

Law and Development 2011_April_13

Introduction

As the New Institutional Economy (e.g. North and Coase) indicated, law plays an important role in economic development. Though law is a small (but very important) part of institutions that control (irrational!) human behavior, the relation between law and social progress have attracted many scholars for long time.

Especially, when the development of newly independent countries became an important issue after the World War II, the role of law in economic and social development became a charming issue for law scholars, and international cooperation for law reform became the boom. This is called the "Law and Development movement (LDM)." The LDM mainly done by US law scholars focusing on Latin American countries had decreased without significant result. Then, aid business have been more economic oriented (neo-liberal market approach), or law was considered as paraphrased version of politics (dependency approach).

But in 1990s, along the transition of socialist countries to market economy, the LDM revives as the popular issue of the international development cooperation. This, specially, is called "New Law and Development Movement (NLDM)."

In law and development projects, the "Rule of Law" (RoL) is the keyword. It is considered that contries with good RoL will achieve good development. The RoL is a infrastructure for economic development. For example:

"Economists became fascinated by the rule of law after the crumbling of the "Washington consensus". This consensus, which was economic orthodoxy in the 1980s, held that the best way for countries to grow was to "get the policies right"-on, for example, budgets and exchange rates. But the Asian crisis of 1997-98 shook economists' confidence that they knew which policies were, in fact, right. This drove them to re-examine what had gone wrong. The answer, they concluded, was the institutional setting of policymaking, especially the rule of law. If the rules of the game were a mess, they reasoned, no amount of tinkering with macroeconomic policy would produce the desired results. Partly because of this [empirical studies], and also because the rule of law is desirable for its own sake, governments and aid agencies began splurging money on rule-of-law reforms, such as training judges, reforming prisons and setting up prosecutors' offices. Such reforms had begun in Latin America in the mid-1980s. Now they became universal." (Website of *Economist Magazine*, Mar 13th 2008, <http://www.economist.com/node/10849115>)

According Prof. Santos, "TheWorld Bank estimates to have supported 330 "rule of law" projects dealing with legal and judicial reformin over 100 countries. It has spent about \$3.8 billion since 1993." (Trubek and Santos eds., The New Law and Economic Development: A Critical Appraisal, 2006, p.253)

World bank strategically uses the RoL either in narrow and in broad definitions. The World governance index (WGI), one of key data for loans and investments, covers six broad

dimensions:

- **Voice and Accountability:** the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, association, and the press.
- **Political Stability and Absence of Violence:** the likelihood that the government will be destabilized by unconstitutional or violent means, including terrorism.
- **Government Effectiveness:** the quality of public services, the capacity of the civil service and its independence from political pressures; the quality of policy formulation
- **Regulatory Quality:** the ability of the government to provide sound policies and regulations that enable and promote private sector development
- **Rule of Law:** the extent to which agents have confidence in and abide by the rules of society, including the quality of property rights, the police, and the courts, as well as the risk of crime.
- **Control of Corruption:** the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as elite "capture" of the state

Not only economic development, the RoL is considered as the key for democracy, world fair trade, environmentally balanced life style as well as freedom from famine. Everyone talk about the RoL as if the RoL is panacea for all challenges our world facing.

However, for example, the World Bank itself confessed in its press release in 2007 (News Release No. 2007/58/DEC):

"Where there is commitment to reform, improvements in governance can and do occur. Over the past decade from 1998-2008, countries in all regions have shown substantial improvements in governance, even if at times starting from a very low level. Examples include Ghana, Niger, and Peru in Voice and Accountability; Algeria, Angola and Sierra Leone in Political Stability and Absence of Violence/Terrorism; China, Colombia, and Rwanda in Government Effectiveness; the Democratic Republic of Congo, Georgia and Libya in Regulatory Quality; Latvia, Liberia and Rwanda in Rule of Law; and Indonesia, Liberia and Serbia in Control of Corruption.

On average the quality of governance around the world has not improved much over the past decade, despite some of the individual country improvements noted above. Coinciding with countries that have done well, a similar number have experienced deteriorations in several governance dimensions, including Zimbabwe, Cote d'Ivoire, Belarus, Eritrea and Venezuela. In many other countries, no significant change in either direction is yet apparent in recent years."

Still, we have so many disagreements about the RoL that the global "rule of law" projects are conflicting with others everywhere. Thus, we need an analytical stance about, say:

Whether the RoL is the only solution to achieve desired goals?

What elements are composing the RoL?

What mechanism is working when the RoL co-relates with development?

What preconditions are necessary to have the good RoL in a country?

For whom the RoL is beneficial?

Whether the RoL is transplantable from one place to another?

Is the RoL global?

A scholarly effort to examine those disagreements:

World Justice Forum in Vienna in July 2008

Proceedings:

(1) Global perspectives on the Rule of Law - exploring foundational questions and debates on the rule of law, with special emphasis on the relationship between the rule of law and economic development.

(2) Marginalized Communities and Access to Justice - focusing on 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 this semester, we read first one to understand the theoretical aspect of the RoL in relation to economic, political and social development.