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"General Theory of Law and Development: Constructing Effective Remedy"

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1. Introduction

"Law and development" is generally used to denote the activity of law reform in pursuit of development via various kinds of transnational assistance programmes, and the area of academic inquiry regarding the interrelationship between law and development.[1] Although the term is still unfamiliar to many scholars, students, and policy-makers, nonetheless, law reform has had, and continues to have, a significant impact on economic and social development across the world, especially in poor and middle-income countries, as well as states undergoing transition and reconstruction.

The relevance of law and development in the discussion of comparative law is that it raises issues of general interest to comparative lawyers as well as involving comparative law techniques and concerning itself, like comparative law, with the legal system in general. In some respects, law and development is the sharp end, so to speak, of comparative law. The relevant issues and techniques include such matters as the conditions under which law can be "transplanted" from one legal system to another[2] and the techniques of legislation.[3] To name just one example, is it possible, or how might it be possible, to incorporate the common law concept of the trust into civil law systems that may derive economic benefit from its adoption?[4] To name another, can modes of legal education developed in one system be utilised in another system with different assumptions about law, lawyers, and education? In short, law and development is intertwined, at least implicitly if not explicitly, with comparative law in virtually all its aspects, both theoretical and practical.

The role that law fulfils *in development* has nevertheless been a subject of substantial controversy over the years. While classical thinkers such as Max Weber and Friedrich Hayek, focusing their inquiries on Europe, emphasised the importance of rational law that protects civil liberty and especially property rights in the promotion of development, successful economic development of Eastern Asian countries, which did not, at least in its early stages, focus on the rule of law in the Western sense (for example, in the protection of political freedom, or a powerfully independent judiciary), seems to suggest otherwise.[5] Neoliberal law reforms, in particular, as promoted by intergovernmental agencies such as the World Bank since the 1980s, have signally failed to bring successful development in many places throughout the world where these policies have been adopted. Nonetheless, it is clear that, although law alone clearly cannot create successful development, it can, in conjunction with the suitable legal frameworks, institutions, and policies, facilitate or inhibit development by influencing actors in the economy and society. For example, it is widely accepted as an aspect of "new institutional economics" that economies benefit

[1] Yong-Shik Lee, *Law and Development: Theory and Practice* (2d ed., Abingdon: Routledge, 2022), p. 1; See also Yong-Shik Lee, *General Theory of Law and Development*, 50 Cornell International Law Journal (2017), 415-471. This paper is a revised version of Yong-Shik Lee and Andrew Harding, in Mathias Siems *et al.* (eds.), Cambridge Handbook of Comparative Law (Cambridge University Press, forthcoming 2024)

[2] See also the chapters by Cohn and Caffera *et al.*, in Mathias Siems et al. (eds.), *Cambridge Handbook of Comparative Law* (Cambridge University Press, forthcoming 2024)

[3] Jan Michiel Otto *et al.* (eds.), *Lawmaking for Development: Explorations into the Theory and Practice of International Legislative Projects* (Leiden: Leiden University Press, 2008).

[4] Surutchada Reekie and Narun Popattanachai, "Thai Trust Law: A Legal Import Rooted in Pragmatism," in Andrew Harding and Munin Pongsapan (eds.), *Thai Legal History: From Traditional to Modern Law* (Cambridge: Cambridge University Press, 2021).

[5] Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 Law and Society Review (2000), 829-856.

significantly from the legal enforceability of contracts and property rights, as was advocated by Weber and Hayek. Thus, the rule of law, or what some call "real legal certainty,"[6] is generally regarded as a desirable condition for development. This paper discusses the constituent elements of law and development, discusses its history, introduces relevant theories, and explores how law and development approaches may contribute to development efforts throughout the world. In the course of addressing these issues, we emphasise those aspects of the subject that bring into focus the traditional concerns of comparative law. We also introduce a General Theory of Law and Development that seeks to capture the different aspects of a subject that has, in general, lacked theoretical articulation. This Theory attempts to define the conceptual parameters of "law" and "development" and sets forth the mechanisms by which law affects development. The Theory can be used to construct effective remedies for the pandemic-caused economic disruptions. We also examine the discipline's relationship with comparative law and explore the path forward.

2. Law and development as a discipline

Law and development is distinguished from, but also relates to, other areas of study such as "law and economics," "law and society," and "law and governance."

Law and economics tends to focus on the microeconomic analysis of law, analysing its economic efficiency.[7] Law and development, too, examines economic issues in the context of development, but focuses more on macroeconomic issues such as political economy, economic growth, and income distribution. Law and development also examines issues of social improvement, which is not considered a relevant area of analysis under law and economics.

Law and society, on the other hand, focuses on the practical social impacts of law. There are overlaps between law and development and law and society in that both discuss the impact of law on social changes, but law and society analyses the impact of law on society more broadly, without a focus on development or reform issues as law and development does.

Similarly, law and governance is part of law and development, which concerns itself with governance in public administration and anti-corruption mechanisms, but engages with minutiae going beyond law and development, such as regulation and judicial review. In contrast, law and development addresses development issues broadly.

Law and development, as a separate area of study, serves the need for a discipline that focuses on the important relationship between law and development where development is currently a pressing international agenda, as demonstrated by major global initiatives such as the Sustainable Development Goals (SDGs).[8] Indeed, as the international community has moved towards ever more comprehensive and ambitious definitions of development, or at least the objects of development, law has become an ever more important aspect of such definitions. A comparison of

[6] Jan Michiel Otto *et al.* (eds.), *Real Legal Certainty and its Relevance: Essays in Honour of Jan-Michiel Otto* (Leiden: Leiden University Press, 2018).
[7] Richard Posner, *Economic Analysis of Law* (7th ed., Austin, TX: Aspen Publishers, 2007) Richard Posner provided excellent coverage of law and economics.
[8] See *generally* United Nations, *Sustainable Development Goals*,
available at: <www.un.org/sustainabledevelopment/sustainable-development-goals/>, accessed December 1, 2021 (providing a further discussion of SDGs).

the simplistic Millennium Development Goals (MDGs) (2000-2015) with the SDGs (2015-2030) implies a strong critique of the MDGs in neglecting the legal aspect of development. This is sought to be corrected by the SDGs' Goal 16.[9]

Despite its importance, the emergence of law and development as a field of study has stagnated as a result of various factors. These include the lack of underlying theories that inform the field and seek to explain with precision the impact of law on development; dissimilar approaches and methodologies adopted by scholars in related but different backgrounds such as economics, law, and political science; lacking coherent approaches required for an independent field of study; and absence of "success stories" from law reform projects largely uninformed by and disconnected from law and development studies. It is indeed striking that scholarly critiques identify the same errors being made repeatedly in law and development processes, indicating a mismatch between law and development in its practical and academic modes.[10] However, recent trends in the discipline have begun to fill the gaps and reinforce law and development as a significant discipline in its own right. These trends include the emergence of new theories that attempt to clarify the mechanisms by which law impacts development, as well as the establishment of new institutes, journals, and conferences which support studies, law reform projects, and wider discussions in the field of law and development.[11]

3. The Evolution of Law and Development

3.1. Law and Development "Movements"

Law and development originated in the efforts of a group of scholars, practitioners, private foundations, and aid agencies in developed countries to transplant laws and legal practices from developed countries such as the United States to assist in the economic and social progress of developing countries, especially in Africa and South America, but less so in Asia, in the 1950s and the 1960s.[12] These efforts are collectively referred to as the first "law and development movement."[13] The participants of the first law and development movement sought to achieve the modernisation of the Third World by the diffusion of capital, institutions, and values from the First World.[14] They believed "modern law," in line with Max Weber's theory of modernisation, to be

[9] Andrew Harding, *Constitutionalism and Development: A Mismatch or a Dream Team?*, 12 Law and Development Review (2019), 647-668.
[10] *Ibid.*
[11] The new theories include the General Theory of Law and Development, which is introduced in this paper. The examples of the new institutes, journals, and conferences include the Law and Development Institute (LDI, www.lawanddevelopment.net), the Law and Development Research Network (LDRN), Law and Development Review, and annual conferences hosted by the LDI and the LDRN.
[12] See David M. Trubek, "The 'Rule of Law' in Development Assistance: Past, Present, and Future," in David Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006), pp. 74-75.
[13] *Ibid.*, at 74-81.
[14] Kevin Davis and Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 American Journal of Comparative Law (2008), 895-946, at 900.

the "functional prerequisite of an industrial economy,"[15] perceiving law as "a force which can be moulded and manipulated to alter human behaviour and achieve development."[16]
Despite these objectives, the first law and development movement was considered to be a largely failed initiative. Commentators noted that the ethnocentric assumptions about the nature and role of law, its relationship to social change, and the role of certain institutions, such as the judiciary and legislation, ignored local realities and denied the field a functional theory that could have made law reform projects effective.[17] Without such support, reformers had to operate in a vacuum on an ad hoc basis and had significant difficulty in implementing laws and legal practices adopted from developed countries, including reform of courts and legal education in developing countries. The absence of the key socioeconomic conditions that were essential to their successful implementation, such as, in the case of education reform, a legal academic tradition amenable to the adoption of American law school-style education, was either overlooked or ignored.[18] Thus, to use Newton's formulation, an "inaugural moment" was succeeded by a "critical moment.

However, the proliferation of neoliberal[19] law reform projects in the 1980s and 1990s, especially following the end of the cold war, that sought to reduce state intervention in the economy by promoting privatisation and deregulation of the economy, resuscitated law and development in what Newton calls a "revivalist moment."[20] This second law and development movement) was substantially larger in scale than the first and had significant impacts on development projects and policies around the world.[21] The second law and development movement was strongly grounded in neoliberalism, as perhaps best illustrated by it being dubbed the "Washington Consensus".[22] Neoliberal preferences predominated the funding selection, implementation, and evaluation of development and law reform projects,[23] although some of the most successful development experiences after the Second World War, such as the unprecedented economic development in East Asian countries, exhibited a policy path that was substantially different from this neoliberal stance.[24] Certain East Asian countries, such as South Korea, Taiwan, Singapore, and, more

[15] David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 Yale Law Journal (1972), 1-50, at 6.
[16] Elliot M. Berg, *Law and Development: A Review of the Literature and a Critique of "Scholar in Self-Estrangement"*, 25 American Journal of Comparative Law (1977), 492-530, at 505-506.
[17] David M. Trubek and Marc Galanter, *Scholars in Self- Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, Wisconsin Law Review (1974), 1062-1103, at 1078-1079.
[18] *Ibid.*
[19] Lee (2022), *supra* note 1, at 21. The neoliberal approach is based on neoclassical economics, which emerged in the late nineteenth century and reaffirmed, against Marxism, that the market promotes economic efficiency and fair social distribution. Neoliberalism, which became a dominant political-economic ideology in the 1980s, discouraged positive government intervention in the economy and promoted free market approaches, including privatisation and trade liberalisation.
[20] David M. Trubek and Alvaro Santos, "Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).
[21] *Ibid.*
[22] See Davis and Trebilcock, *supra* note 14 (providing a discussion of the Washington Consensus).
[23] Alvaro Santos, "The World Bank's Uses of the 'Rule of Law' Promise in Economic Development," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).
[24] See Yong-Shik Lee, *Reclaiming Development in the World Trading System* (2d ed., Cambridge: Cambridge University Press, 2016), pp. 14-32, 301-33 (providing an account of the success of East Asian economies and the role of the state).

recently, China, have achieved remarkable economic development within a few decades, and these countries have risen from a state of poverty to that of developed economies by adopting strong state-driven industrial policies and through state involvement in the economy. These lessons were, however, not incorporated into the development projects by international development agencies, such as the World Bank.[25]

The second law and development movement, like the first, failed to bring successful development in most of the developing world.[26] Some of the reforms it spawned even caused serious economic difficulties, as shown by the devastating economic outcome of the market-shock therapy in Russia; the economic emergency experienced by many Latin American countries adopting neoliberal policy prescriptions in the 1980s; and the serious economic recession in Asian countries which resulted from the neoliberal measures imposed by international financial institutions to address their financial crisis in the late 1990s.[27] The problems of this neoliberal law reform movement resembled those associated with the first law and development movement in that both presumed a set of conditions that did not exist on the ground for the operations of both law and markets, such as the erroneous premise that legal order applies, interprets, and changes "universalistic rules,"[28] and the market adjusts itself to maintain optimal efficiency. The law reform projects nonetheless presumed these conditions, based on which the reformers imposed a set of prescriptions on developing countries as they implemented development projects. The outcome was an eventual failure of both movements due to these unrealistic assumptions.

Since the late 1990s, law and development has been undergoing a period of reflection and examining new approaches, referred to as the "third moment,"[29] although it is no simple matter to identify the current "moment" in law and development's evolution. Critical legal studies, postcolonial studies, and the Third World Approaches to International Law (TWAIL) have formed important academic contexts for this reflection.[30] The identification of development "goals" in 2000 (U.N. Millennium Development Goals) and 2015 (Sustainable Development Goals) also formed an international agenda context.[31] The new movement included a mix of different ideas for development policy, such as a new emphasis on market failures and the necessity of compensatory interventions, and the redefinition of "development" as a concept that exceeded merely economic growth to include notions of "human freedom,"[32] as argued by Amartya Sen. In this formulation

[25] World Bank Report, *The East Asian Miracle: Economic Growth and Public Policy: Main Report (English)* (World Bank, 1993).
[26] Trubek and Santos, *supra* note 20, at 6-7.
[27] *Ibid.*, at 7. These failures demonstrated that "markets do not create the conditions for their own success"; See generally Haider A. Khan, *Global Markets and Financial Crises in Asia* (Basingstoke: Palgrave Macmillan, 2004) (providing a further discussion of the Asian financial crisis).
[28] See Trubek and Galanter, *supra* note 17, at 1070-80; See also Katharina Pistor and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development, 1960-1995* (Oxford: Oxford University Press, 1999).
[29] Trubek and Santos, *supra* note 20, at 7-9.
[30] See Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton, NJ: Princeton University Press, 2011) (providing critical reviews of "development" as an international initiative); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011); Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).
[31] See also Harding, *supra* note 9.
[32] Trubek and Santos, *supra* note 20, at 7-8; Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

it seems as if economic development is seen, not so much as the (or even perhaps a) goal, but as an essential means of achieving other development goals. Scholars acknowledged that a new form of development doctrine was emerging, which accepted the use of law not only to create and protect markets but also to curb market excess, incorporate the social,[33] and provide direct relief to the poor.[34] In this new moment, law (or the rule of law) has become a development objective itself, and not just a means to achieve other development objectives, which is how it was perceived in the two preceding movements.[35]

In this moment, we may also discern a greater pluralism in types of actors, transnational relationships, and mode of delivery. Thus, law and development in practice is no longer the monopoly of international financial institutions, or even national governments and development agencies, but is undertaken by a variety of agencies, such as courts, ministries, universities, and bar associations. It also involves division into sub-categories such as "access to justice," "judicial reform," and "customary dispute resolution." There is also a shifting of the balance of power, where projects are initiated by the "donee" governments rather than foreign or international agencies. Accordingly, the best adjective we can nominate to describe this current phase is "pluralistic."

3.2. Limits of Law and Development Scholarship

The law and development movement originated as a movement of scholars, many of whom became leaders yet again in the second movement. Indeed, the most famous scholarly critique of law and development, that of Trubek and Galanter in 1974, was entitled "Scholars in Self-estrangement."[36] American law schools played a prominent part in the dissemination of legal ideas, especially those concerning legal education.

Since the first law and development movement, despite continued scholarly interest in the subject, it has been rare either for law and development practice to reflect or take account of theoretical concerns. It has also been rare for law and development practitioners to share their experiences in terms that could be incorporated into legal theory. This divergence may be due to the fact that, on the one hand, scholarship has tended to cast doubt on law and development process as being capable of producing significant and timely change, while on the other hand, law and development projects have been subjected to tighter controls in terms of requiring the demonstration of the very short-term, cost-benefit success that scholarship claims is unlikely to be achieved.

It is not necessarily the case that this disjunction is destined to continue. On a positive view, there are signs that the discipline is maturing and understanding its own limitations and the modest nature of its achievements.

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[33] Kerry Rittick, *The future of law and development: Second generation reforms and the incorporation of the social*, 26 Michigan International Law Journal (2004), 199-243.
[34] *Ibid.*
[35] David Kennedy, "The 'Rule of Law,' Political Choices, and Development Common Sense," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006), pp. 156-157.
[36] Trubek and Galanter, *supra* note 17.

4. General Theory of Law and Development

Law has provided both a framework and the vocabulary for constructing and debating development policies,[37] but at the same time law and development is underdeveloped as an academic field despite decades of research. As discussed in the introduction and the foregoing section, the lack of a theoretical framework that systematically explains dynamics among law, institutions, and the existing political, social, and economic conditions was a cause of stagnation. To address this problem, the General Theory of Law and Development ("the general theory") has been developed.[38] The general theory is comprised of two parts: the first part of the general theory defines the disciplinary parameters of law and development, while the second part examines the causal relationship between law and development through an analytical device, "the regulatory impact mechanisms (RIMs)." The RIMs set forth mechanisms by which law impacts development, with references to institutional frameworks and socioeconomic conditions.[39] An explanation of a complex general theory in a limited space such as this section inevitably entails a degree of condensed and abstract discourse. Additional references are available to readers who require a fuller description and examples of its applications.[40]

4.1. Parameters of "Law" and "Development"

It is an issue for law and development that the sources and even definitions of "law" may differ according to the jurisdiction. For example, as is well known, rules drawn from binding judicial precedents are referred to as "law" (case law) in common law countries, while such precedents are not formally considered "law" in civil law jurisdictions.[41] Therefore, precedents in civil law jurisdictions may generate "law" in the context of law and development as long as judicial precedents are followed with de facto if not de jure, binding force. If not formally "law," they are often nonetheless highly indicative examples of the application of the law. Similarly, administrative guidance or operating procedures, self-regulatory mechanisms, governance practices, or "soft law" may be relevant in many jurisdictions. Thus, in the context of law and development, law may indeed be much broader than the general conception of law, based on its formal characteristics. The general theory considers *opinio juris* to be an essential element to constitute "law" as opposed to "nonlegal order" in the context of law and development; administrative guidance, for example, in the absence of *opinio juris*, may not be "law" whereas customary law, as introduced below, is.

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[37] *Ibid.* Development policies since the 1990s have been conceived and constructed in the notion of legal rights.

[38] Lee (2022), *supra* note 1, at 38 (It is described as a "general" theory as it sets the general parameters of the discipline by defining the constituent concepts of "law" and "development" and explains the general mechanisms by which law impacts development).

[39] *Ibid.*, at 38. Socioeconomic conditions refer to a range of social, political, economic, and cultural conditions that are essential to the successful operation of law.

[40] Lee (2017, 2022), *supra* note 1. See also T. K. Pooe, *Law and Economic Development in South Africa: An Assessment through the General Theory of Law and Development*, 12 Law and Development Review (2019), 377-401 (for applications of the general theory); Sara Ghebremusse, *Application of Y.S. Lee's General Theory of Law and Development to Botswana*, 12 Law and Development Review (2019), 403-424

[41] See also the chapters by Swaminathan and Ortolani (in this volume) "Common law" refers to the legal system that originated in England based on binding judicial precedents which has been adopted in many of the former British colonies and territories, including the United States, Canada, India, Australia, and New Zealand. "Civil law" is the legal system that originated in Roman law which is now prevalent in Continental Europe, Latin America, and East and Southeast Asia, and is based on formally legislated "codes."

"Law" may also include norms and informal rules other than legislation and case law, referred to as "customary law," or religious norms (such as Sharia). It is recognised that these may have developmental potential at, say, the village level, irrespective of whether they are formally regarded as "law" in the national legal system. It may even be argued that the identification of certain rules or practices as "law" is less important than deciding whether they are useful. [42] A sense of legitimacy in following a rule, shared by a majority of the community, will normally be relevant to its efficacy. Asian experiences, in particular, seem to show that often something other than law, be it social norms or legal culture, may well, seen from a developmental perspective, serve as well as law in the strict sense of the term. Here, comparative law may have much to offer law and development, and vice versa.

"Development" is the other constituent concept of law and development. There is no universally adopted definition of "development," [43] but the term can be defined as "a progressive transformation of the economy and society"[44] or "economic or social progress" in the context of law and development. "Economic progress" (economic development) is more straightforward to identify than "social progress," although there is no single measure capturing all elements of economic development, as relevant economic indicators, such as gross domestic product (GDP), gross national income per capita (GNI per capita), and GINI coefficient (measuring income distribution), can be referenced to gauge economic progress. However, "social progress," which encompasses non-economic values,[45] can raise complex and multifaceted issues with divergent and often irreconcilable views as to their substance, characterisation, and constituent elements. Despite the existence of values and priorities claimed as "universal," such as fundamental human rights of a political and civil nature, the question of social progress is a much broader one that often lacks cross-cultural consensus.[46]

It would, of course, be extremely complex and controversial to develop objective and universal analytical criteria for social development, as it will be difficult to agree on a set of criteria that can satisfy different cultures and ideologies. Most of the controversy centres on the question of what should be identified as social progress. Reflecting on this difficulty, the general theory adopts an approach that identifies social development as what is considered social progress by the majority in a given society. In this approach, one does not presume or attempt to prescribe what *has to be*

[42] The existence of a customary law may be confirmed by a judicial decision. See Amanda Perreau-Saussine and James B. Murphy, *The Nature of Customary Law: Legal, Historical and Philosophical Perspectives* (New York: Cambridge University Press, 2009) (providing further discussion of customary law); See, *e.g.*, Salim Farrar and Ghena Krayem, *Accommodating Muslims under Common Law: A Comparative Analysis* (Abington: Routledge, 2016). Customary law includes religious codes, such as Sharia law (Islamic Law), adopted and enforced by most Muslim-majority countries.
[43] Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 Harvard Human Rights Journal (2004), 137-168, at 148 (citing a comment from a former U.S. representative to the United Nations Human Rights Council Michael Novak, reflecting on this uncertainty in 1981, "The concept of 'development' is itself in need of development…").
[44] Trubek and Galanter, *supra* note 17, at 1062 Trubek and Galanter considered development to mean "progressive social, political, and economic changes in developing countries". The terms used in this definition, "a progressive transformation of […] society" and "social progress," encompass progressive political changes. Thus, the term, "social development," also includes progressive changes of a political nature ("political development"); Lee (2022), *supra* note 1, at 15.
[45] Under this definition, social development of a non-economic nature, such as an improvement in gender equality, as well as economic development without concurrent social progress, would be embraced in the notion of "development."
[46] Lee (2022), *supra* note 1, at 15.

considered "social progress" everywhere. The general theory adopts an approach that is essentially descriptive and analytical rather than normative and prescriptive.[47] Thus, for example, it is generally accepted that increased average longevity of citizens, reduction in the proportion of infant mortalities, and an increase in the number of children in school, or achieving a certain provision of hospitals per one million of population,[48] represent social gains that correspond to development. But other aspects, such as increased democratic accountability or public participation in decision-making, may not carry universal approval, although there is an increasing trend to encourage them.

4.2. Regulatory Impact Mechanisms

We now move to a discussion of regulatory impact mechanisms, which explain the process by which law impacts development. These comprise three analytical elements: "regulatory design," "regulatory compliance", and "quality of implementation," with additional sub-elements under each of these three elements.[49] These are conceptually distinct but are interrelated and influence one another.[50] The first element, "regulatory design", analyses how law is designed to achieve a development objective. Three sub-elements, anticipated policy outcome; organisation of law, legal frameworks and institutions (LFIs); and law's adaptation to socioeconomic conditions; determine regulatory design.[51]

The first sub-element, anticipated policy outcome, refers to the outcome of the policy that a law is anticipated to deliver.[52] For example, a law that mandates government subsidies for the development of particular industries pursues a policy to develop the designated industries and contribute to economic development. To assess the anticipated policy outcome—i.e., whether such law will, in fact, promote industries and contribute to economic development—one needs to employ relevant social sciences, which include, but are not limited to, economics, political science, anthropology, and sociology,[53] although in this case, the most relevant discipline would be economics. The governments of the East Asian countries, such as South Korea, Singapore and Taiwan, have adopted laws that facilitate the development of particular industries[54] and achieved unprecedented economic success, whereas the advocates of neoliberal economic policies tend to discourage active government interventions in the economy.[55]

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[47] William H. J. Hubbard, *Yong-Shik Lee, "Call for a New Analytical Model for Law and Development": A Comment*, 8 *Law and Development Review* (2015), 271-276, at 273-274.
[48] Admittedly not in some highly conservative societies.
[49] Lee (2017), *supra* note 1, at 418.
[50] *Ibid.*
[51] *Ibid.*
[52] *Ibid.*, at 437.
[53] *Ibid.*
[54] For example, South Korea enacted a series of statutes providing direct support for specific industries, including the Act on Temporary Measures for Textile Industrial Facilities 1967; the Acts on Promotion of Mechanical Industries 1967, Shipbuilding Industries 1967, Electronic Industries 1969, Petrochemical Industries 1970, and Steel Industries 1970; the Act on Refining Service of Non-Ferrous Metals 1971; and the Act on the Promotion of the Modernization of Textile Industries 1979. *Ibid.*, at 459.
[55] For a further discussion on this point, see *ibid.*, at 438-41.

The second sub-element, organisation of LFIs, examines the dynamics and interrelations among law, applicable legal frameworks, and relevant institutions.[56] Law does not operate in a vacuum, and its operations are affected by relevant legal frameworks[57] and applicable institutional arrangements. "Institutions," in the context of law and development, refers to organisations, norms, and practices related to the adoption, implementation, and enforcement of the law.[58] Douglas North defined "institutions" more broadly, to mean "the humanly devised constraints that structure political, economic and social interaction" which "consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights).[59] As such, regulatory design is enhanced by positive synergies among the constituent elements of LFIs. For example, a law that aims to protect individual property rights may not be effective without operative legal and institutional frameworks, such as an enforcement mechanism (usually courts) against violations. An incoherent legal framework, under which, for example, the government is legally authorised to expropriate land without a clear public purpose, will create a conflict with and undermine the law that attempts to protect individual property rights.

The third sub-element, adaptation to socioeconomic conditions, examines whether law conforms to relevant social, political, economic, and cultural conditions, and is an obvious field for applying comparative law.[60] For instance, a law that aims to provide the public with broader access to courts of law will have only a limited impact on improving public access to the judiciary if the underlying socioeconomic conditions are incompatible. Such an example would include cases where a majority of the population are unfamiliar with the judicial process for dispute resolution and/ or are more likely to refer their disputes to informal dispute resolution processes, such as community hearings. Thus, adaptation to the prevailing socioeconomic conditions is seen as essential to the successful operation of law, and in this example, it will be necessary, if such a law is to be successful, to mandate extensive public engagement and campaigns to increase public awareness of the judicial option in resolving disputes. Emphasis simply on the legislative process or the rule of law norms will be inadequate by themselves.

In addition to the regulatory design assessed by the anticipated policy outcome, an organisation of LFIs, and the law's adaptation to socioeconomic conditions, the general theory presents two other elements to determine the impact of the law: regulatory compliance and quality of implementation.[61] The second element, regulatory compliance, examines compliance with the law by those who are subject to the application of the law.[62] A law will not be effective without such compliance.[63] Two sub-elements - general regulatory compliance and specific regulatory compliance[64] - determine regulatory compliance. General regulatory compliance examines the overall level of compliance with law in a given jurisdiction.[65] Social and political factors, such as

[56] *Ibid.*, at 441.
[57] *Ibid.*, at 424. Legal frameworks' refers to frameworks in which law is organized, such as regulatory structures and legal systems.
[58] *Ibid.*, at 426.
[59] Douglass C. North, *Institutions*, Journal of Economic Perspectives (1991), 97-112.
[60] See Lee (2022), *supra* note 1, at 38 (for a definition of socioeconomic conditions).
[61] Lee (2022), *supra* note 1, at 418.
[62] *Ibid.*, at 446.
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*

legal culture in society and public confidence in the state implementing law, influence general regulatory compliance.[66] Specific regulatory compliance addresses the strength of compliance with a particular law.[67] General regulatory compliance does not ensure specific regulatory compliance: in a society where general regulatory compliance is strong, a particular law may still have weak compliance when it does not conform to the socioeconomic conditions prevailing on the ground.[68] For example, a law that mandates quarantine of those infected with COVID-19 may not attract strong regulatory compliance where a culture that emphasises individual autonomy and freedom prevails, even if that particular society commands a high level of general regulatory compliance with laws in general.

Quality of implementation is the third and final element under the regulatory impact mechanisms.[69] This element examines the degree to which a state meets the requirements of law and undertakes its mandates to fulfil regulatory objectives.[70] A law that is otherwise well-designed and commanding strong compliance may not be effective if the state fails to properly implement it.[71] A law that attempts to protect individual property rights by establishing a public land registry and mandating land registration would not be successful unless the state implements the law by successfully setting up and operating a working registry with sufficient capacity (e.g., competent personnel, technical resources, adequate budget). State capacity, including its financial, technological, and administrative capabilities, is essential to ensure successful implementation.[72] Implementation also requires a degree of political will, particularly when it poses political challenges due to a conflict of interests or dissimilar preferences among different segments of the population.[73] For example, political will would be necessary to implement a law that requires the removal of customs tariffs on certain imports—the purpose of which is to liberalise international trade—where competing domestic producers object to such implementation for fear of losing their shares in the domestic markets. Thus, these two factors, state capacity and political will, are essential elements that determine the quality of implementation.[74]

The general theory has been circulated and referenced widely, demonstrated by hundreds of citations and over 13,000 downloads from the publishing journal's website and the Social Science Research Network since its publication in 2017.[75] Scholars have published articles adopting the general theory to explain the law's impact on the development process in South Africa, Botswana, and Thailand.[76] Students have adopted the general theory in Ph.D. dissertations and research

[66] *Ibid.*, at 446-48.
[67] *Ibid.*, at 446.
[68] *Ibid.*, at 447.
[69] *Ibid.*, at 450.
[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*, at 451-52.
[73] *Ibid.*, at 454.
[74] See also Yong-Shik Lee, *General Theory of Law and Development: An Overview*, 12 Law and Development Review (2019), 351-375, at 368.
[75] Cornell University Law Library, *General Theory of Law and Development*, available at: <https://scholarship.law.cornell.edu/cilj/vol50/iss3/2/>, accessed January 12 2022; Social Science Research Network, *General Theory of Law and Development*, available at: <https://ssrn.com/abstract=2951317>, accessed January 12, 2022.
[76] Pooe, *supra* note 40; Ghebremusse, *supra* note 40; Prapin Nuchpiam and Dhiyathad Prateeppornnarong, *Addressing Instability in Thailand's Deep South with Law and Development*, 13 Law and Development Review (2020), 499-534.

papers as the analytical framework to explain the impact of law and legal institutions on development. Further utilisation of the general theory will also be useful to enhance the effectiveness of law reform projects.

5. Relationship with Comparative Law

5.1. Comparison of Approaches to Law and Development

Traditional comparative law, which emphasised largely the comparison of rules in what Zweigert and Kötz called "microcomparison,"[77] may well be seen as inimical to the foregoing statement of general theory. Indeed, it was the assumption of the validity of such comparison that, arguably, led to the failure of law and development in its first two iterations.[78] Yet clearly comparative law has moved far beyond such simplistic assumptions. It is recognised that rules that are apparently similar, or seem to occupy a similar place in two or more legal systems, may not be similar in practice, in terms of their purposes and functionality. Yet, like law and development, comparative law has moved on to recognise the simplistic nature of this assumption, and is now engaged as much in the comparison of contexts as it is engaged in the comparison of rules.[79] It also embraces the idea of comparing functions: a function performed by a given rule in one system may be performed by something entirely different in another system. Thus, the regulation of corporations may be affected by company law in the American legal system, but by a system of "administrative guidance" in the Japanese. Whether administrative guidance is equivalent to company law, or is even law at all, is less important than understanding how such guidance works and what can be learned from it in terms of its impact on economic development.[80] So, just as comparative law has evolved to develop a comparative sociology of law, so law and development has become more engaged with the social as an aspect of legal change.

5.2. Use of Comparative Law in Development Process

As was mentioned earlier, one of the standard techniques in law and development – namely legal transplantation – is also one of the major concerns of comparative law.[81] Here, in spite of increased concern for law and development with the social, there appears to be a disconnect between the two disciplines, in the sense that, while some comparative lawyers are in general skeptical about legal transplantation, both as a practical activity and as an understanding of the nature of legal change,[82] law and development continues as though legal transplantation is a perfectly respectable activity (although the general theory predicts that such translation not fitting the local context is likely to fail).

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[77] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3d ed., Oxford: Clarendon Press, Tony Weir trans., 1998), p. 5.
[78] Trubek and Galanter, *supra* note 17.
[79] See, *e.g.*, David Nelken, *Comparing Legal Cultures: An Introduction, in* David Nelken (ed.), *Comparing Legal Cultures* (Aldershot: Dartmouth, 1997).
[80] Tom Ginsburg, *Dismantling the developmental state? Administrative procedure reform in Japan and Korea*, 49 American Journal of Comparative Law (2001), 585-625.
[81] See, *e.g.*, the chapters by Cohn and Caffera *et al.*, *supra* note 2.
[82] Pierre Legrand, *The Impossibility of "Legal Transplants,"* 4 Maastricht Journal of European and Comparative Law (1997), 111-124.

It may well be seen as problematic that law and development practitioners routinely ignore a major finding of comparative lawyers. One comparative legal theorist even argues that legal transplants are logically, not just practically, impossible. We suggest, however, that law and development advocates are not necessarily at fault—although the term "transplantation" is not preferred due to its failure to capture the need for modification to fit the socioeconomic conditions on the ground. The debate in comparative law also appears to ignore the vast amount of legal transplantation that increasingly takes place (often with considerable modifications). It is a stretch of the imagination to consider that all such legal adoptions are unsuccessful and billions of dollars wasted, even if law and development needs to be modest in its claims. The fact is that in spite of the acknowledged need to engage with legal culture, or with "real legal certainty" as it is sometimes called, as opposed to simply "rule of law," legal problems do tend to repeat across jurisdictions, and the solutions available for solving such problems are in general rather few in number. Creativity and originality are certainly desirable, but they cannot be found in every instance. Tried and tested solutions are often to be preferred. And as an observable fact, positive legal change, in spite of examples to the contrary, is often achieved through the adoption of foreign precedent, particularly when they fit the local context. For example, Nigeria's attempt during the COVID-19 pandemic to copy, holus-bolus, Singapore's Infectious Diseases Act was a failure,[83] yet it would be idle to pretend that track-and-trace as a preventive mechanism was incapable of being adopted by very different societies.

We therefore submit that both law and development and comparative law have much to learn from each other in the context of legal transplants. Perhaps the general theory may work as a bridge between these two disciplines.

6. The Path Forward

The concept of "development," defined as a progressive transformation of the economy and society, has been traditionally associated with developing countries.[84] However, the concept of "development" may also be applicable to economic problems in developed countries to the extent that economic and social transformation and the accompanying changes in law are required to address them.

This approach may not be orthodox, but the adverse economic conditions faced by many developed countries today, such as increasing economic disparities, regionally and class or ethnicity-based, and stagnant growth, may justify this extension of the concept. The neoliberal economic shifts, which have taken place in many developed countries since the 1980s, have created, in fact, substantial income gaps among citizens and regions within developed countries.[85] The widening income gaps, as well as cultural and urban-rural divides, have led to unexpected political consequences, such as Britain's referendum result to exit the European Union (E.U.) in 2016 and

[83] Ruth Olorunbi, *Corona Virus: Nigeria's Proposed Covid-19 Law Tears the Country Apart*, The Africa Report, available at: <https://www.theafricareport.com/27969/coronavirus-nigerias-proposed-covid-19-law-tears-the-country-apart/>, accessed May 15, 2020.

[84] See Lee (2022), *supra* note 1, at 12. The dichotomy between developed and developing countries is not always clear, but the former are normally understood as high-income countries with advanced economic, technological, and industrial capacities. For further discussion of this distinction.

[85] See OECD, *Divided We Stand: Why Inequality Keeps Rising* (Paris: OECD Publishing, 2011).

the unanticipated outcome of the U.S. presidential election in the same year.[86] Thus, the concept of "development" may be relevant to address economic and other disparities within developed countries, as demonstrated by significantly large lower-income groups and regions marked by relative economic backwardness. Reflecting this concern, the central and regional governments in developed countries have established offices to foster economic development.[87]

Additionally, the contemporary economies of "developed" countries exhibit structural issues that are not cyclical in nature, such as persistently low economic growth accompanied by significant unemployment.[88] These structural economic problems and the institutional incapacity to deal with these issues resemble the chronic problems of the developing world[89] that necessitate a new approach, such as the legal and institutional approaches (i.e., the law and development approach) that are used to deal with economic problems and facilitate economic development in developing countries.[90] An article that was published in 2019, "Law and Economic Development in the United States: Toward a New Paradigm," and a series of other articles published in the 2021 Law and Development Review Special Issue examine the applicability of law and development in the context of developed countries.[91]

The applicability of the law and development approach in developed countries will substantially expand the scope of law and development and its utility beyond addressing development issues in developing countries.[92] However, in expanding the law and development approach to developed countries, a question arises as to whether the promoted approach would be consistent with the political and legal traditions of developed countries. In the United States, for example, where laissez-faire economics has in general prevailed, the federal government traditionally has not engaged with local economic issues, except those caused by natural catastrophes and other types of emergencies,[93] as state and local governments are expected to handle regional economic

[86] John Harris, *If You Have Got Money, You Vote In . . . If You Haven't, You Vote Out*, The Guardian, available at: <https://www.theguardian.com/politics/commentisfree/2016/jun/24/divided-britain-brexit-money-class-inequality-westminster>, accessed June 24, 2016; Trip Gabriel, *How Erie Went Red: The Economy Sank, and Trump Rose*, The New York Times, available at: <www.nytimes.com/2016/11/13/us/politics/pennsylvania-trump-votes.html>, accessed December 11, 2021.

[87] Examples include the Economic Development Administration (EDA) established under the United States Department of Commerce, the Georgia Department of Economic Development in the State of Georgia, USA, and the Office of Economic Development in the City of New Orleans.

[88] Lee, *supra* note 1, at 17.

[89] Mohamed A. El-Erian, *Why Advanced Economies Need to Learn from Developing Nations*, Bloomberg View, available at: <https://www.bloomberg.com/view/articles/2016-07-11/why-advanced-economies-need-to-learn-from-developing-nations >, accessed July 11, 2016; See also Ran Hirschl, *City, State: Constitutionalism and the Megacity* (Oxford: Oxford University Press, 2021), ch. 3.

[90] *Ibid.*

[91] Yong-Shik Lee, *Law and Economic Development in the United States: Toward a New Paradigm*, 68 Catholic University Law Review (2019), 229-290; See also Yong-Shik Lee and Hans-Bernd Schäfer (eds.), 14 Law and Development Review, no. 2 (2021, Special Issue: Law and Development in High-Income Countries), available at: <www.degruyter.com/journal/key/ldr/14/2/html>, accessed December 11, 2021.

[92] Lee (2022), *supra* note 1, at 18.

[93] United States Department of State, *Hurricane Katrina: What Government Is Doing*, <https://2009-2017.state.gov/documents/organization/150082.pdf>, accessed December 11, 2021. The U.S. federal government, for instance, supported $110.6 billion in aid for relief, recovery, and rebuilding efforts in the Gulf Coast of Louisiana following Hurricane Katrina. Ben Winck, The $5 Trillion in Pandemic-era Stimulus Is More Than Triple Great Recession-era Aid — and Suggests a Permanent Shift in the Way Congress Spends, Business Insider, available at: <https://www.businessinsider.com/stimulus-package-pandemic-surpass-great-recession-fiscal-plans-recovery-2021-

issues.[94] The approach has created a problem because state and local governments often lack resources to support economic development efforts, including implementing development-facilitating laws that provide incentives for investment and employment generation.[95] Also, segments of the population that ideologically advocate "small government" may not support the idea of the government taking up an active role in economic development by spending public resources. Thus, the proposed expansion will also have to address the question of the appropriate role of the state in the economy.[96] This question is, of course, no different when asked in relation to developing countries, although the need for economic development would be more pressing in these countries.

It is to be hoped that the articulation of development goals carrying broad support internationally will be seen by 2030, the target year for the SDGs, as having concentrated the minds of all on essential tasks such as the abolition of extreme poverty and the achievement of high levels of public health and low levels of corruption.

It seems unavoidable to regard law as front and centre to these ambitions, quite apart from arguments designed to show that legal development is itself desirable, irrespective of its developmental impacts. In preceding along these lines, comparative law, we submit, can and should make law and development more aware of the relationship between law and society, more aware of possible, functional solutions beyond those envisaged by legal formalism, and more modest about the achievements of, and inherent possibilities within, legal change.

7. Conclusion

This paper has sought to explain to the comparative lawyer the field known as law and development. It has sought to examine the relationships between the two disciplines. It has also sought to expound a general theory of law and development that can be used as a bridge between the two disciplines. In doing this, we draw attention to the practical importance of law and development, and to the rapidly developing nature of development itself. By discovering new

3>, accessed December 11, 2021. The U.S. government also expects to spend US$ 5 trillion in economic relief packages for COVID-19. Peter Harkness, *Detroit and New Orleans Have More in Common Than Most Think*, Governing, available at: <https://www.governing.com/archive/gov-detroit-new-orleans-resilience.html>, accessed December 11, 2021. A relatively modest amount, US$ 350 million of federal aid, was allocated toward relief for the bankrupt city of Detroit in the wake of its financial crisis.

[94] This is generally the case except for small-scale support for "economically distressed areas" provided by the EDA under the authority of the Public Works and Economic Development Act of 1965 (PWEDA), as amended, 42 USC § 3161 *et seq.* In Fiscal Year 2018, the EDA supported 692 development projects for a total grant of US$ 381 million, averaging around $550,000 per project. Economic Development Administration, *2018 Annual Report* (2019), available at: <www.eda.gov/files/annual-reports/fy2018/EDA-FY2018-Annual-Report-full.pdf>, accessed December 11, 2021.

[95] See Lucy Dadayan and Donald J. Boyd, *By the Numbers: 2016: Another Lackluster Year for State Tax Revenue*, Rockefeller Institute of Government, available at: <http://rockinst.org/wp-content/uploads/2018/02/2017-05-08-By-numbers-brief-no9-1.pdf>, accessed December 11, 2021. Local and regional governments may provide incentives in the form of tax reduction or exemptions, but the finances of many regional and local governments may not be strong enough to afford meaningful tax relief and other concessions in lieu of direct subsidy payments.

[96] See Joseph Stiglitz, *Globalization and the Economic Role of the State in the New Millennium*, 12 Industrial and Corporate Change (2003), 3-26; George J. Stigler and Paul A. Samuelson, *A Dialogue on the Proper Role of the State*, University of Chicago Graduate School of Business Selected Papers, no. 7 (1963); Peter J. Boettke and Peter T. Leeson, *The Economic Role of the State* (Aldershot: Edward Elgar, 2015).

modes and vectors of legal development, we submit law and development can engage even more with comparative law experience and technique than it has done in the past.

References

Berg, Elliot M., *Law and Development: A Review of the Literature and a Critique of "Scholar in Self-Estrangement"*, 25 American Journal of Comparative Law (1977).

Boettke, Peter J. and Peter T. Leeson, *The Economic Role of the State* (Aldershot: Edward Elgar, 2015).

Cornell University Law Library, *General Theory of Law and Development*, available at: <https://scholarship.law.cornell.edu/cilj/vol50/iss3/2/>, accessed January 12, 2022.

Dadayan, Lucy and Donald J. Boyd, *By the Numbers: 2016: Another Lackluster Year for State Tax Revenue*, Rockefeller Institute of Government, available at: <http://rockinst.org/wp-content/uploads/2018/02/2017-05-08-By-numbers-brief-no9-1.pdf>, accessed December 11, 2021.

Davis, Kevin and Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 American Journal of Comparative Law (2008).

Economic Development Administration, *2018 Annual Report* (2019), available at: <www.eda.gov/files/annual-reports/fy2018/EDA-FY2018-Annual-Report-full.pdf>, accessed December 11, 2021.

El-Erian, Mohamed A., *Why Advanced Economies Need to Learn from Developing Nations*, Bloomberg View, available at: <https://www.bloomberg.com/view/articles/2016-07-11/why-advanced-economies-need-to-learn-from-developing-nations >, accessed July 11, 2016.

Escobar, Arturo, *Encountering Development: The Making and Unmaking of the Third World* (Princeton, NJ: Princeton University Press, 2011).

Farrar, Salim and Ghena Krayem, *Accommodating Muslims under Common Law: A Comparative Analysis* (Abington: Routledge, 2016).

Gabriel, Trip, *How Erie Went Red: The Economy Sank, and Trump Rose*, The New York Times, available at: <www.nytimes.com/2016/11/13/us/politics/pennsylvania-trump-votes.html>, accessed December 11, 2021.

Ghebremusse, Sara, *Application of Y.S. Lee's General Theory of Law and Development to Botswana*, 12 Law and Development Review (2019).

Ginsburg, Tom, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 Law and Society Review (2000).

Ginsburg, Tom, *Dismantling the developmental state? Administrative procedure reform in Japan and Korea*, 49 American Journal of Comparative Law (2001).

Harding, Andrew, *Constitutionalism and Development: A Mismatch or a Dream Team?*, 12 Law and Development Review (2019).

Harkness, Peter, *Detroit and New Orleans Have More in Common Than Most Think*, Governing, available at: <https://www.governing.com/archive/gov-detroit-new-orleans-resilience.html>, accessed December 11, 2021.

Harris, John, *If You Have Got Money, You Vote In . . . If You Haven't, You Vote Out*, The Guardian, available at: <https://www.theguardian.com/politics/commentisfree/2016/jun/24/divided-britain-brexit-money-class-inequality-westminster>, accessed June 24, 2016.

Hirschl, Ran, *City, State: Constitutionalism and the Megacity* (Oxford: Oxford University Press, 2021).

Hubbard, William H. J., *Yong-Shik Lee, "Call for a New Analytical Model for Law and Development": A Comment*, 8 *Law and Development Review* (2015).

Kennedy, David, "The 'Rule of Law,' Political Choices, and Development Common Sense," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).

Khan, Haider A., *Global Markets and Financial Crises in Asia* (Basingstoke: Palgrave Macmillan, 2004).

Lee, Yong-Shik, *Reclaiming Development in the World Trading System* (2d ed., Cambridge: Cambridge University Press, 2016).

Lee, Yong-Shik, *General Theory of Law and Development*, 50 Cornell International Law Journal (2017).

Lee, Yong-Shik, *General Theory of Law and Development: An Overview*, 12 Law and Development Review (2019).

Lee, Yong-Shik, *Law and Economic Development in the United States: Toward a New Paradigm*, 68 Catholic University Law Review (2019).

Lee, Yong-Shik, *Law and Development: Theory and Practice* (2d ed., Abingdon: Routledge, 2022).

Legrand, Pierre, *The Impossibility of "Legal Transplants,"* 4 Maastricht Journal of European and Comparative Law (1997).

Marks, Stephen, *The Human Right to Development: Between Rhetoric and Reality*, 17 Harvard Human Rights Journal (2004).

Nelken, David, *Comparing Legal Cultures: An Introduction*, *in* David Nelken (ed.), *Comparing Legal Cultures* (Aldershot: Dartmouth, 1997).

North, Douglass C., *Institutions*, Journal of Economic Perspectives (1991).

Nuchpiam, Prapin and Dhiyathad Prateeppornnarong, *Addressing Instability in Thailand's Deep South with Law and Development*, 13 Law and Development Review (2020).

OECD, *Divided We Stand: Why Inequality Keeps Rising* (Paris: OECD Publishing, 2011).

Olorunbi, Ruth, *Corona Virus: Nigeria's Proposed Covid-19 Law Tears the Country Apart*, The Africa Report, available at: <https://www.theafricareport.com/27969/coronavirus-nigerias-proposed-covid-19-law-tears-the-country-apart/>, accessed May 15, 2020.

Otto, Jan Michiel *et al.* (eds.), *Lawmaking for Development: Explorations into the Theory and Practice of International Legislative Projects* (Leiden: Leiden University Press, 2008).

Otto, Jan Michiel *et al.* (eds.), *Real Legal Certainty and its Relevance: Essays in Honour of Jan-Michiel Otto* (Leiden: Leiden University Press, 2018).

Pahuja, Sundhya, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011).

Perreau-Saussine, Amanda and James B. Murphy, *The Nature of Customary Law: Legal, Historical and Philosophical Perspectives* (New York: Cambridge University Press, 2009).

Rittick, Kerry, *The future of law and development: Second generation reforms and the incorporation of the social*, 26 Michigan International Law Journal (2004).

Pistor, Katharina and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development, 1960-1995* (Oxford: Oxford University Press, 1999).

Pooe, T. K., *Law and Economic Development in South Africa: An Assessment through the General Theory of Law and Development*, 12 Law and Development Review (2019).

Posner, Richard, *Economic Analysis of Law* (7th ed., Austin, TX: Aspen Publishers, 2007).

Public Works and Economic Development Act of 1965 (PWEDA).

Rajagopal, Balakrishnan, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003).

Reekie, Surutchada and Narun Popattanachai, "Thai Trust Law: A Legal Import Rooted in Pragmatism," in Andrew Harding and Munin Pongsapan (eds.), *Thai Legal History: From Traditional to Modern Law* (Cambridge: Cambridge University Press, 2021).

Santos, Alvaro, "The World Bank's Uses of the 'Rule of Law' Promise in Economic Development," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).

Sen, Amartya, *Development as Freedom* (Oxford: Oxford University Press, 1999).

Social Science Research Network, *General Theory of Law and Development*, available at: <https://ssrn.com/abstract=2951317>, accessed January 12, 2022.

Stigler, George J. and Paul A. Samuelson, *A Dialogue on the Proper Role of the State*, University of Chicago Graduate School of Business Selected Papers, no. 7 (1963).

Stiglitz, Joseph, *Globalization and the Economic Role of the State in the New Millennium*, 12 Industrial and Corporate Change (2003).

Trubek, David M., *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 Yale Law Journal (1972).

Trubek, David M., "The 'Rule of Law' in Development Assistance: Past, Present, and Future," in David Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).

Trubek, David M. and Alvaro Santos, "Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice," in David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).

Trubek, David M. and Marc Galanter, *Scholars in Self- Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, Wisconsin Law Review (1974).

United Nations, *Sustainable Development Goals*,
available at: <www.un.org/sustainabledevelopment/sustainable-development-goals/>, accessed December 1, 2021 (providing a further discussion of SDGs).

United States Department of State, *Hurricane Katrina: What Government Is Doing*, <https://2009-2017.state.gov/documents/organization/150082.pdf>, accessed December 11, 2021.

World Bank Report, *The East Asian Miracle: Economic Growth and Public Policy: Main Report (English)* (World Bank, 1993).

Zweigert, Konrad and Hein Kötz, *An Introduction to Comparative Law* (3d ed., Oxford: Clarendon Press, Tony Weir trans., 1998).