

Talking Points
PREM Week Session on Legal and Judicial Reform

June 25, 2002, 11:30 – 1:00
Ronald Reagan Building
1300 Pennsylvania Ave., N.W., Room: Hemisphere A *

Our principal speaker today is Professor Louis Kaplow of the Harvard Law School. He is here to discuss with us his recent book, co-authored with Steven Shavell, *Fairness versus Welfare*. Luba Beardsley from the Bank's Legal and Judicial Reform unit, Randi Ryterman of the Public Sector Group in East Europe and Central Asia, and Rick Messick from the Public Sector Group will comment. Each will discuss how the ideas presented in the Kaplow/Shavell book can inform the Bank's work on legal and judicial reform.

Professors Kaplow and Shavell take up an issue in their book that has occupied policy analysts and moral philosophers for at least three centuries: What criteria should we use in judging the desirability of a particular social policy?

On the one side, Immanuel Kant and his followers, most notably perhaps John Rawls, argue that "fairness," or such related concepts as "justice" or "right," should be assayed independently. These considerations are so important, they say, that they must be given independent weight no matter what the consequences might be for particular individuals. On the other side of this debate stands Jeremy Bentham and followers. They assert that the only criteria for judging policy should be its "utility," that is, the sum of its effects on individuals within the community.

* Hemisphere A is part of the Conference Center which is located on the Concourse Level. The closest building entrance is the one off Pennsylvania Avenue.

To this debate Professors Kaplow and Shavell have brought the tools of modern welfare economics. Using them, they demonstrate that when the notion of “individual well-being” or “welfare” is properly defined, the concept of “fairness” or “justice” should not be independently weighed when assessing policy. Indeed, one of their most important contributions is to show that cases exist where placing an independent value on fairness or justice can make everyone in society worse off.

But as intellectually interesting as their analysis may be, one can fairly ask: What relevance is it for World Bank staff? While our other speakers will explore this in more detail, to set the stage, let me suggest two cases where the analysis can be employed. One comes from the book, the other from a recent request for advice by Bank field staff.

First an example Kaplow and Shavell present, slightly modified to reflect Bank circumstances. Let us suppose that in assessing the legal and judicial system in a client country we conclude that the judiciary is functioning very, very poorly. Our assessment reveals that antiquated procedures, corruption, perverse incentives, and so forth make it unlikely that most victims of traffic accidents will ever receive adequate compensation for their injuries. Suppose too that our analysis suggests that the introduction of a no-fault insurance scheme supplemented by heightened enforcement of the traffic laws would make everyone unambiguously better off. Victims would be quickly and adequately compensated while more vigorous traffic law enforcement would ensure the number of road accidents did not increase. At the same time, the cost of administering the system would be much less than the costs of operating courts to hear road accident cases.

Should we recommend to the client country that it deny road accident victims the right to sue their injurer in favor of such a system? Or should we decide not to because “everyone is entitled to their day in court”?

A second example comes from a recent inquiry from Bank field staff. A new government has just replaced an extremely corrupt one, and the newly installed Finance Minister asked for the Bank’s views on how to deal with the legacy of corruption he inherited. Should he expend the nation’s limited law enforcement resources to bring corrupt officials from the previous government to justice? Or should those resources be devoted to other activities, such as conducting surveillance on and investigations of office holders and civil servants in the new government to ensure they remain honest? What factors should he weigh when taking this decision? Should ensuring that bribe-takers from the previous regime receive a “fitting” punishment be a consideration? Even if the proceeds cannot be recovered? If it will take many years to prosecute them?

With that, let me introduce our principal speaker --

Louis Kaplow joined the Harvard Law School faculty in 1982 after serving as a clerk for Henry J. Friendly, the legendary common law judge on the United States Court of Appeals for the Second Circuit. As a junior faculty member at the Law School, Professor Kaplow apparently did not have enough to keep him busy so he pursued a degree at the Harvard Economics Department. In 1987 he was awarded a Ph.D. in Economics while at the same he was named a full professor at the Law School.

His research interests are antitrust, law and economics, taxation, and moral philosophy. A research associate at the National Bureau of Economic Research, he has

consulted for the American, Russian, and Israeli governments as well as various American state governments on competition policy.

Professor Kaplow, welcome to the World Bank and we look forward to your remarks.