Introductory Essay: New Research on the Rule of Law[1]

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I. Overview of Scholars Program for World Justice Project

The World Justice Project, with support from the American Bar Foundation, the Ford Foundation, and the Hewlett Foundation, sought to generate new scholarship on the rule of law that would 1) advance the understanding of the processes that lead to and impede the development of the rule of law in different national contexts, and 2) advance the understanding of the contributions that the rule of law can make to reducing poverty, violence, and corruption, and increasing education and health. Given the complexity of these issues, the Project quickly settled on a strategy of organizing groups of scholars to examine aspects of the problem, rather than attempt a single research statement. Indeed, part of the

Project's effort has been to stimulate and encourage the next generation of empirical scholarship in this area.

The two volumes of conference papers prepared for the World Justice Forum are key elements of this scholarly effort. The first volume contains the work of scholars led by James Heckman, Nobel Laureate economist from the American Bar Foundation, the University of Chicago, and University College Dublin. The first volume emphasizes the relationship between the rule of law and economic and political development. The second volume contains the work of scholars led by Yash Ghai, Emeritus Professor of Hong Kong University and Special United Nations Representative in Nepal. The second volume emphasizes access to justice and the particular challenges that traditionally marginalized social groups face in attempting to achieve justice through formal and informal justice systems.

In addition to these efforts, which were aided by preliminary meetings in November 2007 and March 2008, several other groups of scholars have come together to provide advice to the World Justice Project and to map related lines of inquiry. These include a group of scholars organized by Margaret Levi who met at the Center for Advanced Study in the Behavioral Sciences in July 2007, a conference held in March 2008 at the American Bar Foundation organized by Bryant Garth and Yves Dezalay on "Lawyers and the Construction of the Rule of Law," and a Workshop on the Rule of Law organized by Margaret Levi, Frances Rosenbluth, and Ian Shapiro held in March 2008 at the MacMillan Center of Yale University. The programs for these latter two meetings may be found in Appendix A to this document. The several international and domestic multidisciplinary meetings organized by the World Justice Project over the course of 2007 and 2008 also provided meaningful input from several notable scholars.

In this introduction we primarily summarize the work of the Scholars Group on the Rule of Law and Economic and Political Development, although we also refer to some of the research done by Scholars Group on the Rule of Law and Access to Justice. Professor Ghai will provide an introductory essay for the Access to Justice Group. We also make brief reference to the Rule of Law Index developed by the Project, but the Index is comprehensively presented and discussed in other materials prepared for the Forum.

II. Defining the Rule of Law

From the outset it is important to recognize that the rule of law can be defined in many different ways for different purposes. Judith Sklar, the noted jurisprudential scholar, has observed that the term has been used by everyone from social democrats to conservatives to authoritarian rulers, and therefore is in danger of becoming meaningless (1987). Despite this problem, the use of the term is unavoidable in policy and scholarly circles. Indeed the various ways in which the rule of law is defined has been the subject of ongoing discussions amongst our scholars.

Thomas Carothers has noted that there are at least two concepts of the rule of law circulating: one that emphasizes the procedural aspects of a rule of law system (such as independent courts), and one that insists that the rule of law provide elements of substantive justice. History contains many examples of legal systems that offered procedural elements of the rule of law but denied substantive justice: the slave era in the United States, apartheid in

South Africa, to name but two. If the rule of law must guarantee substantive justice, how far should that principle go? Does it mandate more than equality of opportunity?

The divergence between these two versions of the rule of law is sometimes referred to as "thin" versus "thick" rule of law. Tamanaha suggests that this simple dichotomy is not quite so clear and can better be understood as a progression along which both formal and substantive aspects of the rule of law can be "thinner" or "thicker" (2004, 91). Beginning at the "thinner" end, formal law may take the shape of "Rule-by-Law," wherein law articulates state power. Then, moving on, formal law may progress to "formal legality" and, eventually, to the "thicker" end of the spectrum by constituting "democracy and legality" (2004, 91). Similarly, substantive justice may provide a thin version of "individual rights" in property, contract, and so forth, then develop into an intermediate form of "rights to human dignity," and finally progress to the thick version of "social welfare rights," which would entail substantive equality, preservation of community, and so on.

A related concern is whether the terminology of the rule of law contains an effort to impose a western or perhaps even a United States perspective on law on the rest of the world. Obviously, different cultures and different legal traditions define law differently. It would be wrongheaded to equate the rule of law with a particular legal tradition's prescriptions for the character of legal institutions. Nonetheless, it may be possible to build a definition of the rule of law around a central tenet of western and non-western traditions, namely that law imposes limits on the exercise of power by government and private interests (Tamanaha 2004, 137 et seq.). Moreover, as one reads the papers in both sets of conference papers, one finds marginalized groups in many non-western contexts invoking the rule of law. For these groups, law is seen as a mechanism for delivering justice within their local situation. At a pragmatic level then, despite a lack of consensus on all the components of the rule of law, there is some set of core principles in the concept that is not solely a western creation.

As will be evident, this collection of papers does not attempt a single definition of the rule of law. Rather, different authors define their own terms in ways that make sense for their own research projects.

The Rule of Law Index created by the World Justice Project provides an elaborate definition of the main components of the rule of law and related subfactors. The Index tends toward the "thick" end of the continuum of definitions. The Index was not created for research purposes, although it is being measured through social science techniques. In the language of social science, the Index contains both independent and dependent variables. Thus social scientists will need to exercise care in using the Index in future research on the determinants and impact of the rule of law.

III. Assessing Current Policy Discussions of the Rule of Law

In his contribution to this collection, Thomas Carothers provides a provocative analysis of the trends in rule-of-law development. He begins by acknowledging that the past decade has realized sustained growth in rule-of-law development projects due in part to a very real connection between the rule of law and economic and political development, as well as the steady advance of globalization. The increasing attention to rule-of-law development by many western policymakers and aid practitioners, however, has not been accompanied by a very critical or analytical stance, frequently leading to what Carothers has identified as

"temptations to believe certain things about the rule of law and its place on the international stage that are misleading and possibly unhelpful" (2). (For papers contained in this collection, we simply include the page number in parentheses. Due to reformatting prior to printing, some page numbers may have changed.) It is to these temptations, four in particular, that Carothers devotes his paper.

The extraordinary amount of consensus within the international community in support of the rule of law, Carothers first warns, may be misleading. Declarations of commitment to the advancement of rule of law by powerholders do not necessarily translate into true changes within their society. Moreover, it is difficult to even comprehend what such a declaration might mean, as the concept of "rule of law" is itself left open to numerous interpretations. The broad consensus in rule of law may also be misleading in that a belief in the rule of law does not necessarily entail a shared faith in democratic political values, as it did in the 1980s and 1990s. Instead, rule of law has also found popularity in authoritarian and semi-authoritarian regimes. A recent tendency toward reductionism in rule-of-law development, which Carothers identifies as the second temptation, may also feed into the programs of authoritarian and semi-authoritarian governments by providing them an opportunity to practice cafeteria-style rule of law – picking and choosing only those elements of the rule of law that are particularly palatable to them. This becomes problematic when western aid workers applaud these steps, rather then critically examining "the larger damage that such reductionism may cause to the health of the broader rule-of-law agenda" (4).

A third temptation is the recent move to sequencing – the idea that transitional countries must build the rule of law before taking any steps toward democratization. The proposition is flawed in several respects. Primarily, the assumption that authoritarian regimes will somehow be persuaded by the international community to pursue rule of law has simply not borne out in reality. Experience has also shown that democratization does not always wait until the development of the rule of law. Instead, citizens may demand democratic measures, such as free elections, before there is any semblance of rule of law.

The fourth and final temptation that Carothers addresses is the idea that the development of rule of law is somehow an easy, tidy project. Nothing could be further from the truth. In light of this temptation and the others, Carothers cautions those who are rightfully eager and optimistic about the rule of law to maintain "a healthy dose of analytic as well as practical restraint" as rule-of-law development moves forward (7).

IV. Global Justice and Human Capability: Amartya Sen's Contributions to Theories of Global Justice

We have been fortunate to have Nobel Laureate economist and recognized authority on development and social justice, Amartya Sen, participate in our scholarly meetings. Professor Sen is preparing a paper that will be added to this collection prior to the time of the Forum. Here we briefly summarize two of Sen's contributions to this field: first, his human capability perspective on justice, and second, his conception of "plural affiliation" as it relates to global justice.

IV. 1. Sen on Human Capability

In a lecture delivered at Stanford University in 1979, Sen introduced the capability approach (Sen 1980). In the decades that followed, this approach has since developed into a major theory used to analyze issues of human development, human rights, equality, justice, and other social and economic concerns. The novelty and the strength of the capability approach is the shift of attention onto "'basic capabilities': a person being able to do certain things" (Sen 1980, 218). Indeed, capability theory is primarily and ultimately concerned with the *actual* freedom that a person can exercise in choosing between different ways of living valued by that particular individual (Sen 1990b, 114). The focus is not on the specific bundle of life functionings, with "functionings" defined as "parts of the state of a person—in particular the various things that he or she manages to do or be in leading a life" (Sen 1993, 31), that a person ultimately achieves, but on the freedom that that individual had to choose this assemblage of functionings (Sen 1990b, 116; Sen 2004b, 334-35; Sen 1993, 38-39). In other words, it is not the achievement of a certain life, but the freedom to choose a life composed of personally valuable functionings. "It is this actual freedom that is represented by the person's 'capability' to achieve various alternative combinations of functionings, or doings and beings" (Sen 1990b, 114).

By focusing on the actual freedoms enjoyed by a person, capability theory is distinct from John Rawls's Difference Principle and welfarist approaches. Sen believes that Rawls's Difference Principle, in which advantage is judged on the basis of holdings of means (such as income and primary goods) succumbs to an "overconcentration" on means (Sen 2004b, 332; Sen 1980, 214, 218). Inherently problematic to Rawls's focus on "primary goods" is the fact that "there is evidence that the conversion of goods to capabilities varies from person to person substantially, and the equality of the former may still be far from the equality of the latter" (Sen 1980, 219). Thus, a Rawlsian approach to equality or justice may lead to unequal or unfair ends (Sen 1990b, 112).

Sen argues that welfarist approaches, including utilitarian theory, are also deeply flawed. Unlike Rawls's Difference Principle, welfarist conceptions consider to some extent the effect that primary goods have on human beings, but, Sen insists, the focus is still misplaced. Sen's primary concern with welfarism seems to be the extremely narrow position taken by the welfarist approach. As explained by Sen, welfarism determines the "goodness of a state of affairs" based solely on the "goodness of the utilities in that state" (Sen 1980, 205). To the extent that non-utility factors are considered in assessing the state of affairs, they are considered only in their relation to determining utility or as a surrogate for utility information (Sen 1980, 210). What is missing here is any recognition of the relevancy of non-utility information in determining a person's well-being (Sen 1980, 212). This "extremist" focus on utility, like Rawls's focus on primary goods, can lead to morally unsettling results (Sen 1980, 212). Capability theory, therefore, directs the focus onto "a *magnitude* different from utility . . .," one that seeks to increase a person's basic capabilities (Sen 1980, 220).

Appreciating the capability perspective as an evaluative exercise also indicates its usefulness. In capability theory, the objects of evaluation, or what may be called its evaluative space, are much broader than those included in Rawls's Difference Principle or utilitarian analysis. The evaluative space of capability theory includes human acts and states (i.e. functionings), as well as freedoms (i.e. capabilities) (Sen 1993, 33). The wider scope of value-objects in capability theory does complicate the evaluative process, however. What arises, Sen explains, are four general "concepts of [human] advantage" related to a single

individual, each involving a different evaluative exercise (Sen 1993, 35). These four concepts are: "(1) well-being achievement, (2) agency achievement, (3) well-being freedom, and (4) agency freedom" (Sen 1993, 35). The difference between achievement and freedom has been discussed above. The difference between well-being and agency accounts for the fact that the goals a person may have may include goals that do not advance his or her own well-being (Sen 1993, 35). To illustrate, a person's achieved state of well-being (whether they are well-nourished) is probably more important than that person's agency achievement (whether they are able to build a monument to their hero) when considering whether or not that person requires assistance from others or from the state (Sen 1993, 36). On the other hand, a person's well-being freedom (whether she can be well-nourished if she wants to) might be more important than his or her well-being achievement (whether she has, in fact, chosen to be well-nourished) from a public policy perspective (Sen 1993, 36). Thus, the capabilities and the functionings that constitute the value-objects, as well as the basis for evaluation will obviously be affected by the particular analytical question at hand.

Notably, Sen has steadfastly resisted creating a fixed list of capabilities. Sen explained in 1979 and has maintained throughout, that the application of capability theory "must be rather culture-dependent" (Sen 1980, 219). Additionally, the capabilities under evaluation necessarily differ depending on the issue at hand (Sen 1993, 48-49; see also Sen 1980, 219). Through his work, Sen has discussed various capabilities that "would seem to demand attention in any theory of social justice and more generally in social assessment," (Sen 2004a, 78), such as "the freedom to be well nourished, to live disease free lives, to be able to move around, to be educated, to participate in public life . . ." (Sen 2004a, 77). He insists, however, that it would not be possible to create "one predetermined canonical list . . . chosen by theorists without any general social discussion or public reasoning" (Sen 2004a, 77).

Perhaps because of or perhaps in spite of Sen's refusal to create a fixed list of capabilities, the capability approach has had wide-reaching influence in the economic, development, justice, and rights communities. Sen, of course, argues that it is the very flexibility of the capability approach that at once prevents him from creating a fixed list of capabilities and permits him and others to use the capability theory to analyze a great number of social issues (Sen 1993, 49-50). In his own writings, Sen has suggested the possibility of applying the capability approach to the evaluation of equality, "well-being and poverty, liberty and freedom, living standards and development, gender bias and sexual divisions, and justice and social ethics" (Sen 1993, 30, internal citations omitted). In part, it is this tremendous range and flexibility, in addition to the consistency, clarity, and, well, capability to get at the heart of social concerns that make Sen's capability theory so alluring and enduring.

IV. 1.1 Sen on Global Justice and Plural Affiliation

Sen's discussion of global justice finds its footing in John Rawls's conception of "justice as fairness." As Sen explains, "[i]n the Rawlsian framework, fairness for a group of people involves arriving at rules and guiding principles of social organization that pay similar attention to everyone's interests, concerns, and liberties" (Sen 1990a, 117). The working out of these rules and principles takes place through an exercise in fairness in what Rawls has described as the "original position." In Sen's words, the "original position" is "a hypothetical state of primordial equality in which the persons involved do not yet know who they are

going to be" and are not, therefore, guided by any preexisting vested interests (Sen 2002, 37). The process, thus, is imagined as fair and, consequently, just. It is the Rawlsian device of the "original position" that particularly interests Sen. Specifically, Sen asks, who were the individuals that were hypothetically gathered together in the original position? If they are all the people in the world, then we are discussing "grand universalism" where the established rules and principles apply regardless of nationality or other features or classifications (Sen 1990a, 118; Sen 2002, 38-39). On the other hand, if the people gathered in the original position are citizens of a particular nation, with each nation convening its own original position, then we have "national particularism" where justice is a national affair (Sen 1990a, 118; Sen 2002, 38-39). In the case of "national particularism," which is what Rawls seems to envision, Rawls suggests that the nations must then convene another original position to decide upon a separate scheme of norms that would govern the nations themselves (Sen 1990a, 119; Sen 2002, 38-39).

Sen finds both scenarios problematic to a conception of global justice. The fatal flaw of grand universalism is that it requires a global institutional base for implementation of the norms created in the original position (Sen 1990a, 119). Regrettably, Sen states, no such institution exists (Sen 1990a, 119; Sen 2002, 40). National particularism also fails to provide an adequate understanding of global justice because it fails to account for cross-border interactions between people (Sen 1990a, 119-20; Sen 2002, 41). As noted above, Rawls's theory suggests that a second original position between nations would create rules and principles (i.e. international justice) to govern international relations. National particularism, therefore, takes no account of the very real interactions between people who share commonalities and identities, such as gender or occupation, which are *not* based on nationality (Sen 1990a, 120; Sen 2002, 41). For these reasons, Sen argues that a different conception of global justice is necessary.

As an alternative, Sen offers a concept he calls "plural affiliation," an approach that can recognize "the fact that we all have multiple identities, and that each of these identities can yield concerns and demands that can significantly supplement, or seriously compete with, other concerns and demands arising from other identities" (Sen 1990a, 120; Sen 2002, 42). The exercise of fairness can then be applied to each of the groups to which an individual may belong. Indeed, the device of the original position retains its influence in the plural affiliation conception of global justice (Sen 1990a, 120; Sen 2002, 43). Sen uses the example of an original position composed of physicians – together the physicians could decide on the types of commitments they may have, regardless of national boundaries (Sen 1990a, 121; Sen 2002, 43). Of course, multiple original positions will result in multiple sets of norms, some of which will lead to competing concerns amongst the various groups. However, Sen submits that such a scenario is far better than the alternative "of subjugating all affiliations to one overarching identity—that of membership in a national polity" (Sen 1990a, 121; Sen 2002, 43).

Since introducing the plural affiliations approach in 1990, Sen has slightly altered his view on the wholesale adoption of the original position. By 2002, Sen acknowledges limitations to the Rawlsian contractarian approach to hypothetical negotiations that take place in the original position (Sen 2002, 45-46). For example, the question of the ethics of population policy presents an interesting problem. The contractarian approach would result in an "incoherence of trying to include in the original position all the affected parties where some people would be present in one society if one decision were taken about population, who would never exist if a different decision were to be taken" (Sen 2002, 45). Clearly, these "non-beings" – those who would never be born – cannot be said to have assessed the fairness of a decision (Sen 2002, 45). To address such a limitation, Sen suggests a slight alteration to

Rawls's original position. Drawing from Adam Smith, Sen argues that an "impartial spectator," acting much like an arbitrator, would alleviate the problems raised under the contractarian approach (Sen 2002, 44-46). Necessary to fairness and justness, the impartial spectator represents both "impersonality and decisions based on suppressing the diverting influence of vested interests" (Sen 2002, 44-45).

Sen has also offered potential applications of the plural affiliations approach. He specifically envisions the plural affiliations approach to global justice as instrumental to transnational agencies and organizations. Currently, nothing exists to assist or guide these transnational conglomerates when facing issues of "purpose, relevance and propriety" or when seeking answers to questions like how to "treat the local labour force" (Sen 1990a, 122). National laws do little good in navigating the transnational relationships forged through these types of organizations, and international relations do not really address their transnational missions that exist independent of national identity. Sen argues that the plural affiliations approach can help fill this void by creating global norms of justice and fairness that can be used to guide and evaluate transnational organizations (Sen 1990a, 123).

Sen's contributions go to the heart of an effort to advance global justice through an international effort to strengthen the rule of law. The capability perspective calls for attention to the impact that law and other systems of justice can have on the actual situation of different groups in society. The concept of plural affiliation supports the idea of a multi-disciplinary effort to advance the rule of law, an effort that cannot rely simply on lawyers or the legal status of citizens, but which recognizes the importance of involving other professions and group leaders in the support of social justice.

IV. 2. Ghai on Human Rights in a State of Poverty

We can see the influence of Sen's theory in the work of another member of our scholars group, Yash Ghai, who currently is the United Nations representative for constitutional reform in Nepal, and who has been deeply involved in constitution writing in Africa and Asia. Addressing the topic of poverty in his inaugural lecture for the Kenyan Human Rights Commission's National Human Rights Lecture Series, Ghai acknowledges Amartya Sen's capability theory as the best framework in which to understand the roots of poverty and to formulate an approach to the end of poverty. Ghai argues that it is simply not accurate to view poverty as a mere lack of financial resources and to place the blame on the poor for having failed to access education, health services, food, jobs, etc. In his view, this unsatisfactory explanation for poverty has regularly led to policies and programs that can make no real improvement. Rather, adopting Sen's approach, Ghai urges an understanding of poverty that considers "the lack of qualities that facilitate a good life, defined in terms of access to the conditions that support a reasonable physical existence and enable individuals and communities to realize their spiritual and cultural potential . . ." (Ghai 2006, 2). Poverty is about a lack of opportunities resulting in political exclusion, social exclusion, and physical deprivation and "is created by societies and governments, the result of policies that deny people opportunities . . ." (Ghai 2006, 4). It is here, Ghai argues, that human rights must be considered. "Poverty is a mockery of the concept of the 'autonomous individual' which lies at the heart of the dominant tradition of human rights" (Ghai 2006, 4). Without explicitly saying so and without listing the human rights to which he refers, Ghai suggests that human rights are the basic capabilities that all humans should enjoy. "From the perspective of poverty, the purpose of both kinds of rights," meaning, economic and social rights, "is

perceived to be empowerment" (Ghai 2006, 6). Thus, Ghai asserts that in our fight against poverty we must turn our attention to the most basic pursuit of human rights.

V. The Rule of Law and Economic Development

The role of the rule of law in economic development has become a subject of central importance in modern economics (see, e.g., Haggard, MacIntyre, and Tiede 2008; Dam 2006; Glaeser, LaPorta, Lopez-de-Silanes, and Shleifer 2004; Glaeser and Shleifer 2002; Weingast 1995; North 1990). There is consensus that levels of economic development are positively correlated with more robust legal systems. But there have been active debates about the effects of legal origins (whether common law systems offer comparative advantages to civil law systems) and the direction of causation between economic and legal development. Historical and cross-national comparisons loom large in this literature, as scholars have sought to explain seeming anomalies of nations that have achieved rapid rates of economic growth while not developing all aspects of a rule of law system.

The economists in our group represent different perspectives within these debates. Although our scholars use different methods, examine different empirical cases, and reach different conclusions, there is agreement that "institutions matter" to economic development. Legal institutions and their alternatives are at the heart of these analyses.

Daniel Kaufmann, who presented to the November meeting of the scholars, is the chief economist at the World Bank Institute and the architect of the Worldwide Governance Indicators Project (Kaufmann, Kray, and Mastruzzi 2007). His paper also will be added to this collection prior to the Forum. The Governance Indicators Project measures several aspects of governance, including Rule of Law, over time and across more than 200 countries. Based on these indicators, Kaufmann and colleagues report a strong relationship between rule of law and per capita GDP. See figure below. Indeed, they assert that by moving one standard deviation ahead on the rule of law index, GDP increases by 300% (Kaufmann, Kray, and Mastruzzi 2007; Economist, March 13, 2008).

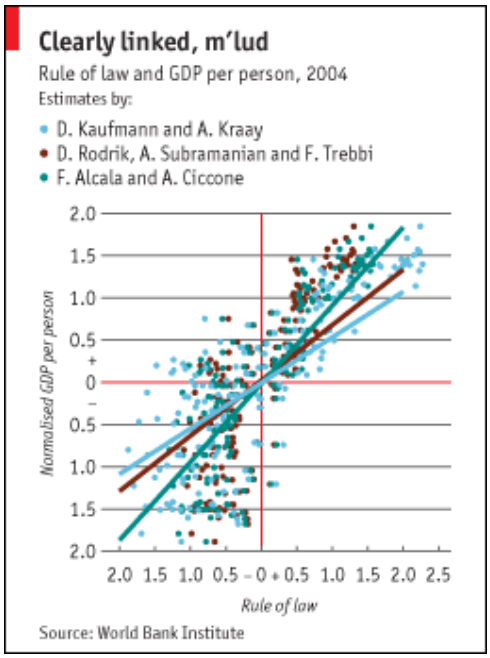

Figure reprinted from the Economist, March 13, 2008

A central challenge to the position of Kaufmann and colleagues is that they cannot prove the direction of causation between improvements in the rule of law and economic development. Other research has made a strong causal case for the positive effects of property rights (see Acemoglu, Johnson, and Robinson 2001), but the debate has continued. In their summary of the conflicting literature, Haggard, MacIntyre, and Tiede conclude: "In sum, there seems to be reasonably strong consensus that property rights matter, supported both by cross-national and survey work. But there is also concern that the security and enforcement of property rights might be wholly endogenous to some antecedent political conditions, or that the effects of property rights are at least conditional on other, complementary institutions" (2008, 8). Legal institutions by themselves cannot guarantee economic growth. Nor will robust legal institutions develop without certain supporting conditions. Other papers in this collection address those issues directly.

Perhaps the most important set of institutions relating to equity and opportunity within developed nations is the welfare state. Nobel Laureate economist, James Heckman, examines variations among modern welfare states and their effects on economic performance from the 1980's through 2006. Heckman raises several cautions about embracing the welfare policies of European states. After noting that common typologies of European nation states are too broad, he reviews evidence on employment indicators across Europe, the U.K., and the United States. He asserts that the Nordic miracle states, typified by Sweden, are not achieving the employment successes that some indicators suggest. When employment rates are corrected for certain public employment programs, which Heckman argues artificially raise the employment rate, Sweden's employment rates are significantly lower. Heckman concludes that welfare state policies that undercut incentives to work and which do not invest in higher education at the same levels as the United States, Ireland, and Japan, will achieve lower levels of economic growth.

Franklin Allen and Jun Qian examine the role of law (or the avoidance of law) in two of the world's fastest growing economies, China and India. China and India often are cited as

examples of rapidly developing economies which do not rely on strong property rights or contract enforcement systems. In the Chinese case, these institutions remain underdeveloped formally. In India, despite a fully developed formal system of laws that follow the British Commonwealth tradition, the effective capacity of the legal system is quite limited. Thus most business actors do not rely on the law to make and enforce contracts and property claims. Allen and Qian argue that the use of alternatives to the legal system in both societies is in fact an advantage, because it allows for quick adaptation to changing circumstances and avoids the rent-seeking behavior and barriers to competition that sometimes accompanies more fully developed legal systems. They cite intellectual property law and slowness to move away from paper checking transactions in the United States as examples of when formal law can slow economic development.

Allen and Qian's argument will provoke further debate about the role of law in China and India. Pierre Landry's work, which was presented at the Macmillan Center meeting on Rule of Law, directly examines the quite dramatic growth of intellectual property law in China (2008). Landry suggests that the Chinese intellectual property system has become much more effective in the last 15 years in part due to a strategy of devoting greater resources to a smaller number of actors who generate large numbers of patent applications. Eva Pils' work on the property rights of Chinese peasants, which is contained in the companion collection of scholarship on access to justice, offers a very different view of the need for law in the Chinese context (2008). Without legal protection, peasants will suffer serious harms to their livelihood. And China may experience more widespread civil unrest.

Ron Harris, a leading economic historian of the industrial revolution in England and the role that law played in that pivotal transformation, adds a theoretically significant case study of the relationship law, finance, and economic growth. By comparing the history of two corporations that were by far and away the largest business enterprises for more than a century in the 17th and early 18th centuries, the Dutch East India Company and the English East India Company, Harris provides an important test of leading theories about law and development. Contrary to the predictions of the legal origins theory, which holds that common law legal systems facilitated economic development, Harris establishes that the Dutch, working in a continental legal system, successfully established a large private corporation almost a century before the English did the same. Moreover, both the Dutch and the English markets grew up on the margins of the legal system, in merchant and maritime law, not within the core province of judge-made law. Harris also uses his historical comparison to add proof to the North and Weingast thesis that for private markets to succeed there must be credible commitments that the State will have limited powers to confiscate wealth. Both the Dutch and English cases achieved these credible commitments, albeit in a different fashion. And, the relative weakness of the English state, compared to the Dutch state, forced the development of a more innovative and cooperative market that proved more effective at long term growth.

Harris draws out the contemporary policy implications of his analysis. While he cautions that the political and economic environment of the 17th century is very different from the challenges that lesser developed countries face today, he suggests that law matters to the development of business organizations and stock markets. But law reform is contingent on other social and political conditions. When designing business institutions there often are tradeoffs between long term and short term growth, smaller scale voluntary cooperation and large scale coerced investment, and so forth. "Because political and social environments and institutional baselines are often different in different LDCs and emerging economies, the same size cannot fit all. It is wise to recognize that conditions are different and that

preferences in tradeoffs are different in different localities and accordingly there should be plurality in policy recommendations" (18).

Timur Kuran, a leading scholar of Islamic law and its relationship to economic and political development, continues to make important contributions to knowledge about the relationship between the state, civil society, and economic and political development in Islamic states. Below we will discuss Kuran's contribution in greater depth. Here we note that Kuran suggests that the waqf system of Islamic societies did not permit the same growth of large private enterprises as the legal systems of western nation states. As a result, it was not until relatively recently, that we have seen the emergence of strong private firms in Islamic states (Kuran 2001).

These papers suggest the importance of ongoing research on the relationship between institutions and economic growth. While the research suggests that stronger rule of law institutions will promote economic growth in most contexts, if legal institutions become captured by special interests, law can discourage growth and innovation. It is critical to appreciate that variations in legal forms, all of which fall within a definition of rule of law systems, can affect economic development. The challenge for scholarship is not just to note the positive relationship between rule of law and economic growth, but to develop better theories of what kinds of rule of law systems better promote development.

VI. Rule of Law and Political Development

The papers summarized in this section examine the relationship between the rule of law and political development, with several scholars focusing on the role of institutions and others offering a broader exploration of this relationship. Again, much of the scholarship relies on historical and comparative analysis to test theories about the conditions under which the rule of law can develop and the conditions that will tend to undermine the rule of law. As is evident below, we pay particular attention to research on Islamic law and development. Some of the papers also examine the problem that sometimes law fails to address the needs of disadvantaged groups—an issue that is further explored in the companion collection on access to justice.

VI. 1. Islam and Institutions

Timur Kuran, who presented at the November meetings of the scholars group and will present in Vienna, is a leading scholar on Islamic law, economy, and culture. Here we draw on Kuran's published work, so that we may examine questions about the origins and character of legal institutions in Islamic societies. Then we briefly consider a recent book on the fate of the rule of law in modern Iraq by Noah Feldman.

In his paper "The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System," published in 2001, Kuran focuses on the Islamic waqf, a deeply historic institution that he traces back to at least 750 C.E. Summarized roughly here what Kuran discusses in fascinating detail, "[a] waqf is an unincorporated trust established under Islamic law by a living man or woman for the provision of a designated social service in perpetuity" (2001, 842). To the founder of a waqf, a waqf provided an opportunity to

protect wealth from state confiscation and avoid various taxes by converting all or some of his personal property into traditionally immovable assets such as land. In return, the state, who stood to lose out on taxes in perpetuity, required a waqf to provide public goods, thereby alleviating the state's responsibility to provide these services to its citizens. In order to ensure continued wealth protection for the founder and provision of services for the state, the waqf system was remarkably inflexible and required strict interpretation of the founder's intentions (Kuran 2001, 864-65). Though Kuran's paper primarily focuses on the historic growth and significance of the waqf system, he also suggests that these particular qualities of the waqf system – the decentralized delivery of public goods and the inflexibility of a waqf – led to the stunted political and economic development in Islamic states that we see today.

Historically, the waqf system has had enormous economic significance. Kuran cites numerous facts to attest to this, including "in 1923, three-quarters of [Turkey's] arable land belonged to waqfs" (2001, 849). And waqfs provided substantial public goods and public services (2001, 849-50). However, as might be guessed, the waqf system was not entirely beneficial to Islamic society. Most significantly, Kuran sees the inflexibility of the waqf system as the major obstacle to building economies of scale. As an illustration, major public works could be undertaken by pooling the assets of several waqfs, yet a conglomeration of waqfs was usually impossible, as the founders often did not address this type of situation in their originating intentions. This problem only worsened as technological advances were made, and substantial amounts of money remained locked into suboptimal uses. It was not until the 20th century that Islamic states began to address the problems plaguing the waqf system. The modern waqf now functions more like a corporation, with a manager or board of managers who have wider operational latitude. Their objectives are multifaceted, including a maximization of the return on assets in order to best obtain the goals of the waqf. These measures, Kuran argues, directly support his contention that the inflexibility of the waqf system is in part responsible for the economic underdevelopment of the Middle East.

Kuran sees the Middle East's current political problems as closely linked to the stunted economic growth. The inability of the waqf system to pool resources and develop into larger corporate-type structures or even municipalities hampered economic growth as well as the development of "the intermediate social structures that we associate with 'civil society'" (2001, 881). And without a civil society, there was little to challenge executive power or introduce democracy. Kuran also points to clear evidence that even prior to the modern waqf reforms, waqf managers often attempted to circumvent or at least broadly interpret the founders' wishes. While this might have had some positive economic effects, it also meant regular lawbreaking without repercussions and sometimes *with* official complicity bought through bribes and other enticements. Under these conditions, Kuran argues, embezzlement and other corruption helped to de-legitimize the waqf system and undermine rule of law. In turn, the corrupt waqfs provided a ready excuse for state confiscation, thereby enriching already powerful states. Again, it was not until the 20th century reforms of the waqf system, when the damage had already been done, that waqfs began to regain their legitimacy and reassert themselves as integral parts of Islamic society.

Noah Feldman's analysis of the relationship between the rule of law and the Islamic state is, like Kuran's, grounded in a specific institution. However, this is where their similarities end. In his very recent book, *The Fall and Rise of the Islamic State* (2008), Feldman pays closest attention to the position of shari'a and the presence, absence, and shape of the scholars who develop, interpret, and apply shari'a, as well as balance executive authority in the name of shari'a. Using examples from the history of the Islamic world, Feldman cogently argues for the necessity of institutions like the scholars in achieving rule of law. Feldman identifies the secret to the Islamic states' success over a period of thirteen

hundred years as the supremacy of shari'a and the presence of a class of scholars. Most notably, the scholars acted independently of the state in performing their duties as "guardians of the law" (25). It was believed that the law (i.e. shari'a) descended from God and that the scholars were uniquely able to identify and interpret it. In this role, the scholars expressed opinions on the content of shari'a and its application to specific issues and legal matters. And, very importantly, it was the scholars as the living embodiment of shari'a that conferred legitimacy on the ruler, something of particular concern during an era when succession was often uncertain. The conferral of legitimacy by the scholars, however, was a two-way street, and the ruler was thereby obligated to adhere to the law. In this way, Feldman argues, the scholars can be viewed as essential for the creation and maintenance of the rule of law in Islamic states, as well as the decline of rule of law when the scholars were slowly painted out of the picture. Without scholars, the scene was prepped for the rise of unchecked executive power, which is exactly what occurred.

It is against this background that Feldman analyzes the fairly recent constitutional vision of modern Islamism, something he calls a product "of twentieth-century ideology in its most distinctive sense" (106). Central to the Islamist political platform is a call to return to the rule of shari'a, but, critically, *not* a return to the Islamic legal system, where the scholar was indispensable. Addressing first the prospect of shari'a law, Feldman remains open-minded and optimistic. While significant theoretical questions are raised, Feldman suggests that democracy can develop within a state founded on shari'a law. What troubles Feldman most, however, and what becomes the primary point of his research, is that a return to shari'a on its own will not bring the rule of law. History has shown that there must be an institution, specifically, something that can fill the role once occupied by the scholars, that can "give real life to the ideals of Islamic law" (147). The example of Saudi Arabia, which Feldman fleshes out convincingly, illustrates that the scholars can no longer fill this role in modernized, oil-rich states. Instead, he suggests a legislature or independent judiciary appear to be the most promising options. Unless and until *both* the law and the institutions arrive, rule of law will not be possible.

VI. 2. Institutions, More Generally

Moving outside of the Islamic world, but retaining a focus on institutions is the work of Tom Ginsburg, Zachary Elkins, and James Melton who calculate that seventeen years is the average lifespan of a national constitution since 1789 (1). The median is only eight years (1, fn. 1). Such statistics may lead to a great deal of hand-wringing in light of the commonly held assumption that longer lasting constitutions are more likely to result in effective, stable democracies. Ginsburg, Elkins, and Melton, however, are not ready to join in the hand-wringing without first exploring the underlying assumption. They also ask whether there is something in the design of the constitution itself that can create vulnerability or promote longevity. Their research on these questions is based on an impressive survey of every "replacement, amendment, or suspension" of a constitution "in every independent state since 1789, as well as the text of every new constitution during that same time period (2).

Carefully weighing the evidence, the authors ultimately argue in favor of the assumption—that constitutional endurance is positive for multiple reasons. For example, the authors highlight evidence that suggests that an enduring constitution promotes both economic growth and democratic stability. The authors then investigate the factors that challenge the life of a constitution, as well as those that enhance it. They identify and discuss

three broad risk factors to constitutional lifespan that constitute the bases for their study. Reviewing the constitutional histories of all countries, the authors first determine a handful of "precipitating causes of constitutional death", from military subjugation to regime change (31-34). They next recognize structural aspects of a constitution that lend themselves to longevity, looking specifically to the specificity of the constitution, the inclusion of the public in the drafting and ratification of the constitution, and the adaptability of the constitution (36-37). Thirdly, Ginsburg, Elkins, and Melton examine whether attributes of the state contribute to constitutional resiliency (38-39). They distill three shared qualities of constitutions that have endured. They "emerge under conditions characterized by an open, participatory process . . ." (50). They "tend to be specific, inducing parties to reveal information and to invest in the negotiation process" (51). And they "tend to be flexible, in that they provide reasonable mechanisms by which to amend and interpret the text to adjust to changing conditions" (51).

Adding to the discussion on institutions, Margaret Levi and Brad Epperly argue that "[i]nstitutions are not sufficient on their own" to bring about rule of law (28). Levi and Epperly offer an analysis of the foundational moments of the rule of law, asking how, during these critical initial steps in state founding or refounding, can the building blocks for the development of rule of law be best assembled? In answer to this question, they suggest a four-stage process, where each stage presents a path that may foster the growth of rule of law and a path that does not. First, nature provides a leader who may be principled or not. If the leader is principled, she next faces the challenge of either being able or unable to garner the cooperation of powerful others. Third, with a cooperative bureaucracy, the leader creates an institutional design that may or may not provide "*credible constraints on both the leader and on others with power*" (5, emphasis in original). Lastly, only with all of the correct preceding pieces in place, the authors see public compliance and legitimating beliefs in the state.

They carefully unpack each of these stages. Citing several examples of leaders whose principles folded under pressure, they focus on the creation of an environment in which a principled leader can maintain his principles (12). What is necessary to constrain a leader, the authors argue, are "[c]ompetition, dependency, and countervailing power," elements that may arise from institutional arrangements, as well as from "the resources available to the ruler and to those with whom she must bargain" (13). Seeking the cooperation of other powerfully positioned individuals is also, perhaps even more, difficult. Indeed, the "willingness of the leadership to bind its own hands," through institutionalized constraints, "and ensure transparency of actions can gain them credibility with both staffs and publics" (22). The authors note that corruption in high-levels of the state bureaucracy in particularly devastating in that it signals to those at the same level, as well as those at lower levels, that commitments to the rule of law are "at best quixotic, and at worst fraudulent" (24).

Addressing finally the public, Levi and Epperly recognize to some extent the social constraints to the rule of law. They observe, for example, that it is not always clear how populations develop certain perceptions or beliefs related to the state or the rule of law (27). Nevertheless, Levi and Epperly argue that a principled leader, with a cooperating bureaucracy can help to establish "a common set of values" (27) and foster "legitimating beliefs about the state" (26). Institutions on their own are not enough.

Not unlike Levi and Epperly, Katharina Pistor, Antara Haldar, and Amrit Amirapu also argue that institutions alone do not necessarily lead to equality. In their paper, they take a straightforward approach in assessing whether rule of law is directly correlated to the improved status of women, something many quickly (or, as the authors show, *too* quickly) accept as a given. While there is evidence, albeit limited, that improvements in the

socioeconomic status of women in the West over the last ten years coincide with notable legal changes, such evidence cannot explain the measurable variations in equality around the world and cannot generate any conclusive statements regarding the correlation between rule of law and gender equality (3). Thus, the authors systematically analyze the relation between already existing indices measuring rule of law and those measuring gender equality. Their most general, and perhaps most startling, conclusion is the lack of "a strong positive correlation between the status of women and the level of the rule of law" (6). They further suggest that "social norms as well as income levels are critical determinants for the status of women in society, and more important than what is captured by [rule of law]" (9). The authors' work effectively illustrates the gap between "the law on the books and the law in action" (6).

Pistor, et al.'s paper highlights many of the challenges facing rule of law development projects. While a growing consensus of the world community agree on the meaning of women's rights and the types of practices that should be condemned, this consensus does not translate into real change (12-13; see also Carothers, this volume). In short, local contexts, social norms, and culture remain "powerful determinants of gender equality," more powerful, in fact, than legal-institutional reforms. In contrast to the implicit assumption behind popular social theories and numerous rule of law indices that "once [] institutions are in place social practice will change in response to new incentives by such institutions" (13; see e.g. Feldman 2008), the authors show that, in fact, causality does not run neatly and nicely from institutions to social change. Social norms very frequently get in the way. In their closing sentence, the authors offer a modest suggestion on how to reconfigure the rule of law strategy as it relates to gender equality; "clearly spell out the desirable policy outcomes and [] adjust the means for achieving these ends to local conditions" (14) – something that sounds not unlike Sen's capability approach.

VI. 3. Political Development Beyond Institutions

Several scholars broaden the analysis of the relationship between the rule of law and political development to beyond that of institutions. In a comprehensive analysis of the conditions that bring about the growth of political liberalism, Terence Halliday looks to existing studies for the conditions in which political liberalism has been obtained, maintained, or lost or suppressed. Political liberalism, Halliday explains, is a combination of three elements: (1) basic legal freedoms, also referred to as civil rights; (2) a moderate state; and (3) a civil society (4). To assist with his analysis, Halliday introduces a new concept – the "legal complex" – that "seeks to capture the set of relationships among all legally trained occupations that are practicing law" (6). Thus, by analyzing the array of relationships between private lawyers, public lawyers, judges, prosecutors, and legal academics and the effect that the mobilization of these various configurations have on the growth of political liberalism, Halliday aims to provide a more complete understanding of how, when, and under what circumstances political liberalism takes root.

Despite the seeming individuality of each case study, Halliday identifies several categories of commonality. He concentrates on patterns of mobilization of the legal complex, ranging along a spectrum from progressive mobilization, where a small group of lawyers lead the movement toward political liberalism and find quick support from the judiciary, to non-mobilization, where the un-checked powers of the executive have completely co-opted or intimidated the legal complex (27-30). This allows Halliday to draw preliminary conclusions

regarding the relationship between mobilization and political transition. He suggests, for example, that effective mobilization, i.e. mobilization that achieved basic legal freedoms, was dependent on two conditions, "an activist, relatively autonomous *court* . . .[and] At least a fraction of the *private* bar must be prepared to mobilize for or before a court" (31).

Halliday also turns his attention the specific conditions and limitations on each aspect of the legal complex and the effect these have on the legal complex's ability to be in "the vanguard of the march towards political liberalism" (35). Each group within the legal profession faces complicated restrictions on action and organization, which leads Halliday to conclude that "actual patterns of alliance and division across the legal complex are far more complex than we originally envisaged" (41). He also discusses the role of NGOs, the media, religious groups, political parties, and the market in the development of political liberalism. But, even more so than the legal complex, the complexity and variety of these entities around the world make generalizations difficult to formulate. Instead, Halliday ends with six broad conclusions "that may also serve as hypotheses for more refined and extensive empirical research" (52). Without repeating his conclusions in full, Halliday directs attention to the relationship of the threats to security, the properties of the legal complex, the characteristics of the State, the development of the civil society, the state of politics, and the shape of the market to the development of political liberalism.

Barry Weingast begins his paper by asking, "Why do developing countries prove so resistant to the rule of law?" (1) He ends by acknowledging that the "tenor of this paper is a pessimistic one" (16). Indeed, as Weingast progresses through his analysis of the difficulties faced in achieving rule of law in developing nations, the challenges seem nearly insurmountable. Adopting an approach that he developed with Douglass C. North and John Joseph Wallis (the NWW approach), Weingast provides a novel explanation for why it has been so difficult to successfully transplant various rule of law institutions from developed nations to developing nations. Unfortunately, as Weingast's conclusion suggests, this new understanding does not bring with it an easy solution.

The NWW approach divides the world's societies into two broad social orders based on their means for controlling violence. In the limited access order, or natural state, the political system explicitly manipulates the economic system in order to control violence. Natural states place power in the hands of a coalition of elites. "The coalition grants members privileges, creates rents through limited access to valuable resources and organizations, and then uses rents to sustain order" (4). Members are dissuaded from violence because violence decreases their rents. Critical to the natural state, then, are personal relationships based on the individual personalities of the members – with more privileges granted to the more powerful.

The second social order is the open access order allows open entry to political and economic organizations. And it is the competition that this openness invites that supports order and controls violence. Open access orders are characterized by impersonal relationships, meaning that laws and privileges are not granted based on individual personalities, but, rather, are enforced impartially for all citizens. The result is greater long-term economic development driven by competition and "feedback mechanisms that limit the ability of political systems . . . to create too many rents" (6). In contrast to natural states, an open access order offers a perpetual state in that the law under one ruler today will be the same law under another ruler tomorrow. As might be imagined, the transition from a natural state to an open access order is a tremendous feat, requiring three daunting "doorstep conditions" prior to the actual transition: (1) the establishment of rule of law for elites; (2) the creation of the perpetual state; and (3) the consolidation of control over the military (8).

The NWW approach is useful to the discussion of rule of law in its ability to highlight fundamental characteristics of natural states that make them particularly resistant to the rule of law. Focusing on the "impersonal aspects" of the rule of law, including the predictability of law and the ability of the state to treat individuals equally before the law, Weingast argues that natural states, "by definition . . . have substantial difficulties maintaining the rule of law" (8-9). Moreover, Weingast argues, history also suggests that the rule of law emerges with the transition of a natural state to an open access order, a process, as noted earlier, that is particularly difficult to accomplish. As Weingast bleakly points out, "only a little over two dozen states have succeeded in this transformation, with most clustered in Europe" (16).

As we prepared this summary, we did not yet have the paper that will be included in this collection by Yash Ghai. Here we briefly summarize another of Ghai's works, as essay on Cambodian property rights. Ghai also casts a wide net in his approach to access to justice and land rights issues in Cambodia, informed by his previous work as the United Nations Special Representative of the Secretary General for human rights in Cambodia. Given that Cambodia has seen four new governments, with four distinct systems of land ownership, since the 1970s, the breadth of Ghai's work is unavoidable and entirely necessary. Ghai illustrates that the changes in land ownership laws, in conjunction with an absence of rule of law have left the indigenous population, many of whom are subsistence farmers, involuntarily landless with no true possibility of legal recourse.

He focuses on the most recent land law in Cambodia passed in 2001 under which the State is the primary landowner, but private ownership is permitted. Ghai points out that because so many Cambodians rely on the land for their livelihoods, "the manner in which land rights are recognized and allocated has a profound impact on social and economic development . . ." (Ghai 2008b, 1). In such a sensitive situation, adherence to the rule of law is critical. Unfortunately, Ghai observes, the Cambodian state has made no apparent effort to establish or maintain independent institutions. Both the judiciary and the prosecutors bend to the will of the executive. The legal profession, too, often folds under the pressure of the State. The current government has found that such a state of existence, is greatly to its advantage, allowing it and its wealthy supporters to confiscate land and displace indigenous peoples in order to further economic interests. The denial of basic land rights and access to justice allows the state to "dominate[] and control[] politics, economy and civil society" (Ghai 2008a, 5).

The results of such a system are unsurprising and can only be briefly summarized here. Access to courts and legal representation are often prohibitively expensive. To the extent that there is legal aid available, the state has repeatedly harassed and repressed the NGOs providing this service. At the same time, the need for lawyers has increased with the aggressive tactics employed by the wealthy and well placed; Cambodian elites do not hesitate to accuse indigenous landowners of criminal activity, such as "destruction of property" or "infringement of property," when they attempt to assert or defend their rights to the land (Ghai 2008b, 11). As a result of these accusations and the provisions of the Cambodian criminal code, the accused is often immediately detained pending trial. Many, of course, do not have access to a lawyer during their detention. Through this picture of the Cambodian land rights situation, Ghai provides a compelling argument for immediate attention to establishing the rule of law in Cambodia.

VII. Conclusion

The World Justice Project scholars program was intended to engage at the highest academic level serious questions about the meaning, sources, impediments to, and consequences of the rule of law. As the complexity of these papers show, we have made progress in advancing these inquiries, but the debates about these issues should and will continue.

While anyone who promotes an agenda of social change through the rule of law must be sensitive to the great variety of meanings that have been attached to the phrase, we continue to see value in pursuing a rule of law framework. It is necessary for specific research projects that scholars clearly define how they are using the term, and indeed, to break down the broad concept into meaningful, concrete indicators.

We have probed whether the rule of law is a narrowly western concept, and have concluded that it is possible to speak meaningfully about the rule of law in many social and cultural contexts. The research summarized here examined aspects of the rule of law in widely divergent contexts, from India and China, to Cambodia, to Islamic societies, to name a few. The companion collection and the research in related conferences has examined the rule of law in Africa, Latin America, and Europe.

Much of our research has shown the positive contributions that law, and more broadly institutions, can make to the creation of societies that are less violent, better educated, healthier, more free, and more prosperous. We have identified several factors that may improve the prospects for achieving the rule of law, including a robust legal profession and independent judiciary; a written constitution that is specific, stable, and flexible; legal institutions that are not captured by special interests or undermined by corruption; and a set of supporting institutions (such as the Islamic scholars critical to the shari'a). A recurrent theme though is that the rule of law cannot be established by legal actors alone. It requires strong support from political leaders who are themselves willing to abide by the constraints that rules place on power, as well as the cooperation of other centers of power in society. And, developing the formal structures of the rule of law is no guarantee that a society will provide justice for all its members. Pistor, Haldar, and Amirapu's finding of a weak, indeed, a negative correlation between some measures of the rule of law and the welfare of women in society, is a sobering reminder that formal law cannot by itself deliver social justice. Yet in many contexts, the appeal to the principles of justice that underlie the rule of law may be an effective avenue in a campaign to improve the social conditions of the marginalized members of society.

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Appendix A – Related Conference Programs

Lawyers and the Construction of the Rule of Law:

National and Transnational Processes

March 21-22, 2008

American Bar Foundation

750 N. Lake Shore Dr., Chicago IL

Co-editors and organizers

Yves Dezalay and Bryant Garth

To request papers, contact Katie Harr at the American Bar Foundation

kharr@abfn.org

I. Topic One: Constructing Law and Justice Out of Social and Political Capital

A. National Perspectives

1. Manuel A. Gomez, Florida International University, "Greasing The Squeaky Wheel of Justice: Lawyers, Social Networks and Dispute Processing""

2. Ethan Michelson, Indiana University, "Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism"

3. Maria Malatesta, University of Bologna,"The Italian legal elites, the classic model and its transformation"

B. International Perspectives

1. Antoine Vauchez, CNRS, Paris, "The Emergent Field of European Law III"

2. Karen Alter, Northwestern, "Jurist Advocacy Movements in Europe: The Role of Euro-Law Associations in European Integration (1953-1975)"

II. Topic Two: The International Circulation of Legal Expertise

A. Competing for Universals: The Construction of Legal Capital from Hegemonic and Turf Battles

1. Ole Hammerslev, University of South Denmark, "The US and the EU in East European Legal Reform"

2. Daniel Palacios Munoz, Ecole des Hautes Etudes en Sciences Sociales, Paris, "The Criminal Procedure Reform in Chile: New Agents and the Restructuring of a Field."

3. Diana Rodriguez Franco, Center for the Study of Law, Justice and Society, Bogota, Colombia, "The Globalization of Intellectual Property Rights: The Politics of Law and the Transformation of National and Transnational Legal Fields: The struggles behind the IP chapter of the Colombian-U.S. Free Trade Agreement"

B. Investing in Institutions

International

1. Antonin Cohen , University of Picardie, France "The Emergent Field of European Law I: Transnational Institutions, Economic Interests and Career Paths to the European Court of Justice"

2. Mikael Madsen, University of Copenhagan, Denmark, "The Emergent Field of European Law II: Cold War, Decolonization and the Structuration of Post-WWII European Human Rights Law"

3. Pierre Yves Conde, Ecole Normale Superieure de Cachan, France, "Legal Cosmopolitanism Divided.Stating, Codifying, and Invoking International Law of State Responsibility"

4. John Hagan and Ron Levi, Toronto, The Relationship Between Lawyers and the Politics of Statistics Around War Crimes," and/or, "The History of the UN High Commissioner for Human Rights"

C. NGOs and International Human Rights Activism

1. Julien Seroussi, University of Paris, "The Collapsing of the International Mobilization for Universal Jurisdiction: From 'Frame Alignment' to 'Habitus Alignment'"

2. Sandrine Lefranc, "Nanterre, France, "From Post-Conflct Peacebuilding in Developing Countries to ADR in the North"

3. Sara Dezalay, European University Institute, Florence, Italy, "Lawyering War or Talking Peace? On militant usages of the law in the resolution of internal armed conflicts: a case study of International Alert"

4. Angela Santamaria, Javeriana Bogota, Colombia, "Indigenous Diplomacy in The Andean Context: A Case Study of the Process of Recognition of Indigenous Rights at the International Level" (not attending)

5. Virginia Vecchioli, Universidad de Buenos Aires, Argentina, "Human Rights and the Rule of Law in Argentina. Transnational Advocacy Networks and the Transformation of the National Legal Field"

III. TopicThree: Legal Politics and Legal Markets

A. Business and markets

1. Kaywah Chan, Macquarie University, Sydney, Australia, "The Reform of the Profession of Lawyers in Japan: Impact on the Role of Law""

2. Seong-Hyun Kim, Hanyang University, Korea, "The Democratization and Internationalization of Korean Legal Field"

3. Sigrid Quack, Max Planck Institute for the Study of Societies, Cologne, Germany, "Combining National Variety: Internationalization Strategies of European Law Firms"

B. Lawyers and Judges

1. Fabiano Engelmann, UFSCAR-Sao Carlos, Brazil, "Brazil's Judiciary Reform: Mobilizing Judiciary Members And Re-Stating The State Country's Power" (not attending)

2. Cesar Rodriguez-Garavito, University of Los Andes, Colombia, "Judicial Reform and the Transnational Construction of the Rule of Law in Latin America: The Return of Law and Development"

3. Randall Peerenboom, UCLA, "Searching for political liberalism in all the wrong places: the legal profession in China as the leading edge of political reform?"

4. Gregory Shaffer, Loyola/Minnesota, Chicago, "Lawyers and the WTO"

Workshop on the Rule of Law

MacMillan Center, Yale University

New Haven, Connecticut

March 28-29, 2008

Information on the Workshop and links to some papers available at http://www.yale.edu/macmillan/ruleoflaw/index.htm.

Friday, 28 March

Opening Remarks

Frances Rosenbluth, Yale University
Margaret Levi, University of Washington, Seattle

Session I: Establishing the Rule of Law

"Public Finance and Land Disputes in Rural China" (to be discussed at the workshop)

Susan Whiting, University of Washington, Seattle

"The Role of Law in China's Economic Development" (with Donald Clarke and Peter Murrell) a more comprehensive piece on the relationship between law and economics in contemporary China (a contextual piece; not to be discussed).

"How Weak Institutions Can Produce Strong Regimes: Patents, Lawyers and the Improbable Creation of an Intellectual Property Regime in China, 1985-2007"

Pierre Landry, Yale University

"Under What Circumstances Does Law Travel, And Travel Well?"

Iza Hussin, University of Washington, Seattle

Discussant: Mat McCubbins, University of California, San Diego

Saturday, 29 March

Session II: **The Rule of Law and the Nature of Government**

"Local Determinants of the Enforcement and Defiance of Village Election Laws in China"
Mayling Birney, Princeton University

"The Dimensions of the Rule of Law and the Mexican Transition to Democracy"
Alberto Diaz-Cayeros, Stanford University (co-authored with Beatriz Magaloni)

"The Political Origins of "Rule-by-Law" Regimes"
Tamir Moustafa, Simon Fraser University

Discussant: Jack Knight, University of Washington, St. Louis

Session III: **Why and When Does the Rule of Law Persist?**

"Exploring the Longevity of Constitutional Order"
Tom Ginsburg, University of Illinois

"The Origins of Institutional Crises in Latin America: A Unified Strategic Model and Test"
Gretchen Helmke, University of Rochester

"The Reasons for Compliance with Law"
Margaret Levi, University of Washington, Seattle
Tom Tyler, New York University (co-authored with AUDREY SACKS)

Discussant: Robert Nelson, Northwestern University and American Bar Foundation

Session IV: **Reflections and Concluding Remarks**