes. Note that it includes European law reviews.

U of Cal Berkely Law School international law page.

<http://www.law.berkeley.edu/admissions/courses/international.html>

Note the topics.

Google: International Institute of Humanitarian Law. Click on Protection of Human Beings...Read the Welcome Message.

6. Transitions from Authoritarian to Pluralist Regimes

Joireman, Sandra. Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy. In JSTOR.

Bohannon, Laura. 1952. A Genealogical Charter. *Africa*. JSTOR. Leaf

Cao, Lan 2009. Chinese Privatization Between Plan and Market. *Law and Contemporary Problems*. JSTOR.

Wikipedia article on post-soviet transition looks good:

<http://www.answers.com/main/ntquery;jsessionid=3qinqqhn3bg0h?dsid=2222&dekey=Economy+of+Russia&sbid=lc07a&linktext=Economy%20of%20post-Soviet%20Russia>

We will (you will) select chapters from: *Assessing the Value of Law in Transition Economies*.

7. Land Reform/Development assistance/Water

B. Black and A Tarassova. 2003. Institutional Reform in Transition: A Case Study of Russia. *Supreme Court Economic Review*. JSTOR.

Grant, E. 2006. Human Rights, Cultural Diversity, and Customary Law in South Africa . JSTOR.

Swinnen, J and Scott Rozelle. 2004. Success and Failure of Reform: Insights from the transition of Agriculture. *Journal of Economic Literature*. JSTOR.

Ruben, R. and Z Lerhman. 2005. Why Nicaraguan Peasants Stay in Agricultural Production Cooperatives. *Revista Europea....* JSTOR.

Leaf, M. 1983 "The Green Revolution and Cultural Change in a Panjab Village, 1965 - 1978." *Economic Development and Cultural Change*. 31:2:227-270. (This includes a discussion of the relation between land reform and technological change.) JSTOR

"Peasant Logic, Agrarian Policy, Land Mobility, and Land Markets in Mexico," by Roberto Diego Quintana, Luciano Concheiro Bórquez, and Ricardo Pérez Aviles. PDF but it cannot be copied or saved without a password. Recommended but not assigned.

This is a related but more recent article in JSTOR: Twenty-Seven: A Case Study in Ejido Privatization in Mexico Author(s): David Yetman and Alberto Búrquez. Stable URL: <http://www.jstor.org/stable/3631677> .

Evaluating Mexican Land Reform Author(s): R. S. Weckstein.1970. JSTOR. -also discussed 27.

Radical views: <http://www.progress.org/land/>

Short ODI paper on land reform: <http://www.odi.org.uk/NRP/nrp6.html>

Council on Foreign Relations website on land reform:

http://www.cfr.org/publication/9475/land_reform_revisited.html

I have a review of land reform in the different Indian states in *Pragmatism and Development*, but it is scattered.

Manchester University Peasant transformation site (with a lot of information on Mexico):

<http://les.man.ac.uk/multimedia/Default.htm>

American website (Arizona law firm) on Mexican land law (looks good):

<http://www.mexicolaw.com/LawInfo02.htm>

FAO review of contemporary land reform measures.

(Wisconsin Land Tenure Center land reform in Mexico review:

<http://www.ies.wisc.edu/lrc/wp21.html>) This is "Peasant Logic, Agrarian Policy etc.

listed above. It no longer can be found at this link, but you can get it by googling the entire entry. Unfortunately, however, I cannot find a way to save or copy it.

International Water Law Project

<http://www.internationalwaterlaw.org/>

One possible film on the Narmada project is Dam/Age. Aradhana Set. Icarus films. Article in The Hindu on the dam. This is a major paper.

<http://www.hindu.com/2006/04/17/stories/2006041715801500.htm>

Two possible films are Drowned Out (Spanner Films, 75 minutes) and Narmada a Valley Rises about a protest march against the dam.

8. Enforcement in the international context.

The Charter of the UN. Chapter III defines the Organs, which include the Security Council. Chapter V describes the Security Council. Chapters VI and VII, dealing with disputes and breaches of peace, describe its powers.

<http://www.un.org/aboutun/charter/> Focus on why the Security Council is constructed as it is and has the powers it does.

This appears to be a report of the Carnegie Commission on Preventing Deadly Conflict, reviewing the sanctioning powers of the UN and especially the

SC: <http://wwics.si.edu/subsites/ccpdc/pubs/sum/ex.htm>

International court of justice <http://www.icj-cij.org/>

UN Security Council Resolutions on Iraq (archive of anti-sanctions group).

<http://www.casi.org.uk/info/scriraq.html>

Chronology of sanctions on Libya:

<http://www.iie.com/research/topics/sanctions/libya.cfm> In class we assigned this to Steve, but he is overloaded and wants to do what he had been unable to present last week. Here is a link to his paper. Read it in advance so we can discuss it. Here is a link to the book at Amazon: <http://tinyurl.com/y42fn9p>

The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights. This is a review of sanctions with three case studies by the Global Policy Forum.

It is probably too much for us to read, but looks good. GPF is an NGO recognized by the UN, both watchdog and supporter.

<http://www.globalpolicy.org/security/sanction/unreports/bossuyt.htm>

Interpol. This is the official [website](#). The Wikipedia article on interpol is good.

9. WTO -not in 2015

WTO website: <http://www.wto.org/>

Public Citizen.org. Opposition to WTO (one of many)

<http://www.citizen.org/trade/wto/>

Another: <http://www.globalissues.org/TradeRelated/Seattle.asp>

US Government site on WTO

http://usinfo.state.gov/ei/economic_issues/WTO.html

U of ChicagoLibrary site on WTO

<http://www.lib.uchicago.edu/~llou/wto.html>

10. Taxation- not in 2015

This looks good: <http://www.ids.ac.uk/project/international-centre-for-tax-and-development>

Also this: <http://faculty.law.wayne.edu/tad/index.html>

11. Assistance to develop rule of law and human rights:

USAID's Democracy, Human Rights and Good Governance (DRG) strategy:

<http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance>

—assess the program from the point of view of what we have considered in the course.

World Justice Project interactive page with results of their survey of rule of law by country: <http://data.worldjusticeproject.org>

Yale Human Rights and Development Law Journal.

<http://islandia.law.yale.edu/yhrdlj/>

Other sources on the web:

American Society of International law, including online resource guide.

<http://www.asil.org/resource/Home.htm>

International Water Law Project

<http://www.internationalwaterlaw.org/>

World Bank Law Resource Center

<http://www.icj-cij.org/>

Land related publications of WB at Law Resource Center:
http://publications.worldbank.org/ecommerce/catalog/simple-search?has_results_p=1&search_type_to_pass=title&search_text=land

Grading Policy

The weighting of the assignments in the final grade is 30% for the class discussion assignments (you will do analytic reports and lead the discussion) and 70% for the paper.

Course & Instructor Policies

Since the exams will be take home, I cannot think of any possible reason to fail to hand them in on time.

There are no “extra credit” arrangements or make-ups.

No Field Trips

*Standard UTD policies are procedures for all classes are on the U T Dallas website at:
<http://coursebook.utdallas.edu/syllabus-policies/>.*

These descriptions and timelines are subject to change at the discretion of the Professor.