SCHOOL OF LAW
Year 2008/09 Term 3A

LAW431 LAW AND DEVELOPMENT

Instructor: Dr Andrew James Harding
Visiting Professor of Law

Tel: (to be confirmed)
Email: (to be confirmed)
Office: School of Law, Level x, Room xxxx (to be confirmed)

COURSE DESCRIPTION

There have been dramatic developments in democratic and legal reform in recent years in all ‘developing’ or ‘emerging’ regions of the world, not least in Asia. The spread of general principles of human rights and constitutional, representative government based on the rule of law seems both possible and urgently necessary. This course discusses law reform and rule-of-law implementation in developing countries - the enactment of laws and creation of judicial and other institutions designed to create economic growth and environmental sustainability, improve governance, implement human rights, create access to justice, and resolve political conflicts. But how can and how should developing countries and emerging democracies develop their legal systems, embracing the ‘good-governance’ principles of democratic representation, international human rights, entrenched property rights, transparency and accountability? How can they deal effectively with corruption and abuse of power, and establish political stability and sustainable development?

RECOMMENDED TEXT AND READINGS

There is no recommended text for this course. Useful general books, one on Africa, one on Asia, which we will use during the course, are Hatchard/ Ndulo/ Slinn, Comparative Constitutionalism and Good Governance in the Commonwealth: an Eastern and Southern African Perspective (Cambridge: CUP, 2004); and Peerenboom (ed), Asian Discourses of Rule of Law (London: Routledge, 2004).

ASSESSMENT METHOD

Class Participation (20%)
Group Project (30%)
Final Exam (50%)
COURSE METHODS

Teaching methods will require students to read the materials in advance, including for the first class. Students will be asked to report and comment on the readings and to work on specific questions in small groups replicating law and development processes in practice, reporting to the class and comparing and discussing findings or conclusions.

CLASS SCHEDULE

There will be 12 classes of 3 hours each over 4 weeks, ie 36 contact hours, as follows:

1. Introductory: law, governance and development
   What is the meaning of ‘good governance’? Why does it matter? Why is there so much emphasis, in the context of ‘developing countries’, on ‘the rule of law’ and ‘legal certainty’? What is the ‘law and development movement’? How can we characterise the law and development movement now?
   Case study: Indonesia
   Readings:
   Lindsey, ‘Legal Infrastructure and Governance Reform in Post-Crisis Asia: the Case of Indonesia’, ch. 1 of Lindsey (ed), Law Reform in Developing and Transitional States (Routledge, London, 2009), pp.3-41

2. The rule of law and development
   What is the rule of law? Should we aim for a ‘thick’ or ‘thin’ definition? Does the rule of law take on special meanings in a development context? In an Asian context?
   Case study: Public law in Asia
   Readings:
   Kevin Tan, ‘The Role of Public Law in Developing Asia’, 2004 Singapore Journal of Legal Studies 265

3. Law and economic development
   In what ways are law and legal reform relevant to the promotion of economic development?
   Since 1986 Vietnam’s doi moi policy has extensively used law as a crucial device to achieve economic transition in a socialist one-party state; how successful has this been and to what kinds of problem has it given rise?
   Case study: Vietnam
   Readings:
4. Constitution-making:

To what extent is constitution-making a technical as opposed to a democratic exercise? What can we conclude from post-war African experiences of constitution-making? Is it possible to pay down some ‘good practice’ for constitution-making?

**Case study:** South Africa

**Readings:**

Harding, ‘Dynamics and Problems of Constitution-making in Asia and Beyond’, in Harding and Bureekul (ed), Constitution Reform: Comparative Perspectives (Bangkok, KPI, 2009)


5. Presidential and parliamentary government

What are the features of the ‘Westminster model’ constitution? Is it a help or a hindrance to political stability? Is a presidential system preferable? Why have African states preferred a presidential system?

**Case study:** E and S Africa

**Readings:**


6. Political representation: focus on Commonwealth developing states

What functions can the legislature fulfil in the developing world? What specific problems of developing democracies need to be addressed in the context of elections, and how? Should political parties be subject to legislation and if so in what respects?

**Case Study:** individual choice

**Readings:**


7. Military government, national security and emergency powers

Is military government always worse than civilian government? Is there any way of preventing military coups? How do courts deal with the legality/ illegality of a coup? Are emergency powers always a danger to the rule of law, or always necessary for national security?

**Case Study:** Thailand/ Malaysia

**Readings:**

8. Corruption in the public sector

The governance literature stresses the importance of preventing corruption. But how is this best done? What is the correct balance between criminal law and other methods? If poverty reigns is corruption unavoidable? What does TI do to help states fight corruption?

**Case study:** Transparency International

**Readings:**
- Taylor, ‘Anti-Corruption and Asian Legal Professions’, ch.3 of Lindsey and Dick (ed), Corruption in Asia: Rethinking the Governance Paradigm (Sydney, Federation Press, 2002), pp.37-49

9. Independent watchdog agencies

Why are developing countries creating so many independent agencies? How can their independence be guaranteed? What issues arise in relation to their remit, powers, and membership?

**Case study:** Indonesia

**Readings:**
Lindsey, ‘Legal Infrastructure and Governance Reform in Post-Crisis Asia: the Case of Indonesia’, ch. 1 of Lindsay (ed), Law Reform in Developing and Transitional States (Routledge, London, 2009), pp.3-41

10. Human rights
How should bills of rights be interpreted in a development context? Do the needs of development dictate a particular approach to the definition or enforcement of human rights? Are Human Rights Commissions effective and necessary in enforcing human rights in developing democracies?

Case study: Thailand

Readings:

11. Judicial reform
How can we reconcile judicial independence with the need to prevent judicial corruption and incompetence? Many developing democracies, especially in Asia, have created new specialist courts as a reform strategy. Is this a good idea? What do these courts do and how do they perform?

Case study: specialist courts

Readings:

12. Law and development and legal technical assistance (LTA)
Are legal transplants/ transfers possible? What is the best role for the international development community in law and development? Can we discern any principles of good practice for law-making in development?

Readings:
Robert and Ann Seidman, ‘Lawmaking, Development and the Rule of Law’, ibid. ch. 4, pp.91-132


GENERAL READING:

There is no recommended text for this course. Useful general books, which we will use during the course, are


Other relevant books, of which we will make some use, are:

Antons (ed), Law and Development in East and South East Asia (Routledge, London, 2003)
Bergling, Rule of Law on the International Agenda: International Support to Legal and Judicial Reform in International Administration, Transition and Development Cooperation (Intersentia, Antwerp-Oxford, 2006)
Ginsburg and Chen (ed), Administrative Law and Governance in Asia: Comparative Perspectives (Routledge, London, 2009)
Johnston and Ferguson (ed), Asia-Pacific Legal Development (Vancouver, UBC Press, 1999)
Lindsey and Dick (ed), Corruption in Asia: Rethinking the Governance Paradigm (Sydney, Federation Press, 2002)
Peerenboom, Petersen and Chen (ed), Human Rights in Asia: a Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA (Routledge, London, 2006)
Seidman and Seidman, State and Law in the Development Process: Problem-Solving and Institutional Change in the Third World (New York, St Martin’s Press, 1994)
Treibilcock and Daniels, Rule of Law Reform and Development: Charting the Fragile Path of Progress (London, Edward Elgar, 2008)