

International Law & Development

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Mandatory preparatory meeting: 9 March 2020, 13:00–14:00

Monday-Friday, 23–27 March 2020, 17:00–20:00, Seminar Room 52, Juridicum

Saturday, 28 March 2020, 10:00–13:00, Seminar Room 52, Juridicum

Description

This course deals with a simple but important question: Why are some nations so rich and others so poor? We won't be able to offer definite answers to this vexing question, but during our week-long investigation, you will learn a number of things:

1. Why being rich is a good thing, in other words: what development is;
2. How to measure development;
3. Which international rules and institutions exist;
4. Why rules matter and how they affect economic and social prospects;
5. Which structures exist to enforce these rules;
6. What, if anything, can be done to improve the lot of the poor.

Each day, we will cover one of these clusters and the focus will be on international law and the institutional structure created at the inter-state level to deal with the challenges of vast disparities of wealth. After this course, you will be able to navigate the complex 'alphabet soup' of international development finance and technical assistance organisations, and the normative system in which they operate.

The issue we want to investigate in this course is enormously broad, encompassing far more than 'merely' the aim of increasing the gross domestic product. As you will learn, it involves in the final instance difficult questions of philosophical, even moral import, the role of culture and values, domestic constitutional and administrative systems and education.

Many of these questions are deeply uncomfortable and, consequently, contentious. Some have chosen to avoid such discomfort by retreating to a critique of the concept of 'development' as such, decrying its stipulation as a worthy goal, as we have done here, as an inherently chauvinistic endeavour. While we do subscribe to a holistic understanding of the term, we deliberately focus on one element: the universal history of economic progress. Landes boils this down to one key question: "how have we come to where and what we are, in the sense of making, getting, and spending." (Landes, 1998, p. xi)

Learning Outcomes

At the successful completion of the course, students should understand the legal, philosophical and economic foundations and the institutional architecture of international law & development. They will understand the important, but limited role international rules play in the existing 'development industry' and be aware of major intellectual critiques, especially in light of the evident failures of the dominant approach. Students will achieve the following learning objectives:

Knowledge

- Know the basic contours of competing development theories
- Know the main protagonists
- Know key terms of art and how they are measured
- Know key doctrinal positions of public international law on economic sovereignty and development
- Know key development finance and technical assistance organisations
- Know the basic constitutional arrangements governing their work
- Know key critiques of the existing development orthodoxy.

Skills

- Read and understand key texts
- Identify major dogmatic debates, both historical and contemporary
- Identify 'lines of parentage' of key concepts and ideological positions
- Differentiate between private and public law and between domestic and international
- Identify and evaluate major legal and bureaucratic institutions
- Identify social pressures for legal change
- Carry out independent interdisciplinary research
- Assess the feasibility of competing ideological positions
- Distinguish between ideal and practical reality
- Communicate academic findings to an interdisciplinary audience
- Analyse the role of law in complex socio-political phenomena in current events
- Communicate these insights effectively

Competencies

- Conduct independent interdisciplinary research
- Critically examine the validity and reliability of ideological claims
- Disaggregate complex phenomena in the developing world (the 'Global South')
- Identify linkages between seemingly disaggregate phenomena
- Give basic legal advice on basic practical problems of development
- Distinguish legal from related argumentation
- Critically assess claims about cultural and legal immutability

Course materials will be made available on Moodle and can also be downloaded here:

<https://ucloud.univie.ac.at/index.php/s/zZXhMujctDY90IL>

Prerequisites

This course will be interdisciplinary and has no prerequisites. No knowledge of (macro-) economics, international relations theory or public international law is presupposed. We explicitly encourage students from across the law faculty and the wider university to attend and will strive to create a congenial environment where those with a lot of previous exposure and those with little or none will be able to collaborate effectively. We will use the first session on 23 March to bring everybody up to speed.

BUT (there is always a but), this course is designated as a 'KO' ('*Konversatorium*', closer to a colloquium than a regular course 'KU'). In other words, we follow the Socratic method and will thus rely heavily on student participation and informed discussions, as opposed to mere lectures by the instructors. This means that you will have to do some reading and come prepared!

Most of the material will be made electronically available. Students should be prepared to purchase some textbooks.

Assessment

Students will be assessed on the basis of class participation and six **short** reflection papers.

Each reflection piece must respond to one of the articles assigned for the course and must be handed in before the beginning of class. Each of the reflection pieces should not exceed half a page, roughly 150 words.

Students can reach a maximum score of 40 points for their participation and 60 points for the reflection pieces (10 each). Thus, the total maximum score of the course is 100 points for all elements combined. Students must hand in at least three reflection pieces and must reach at least 50 points in order to pass the course.

Due to the particular focus on class participation and cooperative learning, students are expected to do the assigned readings before each class

Curriculum

1st Session, Monday, 23rd March: Defining Development

- Why does Landes think Eurocentrism is a good thing?
- Landes and Crone make a counter-intuitive point about European empire, which one?
- Which three benefits of fragmentation does he list? Can you name a fourth?
- Which theories failed to explain national failure?
- The text mentions Abba and a Queen, but she is not dancing. What is she doing?

Mandatory Material: (44 pages)

David Landes, *The Wealth and Poverty of Nations. Why Some Are So Rich and Some Are So Poor* (London: Little, Brown and Company, 1998), pp. xvii–xxi, 29–44. Introduction and Chapter 3 “European Exceptionalism: A Different Path” (20 pages)

Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (New York: Crown, 2012), pp. 45–69. Chapter 2, “Theories That Don’t Work” (24 pages)

Voluntary Material:

The Editors, “Review Article on the UNDP Arab Human Development Report: How the Arabs Compare,” *Middle East Quarterly*, Vol. IX (4), No. 4 (Fall 2002) pp. 59-67.

Hernando de Soto, “The Real Mohamed Bouazizi. One Year on, a Team of Researchers Uncovers the Man Behind the Martyr and the Economic Roots of the Arab Spring,” *Foreign Policy*, (16 December 2011).

Landes, *The Wealth and Poverty of Nations. Why Some Are So Rich and Some Are So Poor*, pp. 200–12. Chapter 14 “Why Europe? Why then?”

United Nations Development Programme and Arab Fund for Economic and Social Development, *Arab Human Development Report 2016: Youth and the Prospects for Human Development in a Changing Reality* (New York: UNDP, 2017).

Magdi Amin *et al.*, *After the Spring. Economic Transformations in the Arab World* (New York: Oxford University Press, 2012), pp. 31–53. Chapter 2 “The Origins of the Arab Spring”

Daron Acemoglu, Simon Johnson, and James A. Robinson, “The Colonial Origins of Comparative Development: An Empirical Investigation,” *The American Economic Review*, Vol. 91(5), No. 5 (2001) pp. 1369-401.

2nd Session, Tuesday, 24th March: Measuring Development

- What is Truman’s Point 4?
- Why do we care about growth and GDP? Why is GDP/capita problematic?
- Are ‘social capital’ and ‘intangible capital’ the same?
- Can there be sustainable diamond mines?
- What is income and is it a flow or a stock?

Mandatory Material: (32 pages)

Jessica Schafer, Paul Haslam, and Pierre Beaudet, “Meaning, Measurement, and Morality in International Development,” in: *Introduction to International Development: Approaches, Actors, Issues, and Practice*, ed. by Paul Haslam, Jessica Schafer, and Pierre Beaudet (Oxford: Oxford University Press, 2017) pp. 1-21.

Glenn-Marie Lange *et al.*, *The Changing Wealth of Nations: Measuring Sustainable Development in the New Millennium* (Washington, D.C.: World Bank, 2011), pp. 93–104. Chapter 5 “Intangible Capital and Development” (11 pages)

Voluntary Material:

Kirk Hamilton, Katharine Bolt, and Giovanni Ruta, *Where is the Wealth of Nations? Measuring Capital for the 21st Century* (Washington, D.C.: World Bank, 2006), pp. xi–xx, 1–32, 87–100. Executive Summary, Chapters 1, 2 and 7 “Introduction: The Millennium Capital Assessment,” “The Wealth Stock Estimates” and “Explaining the Intangible Capital Residual: The Role of Human Capital and Institutions.”

Ebrahim Afsah, "Hamilton et al.: Where is the Wealth of Nations? (Review Article)," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 68(1), No. 1 (2008) pp. 286-91. (review of the above text)

Keetie Roelen, "Measuring and Evaluating Poverty," in: *Introduction to International Development: Approaches, Actors, Issues, and Practice*, ed. by Paul Haslam, Jessica Schafer, and Pierre Beaudet (Oxford: Oxford University Press, 2017) pp. 481-98.

3rd Session, Wednesday, 25th March: International Institutions

- What are differential norms?
- What is 'international development law' and which other fields does it touch?
- Why is transparency important for markets, including international financial flows?
- What is the 'human right to development', who holds it and who is the duty bearer?
- What is the development law matrix?

Mandatory Material: (74 pages, skim only)

Rumu Sarkar, *International Development Law: Rule of Law, Human Rights, and Global Finance* (Oxford: Oxford University Press, 2009), pp. 75–149. Chapter II, "International Development Law: Substantive Principles."

Voluntary Material:

Rüdiger Wolfrum, "International Law," in: *Encyclopedia of Public International Law*, ed. by Rüdiger Wolfrum (Oxford: Oxford University Press, November 2006).

Oscar Schachter, "The Evolving International Law of Development," *Columbia Journal of Transnational Law*, Vol. 15(1), No. 1 (1976) pp. 1-16.

Sarkar, *International Development Law: Rule of Law, Human Rights, and Global Finance*, pp. 199–254. Chapter IV, "Is There a Human Right to Development?"

Tomer Broude, "Development Disputes in International Trade," in: *Law and Development Perspective on International Trade Law*, ed. by Yong-Shik Lee *et al.* (Cambridge: Cambridge University Press, 2011) pp. 29-48.

4th Session, Thursday, 27th March: Rules & Prospects

- Which historical event(s) lie(s) at the heart of Bretton Woods?
- Is there something wrong with the underlying theory?
- What role, if any, is played by the Cold War?
- What is the difference between consumption and investment?
- How has the debt crisis changed our thinking on this?

Mandatory Material: (46 pages)

Marcus Taylor, "The International Financial Institutions," in: *Introduction to International Development: Approaches, Actors, Issues, and Practice*, ed. by Paul Haslam, Jessica Schafer, and Pierre Beaudet (Oxford: Oxford University Press, 2017) pp. 161-77. (16 pages)

World Development Report 2017: Governance and the Law, IBRD/World Bank, Washington, D.C. (2017), available at: <http://hdl.handle.net/10986/25880>, pp. 137–66. Chapter 5 “Governance for Growth.” (30 pages)

Voluntary Material:

Francis Fukuyama, *The Origins of Political Order. From Prehuman Times to the French Revolution* (London: Profile Books, 2012), pp. 245–261, 321–335, 422–436. Chapters 17, 20, 22 and 28 “The Origins of the Rule of Law,” “Oriental Despotism” (concerning Chinese political development), “The Rise of Political Accountability” and “Why Accountability? Why Absolutism?”

Sanzhu Zhu, “Socialist Rule of Law in the 21st Century China,” *Hague Journal on the Rule of Law*, Vol. 7(1), No. 1 (2015) pp. 75-81.

World Development Report 2017: Governance and the Law, pp. 83–108. Chapter 3 “The Role of Law”

Cass R. Sunstein, “Constitutionalism, Prosperity, Democracy: Transition in Eastern Europe,” *Constitutional Political Economy*, Vol. 2(3), No. 3 (1991) pp. 371-94.

Francis Fukuyama, *Political Order and Political Decay. From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus and Giroux, 2014), pp. 108–25. Chapter 7 “Italy and the Low-Trust Equilibrium” (18 pages)

5th Session, Friday, 28th March: Regulation & Stability

- Why don't poor countries adopt policies that make for plenty?
- What are market-supporting institutions?
- What is the role of information, trust and enforcement?
- What are informal institutions?
- What is 'good governance' and where does it come from?

Mandatory Material: (49 pages)

World Bank, *Building Institutions for Markets. World Development Report 2002* (New York: Oxford University Press, 2002), pp. 3–29. Part I, Chapter 1 “Building Institutions: Complement, Innovate, Connect, and Compete” (26 pages)

World Development Report 2017: Governance and the Law, pp. 257–80. Chapter 9 “Governance in an Interconnected World” (23 pages)

Voluntary Material:

World Bank, *Building Institutions for Markets. World Development Report 2002*, pp. 117–32. Part II, Chapter 6 “The Judicial System”

David M. Trubek, “Toward a Social Theory of Law: An Essay on the Study of Law and Development,” *Yale Law Journal*, Vol. 82(1), No. 1 (1972) pp. 1-50.

6th Session, Saturday, 29th March: Prospects for the Poor

- What ‘aggression’ is Landes talking about? **Is the account itself an aggression?**
- Are culture and economic performance linked?
- What would Landes say about the recent Hongkong uprisings?
- What is compound interest and why does it matter to Radelet? What does he forget?
- Which five fundamental changes does he identify in the ‘Emergent Africa’?

Mandatory Material: (49 pages)

Landes, *The Wealth and Poverty of Nations. Why Some Are So Rich and Some Are So Poor*, pp. 512–24. Chapter 29, “How Did We Get Here? Where Are We Going?” (12 pages)

Steven Radelet, *Emerging Africa. How 17 Countries are Leading the Way* (Washington, D.C.: Center for Global Development/Brookings, 2011), pp. 9–46. Chapters 1 and 2 “Emerging Africa” and “Emerging Africa’s Renaissance.” (37 pages)

Voluntary Material:

Acemoglu and Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty*, pp. 368–403, 404–427, 428–462. Chapters 13, 14 and 15 “Why Nations Fail Today,” “Breaking the Mould” and “Understanding Prosperity and Poverty.”

Radelet, *Emerging Africa. How 17 Countries are Leading the Way*, pp. 141–60. Chapter 8 “Challenges and Opportunities on the Road Ahead.”