

**BRUSSELS SCHOOL OF INTERNATIONAL STUDIES
KENT LAW SCHOOL
SYLLABUS 2017/2018**

**LW885
LAW AND DEVELOPMENT**

Time: Tuesdays, 1400-1600

Module Convenor: Professor Harm Schepel

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Office Hours: Mondays, 1400-1500

MODULE FACTS AT A GLANCE

Level: M /7

Teaching Period: Autumn Term 2017/2019

Credits: 20

ECTS Credits: 10

Learning Outcomes: On successfully completing the module, students will be able to demonstrate:

Knowledge and understanding of the theoretical debates and academic controversies surrounding the relationship between law and economic development.

Knowledge and understanding of the theoretical debates and academic controversies surrounding the relationship between law and democratization.

Awareness and critical understanding of the major doctrines and policies directing current international and regional efforts in the field.

A critical understanding of the advantages and drawbacks of 'conditionality' in development policy, particularly as it applies to demands for good governance and the observance of human rights.

Knowledge and critical understanding of the place and role of law and legal institutions in efforts directed at the reconstruction of war-torn territories.

The ability to place issues of law and development in their proper political, economic and social contexts.

An awareness of the historical and ideological underpinnings of Western legal thought and international policy in the field of law and development.

INTRODUCTION

The module will deal with three main interrelated clusters of topics. The first topic is the relationship between law and economic development. This will involve a thorough examination of material ranging from classic sociology up to modern assertions of the economic superiority of the common law over civil law traditions. The second topic is the relationship between law and development understood in a wider sense than mere economic growth. This will involve, inter alia, an investigation of the relationship between law, human rights and democratisation, an examination of

theories of the centrality of 'good governance' in effective development policies, and an introduction to the topic of 'legal transplants' and the associated concerns of comparative law scholarship. These two theoretical topics will be underpinned by an emphasis on the historical and ideological frameworks that have informed much of dominant legal thought on the subject. The third part of the module will deal with selected case studies, to provide students the opportunity to apply the theoretical and conceptual basis they have acquired in the first part of the course.

LEARNING AND TEACHING METHODS

The module will be taught in two hour blocks which will combine in different ways, depending on the topic, a lecture format and seminar format. Students are expected not just to do the mandatory reading for each class, but to develop views on the questions and be prepared to articulate these views in class. The purpose of this dialogic method is not to put students 'on the spot' or to police their diligence; law, however, is sometimes rightly defined as communicative practice, and passive consumption of knowledge imparted by the lecturer is decidedly not the ideal learning and teaching method.

Students should expect to spend 175 hours of private study time on the module.

ELECTRONIC SUPPORT: The Moodle page of the module is here:
<https://moodle.kent.ac.uk/2017/course/view.php?id=1715>

Though the students may find the contents of the page rather disappointing, they are required to check it regularly.

In light of the discursive nature of the class, recordings will not be made.

PERSONAL DEVELOPMENT

On successfully completing the module students will be able to:

1. Present relevant knowledge and understanding in the form of reasoned and supported argument through seminar discussion and coursework;
2. Develop and apply their knowledge and understanding in the form of reasoned supported argument through seminar discussion and assessment;
3. Carry out thorough research analysing various points of view and using wide sources.
4. Express themselves to a high standard in a coherent written form as well as orally in the context of seminar discussion, with appropriate use of citation, and by the use of computer word processing.
5. Find relevant primary and secondary material for research in hard copy and through electronic sources.
6. Undertake further appropriate further training or research in the field.

ASSESSMENT

Students will be assessed on the basis of a written essay of no more than 5,000 words, on a topic chosen upon consultation with the convenor. Students will be expected to use materials provided on the course and to undertake independent research of appropriate sources, providing a well-structured and reasoned analysis of a particular topic or topics. Students should be able to demonstrate a strong understanding of the subject matter using the theoretical tools developed on the course.

The essay is due at noon on 9 January 2018.

Number	Format (and word limit if applicable)	Submission Date	Where to submit	Mark and Feedback Returned	% of final mark
1	Essay of no more than 5000 words, including footnotes.	Noon, 9 January 2018.	Electronically to Moodle	Within three weeks	100

Essays

The following document provides guidance on how to research and write essays.

www.kent.ac.uk/brussels/handbook/styleguide.pdf

Law essays should be typed, double or 1½ line spaced and fully referenced. Essays must state the actual word count. Each Module Convenor will set a list of essay topics for the students to choose from, or may give students the opportunity to set their own essay topic after consultation and agreement of an alternative essay title.

Word Limit Policy: The policy is available in the BSIS PGT handbook. See: <https://www.kent.ac.uk/brussels/handbook/pgt.pdf>

Feedback: Feedback on your essay will be provided in electronic format on Grademark. All essays submitted on time will be returned to you within three weeks. It is imperative that you read and analyse the feedback given to you as this will provide an explanation of why you received a particular mark, what you did well, and what you need to work on to improve your grade.

Essays are seen by three markers: two internal, one external. Dissertations are marked by two internal examiners and read by an external examiner.

Both Kent Law School and the School of Politics and International Relations use the categorical marking scale as set out in the Credit Framework Annex 6: Marking and the standard categories of marks, which are: Pass 50-59%; Merit 60-69%; Distinction 70% and above.

Details on the Assessment Criteria used by each school can be found below:

- Law - <http://www.kent.ac.uk/brussels/handbook/aclaw.pdf>

Please note that all marks remain subject to change until confirmed by the Board of Examiners.

How/where to submit: All students are required to submit ONE typewritten electronic copy to Moodle, of each piece of coursework by 12 noon on the day of the deadline. No email notice will be sent to the student to remind them of this deadline.

SUBMISSION OF COURSEWORK

All coursework must be submitted in electronic format (either a 'word' or 'pdf' document) to Moodle, by 12 noon on the day of the deadline set by the module convenor, and as stipulated in the module outline.

Please note that coursework submitted after the deadline will not be marked. Seminar Leaders and Module Convenors are not permitted to grant extensions. An extension will only be permitted if a concession is obtained from the Concessions Committee. The Concessions Committee will only consider a concession if written documentation of medical grounds or personal crisis is provided. Technical reasons such as computer or printer failure and transport problems are not sufficient grounds for concessions. If you would like more information on how to apply for an extension, please contact ukboffice@kent.ac.uk. Alternatively, you can find this information on our handbook: <https://www.kent.ac.uk/brussels/handbook/pgt.pdf>

FAILURE TO SUBMIT COURSEWORK OR ATTEND EXAMS

Students are expected to submit the coursework and attend the exams required for their specific modules. Students who fail to attend exams or submit coursework will be awarded a mark of '0' for the relevant piece of work/exam. It is therefore important that you speak with our Student Record Administrator regarding any missed coursework/assessments as soon as is possible, so that they can advise you on how to proceed.

ACADEMIC DISCIPLINE

The procedures on academic discipline are outlined in annex 10 to the credit framework (please see the link below for more information)

<https://www.kent.ac.uk/teaching/qa/credit-framework/creditinfoannex10.html>

The following paragraphs outline and highlight some of the most common types of breaches of academic discipline (plagiarism, duplication of material and conspiring with others) and provide additional school specific information on plagiarism. This list is **not an exhaustive list of academic offences** and you should **familiarise yourself with all relevant rules**.

WHAT IS PLAGIARISM?

Common to all forms of plagiarism is that you intentionally or unintentionally present someone else's arguments, information or words as your own. **You plagiarise**, for example, if: 1) You **copy** sentences or parts thereof **verbatim** from any source **without quotation marks**, thereby suggesting that the copied words are your own when they are not. 2) You **paraphrase** sentences or paragraphs very **closely**. 3) You **use** arguments, information or verbatim quotes from a source **without** acknowledging the source by providing a **reference every time** you use information, arguments or verbatim quotes from that source. Anything written or said by someone else is a **source**, including articles, books, lectures, lecture notes, web pages, dictionaries, speeches, interviews, radio and TV programmes, other students' essays, etc.

Just to make it absolutely clear:

- Every time you use a quote (i.e. you copy sentences or parts thereof verbatim) you have to use quotation marks **and** provide a reference, including the page number.
- Every time you state an argument or information from a source in your own words you have to provide a reference.

WHAT IS DUPLICATION OF MATERIAL?

Duplication of material is a lesser known academic offence which nevertheless carries the same penalties as plagiarism. Duplication of material refers to the submission for assessment of any work or substantial parts thereof that you have previously submitted for assessment at the University of Kent or elsewhere without acknowledging that you are doing so.

If you work on your assignments together with other students, there is a risk that your submission may at least in parts be very similar to the work submitted by the students you worked with. Our plagiarism detection software will detect any such overlaps and report them as plagiarism, thus requiring us to take disciplinary action. Therefore, if you work with others, please check your work for possible similarities and overlaps so that you, and we, can be confident that the assignment you submit is the result of your work and not the work of others.

WHAT IS CONSPIRING WITH OTHERS?

Section 2.3 of Annex 10 to the credit framework specifies the following academic offence: 'Conspiring with others to reproduce the work of others, including knowingly permitting work to be copied by another student'. To highlight an often unappreciated aspect of this type of academic offence it is important to stress that to knowingly allow someone to copy your work (e.g. essay, report etc.) is an offence just as it is an offence to copy someone else's work. Therefore, making your essay or other assignments available to someone else means that you may be penalised if your essay is copied from/by someone else.

WHAT ARE THE PENALTIES?

The penalties can be severe. They include marks of zero for individual coursework and de-registration from university for serious or repeat offences. Additionally, offences may be noted in your student record.

For more information on plagiarism (and referencing) please see The Politics and International Relations Student Guide:

<https://moodle.kent.ac.uk/2016/course/view.php?id=3209>

and the University's policy on academic discipline (Annex 10 to the Credit Framework) which can be found at: <http://www.kent.ac.uk/teaching/qa/credit-framework/creditinfoannex10.html>

MODULE READING

A note on sources: The general Kent Library Search page (<https://www.kent.ac.uk/library/>) is fine for most purposes. However, the integration with specialised legal databases (Westlaw, Heinonline, and others) is far from perfect. Should you not be able to find something, go to 'lawlinks' (<https://www.kent.ac.uk/library/subjects/lawlinks/>) and through to the Electronic Law Library (<https://www.kent.ac.uk/library/subjects/lawlinks/electronic-law-library.html>) which provides direct access to the various databases we subscribe to. Especially for US law journals, Westlaw (near the top) and Heinonline (near the bottom) are the places to go.

A. Mandatory Reading

Mandatory readings are listed below in the week-by-week outline. The choice of different readings is guided by different considerations, and students are encouraged to take a critical view of all of them.

B. Recommended Reading

A convenient introductory text to many of the themes discussed in this class is

Michael Trebilcock & Mariana Mota Prado, *Advanced Introduction to Law and Development* (Elgar 2014).

Other important introductory texts include:

Ruth Buchanan and Peer Zumbansen (eds.), *Law in Transition: Human Rights, Development and Transitional Justice* (Bloomsbury 2014).

Isabella Bunn, *The Right to Development and International Economic Law- Legal and Moral Dimensions* (Hart 2012).

Richard Caplan, *International Governance of War-Torn Territories* (OUP 2005).

Thomas Carothers, *Promoting the Rule of Law Abroad- In search of knowledge* (Brookings 2006).

Robert D. Cooter & Hans-Bernd Schäfer, *Solomon's Knot- How Law Can End the Poverty of Nations* (Princeton UP 2012).

Kenneth W. Dam, *The Law-Growth Nexus- The Rule of Law and Economic Development* (Brookings 2006).

John Gillespie and Pip Nicholson, *Law and Development and the Global Discourses on Legal Transfers* (CUP 2012).

Stephen Humphreys, *Theatre of the Rule of Law- Transnational Legal Intervention in Theory and Practice* (Cambridge UP 2010).

Ugo Mattei and Laura Nader, *Plunder- When the Rule of Law is Illegal* (Blackwell 2008).

Curtis J. Milhaupt and Katharina Pistor, *Law & Capitalism- What Corporate Crises Reveal about Legal Systems and Economic Development around the World* (University of Chicago Press 2008).

Amanda Perry-Kessaris (ed.), *Law in the Pursuit of Development: Principles into Practice?* (Routledge 2010).

Pahuja Sundhya, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (CUP 2011).

Brian Tamanaha et al. (eds.), *Legal Pluralism and Development* (CUP 2012).

Celine Tan, *Governance Through Development- Poverty Reduction Strategies, International Law and the Disciplining of Third World States* (Routledge 2011).

Michael Trebilcock and Mariana Mota Prado, *What Makes Poor Countries Poor? Institutional Determinants of Development* (Edward Elgar 2012)

David M Trubek and Alvaro Santos (eds.), *The New Law and Economic Development- A Critical Appraisal* (CUP 2006).

WEEKLY TOPICS AND READINGS

Please note that this is a *provisional* plan, providing a general outline of the course. In the nature of these things, the topics might change order, required reading may be modified, presentation materials will be added, and there may well have to be some juggling with dates.

Week 1 (26 September): Introduction and Administration

Outline: The introductory lecture will provide an overview of Law and Development, the course, the seminars and the examination.

Questions: What pre-perception do you (the student) have about law-and-development? What background knowledge do you have that you think will contribute to our learning during this course? What are your expectations about this course?

Week 2 (3 October): The Emergence and Transformation of ‘Law-and-Development’

Outline: This lecture will provide an overview of the emergence and transformation (fall?) of law-and-development. The focus will be on the learning that has occurred within the field and how this learning has contributed (or not) to transforming law-and-development.

Questions: When reading the literature, what different phases did you identify in the development of law-and-development? Which ideas did you identify that have contributed to the development of law-and-development? How has law-and-development changed over the years, and what has been the impetus for change? From which positions do the different authors approach law-and-development?

Reading: Trubek & Galanter, ‘Scholars in Self-Estrangement: Some Reflections on the Crisis of Law and Development Studies in the United States’, (1974) *Wisconsin Law Review* 1062.
Tamanaha, ‘The Primacy of Society and the Failures of Law and Development’, (2009) 44 *Cornell International Law Journal* 209.
Trebilcock, ‘Between Universalism and Relativism: Reflections of the Evolution of Law and Development Studies’, (2016) 66 *University of Toronto Law Journal* 330.

Week 3 (10 October): The Rule of Law as a Development Strategy

Outline: This session will look at the rise and rise of the ‘rule of law’ as a development strategy espoused by international organisations and agencies working in the field. It will be concerned with the (lack of) meaning of the concept, and with the place it has recently taken in development policies.

Questions: The Empowerment Commission claimed that ‘four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.’ The UN General Assembly is ‘convinced that the advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms.’ But what *is* the rule of law? What does the Commission think it is, and the GA? Do you consider ‘the rule of law’ as a good in itself, or only a useful instrument to

achieve something else? Why would 'the rule of law' have shot to such prominence in recent times?

- Reading:* Carothers, 'Rule of Law Temptations', (2009) 33 *Fletcher Forum of World Affairs* 49.
Krever, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model,' (2011) *Harvard International Law Journal* 287.
Goodwin and Maru, 'What Do We Know about Legal Empowerment? Mapping the Evidence', (2017) 9 *Hague Journal on the Rule of Law* 157.

Week 4 (17 October): The Rule of Law in Post-Conflict Societies

Outline: Building 'the rule of law' is by now part of a standard menu in post conflict reconstruction. There may be, however, a tension between 'the rule of law' and strategies of reconciliation and the reconstruction of trust in society. There is also the suspicion that the 'rule of law' is seen as instrumental especially in building up a market economy in societies that may be argued to lack the prerequisites of equitable capitalism.

Questions: What specific challenges faces rule of law reform in a post-conflict setting? What are the main components of the 'synergistic approach to rule of law reform'? Is and/or why is disarmament relevant for rule of law reform? How do wider rule of law reforms relate to transitional justice? "Can might make right?"

- Reading:* Stromseth, 'Post-Conflict Rule of Law Building: The Need for a Multi-layered, Synergistic Approach,' (2008) 49 *William & Mary Law Review* 1443.
Rajagopal, 'Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination', (2008) 49 *William & Mary Law Review* 1347.
Porter et al., 'The Justice-Security-Development Nexus: Theory and Practice in Fragile and Conflict-Affected States', (2013) 5 *Hague Journal on the Rule of Law* 310.
Shaw and Mangan, 'Enforcing "Our Law" When the State Breaks Down: The Case of Protection Economies in Libya and Their Political Consequences,' (2015) 7 *Hague Journal on the Rule of Law* 99.

Week 5 (24 October): Law and Economic Development

Outline: The lecture will discuss influential assumptions and theories concerning the link between law and economic growth that have informed much development policy over the years, related chiefly to neoclassical economics first, and the 'new institutional economics' later.

Questions: Consider the cases of Chile under Pinochet, the Asian tigers in the 1980s, Russia in the early 1990s, China now. What, if anything, do they tell about the relationship between law, democracy and economic growth?

Reading: Posner, 'Creating a Legal Framework for Economic Development', (1998) 13 *World Bank Research Observer* 1.
Clarke, 'Economic Development and the Rights Hypothesis: The China Problem', (2003) 51 *American Journal of Comparative Law* 89.
Tamanaha, 'The Knowledge and Policy Limits of New Institutional Economics on Development', (2015) 49 *Journal of Economic Issues* 89.
Faundez, 'Douglass North's Theory of Institutions: Lessons for Law and Development', (2016) 8 *Hague Journal on the Rule of Law* 373.

Week 6 (31 October): Measuring Law

Outline: Donors throw millions of dollars and Euros at 'rule of law promotion' projects, and will want to see 'results,' both in terms of particular projects and in terms of the contribution these projects have on 'the rule of law' and on further development goals. This session will discuss the phenomenon of 'governance by numbers,' and the ways in which 'law and development' as a field deals with the statistics involved.

Questions: Have a look at these:
http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf
<http://www.doingbusiness.org/rankings>
<http://info.worldbank.org/governance/wgi/index.asp>
What are the methodologies employed, and how do they differ? Is your own country more or less where you thought it would be? Is it at all possible to 'measure' the 'rule of law'?

Reading: Krever, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neo-liberal Common Sense' (2013) *Third World Quarterly* 34 (1): 131-150
Cohen *et al.*, 'Truth and Consequences in Rule of Law: Inferences, Attribution and Evaluation,' (2011) 3 *Hague Journal of the Rule of Law* 106.
Rodrik, 'Second Best Institutions', (2008) 98 *American Economic Review* 100.
Riegner, 'Governance Indicators in the Law of Development Finance: A Legal Analysis of the World Bank's "Country Policy and Institutional Assessment"', (2016) 19 *Journal of International Economic Law* 1.

Week 7 (7 November): The Law and Economics of Property Rights

Outline: Hernando de Soto's *The Other Path* has become a guiding light for much development thinking: the emphasis here is on the effort to give the poor legal title to their property, thus 'unlocking' capital and wealth creation. This session will discuss this 'property rights'-regime, and some of its problems.

Questions: By some estimates, up to 97% of land in Papua New Guinea is in 'customary ownership' by clans and tribes, and cannot be sold. The rights of indigenous peoples include recognition of customary rights to ownership and tenure of land. Is there a circle to be squared?

Reading: De Soto, 'Property, People and Prosperity,' (2004) 27 *Houston Journal of International Law* 467.
Domeher and Abdulai, 'Access to Credit in the Developing World: does land registration matter?', (2012) 33 *Third World Quarterly* 161.
Springer, 'Illegal Evictions? Overwriting Possession and Orality with Law's Violence in Cambodia', (2013) 13 *Journal of Agrarian Change* 520.
Baaz, Lilja and Ostlund, 'Legal Pluralism, Gendered Discourses, and Hybridity in Land-titling Practices in Cambodia', (2017) 44 *Journal of Law and Society* 200.

Week 8 (14 November): Reading week, no class

Week 9 (21 November): The African Land Grab

Outline: Facts and reliable figures are hard to find, but a reasonable estimate seems to be that a land mass the size of the Ukraine has been bought- or 'grabbed'- by foreign investors in Africa over the last decade. In this lecture we'll discuss some of the implications and consequences.

Questions: "'Land grabbing' occurs when local communities and individuals lose access to land that they previously used, threatening their livelihoods. This land is acquired by outside private investors, companies, governments, and national elites. Communities and individuals can be poorly informed of the consequences, with little rights to stop the land acquisition. The land is then typically used for commodity crops, including agro-fuels, sold on the overseas market to places like Europe." Could you think of another narrative to describe the phenomenon?

Reading: Boone, 'Property and constitutional order: Land tenure reform and the future of the African state', (2007) 106 *African Affairs* 557.

De Schutter, 'How not to think of land-grabbing: three critiques of large-scale investments in farmland', (2011) 38 *Journal of Peasant Studies* 249.

Locher, Steimann and Upreti, 'Land Grabbing, Investment Principles and Plural Legal Orders of Land Use', (2013) 44 *Journal of Legal Pluralism and Unofficial Law* 31.

Fairbairn, 'Indirect Dispossession: Domestic power Imbalances and Foreign Access to land in Mozambique', (2013) 44 *Development and Change* 335.

Week 10 (28 November) Legal Pluralism

Outline: Partly as a response to the apparent widespread failure of ROL-reform 'from above', there has been a resurgence of interest recently in the concept of legal pluralism and in ways of combining the rule of law with a role for customary norms and institutions. This session will discuss the history of the concept, and outline some of the issues and tensions arising.

Questions: Is the 'rule of law' compatible with legal pluralism?

Reading: Tamanaha, 'The Rule of Law and Legal Pluralism in Development,' (2011) 3 *Hague Journal on the Rule of Law* 1.
Mennen, 'Lesson from *Yambio*: Legal Pluralism and Customary Justice Reform in Southern Sudan', (2010) 2 *Hague Journal on the Rule of Law* 218.
D'Aoust and Sterck, 'Who Benefits from Customary Justice? Rent-seeking, Bribery and Criminality in sub-Saharan Africa', (2016) 25 *Journal of African Economies* 439.
Perry, 'Balancing Rights or Building Rights? Reconciling the Right to use Customary Systems of Law with Competing Human Rights in Pursuit of Indigenous Sovereignty', (2011) 24 *Harvard Human Rights Journal* 71.

Week 11 (6 December): Guest lecture

Week 12 (13 December) Consultations on papers.