SYLLABUS FOR LAW AND DEVELOPMENT

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PART 1

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Class Sessions: Wednesdays, 2:10-4:10

INTRODUCTION TO THE SEMINAR

In general: As its subject matter, this seminar focuses on the potential use of law to facilitate the project of ‘Development’ in the poor four-fifths of the world. These countries suffer from a myriad of social problems. At the root of those problems lies poverty (see the reading for our first class). That poverty affects the vast majority of the inhabitants, not only of those who live in the world’s least developed countries, but also the impoverished minority living in the developed-countries.

How best to address the problems of the poor countries of the world remains highly contested. How to use law in aid of that project perhaps remains the even more fiercely contested. This course focuses on the problems and possibilities of using Law in aid of Development.

In the 59 years in which we have studied the problems of Development, we have come to have strong ideas about what ‘Development’ means, and how best to use the law to facilitate efforts to achieve it. We denote our theory and methodology for designing and drafting legislation the Institutional Legislative Theory and Methodology, or ‘ILTAM.’ (We first tried to encapsulate those ideas in our Legislative Drafting for Democratic Social Change: A Manual for Drafters (2001) – and have been developing them along with our students ever since. The Manual has been translated
and published in Chinese, Russian, Arabic, Indonesian, Vietnamese, Ukrainian, Macedonian, Sinhalese, and several other languages.)

In this seminar, we ask that you test ILTAM by using it as a guide for structuring a Research Report that uses evidence, logically organized, to justify the provisions of a bill likely to help alter or eliminate an institutional obstacle to people-oriented development. The Manual, pp. 118 et seq., includes a detailed outline for a Research Report. For purposes of this seminar, in writing your term paper, do try to adhere to that outline. Only by using ILTAM can you assess whether its four-step problem-solving theory and methodology can usefully serve as a guide for designing and justifying evidence-based legislation.

We teach this seminar in two ‘streams:

The term paper: A research report to justify a bill’s detailed provisions for altering dysfunctional “institutions”. Over the years we have worked with colleagues throughout the world (see www.ICLAD-law.org), building on roots deeply embedded in law, social science, and educational literature, to develop ILTAM as a theory and methodology to guide those seeking to translate policy into evidence-based, effectively implemented law. In this seminar, you should write a substantial term paper: essentially a research report using ILTAM as a guide to organize the available evidence to justify a bill’s detailed provisions aimed at resolving a social problem of your choice of as it appears in a developing or transitional country which you may also choose. ILTAM’s institutionalist legislative theory, together with its four-step problem-solving methodology purport to guide drafters in gathering and structuring the available relevant evidence to demonstrate that the resulting bill will likely prove effectively implemented and achieve the desired social impact.

In using ILTAM to guide your own research and structuring your ‘research report’, you will have an opportunity to test its utility as a guide to research of this sort, and discover whether ILTAM will likely prove useful for drafting effective laws in the future.

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NOTE ON THE SUBJECT OF YOUR RESEARCH REPORT: As the subject of your term paper, you may write a research report that provides the available evidence as the basis of a bill to help resolve a social problem which has arisen in a developing or transitional country you have selected. (In our second class session, we discuss the options you may consider for your choice at greater length.) As it happens, we (that is, Ann and Bob) have been retained by the United Nations Development Program ('UNDP') as consultants on the proposed new Somali Constitution. One of our tasks
requires that we draft laws to govern the nine constitutionally-mandated Independent Commissions (for example, an Electoral Commission and a Human Rights Commission).

To contribute to achieving that task forward, we invite any of you who so desire to draft a research report presents the relevant evidence, logically organized, as a basis for conceptualizing a law proposed in the draft Somali Constitution to establish one of the following 9 independent Somalian commissions:

1. Implementation Commission;
2. Electoral Commission;
3. Human Rights Commission;
4. Civil Service Commission;
5. Judicial Service Council (Art 136 & Art 69);
6. Boundaries and Census Commission (Art 136 & Art 69);
7. Land & Property Disputes Commission (Art 36);
8. Finance Commission (Art 157);

(We will discuss these, as well as additional social problems on which you decide you would like to prepare a research report, in class next week).

END OF NOTE.

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Before our next class, you should evaluate the following proposition: By providing the evidence required to justify a proposed bill’s detailed provisions, a research report, structured pursuant to ILTAM’s guidelines. constitutes a potentially valuable quality control for designing and drafting a bill. It enables interested policy-makers, lawmakers, and community leaders to critique and, if possible, find additional evidence which the report may claim undergirds the bill’s detailed provision.

For the first half of the semester, for roughly half the weekly class time, we will discuss issues raised by using ILTAM as a guide to logically structuring your research reports. In the second half of the semester, we will divide the class into what we have come to call ‘Editing’ or ‘Critique’ Groups. Each group will consider a draft research reports submitted by one or two of its members each week. We will spend the entire class time assessing and suggesting improvements in the research reports scheduled for that week.
2. Readings in Law and Development generally. One cannot make a reasoned assessment of a theory and methodology (like ILTAM) for addressing problems in Law and Development without some idea of the range of possible alternatives. For the first half of the semester, we will devote half the class time to considering a range of assigned readings as to alternative theories generally advanced in the field of Law and Development.

Around the world, the subject matter of Law and Development (‘LND’) seminars or courses differ widely. On one extreme, some teach a series of discrete substantive subjects – usually, one subject per class – that the lawyer for a multi-national corporation seeking to do business in Booga-Booga (a mythical developing country) needs to know: Laws on currency exchange, on foreign worker permits, on WTO controls, on patent and copyright, on local tax issues, and the like. Another set of LND syllabi teaches the political economy of development – and if law creeps into the discussion, that’s good too. Is an import-substitution policy better for a developing country than a free market? Should a country hold an open door to foreign capital, or should it accept foreign capital only under constraints? A third set (within which we place ourselves) focuses on assessing the social impact of the several ways that various countries (and the relevant aid agencies) use or might use law to facilitate development.

We plan to focus a portion of class time devoted to the subject around the readings for the week. For these classes we ask that participants in the seminar sign up a week in advance to serve as an ‘author’s advocate’ in the following week’s discussion. The author’s advocate reads the assigned reading carefully, prepares a five-minute in-class presentation of the author’s position and, as if in a debate, argues in support of that view. As you would in a formal debate, make the best argument you can in support of your author – and never mind whether or not you agree with the article you defend. (Do not fear that you cannot ‘boil down’ a complex reading to a five-minute, one PowerPoint slide presentation. The great medieval rabbi, Maimonides, reportedly summarized the essence of the Law and the Prophets while standing on one foot. He recited the Golden Rule. If he can do that, you can present any of these readings in five minutes!) You may want to prepare a short PowerPoint presentation for your talk. In any event, please prepare a one-page summary for distribution in class.

A further note on the course readings. They will be available either on the course website, for purchase at FedEx/Kinko’s, or through the link provided in this syllabus. Due to copyright restrictions, we may have to put two or three copies on reserve in Pappas Law Library
Grading. We grade 50% on the term paper and 50% on classroom performance – especially your performance in your various stints as ‘author’s advocate’ – and in the ‘editing’ sessions.

Upper Class Writing Requirement. Your term paper in this seminar qualifies for satisfying the Upper Class Writing Requirement. You must sign up for that with the Registrar.

COURSE OUTLINE

PART A
AN INTRODUCTION TO LAW AND DEVELOPMENT

1. The social problem of underdevelopment: The ‘Fatal Race.’ Today, law constitutes a government’s primary tool for achieving people-oriented development and good governance. By definition, ‘law’ here includes all forms of rules promulgated and implemented by government, from municipal ordinances, through regulations formulated and administered by a government agency, to legislative acts adopted by an elected representative legislature, and decisions of courts.

Historically, colonial rulers everywhere imposed laws that today still shape the economies of many if not most the former colonies. (In the course of a 2004 consultation in Indonesia, we were asked to work on a law to prevent to rapid despoliation of Indonesia's tropical hardwoods forests. We discovered that the Dutch colonial rulers had enacted the Forestry Law in 1912; it remained in force in 2004.)

A simple model helps to explain why most of the people in those former colonies remain among the 4/5 of world’s people who receive only 20% of global GDP. (A fifth of the world’s population, mainly in the world’s industrialized countries, reaps about 80% of global GDP.)

Sue: Please insert (attached) diagram from p. 1 of the Concept Paper, (see also 2011 syllabus for last fall’s drafting clinic on Black Board 7attached) here….

Thanks! a&b
After World War II, independence came to the colonial world, country by country, in a grand sweep. Its supporters thought that, after the dark night of colonial oppression, independence heralded a new dawn. Freedom and human dignity would reign.

The colonial flags came fluttering down. The future spread bright and shining before the newly independent countries. (One day in Nigeria we watched a steamer sail out of the harbor, not a hundred yards off from where we sat on the yacht club lawn. A military band played ‘Britannia Rules the Waves.’ The departing colonial governor stood on the fantail, erect, his hand at salute. A small band of whom we assumed were departing colonial officials stood around him, all at salute. The crowd around us – entirely white and 99% British – also stood and saluted; there wasn’t a dry eye in the crowd. Colonialism in Nigeria had ended.)

A strange new era had begun. In the seats of political power sat the leaders of the independence movement. In the course of our twelve years in African universities, we met many of them – among others, Nkrumah in Ghana, Kaunda in Ghana, Nyerere in Tanzania. We had no doubts about their sincere devotion to the good of their country.
and its inhabitants. Most of them had undergone many years of conflict, war, destitution, imprisonment and, yes, in some countries torture. If they were the money- and power-hungry corrupt cynics that their opponents claimed, they had chosen a strange and tormented path to wealth.

The world around, in most countries, the elites who run the economy intertwine with the elites who hold governmental power. (Not by accident, some half the members of the U.S. Congress are millionaires.) At Independence, not so in the former colonies. The expatriates who owned and operated the vast estates in Kenya, who owned and exploited rich tropical forests in Indonesia and the rubber plantations in Vietnam, the multinational corporations who owned and operated mines in South Africa and Peru, all lived in the developed world. Despite independence, the colonial economic institutions remained unchanged. Foreign capital exploited the cheap labor in the colonies. The average wage in the colonies was less than a quarter of the average wage in the developed countries.

Thus began the ‘Fatal Race.’ Who would change whom first? Would the new governors, almost all non-white, change the institutions that exploited local labor unmercifully, and, rather than reinvesting their profits in the former colony, shipped them out of the country? Or would the expatriate, white, former colonialists co-opt the new leadership? Who would win?

In many, perhaps most, of the developing countries, sadly the new governors lost that Fatal Race. Those new governors had come to power because they had remarkable leadership qualities and political savvy, they stood up to violence, torture, frequently had excellent qualifications as street fighters, and remarkable endurance to succeed in the decades-long independence struggle. Nothing in that list of qualifications spoke to their competence to use state power through law to achieve not only political but also economic freedom. In time they abandoned the struggle. Many substituted a search for their own economic advantage – with corruption heading the list of pathways to wealth.

Today, a half century and more since most colonies won independence, 20% of the world’s population still receives 80% of the world’s income. The majority of the world’s people still live on $1.00 US per day – or less.

That constitutes the central problem that ‘Development’ proposes to ameliorate. That constitutes the problem we study in this seminar.

2. **The function of institutions in creating and maintaining under-development.** Note that the model purports on its face to model the resource allocations of the
constituent countries. It reaches further than that. Resources do not allocate themselves. Inevitably, what looks like a model of resource allocation also models the institutions that do allocate the world’s resources.

What do you understand by the word ‘institution’? Some suggestions:

a. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 606 (10th ed. 1999) (‘Institution’ means] a significant practice . . . in a society or culture.”);

b. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 988 (2d ed. 1983) (“[A] well-established and structured pattern of behavior or of relationships that is accepted as a fundamental part of culture, as marriage: the institution of the family.”);

c. Wikipedia (“An institution is any structure or mechanism of social order and cooperation governing the behavior of a set of individuals within a given human community....The term "institution" is commonly applied to customs and behavior patterns important to a society, as well as to particular formal organizations of government and public service) At http://en.wikipedia.org/wiki/Institution; visited 10 October, 2010. Accord: George Caspar Homans, The Nature of Social Science 50-51 (1967); Norman Uphoff, Local Institutional Development 9 (1986).


3. In the study of law and development, why a concern with institutions? Compare and contrast Sjostrand’s definition with the others suggested. For our purposes in Law and Development, which seems more useful? Why?

a. Discuss: “Changing problematic institutions constitutes the core task of the Development project?” Why or why not?

b. Discuss: “‘Social problem’ means a problematic institution, i.e., a set of repetitive patterns of problematic behaviors. ‘Social change’ means a change in those problematic behaviors.” If true, what significance does that proposition have for the practice of Law and Development?
4. A thumbnail history of Law and Development. Trubek and Santos perceive as a discipline what they call four ‘moments’ in the history of Law and Development. By that they mean periods in which a substantial consensus existed among practitioners and the developed-world aid agencies (UNDP, USAID, Ford Foundation, etc.). In the first ‘moment,’ between the early 1950s and about 1970, a consensus existed that development required intervention by government in the form of state corporations and regulatory measures – that is, the use of law instrumentally to bring about ‘development,’ in that period almost always defined in terms of a decrease in poverty. USAID and the Ford Foundation believed that that required that lawyers exist with the capacity to use the law instrumentally. That required, they thought, lawyers trained in the U.S. law school style. (For twelve years, the Ford Foundation funded Bob to teach in law schools in Ghana, Nigeria, Tanzania, Zambia, and Zimbabwe, apparently on that theory).

The second ‘moment’ lasted from about 1970 to about 1986. That was the period of the ‘Washington Consensus,’ when economists galore preached the virtues of the market unleashed. The function of law became law, order, and dispute settlement – that is, the function of law in the ‘night-watchman state.’ Funding for Law and Development dried up – the World Bank-funded various development projects – but law was not on the beneficiary list.

The third ‘moment’ began in 1986, and is still evolving. Dismayed at some of the practices of some of the developing countries, the World Bank wanted to add, as a condition of making a loan, a requirement that the recipient country enact a specified law – for example, a law requiring the titling of real property, on the theory that without clear laws designating thine and mine, no market could exist. The World Bank charter, however, forbade the Bank from interfering in the government of a country. Requiring a country to enact a specified law to ordinary folk surely looks like interference in the country’s government. The Bank’s General Counsel, Ibrahim Shihata, however, thought otherwise. Laws, he wrote, constituted part of a country’s system of ‘governance’ not ‘government.’ He approved of the Bank requiring a country to enact general laws in terms that sounded like a first-year law school student’s notion of what the Rule of Law requires. The third moment began with the proposition that a government could use the law to rectify market failures – a notion that nestled comfortably with the new doctrines that Coase was teaching about social cost, and Posner, about Law and Economics.

Morphing out of the third moment, the fourth ‘moment’ began sometime early in this millennium. Aid for ‘Rule of Law’ programs slowly but perceptibly increased, a
movement still in progress. These programs aim, however, principally at courts, not legislatures. If a legislature adopted a law that met Shihata’s criteria, and independent, impartial and skilled judges decided cases arising under those laws, the market would clear itself of imperfections. Market failures would disappear – or some so claimed.

Other scholars and even some practitioners expanded the meaning of ‘development.’ Shortly into the 21st Century, new notions arose. Increasing a country’s net worth, some argued, was not the sole goal of Project Development. These debates about the purposes of ‘development’ we glance at briefly next week.

**PART B**

**DEFINING THE SOCIAL PROBLEM THAT YOUR PROPOSED BILL WILL ADDRESS**

Prepare for next week’s class: Draft a one page description of the social problem to help resolve which you propose to draft a bill. (If you propose to draft a research report to justify one of the 9 bills requested to support establishment of a Commission proposed in the new draft Somali Constitution, describe the social problem to that Commission seems likely to aim to resolve).

DISCUSS: By what criteria ought you to choose a social problem which you would like to draft a research report for your term paper?

1. **In general.** Methodologies for developing law in aid of ‘development,’ however defined, roughly fall into two main categories. One begins with a ‘vision;’ practitioners frequently actually hold workshops in how to develop a ‘vision statement.’ Others begin with a precise statement of a presently-existing social problem, and build from there. (Much more on this in future classes.)

In this seminar we ask that you use Institutional Legislative Theory and Methodology (or ‘ILTAM’) as a guide in formulating your research report. ILTAM takes an uncompromisingly pragmatic position. It starts with a statement of the social problem the proposed bill will address. In choosing a subject matter for your paper, do not begin with a statement of your objective or ‘vision.’ Begin with a statement of an existential social problem for which your research report will seek resolve through law.

2. **ILTAM’s problem-solving methodology**
ILTAM purports to provide a methodology that serves two purposes. First, it guides the drafter in designing a bill. Second, it justifies a bill to a rational skeptic reader – that is, rational skeptic reader who reads a justification for a bill, which justification follows ILTAM's methodology, and who has no netter evidence in opposition, must agree.

ILTAM's methodology consists of four basic steps, as follows:

**Step 1(a).** State the superficial appearance of the social problem the bill addresses.

**Step 1(b).** Describe the behaviors that constitute that social problem.

**Step 2.** Explain (i.e., state the causes) of those behaviors.

**Step 3.** Describe the provisions of the bill that address those explanations.

**Step 4.** Monitor and evaluate the implementation of the bill.

**Discuss:** (1). ILTAM claims that, absent new evidence, a rational skeptic reader of a research report that follows ILTAM's methodology must agree that the bill will 'work'. Do you agree? Why or why not?

(2). ILTAM means "Institutional Legislative Theory and Methodology." Explain why it is called "Institutional Legislative Theory and Methodology."

3. **Criteria for selecting a topic.**

Development, however defined

a. **Structural change.** In choosing the subject matter of your term paper, do choose one that addresses the institutional structures that perpetuate the miseries of the poor majority. In general, these consist of two major, overarching problems. One constitutes the problem posed by dysfunctional institutions that perpetuate economic dependency portrayed in the model of economic dependency described above. The other consists of the abysmal levels of government institutions that remain prevalent in many poor countries.

For example, if you decide to focus on the problem of trafficking in women and children in Thailand, how might you define the subject matter of your research report and proposed bill for purposes of this seminar? A gaggle of subjects suggest
themselves, from issues of criminal law (should the law punish the prostitutes for behaving as prostitutes? Should it punish the johns?), to safe houses for runaway prostitutes, to issues of health care delivery to the prostitutes, to considering the institutionalized system for recruiting rural young women for the Bangkok brothels, to rural poverty (the extreme poverty of some of Thailand’s rural areas makes even a Bangkok brothel look good), to governance questions (how might one design a law to make corruption of police officials more difficult?)

Or, as another example, you might decide to focus on one of the many problems of poor governance which led to Somalia’s current efforts to draft a bill to help ensure effective implementation of one of the nine Commissions proposed in Somalia’s new Constitution – for example, you might identify the problem confronting the Land & Property Disputes Commission (Art 36). Again, that would pose several social problems, perhaps requiring a legislative program -- a series of bills each focused on resolving one specific problem. These might range from disputes over who holds title to a piece of land to how a group of farmers might work together to acquire farm machinery to increase productivity.

In tackling either of these examples, ILTAM suggests you should begin with Step 1, formulating descriptive hypotheses (ie educated guesses) as to

(a) the nature and scope of the problem, and

(b) since law can only resolve social problems by changing the problematic behaviors that comprise them (ie, by definition the relevant institutions).

In both cases, you would have to begin by conducting research to find the available relevant evidence, and structuring it logically to demonstrate that your hypothesized description of the problem and the behaviors that comprise it seem consistent with that evidence.

For Step2, ILTAM offers a guide to formulating explanatory hypotheses as to the causes of each set of problematic behaviors. In turn, those hypotheses tell you what evidence you need to find to prove those hypotheses consistent with the facts.

That lays the basis for Step 3, the design of your proposed bill’s detailed provisions that, logically, seem likely to alter or eliminate the existing problematic behaviors and induce new ones likely to help resolve the problem.

Either because your research at each Step failed to provide sufficient evidence or because the ‘world out there constantly changes, Step 4 calls for including in the
bill’s provisions a requirement for monitoring and evaluating a) the effectiveness of the bill’s implementation; and b) its social impact.

In deciding on a topic, do try to find one (like the rural poverty, or good governance issues mentioned above) that requires using law to change the institutions that foster the conditions of underdevelopment. (In short: For this seminar, whatever topic you decide to address, you probably will find it more interesting to focus not on the criminal law issue, but rather on the poverty or the good governance issues.)

b. Narrow topic. Like so many Russian dolls, social problems nestle the one inside the other. Take the problem of trafficking in women in Thailand as mentioned above. The problem of trafficking involves problematic institutions all the way from rural Thailand to Bangkok’s brothels, and all the institutions that support the traffic. All of these nestle inside the larger issue of rural poverty, which itself consists of a large number of separate issues: the low level of agricultural technology used on many Thai farms, the low level of education, the absence of sufficient farm-to-market roads, and many, many more. Neither the drafter nor the legislature can make much sense of a bill that covers very many of these interacting social problems. (The Health Care bill in the U.S. ran to some 2,700 pages. Does someone care to wager how many Congressmen read that bill before voting on it?) Choose a narrow subject, and draft a bill designed specifically for that topic. (We will discuss later how, in the Introduction to your research report, you might indicate the larger problem).

c. Availability of research materials. Before finally deciding on a topic, do a quick search on the web and elsewhere to see what evidence seems available to describe the present situation on the ground with respect to your chosen topic.

Week 2
January 19, 2011

REQUIRED READINGS:


Reading A-3: Dr. Jan Edward Garrett, “Amartya Sen's Ethics of Substantial Freedom,” (2001). Dr. Garrett is a Professor at Western Kentucky University, Department of Philosophy and Religion. You may find his article on his website at http://people.wku.edu/jan.garrett/ethics/senethic.htm.

Reading B-1: Seidman, Seidman and Abeysekere, Legislative Drafting for Democratic Social Change: A Manual for Drafters, (2002), pp. 10-17, 86-93; and scan pp. 115-125 (consider especially pp. 118-119). (This large file is on the course website, but students also have the option of purchasing the Manual for $25.00. See our administrative assistant Sue Morrison in Suite 1120.)

RECOMMENDED READINGS:

Reading A-4: Dasho Karma Ura, “Gross National Happiness: Explanation of GNH Index,” The Centre for Bhutan Studies. Dasho Karma is the President of the Centre for Bhutan Studies; see his article on the CBS website http://www.grossnationalhappiness.com/gnhIndex/introductionGNH.aspx

PART A
AS APPLIED TO THE POOR NATIONS OF THE WORLD, WHAT DO YOU UNDERSTAND BY ‘DEVELOPMENT?’

DISCUSS: Complete the following sentence, and justify your answer:

a. As used in the phrase, ‘Law and Development,’ ‘Development’ means, in its general sense, ‘a principal objective of government policy.’ More precisely, complete the following proposition: “As a general proposition, in title of ‘Development’ a developing country ought to ….” Give reasons for your answer.

b. In commenting on the discussion issue mentioned in (a) just above, consider the implications of that definition for the development project.

PART B
DEFINING THE SOCIAL PROBLEM THAT YOUR PROPOSED BILL WILL ADDRESS

Prepare for next week’s class: Draft the first three items of a possible Introduction to a Research Report justifying your proposed bill, conforming to the following outline:
I. ‘Grabber’: A brief anecdote or a startling statistic to catch the reader’s attention.

II. A brief statement of the social problem your bill will address, its explanation and the barebones outline of a possible bill addressing that social problem. THREE SENTENCES MAXIMUM!

III. A brief description of the larger context in which your proposed bill would function; and how the proposed, narrowly-defined bill might fit into a legislative program of related bills directed to altering other aspects of related dysfunctional institutions.

Be prepared to discuss your topic in class, and to explain why your proposed bill addresses an issue related to Project Development.

Class discussion:

In today’s discussion, focus on two issues: First, the advantages and disadvantages of the problem-solving methodology, compared with other methodologies for making a judgment of practical reason—ie what we ‘ought’ to do; and, second, the subject matter of the Introduction.

1. Three Possible Alternative Methodologies for Exercising Practical Reason

The Stanford Encyclopedia of Philosophy defines that term ‘practical reason’ as “the general human capacity for resolving, through reflection, the question of what one is to do.” In those terms, making a law constitutes an act of practical reason. Here we briefly discuss three methodologies for making a judgment of practical reason: ends-means, incrementalism, and problem-solving. Institutional Legislative Theory and Methodology – the theory and methodology put forward in the Manual that constitutes this seminar’s basic text – puts forward a problem-solving methodology. Here we ask that you discuss the relative advantages and disadvantages of those three methodologies.

a. Discuss: “ILTAM’s evidence-based version of problem-solving is nonsense. A law constitutes a value proposition. One cannot use ‘facts’ to prove or disprove a value proposition. The only way to design a bill consists of the ‘ends-means’ methodology. State your vision for your proposed law’s consequences. Consider alternative means of realizing your vision. From among the various alternative
means of achieving that vision select the one that will likely produce the most benefit for the least cost.”

b. Discuss: “Both ends-means and problem-solving are nonsense. Both assume the ‘S-M-R’ model. That model supposes that the legislature constitutes the pilot of the ship of state. It passes a law and sends that law through various channels to its addressee. Both those who transmit the law and those who receive it, they suppose, transmit and receive exactly the law as the law-makers formulated it. They further assume that the law’s targets act in strict obedience to the new law. They assume that we human beings can thus engineer large-scale social change. Nonsense! When we do try that, we bring catastrophe down on us all. (Remember Mao’s Great Leap Forward?) Better to legislate in small increments; if the law fails, it causes only small damage. (Call that the ‘incrementalist’ methodology.) The rule to follow: The smallest step in the direction you want to follow constitutes the best and wisest step.”

c. Discuss: “Ends-means rests on nothing more than a subjective intuition of what law might produce what change. Incrementalism moves so slowly that it would do little or nothing to repair the broken institutions that produce the poverty and poor governance of the poor four-fifths of the world. Problem-solving best guides the practitioner to make judgments of practical reason resting on facts and logic. It produces evidence-based legislation. Unless she has better facts or better logic, a rational skeptic must agree with a bill’s proponent who justifies the bill in terms of the problem-solving methodology, and who supports each of its steps with evidence. If the parties on both sides of the aisle agree with a bill’s justification, that bill must be in the public interest.”

In the remainder of this course we will amplify each of these steps.)

2. The Introduction to the Research Report: The ‘Larger Context’

a. A frequent criticism of a bill goes like this: “Why did you address that teeny-weeny problem? Don’t you know that the real problem is thus-and-so? (For example: ‘Why address the problem of corruption between brothel keepers in Bangkok and the police? Don’t you know that the real problem is the control the multinationals have over Thailand’s economy, a control that ensures the poverty that leads to parents selling their daughters into prostitution? Address the real problem, not the itsy bitsy one you have chosen! Get real!”)

You can defend against that criticism by stating early in your research report that, yes, you acknowledge that your bill addresses only a small part of the larger
problem, that a legislative program is needed to address all the issues connected with that larger problem. Nevertheless, for the moment, your research report concentrates on the problem that your bill addresses. (That usually appears in the Research Report as the ‘Context’ section of the Introduction. See Manual, p. 119.)

Week 3
January 26, 2011

REQUIRED READINGS:


Reading B-3: Manual, Ch. 6, “Capturing the Evidence,” pp. 167-186.

RECOMMENDED READINGS:


Reading A-2: id., Chapter 3.
Reading A-2: id., Chapter 4.
Reading A-2: id., Chapter 5.
Reading A-2: id., Chapter 6.

The Easterly book will be on reserve in the Pappas Law Library.

PART A
ECONOMIC STRATEGIES FOR DEVELOPMENT

Easterly lists several strategies that to one or another economist at one or another time became the North Star that leads to that bright land of Development. As his chapter on Ghana argues, perhaps the earliest proposed development strategy taught that increased investment would lead to increased productivity per worker which would tend to alleviate poverty. It did not work.
Robert Solow played a riff on the ‘investment’ strategy. Not merely increased investment, but improved technology, he held, would prove the key to development. More capital invested in buildings or low-tech machines added little to increase per worker productivity, and hence little to per capita income. Many poor countries improved their capital investment at the same rate as some countries that did break through the development barrier (for example, the East Asian ‘tigers’) – but nevertheless remained poor. Some variable other than capital investment or improved technology seemed required.

Many economists turned to education and ‘human capital’ as an alternative. Across the globe, in the poor countries, educational levels improved dramatically. That did not work either: An educated Indian more likely tries to immigrate to the United States than to remain in an India that only in principle hungers for highly-trained expertise. Again, some other factor seems at work.

Popular and expert attention early on turned to population control as a key factor in Project Development. That strategy broke no new ground; Malthus had previously plowed that field. Population, these experts argued, causes “famine, water shortages, massive unemployment, and other disasters.” (Easterly, p. 91). Aid for contraceptives became a major item in the international aid budget. “The general wisdom among economists,” however, “is that there is no evidence one way or another that population growth affects per capita [economic] growth.” (Development itself turns out to be the best contraceptive. Wealthier countries have lower rates of population growth than poor countries.)

None of these panaceas proved the key to unlock development’s door. All of them found their actual expression in law, broadly conceived. Laws a-plenty held out the open hand to capital, to better educational opportunities, and to reducing population growth. Foreign aid helped, in some countries generously. Nothing seemed to work.

a. Discuss: Divide into small groups. In light of the ‘fried-egg’ model of underdevelopment, each group should assess the theoretical justification for one of the ‘magic bullets’ aimed at the Underdevelopment Monster. A group spokesperson (who earlier signed up to read the relevant recommended reading) will present a five-minute argument to justify the use of the specific ‘magic bullet’ as a potential solution to underdevelopment.

b. Discuss: As Easterly shows, none of these solutions actually worked. What general explanation might one advance to explain that general failure?
Prepare for next week’s class: Recall that Step 1 of the problem-solving methodology consists of two moves. In Step 1(a), describe the superficial appearance of the social problem your bill will address. In Step 1(b), describe in as much detail as possible whose and what behaviors constitute that social problem. Draft a (very preliminary) version of Step 1(b) of your Research Report (i.e., your term paper) – a couple of pages or so – using whatever information you have at hand.

Class discussion:

In describing whose and what behaviors constitute the social problem addressed, imagine a documentary film concerning the social problem. Describe what you see on the screen. Do not include either any explanations for those behaviors, or your proposed solution for the specified problem. Reserve those for their proper places in the problem-solving agenda, that is, in ILTAM’s Step 2 and Step 3.

a. Discuss: What function does Step 1(b) have in the logic of the problem-solving agenda?

b. Discuss: How might you research the behaviors that constitute the social problem that your bill will address?

c. Discuss: “Resolved: The key to the all-too-frequent failure of laws seeking development lies with the implementing agencies. Mostly, countries have good laws – but poor implementation.”

End of Syllabus Part 1