

ROUNDTABLE DISCUSSION

THE RULE OF 'NON-LAW'

Monday 4 April 2016

Freeman Spogli Institute for International Studies
Philippines Room, Encina Hall
616 Serra St C100
Stanford University
Stanford, CA 94305-6055

The Stanford Law Faculty received a grant from the *Global Development and Poverty Fund* for an interdisciplinary research project that involves the “rule of non-law” as an essential aspect of the alleviation of poverty in developing countries. The basic hypothesis of the Project is that the growth of small and medium-sized enterprises (SMEs) and a host of other economic activities, especially as they serve populations living at the base of the pyramid, cannot await the development of OECD-level legal regimes, and may be facilitated by strategies and techniques that do not depend on formal legal institutions.

In the 1990s, when the World Bank began to support “rule of law” projects, it asserted time and time again that a well-functioning judiciary is necessary for economic growth and development. A corollary assumption was that substitutes for a well-functioning judiciary entail high transaction costs. These assertions were brought into question over the past fifty years by countries that have experienced rapid economic growth and development without an effective judicial system. These economies relied instead on substitutes for well-functioning laws and legal institutions that included self-enforcing contracts, bilateral relationships, social and reputational norms, market intermediaries, and (more recently) technology-aided mechanisms. Formal legal regimes were not in fact a precondition for economic development in these cases and, indeed, appear to follow rather than precede it. At early stages of development, business actors often use poorly functioning legal regimes to their advantage until the complexity of economies reduces those advantages and obfuscates winners and losers. The need for effective legal institutions, then, seems to become more pronounced at a later stage of development.

Understanding the ways in which such *non-legal* techniques — what the participating faculty call the *rule of non-law* — can substitute for effective legal institutions, including especially effective and unbiased courts, is central to understanding and thus facilitating economic development and alleviating poverty in the world’s poorest countries. The project explores the ‘rule of non-law’ across six domains: *contracts; impact investing; corporate governance; banking; constitutional protection of creditors; comparative law and legal institutions (sequencing)*.

The roundtable discussion is jointly organised by the Center on Democracy, Development and the Rule of Law (CDDRL) and the Bingham Centre for the Rule of Law (London) with the support of Jones Day. The purpose of the round table is to take stock and discuss recent findings for the project. This will be complemented by evidence drawn from other research.

PROGRAM

- 8.30-9.00 **Registration**
- 9.00-9.15 **Welcome & Introduction**
CDDRL, Bingham Centre and Jones Day
- 9.15-10.30 **Private Equity and Developing Countries**
Paul Brest, Former Dean and Professor of Law Emeritus (active): *“Impact Investing in the Absence of Credible Legal Institutions”*
- Randall B Schai, Partner, Jones Day
 - Marcus Cole, Professor of Law, Stanford Law School
- 10.30-11.00 **COFFEE BREAK**
- 11.00-12.15 **Commercial Arbitration and the Rule of Law**
Erik Jensen, Professor of the Practice of Law, Core Faculty CDDRL and Matthew Gasperetti, PhD (JD, SLS '17): *“Commercial Arbitration: Signaling Targeted Commitment to the Rule of Law.”*
- Fahad A Habib, Partner, Jones Day
 - Vikramaditya Khanna, Professor of Law, Michigan Law, University of Michigan
- 12.15-13.15 **LUNCH**
- 13.15-14.30 **Transparency and Infrastructure**
Francis Fukuyama, Senior Fellow, Freeman Spogli Institute for International Studies; Director, CDDRL and Bruce Cain, Professor of Political Science; Director, Center for the American West: *“Too Much Law: The Transparency, Participation and Infrastructure Paradox.”*
- Kent Lindsay, Partner, Jones Day
- 14.30-15.00 **COFFEE BREAK**
- 15.00-16.15 **Traditional Institutions, Customary Law and the Rule of Law**
Christina Murray, Professor of Law and Human Rights, University of Cape Town, and Director, Bingham Centre for the Rule of Law (Chair)
Naina Patel, Barrister and Senior Fellow, Bingham Centre for the Rule of Law *“Building the Rule of Law in Helmand”*
Sindiso Mnisi Weeks, Assistant Professor, University of Massachusetts Boston - *“Rule of Law(s) in South Africa: Controversy and Contestation over Traditional Courts”* (via video-conference)
- 16.15-16.30 **Closing**
CDDRL, Bingham Centre and Jones Day (tbc)
- 16.30-18.00 **Reception** (*Falcon Room, 5th floor Encina Hall East*)