Annotated Bibliography

Legal Institutions of the Market Economy
The World Bank

June 15th, 2005

This bibliography has been prepared by the World Bank’s Legal Institutions Thematic Group to assist project managers, research staff, and others working on legal and judicial reform in developing and transition countries. The topics cover a range of subjects from court and case management to legal transplants to alternative dispute resolution to judicial independence. They reflect a variety of approaches, from qualitative descriptions of legal institutions to formal models of the legal process.

The bibliography is being constantly updated and can be searched on the group’s external Web site, http://www.worldbank.org/publicsector/legal/. Comments and suggestions for additional topics or entries should be sent to Klaus Decker at kdecker@worldbank.org and to Richard Messick at Rmessick@worldbank.org.

(“The Mauritanian Judicial System before Independence”, in French) Before the colonization of Western Africa, the legal and judicial systems in place were based on the shari’a and customary law. After giving a general introduction to these systems in Western Africa, the author describes and analyzes the situation in Mauritania before the independence. In addition to the local law and justice institutions, he also describes the interaction with pre-independence French style courts existing at that time.

Methodology: Qualitative description and analysis
Subject Keywords: Civil litigation, colonialism/imperialism, criminal law, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics, import of foreign law/legal transplants, Islamic law, legal culture, legal pluralism, popular justice
Country/Region: Mauritania/Africa


(“The Mauritanian Judicial System after Independence”, in French) Right after independence, the government had two main objectives as to the judiciary: the separation of powers and judicial independence on the one hand and the mauritanization of justice on the other hand. The author retraces the history of reforms in Mauritania aiming at achieving these objectives. He also describes the present situation of the judiciary in Mauritania.

Methodology: Qualitative description and analysis
Subject Keywords: Civil litigation, colonialism/imperialism, criminal law, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics, import of foreign law/legal transplants, Islamic law, legal culture, legal pluralism, popular justice
Country/Region: Mauritania/Africa


Toward the end of the twentieth century, English lawyers enjoyed widespread respect and prosperity. They had survived criticism by practitioners and academics and a Royal Commission enquiry, but the final decade witnessed profound changes. First the Conservatives sought to apply laissez-faire principles to the profession. Then Labor transformed the legal aid scheme it had created half a century earlier. At the same time, the profession confronted cumulative changes in higher education and women’s aspirations, internal and external competition, and dramatic fluctuations in demand. This book analyzes the politics of professionalism during that tumultuous decade, the struggles among individual producers (barristers, solicitors, foreign lawyers, accountants), their associations, consumers (individual and corporate, public and private) and the state to shape the market for legal services by deploying economic, political, and rhetorical resources (including changing conceptions of professionalism).

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, corruption, costs of the legal system, legal culture, legal education/training, legal literacy, legal personnel, legal profession, liberalism, regulation of legal services, state budget
Country/Region: England, Wales, United Kingdom/Europe


This collection of articles offers a comparative perspective on the phenomenon of informal justice. It describes informalism in diverse social formations and under divergent ideologies: in precapitalist societies and developing countries, under liberal capitalism, social democracy, and fascism. The articles respectively deal with the following topics: the social organization of mediation in nonindustrial societies, Nyaya
Panchayats in India, the theory and practice of legal advice for workers in pre-nazi Germany, the Japanese experience with the politics of informal justice, the discourse of summary justice and popular justice in Argentina, the movement toward procedural informalism in North America and Western Europe, institutionalizing neighborhood courts in Chile, Portugal’s experience with popular justice, and the legal system in Mozambique before and after independence.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Alternative dispute resolution, authoritarianism, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, ideological role of law, informal dispute resolution, institutionalization, legal culture, legal pluralism, lok adalat, mediation, popular justice, post-transition justice

**Country/Region:** India, Germany, Japan, Argentina, Chile, Portugal, Mozambique


This article is a critique of Alan Watson’s book *Society and Legal Change*. Watson’s main thesis, according to Abel, is that the law of any given society cannot be explained by that society’s needs. Instead, law frequently is disconnected with society, and can be best explained by societal inertia. Abel criticizes Watson’s concepts of both “law” and “society” as excessively vague, and argues further that Watson’s theoretical approach actually shares the flaws of the functionalist view he critiques. Watson’s discussion of “inertia”, says Abel, is more vague metaphor than theory. Finally, Abel claims that the most fundamental problem with Watson’s book is its neglect of politics. Especially important in this regard are the refusal to recognize fundamental class conflicts in society, and the political uses of law to legitimate and mystify the existing social structure. This neglect of politics, Abel asserts, stems from Watson’s own conservative worldview.

**Methodology:** Critical review

**Subject Keywords:** Politics of reform; legislative process; legal rationality; politics of resistance; legal profession; legal development; colonialism/imperialism; import of foreign law/legal transplants; ideological role of law


Ackerman examines different kinds of constitutional separation of powers, focusing especially on the question of whether the American model ought to serve as a model for other nations. He proceeds by considering the effectiveness of different constitutional forms in achieving three goals: democratic lawmaking, functional specialization and professionalism in the judiciary and bureaucracy, and the protection of individual rights. He concludes that the American system fares poorly in all three aspects. He argues instead for a system of “constrained parliamentarianism” in which a democratically elected legislature is in charge of selecting a government and enacting ordinary legislation. The power of the central government is further checked by a number of special branches, in order to further each of the three goals enumerated above. To further democratic legitimacy, he suggests that serial referenda and a constitutional court be used to constrain the center to follow previous decisions. Also, the center could be checked by a second chamber, which should be weak in the case of federal systems, but somewhat stronger in unitary systems. Ackerman then argues that functional specialization can be enhanced by an independent court system, as well as a separate “integrity branch” (to oversee the operation of the other branches) and a “bureaucracy branch”. Finally, to protect individual rights, he recommends the creation of a “democracy branch” (to safeguard each citizen’s participatory rights and the integrity of elections) and a “distributive justice branch” (to focus on providing minimum economic security to the disadvantaged), as well as a constitutional court to protect fundamental liberal rights. Ackerman stresses that he is not recommending that the US scrap its current system and attempt to construct a new one from scratch. But, he stresses that the American system has deep flaws which may be even more acute outside the American context, and a constitution along the lines he proposes might be more appropriate.

**Methodology:** Qualitative description and analysis
Subject Keywords: Separation of powers; constitutionalism; presidentialism v. parliamentism; electoral process; legislative process; bicameralism; federalism; rule of law; bureaucracy; individual rights; equality/social justice; judicial review; liberalism; political parties; judicial selection/promotion; corruption

Law Keywords: Constitutional law; administrative law

Country/Region: United States; United Kingdom; Germany; France; Italy; Australia; Switzerland; India; Japan


The author tries to demonstrate that the structural variation in the administration of justice among Romani systems can provide a multi-dimensional model for variation in human justice systems in general. It is suggested that structural variation correlated with the differential prioritization of three key values: personal responsibility versus individual conscience, democracy versus consensus, and authority versus tradition.

Methodology: Qualitative description and analysis, comparative analysis

Subject Keywords: Culture/social norms/informal institutions, customary law/indigenous law, legal culture

Country/Region: Scotland, Albania, Kosovo, England, Romania, Bulgaria, Slovakia, Hungary, Germany, Poland, Russia, Estonia, Latvia, Lithuania, Serbia and Montenegro, Croatia, Slovenia, Macedonia, Bosnia and Herzegovina


This report, prepared by a London-based human rights group, analyzes issues related to the operation of the legal system in Zimbabwe, focusing especially on issues of access to justice and gender issues. The report includes chapters on administrative barriers to justice, the judiciary and legal profession, cultural and economic factors, political impediments to justice (with special reference to the continued dominance of a single party, ZANU-PF), and initiatives by the government and non-governmental organizations intended to improve access to justice. A consistent theme is the need for greater education to improve people’s understanding of their legal rights and the operation of the legal system generally. The report includes excerpts from interviews with Zimbabwean citizens, activists, and government officials.

Methodology: Qualitative description and analysis

Subject Keywords: Access to justice; corruption; culture/social norms/informal institutions; customary law/indigenous law; democracy; electoral process; ethnic politics; equality/social justice; gender/women’s rights; human rights; individual rights; judicial efficiency/court delay; judicial independence; legal aid; legal information; legal literacy; popular justice; public opinion of the legal system

Law Keywords: Family law; criminal law; civil litigation

Country/Region: Zimbabwe


This chapter discusses the principles of constitutional interpretation applied to the judicial review of executive or legislative decisions in Malaysia. The author quotes extensively from decisions of the Malaysian courts and the British Privy Council to illustrate some of these principles. Some of the themes discussed include the relationship of the written constitution with principles of natural justice, the constitutional principles relating to the declaration of “states of emergency”, and the deference courts ought to give administrative decisions of the executive.

Methodology: Qualitative description and analysis

Subject Keywords: Constitutionalism; judicial review; judicial decision-making; state of emergency/martial law; individual rights; legal doctrine; legal formalism

Law Keywords: Constitutional law; criminal law
**Country/Region:** Malaysia; United Kingdom; Singapore

**Ahmadi, A.M.** “ADR Programmes in India,” [Unpublished manuscript, 1996.]

The author, Chief Justice of India and Patron-in-Chief for the Committee for Implementing Legal Aid Schemes in India, describes India’s experience with alternative dispute resolution and legal services. In pre-colonial India, *nyaya panchayats* or village councils composed of respected elders resolved village-level disputes; during the colonial period, British common law, professional representation, and adversarial methods of dispute resolution were introduced. India has faced and continues to face an explosion in litigation and severe court delay (more than 20 million cases pending in subordinate courts in 1993). In 1976, a new constitutional amendment required the government to provide free legal aid in order to poor citizens, and new legal aid schemes aimed to deliver financial assistance and professional service across the country. These legal aid programs are designed both to aid litigants as well as to foster settlements and divert cases from court. Indian ADR programs include the network of *lok-adalat* (“People’s court”) which mediate cases using a panel of trained legal and non-legal professionals, delivering more efficient and cost-effective justice. Other ADR programs include tribunals to resolve consumer disputes, family counseling centers, and arbitration proceedings, although some of these methods have had uncertain results—arbitration, for example, adding another level of litigation without reducing cost. The author concludes by calling for the establishment of international legal aid services to universalize access to justice.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Alternative dispute resolution; legal services; access to justice; *lok-adalat*; *panchayat*; mediation; judicial efficiency/court delay; costs of the legal system; culture/social norms/informal institutions; legal pluralism; colonialism/imperialism; common law; nonlawyer advocates

**Law Keywords:** Civil litigation; family law

**Country/Region:** India


This article examines the influence of U.S. constitutionalism on South Korea, focusing especially on post-1988 developments. The first section of the article examines the factors that Ahn believes led to the increase in judicial activism after 1988. He lists five factors that he believes are responsible for this change: easier access to constitutional adjudication due to institutional changes, growing assertiveness on the part of judges, the growth and diversification of the bar, increasing globalization, and, most importantly, changes in the attitudes of the general public toward law, litigation, and the constitution. The second part of the article highlights some specific decisions that highlight the Constitutional Court’s growing activism, its willingness to create unenumerated constitutional rights, and its assertiveness in matters of its own jurisdiction. The third part of the article discusses American influence in several specific areas of law, including the electoral process, equal protection, due process, freedom of expression, and the rights of criminal defendants. Ahn concludes that Korea is undergoing a profound change from authoritarianism to democracy and constitutionalism, and he argues that in this context judicial activism is something to be cherished. He predicts that American influence on Korean constitutional law will continue to increase as Korea continues its democratization.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutionalism; legal transplants/import of foreign law; individual rights; judicial review; democracy; political reform/regime change; constitutional change; judicial independence; legal profession; public opinion of the legal system; judicial reform; political question doctrine/judicial deference; electoral process; gender/women’s rights; due process; public prosecutors

**Law Keywords:** Constitutional law; criminal law; administrative law; labor law

**Country/Region:** South Korea

Ajani discusses the transplant of Western legal models to the Russia and the formerly socialist countries of Central and Eastern Europe, focusing particularly on the relationship between law reform and the creation of a market economy. After discussing legal developments in the post-Stalinist Soviet Union, she turns to the more extensive legal borrowing which took place after the Soviet Union’s collapse. First, she discusses the demand for new legal models, especially in the context of drafting new laws for a market economy. Then, she discusses the supply of these models, looking in particular at the IMF and the European Union. She concludes by suggesting that prestige and political opportunity determine when and how foreign legal models are adopted. She also suggests that the study of comparative law should focus more on the dynamic flow of legal ideas between different systems then on classification of systems into static legal families.

Methodology: Qualitative description and analysis
Subject Keywords: Legal transplants/import of foreign law; post-socialist transition; economic reform; political reform/ regime change; outside assistance; civil law; law drafting
Law Keywords: Constitutional law; commercial law; administrative law
Country/Region: Russia; Eastern Europe; Central Europe


In this article, the authors challenge the idea that nonjudicial officials need not take Supreme Court decisions as authoritative, as many have argued. The authors argue that constitutionalism entails obeying a constitution even when its directives seem mistaken, and furthermore requires obeying the interpretations of an authoritative interpreter, even when those interpretations seem mistaken. The obligation to follow the Supreme Court’s interpretation may be overridden at times by other moral or policy considerations, but that does not mean that the obligation to defer to the Supreme Court does not exist. The authors conclude that a doctrine of judicial supremacy in constitutional interpretation is a necessary element of constitutionalism.

Methodology: Conceptual/philosophical inquiry
Subject Keywords: Constitutionalism; judicial review; separation of powers; obligation to obey the law
Law Keywords: Constitutional law
Country/Region: United States


In this article, Alford assesses the state of law reform in China, in light of the violent suppression of student demonstrators in 1989. First, he notes that the Chinese leadership’s principle objective in law reform has been legitimizing the power of the leaders and establishing technical guidelines for facilitating economic development. Establishing the rule of law – constraining officials and protecting the rights of the people from abuses of authority – has not been part of the reform agenda. Furthermore, there is a substantial gap between the law as written and its actual impact on Chinese society. Alford discusses the reasons that American China specialists failed to identify the weaknesses in China’s legal reform efforts prior to 1989. He also assesses the future of Chinese law reform, and his predictions are bleak. Intractable problems of population, the state economic sector, and political system are closely interwoven with the fate of law reform. Alford believes foreign experts can play a limited role in aiding Chinese law reform, but argues that they must be mindful both of the limitations of law and the impact of direct involvement on their role as observers. Independent and dispassionate analysis is critical, and scholars must strive to provide it.

Methodology: Qualitative description and analysis
Subject Keywords: Legal reform; economic reform; individual rights; symbolic use of law; politics of resistance; rule of law; judicial independence; institutional capacity; legal implementation; politics of reform; state sector/public ownership; economic development; import of foreign law/legal transplants
Law Keywords: Intellectual property law; commercial law; criminal law; administrative law
Country/Region: China

This article discusses personal status codes and the education of women in Islamic law and the law of several Muslim countries. Al-Hibri notes that internal critiques of patriarchal features of modern law codes are important to Muslim women who seek religiously grounded jurisprudence establishing women’s rights. She presents an overview of Islamic jurisprudence, discussing such issues as *ijtihad* (defined as the science of interpretation and rule making), principles applicable to change in law, and the schools of jurisprudential thought in Islam. The article then considers three issues pertaining to Muslim women’s rights in personal status codes: the right of a woman to contract her own marriage, the duty of the wife to obey her husband, and the right of the wife to initiate divorce. These three issues are discussed in relation to the current codes of Egypt, Algeria, Morocco, Tunisia, Syria, Jordan, and Kuwait, and in light of the Hanafi and Malaki schools of thought. Al-Hibri then presents a Qur’anic view of gender relations, basing her argument on verses establishing the “Equality Principle,” and challenging traditional interpretations of another Qur’anic verse often used to present a hierarchical view of gender/marital relations in Islam. The article then turns to equal education of women. Al-Hibri argues that while education was generally considered a religious obligation for both sexes, the debate historically turned to what kinds of education were appropriate for women, and under what circumstances. She recounts a number of historical examples of Muslim women scholars and other women who participated actively in politics at the time of the Prophet Muhammad. The article concludes that cultural and patriarchal attitudes influenced the jurisprudence of historical interpreters, and that a new jurisprudence ought to be constructed that takes into account egalitarian developments.

**Methodology:** Qualitative description and analysis; conceptual/philosophical inquiry  
**Subject Keywords:** Islamic law; gender/women’s rights; religion; culture/social norms/informal institutions; human rights; legal reform; legal pluralism  
**Law Keywords:** Family law  
**Country/Region:** Egypt; Algeria; Morocco; Tunisia; Syria; Jordan; Kuwait; Afghanistan


This article discusses the place of the concept of “rule of law” in a constitutional, common-law system based on the principle of legislative supremacy. Allen argues that, while rule of law and legislative supremacy are often assumed to be in tension with one another, in fact the principle of rule of law properly understood is in harmony with the doctrine of legislative supremacy. The courts interpret the laws passed by parliament in light of how those laws would likely be understood by citizens, with presumption generally in favor of citizens’ traditional rights in cases of ambiguity. Judges, when interpreting a statute, are to interpret what parliament actually wrote into law, rather than trying to uncover the intent of those who sponsored or voted for the legislation. Allan concludes that legislative supremacy combined with the rule of law, as realized through this sort of judicial interpretation, is more effective in balancing the tension between majoritarian democracy and individual rights than systems based on a written bill of rights.

**Methodology:** Philosophical/conceptual inquiry  
**Subject Keywords:** Constitutionalism; rule of law; individual rights; legislative supremacy; democracy; judicial decision-making; separation of powers; judicial independence; judicial review; legislative intent; common law  
**Law Keywords:** Administrative law; constitutional law; criminal law  
**Country/Region:** United Kingdom


An extended comparison of the differences between public law in England and France used to critically evaluate the recent emergence of a public/private law distinction in England. The author shows how different approaches to defining the state, differing views of the separation of powers, and the different institutional arrangements in France and England affect the ability of the courts in the two countries to review
administrative action. Anglo-American readers will find of particular interest his argument that the French Conseil d'État oversees government more effectively than the English courts. Among the reasons offered: the Conseil's dual role as both an advisor and overseer of the government and its inquisitorial procedures.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Separation of powers; judicial review; judicial independence; administrative courts; civil law; common law
Law Keywords: Administrative law
Country/Region: United Kingdom; France


The authors report the result of a survey of 206 small landholders at four frontier sites in the state of Pará, Brazil on the relationship between land title and access to credit. The survey respondents noted the importance of secure title for obtaining credit. The overall study showed existence of title had positive effect on investment and on land value.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; credit market; agricultural sector; frontier regions
Law Keywords: Property law
Country/Region: Brazil


This article compares the current US Administration of Justice (AOJ) assistance programs in Latin America with the previous efforts of the Law and Development Movement of the 1960s and 1970s. Alvarez states that, although the formulators of AOJ strategy were aware of and tried to address the problems encountered by the Law and Development Movement, the AOJ has nonetheless come under heavy criticisms, many of them reminiscent of the critiques of the earlier movement. Alvarez argues that some of these criticisms may stem from the fact that AOJ programs are not always implemented in accordance with the enunciated strategy. However, Alvarez also argues that while AOJ strategy was developed in response to some of the criticisms of earlier efforts, it shares the same basic image of law and society, “liberal legalism”. The two areas in which controversy about this basic image is most important are economic development and human rights. Alvarez supports the basic goals of legal reform projects, but emphasizes that the critique must be taken seriously.

Methodology: Qualitative description and analysis
Subject Keywords: Rule of law; outside assistance; judicial reform; Law and Development Movement; legal education/training; individual rights; USAID; economic development; donor politics; democracy; liberal legalism; access to justice; institutional capacity; separation of powers; judicial independence; alternative dispute resolution
Law Keywords: Criminal law
Country/Region: Latin America

American Association for the International Commission of Jurists “The Interdependence of Development and the Constitutional Order” (Submission to the UN World Conference on Human Rights, Vienna, June 1993)

In this submission to the UN World Conference on Human Rights, the American Association for the ICJ stresses that development requires respect for human rights. The effective protection of human rights can only occur in a constitutional order with an effective legal system. Therefore, constitutional order and development are interdependent. The statement urges the World Conference to recognize this relationship in its final document.
Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; human rights; economic development; rule of law; separation of powers
Law Keywords: Constitutional law


Despite some encouraging aspects, several shortcomings of the draft law on the organs of self-government of judges of the Republic of Belarus are identified: vague and open-ended language, redundancies and inconsistencies, time-consuming administrative functions, judicial appointment and selection, disciplinary actions and the Court of Honor, and the relationship with the executive and legislative branches of government.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial Accountability, judicial independence, judicial selection/promotion, law drafting, legal reform, post-transition justice, post-socialist transition, separation of powers
Law Keywords: Judicial Council
Country/Region: Eastern Europe, Belarus


This paper describes specific choices that countries can make to establish judicial independence. Discussing processes of judicial selection, it argues that a “recognition judiciary” is more conducive to independence than a “career judiciary.” It recommends that the bar for removal and discipline of judges be set high to prevent opportunities for abuse of those procedures. In the area of law-making, judges should not have a role in law-making, and there should be limits to “judicial activism.” At the same time, the use of precedent, as in the U.S. common law system, helps judges reach decisions efficiently and helps maintain independence. With regard to administration, the paper surveys changes in the autonomy of the judiciary in U.S. history, and argues that an independent council of presiding judges, without political officials, should be responsible for judicial governance. Furthermore, the courts should not be subordinate to the ministry of justice, or represented by the ministry in budget issues.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; judicial elections; judicial selection/promotion; court administration; separation of powers; judicial activism; common law
Country/Region: Central Europe; Eastern Europe; United States


The Agenda for Access reports the findings of the Comprehensive Legal Needs Study, a study of Americans’ legal needs based on 3,000 interviews with low and moderate income individuals in 1993. The report concludes that the U.S. civil justice system fails to meet the legal needs of many Americans, and calls for a more effective use of existing resources, increased resource commitment for access to justice, and greater simplicity in the legal system. Among the eleven recommendations it issued, the report called for increasing the options available to people with legal problems (including expanding non-lawyer roles, simplifying court procedures, and expanding the use of alternative dispute resolution); improving community access to information; encouraging personal services law in the legal profession; increasing pro bono services; and making legal services more affordable.

Methodology: Attitude surveys
Subject Keywords: Access to justice; legal services; public opinion of the legal system; nonlawyer advocates; court administration; civil procedure; alternative dispute resolution; legal information; costs of the legal system

Law Keywords: Civil litigation

Country/Region: United States


This report presents a set of proposed guidelines, and accompanying commentary, for evaluating the performance of judges. The authors of the report stress that the main purpose of such guidelines is judicial self-improvement; however, the report also suggests that in some jurisdictions these guidelines could be used in judicial assignment and retention decisions. The guidelines cover the criteria on which judges ought to be evaluated, data-collection methodology, and the proper uses and dissemination of the data on judicial performance.

Methodology: Qualitative description and analysis

Subject Keywords: Performance indicators; judicial decision-making; judicial accountability; court administration

Country/Region: United States


This article builds on the argument of William Landes and Richard Posner that the function of an independent judiciary is to increase the durability, and hence the value, of legislative contracts with special interest groups. This perspective, the authors argue, explains why legislators have an interest in preserving an independent judiciary. However, they continue, it does not explain the incentives of judges to maintain their independence and to interpret law in a manner consistent with the intent of the enacting legislature. The authors hypothesize that legislatures use their power over judicial budgets and salaries to keep judiciaries independent. Therefore, all other things being equal, high salaries ought to be correlated with high levels of independence. They conduct an empirical test of this proposition using data from US state supreme courts, using the salary of the chief justice as the dependent variable, the number of laws overturned on the basis of substantive due process (their proxy for independence) as the independent variable of interest, and controlling for a number of other variables. They find a statistically significant and positive relationship between the independent and dependent variables, and conclude that this evidence supports their hypothesis.

Methodology: Quantitative analysis

Subject Keywords: Judicial independence; incentives of judges; legislative process; judicial review

Law Keywords: Constitutional law

Country/Region: United States


This paper examines some of the principal factors that deny poor people access to justice and suggests a number of legal reform strategies. The legal system offers an arena in which people can hold political leaders and public officials to account, protect themselves from exploitation by those with more power, and resolve conflicts that are individual or collective. However, the ability to access and use legal institutions is distributed unevenly in most societies. The poor in the least developed countries in particular have little access and are infrequent users of the legal system. They often live in various forms of illegality. Making legal institutions accessible and responsive to poor people is one of the major challenges that confront law and judicial reform initiatives.

The paper focuses primarily on the judiciary. It begins with a comment on how different forms of illegality or lawlessness contribute to the creation and reproduction of poverty. After a review of the judiciary’s
accountability functions, it proceeds to examine the institutional obstacles to legal accountability by the poor and the anti-poor bias of many legal institutions. The paper’s focus then turns to civil society and examines a number of economic and social factors that keep the poor from obtaining access to judicial systems. The next section explores how democratization and the incorporation of human rights concepts into national law have or have not enhanced access to justice. The conclusion suggests a number of policy reforms and strategies that state and civil society groups can deploy to increase the responsiveness of judicial systems to the poor.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, civil procedure reform, civil society, class actions/representative actions/public interest litigation, court delay, democracy, equality/social justice, human rights, judicial independence, legal literacy, legal services
Country/Region: Developing world (general)


This article discusses the problems facing countries dealing with the transition from socialism, focusing specifically on the question of whether authoritarian forms of government would be better able to handle pressure from different special interests than democratic systems. Apolte argues that this is not the case – although democratic systems are indeed subject to special-interest pressures that result in sub-optimal economic policy, the arguments for authoritarianism are based on a naïve and idealized view of the politics of dictatorships. Authoritarian governments, he argues, are likely to serve even narrower special interests than democracies. Furthermore, dictators can never credibly commit to policy, and can only be replaced by violence. Responding to the East Asian experience, Apolte acknowledges that certain cultural and social conditions may allow the emergence of economically effective authoritarian governments, but he argues that such conditions are unusual and certainly not present in the transition economies of the former Eastern Bloc. He concludes that transition countries need an effective set of interim constitutional rules for the transitional period, when central control has collapsed but new, self-regulating institutions have not yet emerged. He suggests a two-tiered interim constitutional strategy in which a relatively comprehensive constitution would lay down the rules necessary for a functioning market economy and clearly specify a time for the switch to self-regulating market mechanisms, and in which this transformation program would be protected by qualified majority voting.

Methodology: Qualitative description and analysis
Subject Keywords: Post-socialist transition; democracy; authoritarianism; politics of reform; military coups; revolution; public choice; privatization; individual rights; economic reform; culture/social norms/informal institutions; equality/social justice; federalism; institutional capacity; organized crime; constitutionalism
Law Keywords: Constitutional law; property law; commercial law
Country/Region: Russia; Eastern Europe; East Asia


Judicial reform practitioners make more or less good experiences with judges' associations during their work. Are they a "motor for change" or an "obstacle to reform"? In this English language publication, the role of the French Syndicat de la Magistrature for judicial reform in France is explored. It sketches the birth and growth to maturity of the union. It is a history that illuminates efforts by judges to enhance the possibility for broader changes in French society as well as a story of collective challenges to the interplay between state and society and collaborative efforts to refashion judge-citizen relationships.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, civil society, democracy, equality/social justice, judicial reform, legal reform, politics of reform, public support for reform
Country/Region: France/Europe

This book argues that there is a need for a distinct approach to educating judges. The study defines competence—in knowledge, skills, and disposition of judging—as the goal of judicial education. Armytage argues that judicial education programs can increase the accountability of judges without compromising judicial independence. Despite polarization since the mid-1960s over the need for judicial education, more judges in common law countries now recognize the need both for training of new appointees and for continuing professional education. The study argues that the varied processes and criteria for judicial selection in common law countries lead to varied judicial education needs. Surveying empirical research on the reasons that judges, other professionals, and adult learners as a whole participate in continuing education, Armytage argues that the reasons for judicial participation—the development of competence, professional perspective, and interaction with judicial peers—are distinct. The book further discusses the relevance of adult learning to judicial education, arguing that the learning needs, styles, and practices of judges are unique and require a special model of education. Means of effective program delivery, including policy foundations and program evaluation, are analyzed in the final part.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial training; legal education/training; judicial independence  
**Country/Region:** Australia; United States; United Kingdom


(“Judicial Review of Administrative Action in Germany”, in French) The administrative justice system in Germany is characterized by three principles: the existence of completely independent administrative courts, who are separated from the ordinary courts and are truly courts; a complete judicial protection against any kind of administrative action; an approach to standing based on individual rights. The author retraces the history and evolution of administrative justice in Germany. Subsequently, he presents and analyzes core concepts of German substantive and procedural administrative law that are crucial for the understanding of judicial review of administrative action.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative courts, administrative law, bureaucracy, constitutional change, constitutional law, democracy, executive decrees, judicial independence, judicial review, legal culture, legal doctrine, rule of law, separation of powers  
**Country/Region:** Germany/Europe


This article provides an economic analysis of notaries in civil law countries, with a special focus on the organization of notaries in Spain. Arrunada argues that notaries in civil law countries provide both public services (monitoring legality and reducing litigation) and private services (minimizing private transaction costs). Arrunada challenges the assumption that the notary system represents an inefficient monopoly, arguing instead that the organizational rules of the notary profession in Spain provide appropriate incentive mechanisms allow for the provision of important benefits without substantial costs. He supports his argument with some statistical analysis of notary income and the comparative performance of notaries with other parts of the Spanish public sector. He also argues that the Spanish civil law notary system results in lower total legal costs for equivalent services than common law systems.

**Methodology:** Formal analysis; quantitative analysis  
**Subject Keywords:** Civil law; notaries; legal services; legal profession; litigation; alternative dispute resolution; costs of the legal system  
**Law Keywords:** Contract law; civil litigation  
**Country/Region:** Spain

The author writes that the term “common law” is used in a number of ways. It can mean the system of law originating in England and which now forms the basis of the law in the greater part of the former British Empire. Common law countries differ from “civil law” countries, those whose law derive from the law of ancient Rome, in that in common law countries much of the law is not codified and the authority of judges to interpret and develop the law is quite different from that of civil law judges. “Common law” also refers to judge-made law as opposed to that made by a legislature, and in this respect it has traditionally been associated with the economics of the free market. Hayek and other writers believed common law in this sense was more likely to favor and protect individual freedom, particularly those involving economic freedom, whereas law made by legislatures was more likely to involve redistribution of resources. The common law has also been associated with the freedom of the market because of its close connection in England from the 17th to the 20th century with the doctrine of freedom of contract. During this period judges invoked that doctrine to dismantle policies that restrained trade and otherwise hindered economic activity. But the author argues that there is no necessary relationship between the common law and market economics. There is no *a priori* reason why, left to their own devices, judges will be less likely to redistribute wealth than legislatures. The link between common law and the doctrine of freedom of contract is belied by developments of the past half century or so, as legislatures have increasingly intervened to control relations between contracting parties and even courts have developed such doctrines as “unconscionability” under which they will set aside a contract if they believe it is unfair or oppressive.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Common law; judicial decision-making; individual rights; legislative process; economic development  
**Law Keywords:** Contract law


In this section, the authors argue that the speedier administration of justice in England compared to the United States is a result of deep differences in underlying visions of law. In England, there is relatively more emphasis on adherence to legal rules, while the American system to a greater extent emphasizes due process rights and the justness of rules. Consequently, English judges assert more control over procedure. Several differences in U.S. and English procedure stem from that difference in values: these include rules regulating whether the winning party is compensated for its legal costs, the extent to which lawyers can be personally sanctioned, and differences in awarding pre-judgment interest. The American “open courthouse” philosophy also provides for a broader discovery process and less willingness to take control of cases away from parties or their lawyers, even when they are perpetuating delay.

**Methodology:** Comparative analysis; qualitative description and analysis  
**Subject Keywords:** Judicial efficiency/court delay; civil procedure; legal culture; due process; legal doctrine  
**Law Keywords:** Civil litigation  
**Country/Region:** United Kingdom; United States


Atwood states that four conditions determine whether better land titles enhance access to credit: First, the extent to which financial markets constrained by government regulation; second, the presence of other factors, such as size of loan, that keep transactions cost high; third, the existence of active, thick, land market unconstrained by legal, political, or social restraints on foreclosure and resale; and fourth, the degree of informal lending activity. Among the empirical questions that should be answered before initiating a titling program aimed at enhancing access to credit are: What advantages might informal lenders see in accepting
land as collateral? How will technological change in credit markets affect the situation? What are the different sources of credit, their collateral requirements, and their access by different groups?

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Property rights; credit market; agricultural sector; legal reform  
**Law Keywords:** Property law  
**Country/Region:** Developing world (general)


This chapter reviews the data on the performance of courts in Australia. The chapter focuses on court administration rather than the outcomes of the legal process. Thus, the data presented are related to things like administrative structure, number of cases, time and money expenditure per case, accessibility of courts, and so forth. The data are broken down by geographic region, type of court, and type of case. The chapter concludes with comments from each of Australia’s States and Territories.

**Methodology:** Quantitative analysis  
**Subject Keywords:** Court administration; access to justice; judicial efficiency/court delay; performance indicators; costs of the legal system  
**Law Keywords:** Civil litigation; criminal law  
**Country/Region:** Australia


This book argues that the former Lord President of Malaysia, Salleh Abas, was wrongly and unjustly dismissed in 1988, and that his dismissal was engineered by Prime Minister Mahatir, who was threatened by the independence of the judiciary. The author, one of the lawyers who defended Salleh Abas before the Tribunal that removed him, attacks the book Judicial Misconduct by Peter Williama, which purported to defend the dismissal. Aziz claims that Judicial Misconduct is riddled with errors, omissions, and obvious bias, and he contends that a consideration of all the relevant facts – both of the Tribunal’s conduct and the context in which the events took place – shows that Salleh Abas’ dismissal was an unjust and politically-motivated attempt by the Mahatir government to undermine the independence of the judiciary.

**Methodology:** Qualitative description and analysis; critical review  
**Subject Keywords:** Judicial independence; judicial accountability; separation of powers; impeachment of judges; political question doctrine/judicial deference; individual rights; human rights  
**Law Keywords:** Constitutional law  
**Country/Region:** Malaysia


(“Recruitment and permanent education of the judiciary in five countries”; in Dutch) The Research and Documentation Center of the Dutch Ministry of Justice has conducted an international exploratory study into the recruitment and training systems for the judiciary in five countries. It includes an analysis of the role of Justice Ministers in this context.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Judicial selection/promotion, judicial training, legal education/training  
**Country/Region:** Netherlands, France, Germany, Sweden, USA

In this article, Bailey draws on the public choice literature to propose a hypothetical constitution for a new country that would maximize efficiency and total social utility. The article includes a draft of the constitution itself, along with an explanation of the rationale behind its provisions. The emphasis is on the legislative process – here Bailey proposes multiple legislatures, with members selected by lottery, which develop competing proposals to be selected by the public in a referendum. His proposal also includes several recommendations for the judicial branch. He advocates increasing competition in the provision of judicial services by requiring courts to support themselves by fees and requiring disputants to be offered a choice of at least three possible venues for resolution of a dispute. He argues further that the only law ought to be statute law, that the venue of final appeal ought to be part of the legislature rather than a separate court, and that judges be required to interpret the constitution strictly according to the meaning it had at the time it was ratified.

**Methodology:** Formal analysis  
**Subject Keywords:** Constitutionalism; public choice; democracy; legislative process; electoral process; separation of powers; judicial efficiency/court delay; judicial independence; judicial review; legislative intent; adjudicative competition  
**Law Keywords:** Constitutional law


The authors develop a formal model to analyze legal change in common law systems. They note that legal change is driven primarily by litigation; litigation will tend to occur only when the party with the larger interest in precedent would gain from strengthening or overturning the existing precedent. Thus, the law will tend to evolve in a direction that favors the interests of those litigants with the strongest interest in precedent. These tend to be the litigants that are least numerous, or those that are able to organize into interest groups and thereby solve the potential “free rider” problem. The process of changing precedent can be sped up if litigants adopt a coherent litigation strategy. Judges, if they have the ideological disposition to do so, can stop change in the law, but they cannot effect change in the law. The main conclusion of the model and the paper is that changes in the law will favor concentrated interests. This may lead to economic efficiency, but there is no reason to expect that it will.

**Methodology:** Formal analysis  
**Subject Keywords:** Common law; legal evolution theory; litigation; out-of-court settlement; judicial decision-making  
**Law Keywords:** Civil litigation; tort law

**Baldwin, John** “Monitoring the Rise of the Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication” (London: Lord Chancellor's Department, Research Secretariat, 1997) [available by writing enquiries.lcdhq@gtmet.gov.uk]

In January 1996 the limit on claims that could be brought in the small claims courts of England and Wales was increased from £1,000 to £3,000. This report assessed the impact of that increase by comparing the experiences of litigants who took their claims to small court with those who elected to stay with the traditional court system. Those availing themselves of the small claims procedures reported higher levels of satisfaction on every measure chosen. The operation of the small claims regime was not trouble free, however. Litigants did find problems with the lack of preliminary legal advice and difficulty in enforcing judgments.

**Methodology:** Qualitative description and analysis; attitude surveys  
**Subject Keywords:** Alternative dispute resolution; litigation; public opinion of the legal system; law enforcement; legal services  
**Law Keywords:** Civil litigation  
**Country/Region:** United Kingdom

In 2002 – 2003 the regulatory framework governing the provision of legal services became the subject of urgent debate and potential reform. A key question being addressed by the review is whether the current ‘maze’ of over 20 regulators should be replaced by one super-regulator along the lines of the Financial Services Authority (FSA). This proposal was strongly put forward by the Legal Services Ombudsman. Her arguments were that such a change would allow for systematic rationalization, consistency of rules, services standards and sanctions and would facilitate coordination of strategy and efficient delivery on that strategy.

The authors assess the merits of this option, drawing on conclusions reported in the scoping study on legal services regulation that was undertaken by the authors in 2002 for the Lord Chancellor’s Department. They consider the case for and against such a super-regulator and do so in a number of stages. First, they set out the background to the current proposal in order to explain why the prospect of radical change has found its way onto the political agenda at this time. Second, they discuss the regulatory challenges posed by legal services provision. What, they ask, are the special features of the legal services market that are of regulatory relevance and what are the market failures that have to be addressed? Third, they analyze current concerns about legal services regulation. Fourth, the authors look at the development of the proposal that a super-regulator be established and they discuss the various forms and functions that such a body could adopt. Finally, they consider the prospects of success and failure for such a body and discuss how far its establishment might go to meet the array of regulatory challenges and concerns that confront policy-makers at the moment. In assessing those expectations they consider different accounts of the drivers that are likely to shape legal services regulation.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, costs of the legal system, legal profession, legal services, regulation of legal services
Country/Region: United Kingdom, England/Europe


Security for people, communities and states is essential for sustainable development, democratisation and conflict mitigation. Politicised, badly managed or ineffective security bodies and justice systems often create instability and insecurity, largely due to the lack of effective democratic systems. Strengthening democratic security-sector governance after conflict presents enormous challenges, particularly: (1) developing and implementing a legal framework consistent with international law and democratic practice; (2) developing effective, well-functioning civil management and oversight bodies; (3) developing viable, accountable and affordable security forces; (4) ensuring that the institutional culture of the security forces supports the legal framework, international law, good democratic practice and civil management and oversight bodies. Addressing these challenges requires professional security forces, capable civil authorities, rule of law and regional approaches. Reform activities should be guided by local ownership, sensitivity to the politics of reform, local capacity, local context and a comprehensive sector-wide framework. Local stakeholders must make hard decisions about priorities on the availability of domestic resources available and the costs and benefits of accepting external assistance.

Methodology: Qualitative description and analysis
Subject Keywords: Crime control, criminal law, culture/social norms/informal institutions, democracy, divided societies, donor coordination, donor politics, ethnic politics, governance, human rights, institutional capacity, international law, judicial reform, legal reform, military operations, outside assistance, political instability, political reform/ regime change, post-transition justice, property rights, rule of laws


This article analyzes the connection between global economic and political trends and Brazilian strategies for judicial reform. Brazil’s President, Fernando Henrique Cardoso, has endorsed a judicial reform agenda
emphasizing three proposals: (1) one that would require lower courts to adhere to the decisions of Brazil's highest court, (2) an "external control" that seeks to create a judicial council, including members outside of the judiciary, to oversee the courts, and (3) a statute to revamp Brazil's arbitration procedures. The author argues that President Cardoso's choice of judicial reform proposals is influenced by the government's attempt to remake Brazil's economy and bureaucratic state structure to conform to the global neo-liberal paradigm. This argument is based on two premises. First, the Brazilian judiciary affects the success or failure of Cardoso's economic reforms. Second, the judicial reforms backed by Cardoso will likely reduce the judiciary's power to block his economic reforms. Based on these conclusions, the author asserts that Cardoso's proposed legal reform measures would be effective in minimizing barriers to the implementation of the economic and state reform measures intended to root Brazil more firmly in a single world market.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Alternative dispute resolution; court administration; judicial efficiency/court delay; judicial reform; legal reform;

**Law Keywords:** Civil Litigation

**Country/Region:** Brazil


This short piece summarizes the recommendations of USAID’s synthesis evaluation of rule of law/administration of justice programs. The report offers four strategies, arranged hierarchically. First, if the political leadership displays only weak support for the rule of law, a strategy of constituency and coalition building is needed. Second, if political will is present but the legal structure is inadequate, there is a need for structural reform – rewriting laws or the constitution to guarantee an effective and independent judiciary. Once these two conditions are met, the third strategy focuses on improving access to justice, by providing legal services, strengthening advocacy groups, or promoting alternative dispute resolution. The fourth strategy focuses on strengthening the legal system through improving court administration and legal education. While noting that this sequence of strategies should not be followed too mechanically, the basic framework should serve as a guideline to prevent policymakers from wasting resources on the wrong types of reform.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** USAID; outside assistance; judicial reform; legal reform; judicial independence; rule of law; judicial efficiency/court delay; politics of reform; public support for reform; access to justice; court administration; legal education/training; institutional capacity; alternative dispute resolution

**Law Keywords:** Constitutional law; civil litigation; criminal law

**Country/Region:** Latin America; Asia

**Bartole, Sergio** “Organizing the Judiciary in Central and Eastern Europe” *East European Constitutional Review* 7(1):62-69

This article discusses the different systems of organizational management of judicial personnel in Eastern European countries, with regard to the effect on judicial independence. The basic challenge identified by the author is assuring qualified judges (and removing the judges of the old ruling class) without compromising the independence of the judiciary. Bartole then examines the systems of judicial personnel management as they exist in several Eastern European countries, relating the experience of each to different organizational models. He concludes by pointing out that there are a variety of models from which to choose, but that only time and more practical experience will allow us to judge how appropriate the different systems are.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial independence; post-socialist transition; legal personnel; separation of powers

**Law Keywords:** Constitutional law

**Country/Region:** Eastern Europe

This article considers the factors responsible for the establishment and ascendance of parliament in medieval England. Barzel argues against the conventional view that parliament was a proto-democratic institution established by English citizens to protect themselves from the king’s absolutist and predatory tendencies. Rather, he argues, the kings supported the creation of parliament as a means to secure the cooperation of their subjects in financing and prosecuting war efforts. Creating parliament, along with its voting and franchise rules, allowed the king to allay the fear that he would confiscate his subjects’ wealth, created an efficient means for determining which war efforts were worthwhile investments, and ensured that the subjects who stood to profit by war had an incentive to contribute. According to Barzel, the idea that parliament was created by the king to facilitate cooperation and maximize his wealth is supported by empirical evidence. The most important such evidence is the fact that, while parliament frequently rejected requests by the king for new taxes, the overall level and rate of taxation actually increased after parliamentary institutions were created. Moreover, the voting rules used and the type of taxes imposed are consistent with the idea that parliament was created as a kind of business enterprise, rather than as an instrument of democracy. Furthermore, he argues, changes in parliamentary institutions over time were also driven more by considerations of efficiency than by striving for democracy.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Taxation; democracy; authoritarianism; legislative process, bicameralism; separation of powers  
**Country/Region:** England

Bearak, Barry “Women are Defaced by Acid and Bengali Society is Torn” *The New York Times* 24 June 2000, 1

This article describes acid attacks on women in Bangladesh and the questions of justice raised when one acid attack was settled in a traditional *shalish* mediation session. A woman was badly disfigured in an acid attack by her children’s tutor, and village elders met, over the objections of the victim and her husband, to mediate a settlement. The *shalish* arrived at a compromise sum, with some elders arguing for a lower amount because, they said, the woman might be partly responsible for inciting the passions of her attacker. The husband refused to attend the session and did not accept the settlement, which was not legally binding or enforceable.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Mediation; access to justice; gender/women’s rights; alternative dispute resolution; human rights  
**Country/Region:** Bangladesh


Until the beginning of the 1990s, the issue of citizen access to legal information was rarely raised in France. The state gradually became aware of the needs of the public, which led to a major reform in 1991. A new law facilitated access to justice and legal information. However, whilst the law worked fairly well in regard to access to justice, it still had major shortcomings in the field of access to legal information in general. Public pressure, as well as the work of non-governmental organizations, led to the adoption of a second series of legislative measures which were finalized in March 2000. The author provides a brief overview of citizen access to justice and legal information in France, both before and after the implementation of the reform. The article focuses primarily on the work of non-governmental organization in this field, especially the work of Droits d’Urgence.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, civil society, freedom of information legislation, legal aid, legal information  
**Country/Region:** France/Europe

Bell offers an overview of the concept of “polycentric law” – that is, a system based on free and open competition of private legal jurisdictions, rather than a state monopoly on law and adjudication. Bell first notes that numerous scholars have found historical examples of polycentric law, in societies as diverse as medieval Iceland and contemporary Papua New Guinea. He discusses the case of early English law in particular detail, focusing on the transition from polycentric to state law. Bell then reviews the theoretical literature on polycentric law, considering both philosophical and economic justifications for such a system. He stresses the parallels between the case for polycentric law and the case for free banking (that is, competition in the issuance of currency by multiple private banks), suggesting that polycentric law offers a real, viable alternative to the current system. He concludes by noting that more research needs to be done to develop a new school of jurisprudence based on the idea of a competitive market in law.

**Methodology:** Literature review; qualitative description and analysis  
**Subject Keywords:** Adjudicative competition; private adjudication; Law Merchant; customary law; legal pluralism; law enforcement; arbitration; property rights; individual rights  
**Law Keywords:** Civil litigation; criminal law; tort law  
**Country/Region:** England; Iceland; Papua New Guinea; Europe

Bellis, M. Douglass. “The Place of Professional Legislative Drafting” [Unpublished manuscript, 1998; available from author by writing Dbellis@holc.house.gov].

Written by a professional staff member of the American House of Representatives, this paper describes the role the draftsperson plays in the legislative process in the U.S. Despite the U.S. focus, it provides valuable insights on legislative drafting applicable to any system.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Legislative process; law drafting  
**Country/Region:** United States


This article begins by criticizing the idea, common in development thinking, that legal structures and norms directly cause or determine behavior. This flawed “structural-functionalist” assumption, according to Benda-Beckmann, leads to the tendency to see law as a “magic charm” that can fix desirable social or economic arrangements, and as a “scapegoat” that can be blamed when development projects fail. Sometimes the state law of a previous government or regime is blamed. Sometimes the scapegoat is “traditional” or “indigenous” law – either the “backwardness” of the traditional law itself, or the failure of state law to adequately fit with local law. Benda-Beckmann seeks to explain why this structural view of law is so prevalent, when so much academic literature has concluded that it is flawed. He argues that the structuralist theory is sustained by social practices – specifically the interaction between development bureaucrats and villagers. The state uses law to justify and legitimize its interventionist development policies. Bureaucrats who don’t trust the state and consider the local state bureaucrats “arrogant dummies” use “local law” as a justification for refusing to comply with the bureaucrats’ policies. Villagers present bureaucrats with a highly legalistic version of their indigenous law, very different from the more flexible model they use in other interactions. Thus, by presenting “indigenous law” as the reason for not complying with state development projects, villagers actually help maintain the idea that indigenous law is to blame for the failure of development projects. Benda-Beckmann supports his argument with evidence from the Minangkabau of Indonesia. He concludes with the implications of his findings for the methodology of socio-legal studies.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Customary law/indigenous law; economic development; legal reform; legal implementation; legal pluralism  
**Law Keywords:** Property law
Legal pluralism is not a new phenomenon and includes far more than just national, international and transnational law. Research in legal anthropology has long since dealt with constellations of legal pluralism involving also customary legal orders, various types of religious law, and newly created local law. Legal pluralism resulted to a great extent from colonial expansions, missionary movements and migration. More recently, research has shown that legal pluralism is also common in industrial societies, where local communities and industrial and commercial offshoots create their own law. The transnational law that is emerging under the processes of globalization of today therefore does not create legal pluralism, but adds to the already existing constellations of legal pluralism.

Methodology: Qualitative description and analysis
Subject Keywords: Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, import of foreign law/legal transplants, Islamic law, legal culture, legal pluralism
Country/Region: Developing world (general)


Benson discusses the process of legal change in so-called “primitive” societies – societies without a state or other sovereign to impose and enforce law. He argues against a common view that primitive legal systems tend to be characterized by rigid, unchanging rules. In fact, Benson asserts, primitive legal systems actually do evolve, and can sometimes change very quickly. The most important characteristic of these legal systems, according to Benson, is that rules and decisions must be accepted voluntarily. If they are, then they become a part of the customary law. He illustrates his argument with examples of legal change drawn from the Kapauku of Papua New Guinea.

Methodology: Qualitative description and analysis
Subject Keywords: Customary law/indigenous law; property rights; common law; legal development; legal evolution theory
Law Keywords: Family law
Country/Region: Papua New Guinea


The central claim of this book is that government-supplied law, adjudication, and law enforcement services are inefficient and often dysfunctional, and ought to be replaced with a privatized system. Benson first traces the historical shift from voluntary or customary law to state-supplied “authoritarian” law. He then discusses the political and economic dynamics that cause the latter system to function poorly. The next section of the book focuses on private-sector alternatives, including private prisons and other correctional facilities, private police and security services, and private adjudication services. He discusses both how such services currently operate, and also discusses how they might be expanded to take on more functions currently controlled by the public sector. In the last section of the book, he answers some of the common criticisms of proposals for greater privatization in the legal field (including arguments about market failure and monopoly) and outlines a more radical vision of a privatized legal system.

Methodology: Qualitative description and analysis
Subject Keywords: Private adjudication; adjudicative competition; alternative dispute resolution; arbitration; mediation; Law Merchant; culture/social norms/informal institutions; customary law/indigenous law; property rights; individual rights; law enforcement; crime control; private enforcement organizations; costs of the legal system; judicial efficiency/court delay; legislative process; public choice; public opinion of
Benton criticizes what she terms the “structural” notion of legal pluralism, which posits a framework of levels or spheres of law, separate from but linked to one another. She especially criticizes the problems this theoretical framework has created in studies of the so-called “formal” and “informal” sectors of the economy. First, she argues that the structural view of stacked levels of law fits poorly with observed evidence. Participants in the informal sector do not consider themselves as part of a separate legal sphere, and frequently interpret and use state law in ordering their transactions. Second, the structural model fails to capture accurately the relationship between legal and economic ordering. The distinction between regulated and unregulated, legal and illegal spheres is often overshadowed by other distinctions in the structure and social relations of production. Third, the structural model of legal pluralism and the separation of formal and informal sectors does not give sufficient weight to non-legal social institutions and relationships that affect behavior in both sectors. Benton supports her argument with examples drawn from urban housing markets in developing countries, and labor and employment arrangements in developed countries, especially Spain. She concludes that, because of the foregoing theoretical problems, it would be best to abandon the idea of the “informal sector” as a theoretical construct, and to move away from the “scaffolded structural model” of legal pluralism. Instead, she suggests a research program that closely examines the way cultural patterns, market constraints, conceptual mapping, and other factors generate law and influence behavior.

Methodology: Qualitative description and analysis
Subject Keywords: Legal pluralism; informal sector/black markets; culture/social norms/informal institutions; noncontractual agreements/relational contract; property rights; labor market
Law Keywords: Property law; labor law; contract law; manufacturing sector
Country/Region: Developing world (general); Latin America; Spain

Benton advances a new perspective in world history, arguing that cultural practice and institutions – not just the global economy – shaped colonial rule and the international order. The book examines the shift from the multicentric law of early modern empires to the state-centered law of high colonialism. In the early modern world, the special legal status of cultural and religious minorities provided institutional continuity across empires. Colonial and postcolonial states developed in the nineteenth century in part as a response to conflicts over the legal status of indigenous subjects and cultural others. The book analyzes these processes by juxtaposing discussion of broad institutional change with microstudies of selected legal cases.

Methodology: Qualitative description and analysis
Subject Keywords: Authoritarianism, colonialism/imperialism, customary law/indigenous law, culture/social norms/informal institutions, ideological role of law, import of foreign law/legal transplants, legal pluralism
Country/Region: Developing world (general)

Benz, Matthias Institutionen und menschliches Wohlergehen (Tübingen: Mohr Siebeck, 2004), 190 pages

(“Institutions and Human Welfare”, in German) People do not only care about material outcomes, but also value the processes and conditions which lead to these outcomes. Matthias Benz shows that this “procedural utility” is an empirically relevant phenomenon in many areas of the economy, politics and society. This is also true for the field of law and justice. The concept can extend the traditional economic approach, which is predominantly outcome-oriented, and can contribute to a deeper understanding of human well-being and behavior. Procedural utility is relevant for the social sciences, because institutions are an important source of procedural utility. Good institutions are of central importance for the material welfare of a society. However,
they also affect the psychological well-being of individuals, be it in their capacity as consumers, members of the workforce, citizens or members of society.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Bureaucracy, civil procedure reform, civil procedure, civil society, due process, legal proceduralism, legislative process, litigation

**Bergling, Per** “Judicial Reform under International Law: Notes from Bosnia and Herzegovina” *Nordic Journal of International Law* 70/2002 pp. 489-511

The Dayton Peace Accords emphasized that the new BiH should be a democratic state operating under the rule of law. It was clear that the judicial authorities of BiH would not be able to transform this language into reality when the nationalist political parties resisted any such development. In order to promote judicial reform and safeguard vital rule of law interests, the High Representative imposes decisions and laws and remove obstructionist officials. This article describes how these powers are exercised and how the broader effort of judicial reform is organized in Bosnia and Herzegovina. At the heart of the problems is the lack of a strong domestic constituency pressing for rule of law and a fading interest of the donor. Once the structural reforms have been completed, however, important means must be made available to empower and make known the new institutions.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to Justice, court performance, democracy, donor politics, ethnic politics, human rights, institutional capacity, judicial reform, political parties, public prosecutors, rule of law  
**Country/Region:** Balkans

**Bergling, Per** “Rule of Law on the International Agenda” *Juridisk Tidskrift vid Stockholms Universitet* 4:778-797 (2002-03)

This study analyzes legal and judicial reform in the context of international integration, development cooperation and international administration. It points out the reasons for an increased emphasis on legal and judicial reform, explains the goals and points of departure, and shows the historic background of legal assistance. The article focuses on different types of legal and judicial crises and addresses different issues of international administration and judicial reform.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, constitutional change, customary law/indigenous law, donor politics, economic development, institutional capacity, international law, judicial reform, law and development movement, law drafting, legal development, legal reform, outside assistance, political reform/regime change, post-transition justice, rule of law, United Nations, legal transplant/import of foreign law  
**Country/Region:** all


The authors analyze the determinants of “legality” (the effectiveness of institutions that enforce the law, as opposed to the substantive law on the books) and the effect of legality on economic development, using data on 49 countries. Specifically, they test the hypothesis that the way a country got its legal system is a more important determinant of legality than the substance of the law, proxied for by the legal family to which the system belongs. The authors find a large and statistically significant “transplant effect”. Countries that developed their own legal systems, were able to adapt transplanted law, or had a population already familiar with the transplanted legal system score much higher on legality indicators than countries that imported law without adaptation or pre-existing familiarity. Moreover, when this transplant effect is included, the “legal family” (English common law, French civil law, German civil law, Scandinavian civil law”) turns out not to have a statistically significant effect on legality. They show further that the transplant effect has an important indirect impact on economic development through legality, but no direct effect. The authors include a formal model of the phenomenon they believe their data describes, and test several different specifications of their
statistical model to make sure their results are robust. The policy implications of these results, they contend, are that a legal reform strategy should emphasize the careful selection of rules whose meaning can be understood and whose purpose is appreciated by domestic law makers, law enforcers, and economic agents; trying to find the “optimal” substantive rules (or legal family) is less important.

Methodology: Quantitative analysis; comparative analysis; formal analysis
Subject Keywords: Legal transplants/import of foreign law; common law; civil law; economic development; rule of law; law enforcement; colonialism/imperialism; legal reform; culture/social norms/informal institutions; capital market; credit market; investment
Law Keywords: Commercial law
Country/Region: Western Europe; North America; Asia; Africa; Latin America; Australia


The U. S. Supreme Court’s decision in Marbury v. Madison specifically raises the question of the legitimacy of a ‘horizontal’ species of judicial review, that is, review by courts of the exercise of powers by the coordinate branches of government. The author asks the same question with respect to judicial review in the European Union. More particularly, he analyzes how problematic or contestable ‘horizontal’ judicial review has been within the European Union, and how the courts of the European Union have exercised ‘horizontal’ review. He finds, however, that it is not the ‘horizontal’ dimension of judicial review, with which Marbury is associated, but rather its ‘vertical’ dimension, that has generated larger questions of principle within the EU constitutional system, giving rise to serious doubts as to its exercise.

Methodology: Qualitative description and analysis
Subject Keywords: European Community/European Union, European Court of Justice, judicial review, Country/Region: Europe, United States


This article addresses concerns that the independence of the Federal Judiciary in the United States is being threatened. The authors point out that “judicial independence” is an umbrella term that covers both the decisional and personal independence of individual judges, and the procedural and administrative independence of the judicial branch as a whole. Most judges do not believe that their personal decisional independence is threatened; however some are concerned that the judiciary’s procedural and administrative independence is threatened by both legislative and executive intervention. The authors point out that the idea that administrative independence is a necessary condition for decisional independence is not contained in the constitution itself, but nonetheless it has substantial merit. The authors conclude that concern over loss of branch independence has to do with the perception that the workload and jurisdiction of federal courts have grown so rapidly that quality is threatened. In conclusion, the authors note that efforts by the judicial branch to ensure strong within-branch accountability enhances branch independence, since the other branches have a natural disincentive to involve themselves in disciplining judges or micro-managing the judiciary.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; separation of powers; court administration; incentives of judges; judicial decision-making; impeachment of judges; judicial reform; criminal sentencing
Law Keywords: Civil litigation; criminal law; constitutional law
Country/Region: United States


This overview explains the history of legal practice in Denmark, and the rules for the access to the legal profession. Subsequently, the Danish Bar and Law Society, its structure, its propose and tasks, its role in
dealing with complaints about the profession, and the system of disciplinary sanctions are presented. The synopsis concludes on the future of the Danish bar and Law Society.

**Methodology:** Summary/synopsis

**Subject Keywords:** Legal education/training, legal profession, legal services, litigation, regulation of legal services

**Country/Region:** Denmark/Europe


After summarizing the history of the Finnish bar, this overview presents the requirements for admission as advocate and draws a picture of the profession today. It explains the role of the bar as to professional ethics and discipline. Subsequently, fees and the financial protection of the client are addressed.

**Methodology:** Summary/synopsis

**Subject Keywords:** Legal education/training, legal profession, legal services, litigation, regulation of legal services

**Country/Region:** Finland/Europe


After a brief presentation of the historical background, this overview explains the prerequisites for access to the legal profession, distinguishing between the district courts and the Supreme Court. The Icelandic Bar Association is presented in brief as well as ethical rules, and the role of the disciplinary committee. Membership statistics are provided. The overview concludes on the Bar Association’s publications and its future.

**Methodology:** Summary/synopsis

**Subject Keywords:** Legal education/training, legal profession, legal services, litigation, regulation of legal services

**Country/Region:** Iceland/Europe


This brief synopsis first presents the role of the Norwegian Bar Association. Then, the history of the legal profession is explained. The overview then focuses on the role of the attorney and the requirements for practice. The questions of legal education, ethics, and international work are also addressed. The text concludes on the publications and the future of the Bar Association.

**Methodology:** Summary/synopsis

**Subject Keywords:** Legal education/training, legal profession, legal services, litigation, regulation of legal services

**Country/Region:** Norway/Europe


After presenting some salient features of the legal profession in Sweden, this overview explains the organization of the Bar Association as well as the admission of members. It provides membership statistics and trends on the market of legal services, and presents the role of the Bar as to disciplinary supervision and ethics. This short overview concludes on other activities of the Bar such as lobbying, information, training and international relations.

This article attempts to explain why the diamond industry has generally relied on extralegal mechanisms rather than formal contracts to enforce business norms and resolve disputes. Bernstein argues that the diamond industry has developed an elaborate internal set of rules, procedures, and sanctions — based primarily on reputational enforcement mechanisms — that are in fact more efficient than the legal system. Internal arbitration and conciliation have the advantages of speed, secrecy, and relatively low cost. All of these factors are particularly important to diamond traders, given the structure and characteristics of the industry. Bernstein contends that, if the informal business norms and institutions were replaced by the formal legal system, inefficient breach of contract would be frequent. Thus, in this industry, reliance on informal norms is Pareto-superior to reliance on the legal system.


A number of courts in the U.S. require litigants to try and resolve their disputes through arbitration before going to trial. Although either side may reject the arbitration award and proceed to trial, court-annexed arbitration programs typically try to dissuade litigants from electing a trial through various financial disincentives. Litigants who decline to accept the arbitration award and then fail to improve on the award at trial may, for example, be required to pay the other party’s post-arbitration costs and attorneys’ fees. The purpose of forcing litigants into pre-trial arbitration is to produce the same benefits parties who voluntary agree to ADR in advance of litigation realize — principally reductions in delay and litigation expense, informality of procedure, and more accurate decisions. But a comparison of court-annexed arbitration with private, voluntary arbitration agreements shows that mandatory programs do not capture most of the benefits that flow from private agreements. Furthermore, an analysis of court-annexed arbitration programs on the parties incentive to sue, settle, accept arbitration awards, or go to trial — using numerical simulations based on an econometric model — shows that these programs favor the better capitalized litigants at the expense of those who are poorer and more risk adverse. While these findings demonstrate that courts should not force litigants to submit to arbitration as a condition of going to trial, they do not mean that introducing ADR into the litigation process can never enhance welfare. Allowing parties to a lawsuit to agree to resolve pre-trial disputes through ADR or allowing them to contract, in those jurisdictions that operate Multi-door Courthouses or assign cases to different tracks, on the “door” or “track” can produce unambiguous gains in welfare.

Besley tests the relationship between property rights in land and access to credit, using survey data from Wassa and Anloga, two regions in Ghana. The article uses a neo-classical model of the credit market, which assumes that better-defined rights make it easier to seize land collateral and that the value of the collateral never exceeds the value of the loan. This model is designed to test relationship between land rights and investment where land rights are decomposed into rights to sell, rent, bequeath, pledge, mortgage, and gift. Besley finds that, in both regions, rights and investment are significantly related, although only in Wassa is relationship robust. However, the causality may run from investment to rights, or there may be interaction between two. Moreover, results for both Wassa and Anloga are inconsistent with view that better access to credit explains increases in investment. In both regions, Besley’s results show a relationship between rights to a particular field and investment rather than a relationship between household’s rights and investment. If it is assumed that there is no reason why a household cannot pledge any of its fields to invest in another, then the relationship should be between household rights and investment. Thus, Besley concludes that it is difficult to explain the data with the traditional credit-based view of property rights in land.

Methodology: Quantitative analysis
Subject Keywords: Property rights; credit market; agricultural sector; investment
Law Keywords: Property law
Country/Region: Ghana


This memorandum argues that the U.K. legal aid system fails to deliver cost-effective justice and should be revamped. The current system, it is argued, increasingly costs more but covers fewer people, fails to secure individuals’ fundamental rights, and relies too heavily on lawyers as providers. The authors provide an economic analysis of current problems in the legal aid system, attributing the explosion in costs to the principal-agent and moral hazard problems. There is asymmetric information between lawyers and clients, and between lawyers and the state subsidizing lawyer fees: lawyers have incentives to provide more services than are desired or required. As in other insurance problems, insured individuals have incentives to pursue legal cases with no regard to cost. The authors survey rising British legal aid expenditures between 1987 and 1994, and conclude that they are consistent with the hypothesis of supplier-induced demand. They propose the following reforms: the introduction of “fundholders for justice,” or skilled buyers of legal services who would purchase for clients the most cost-effective means of access to justice (including alternatives to lawyers); the transformation of the Legal Aid Board from a passive payer of subsidies to an agency contracting work to competing service providers; simplification of court procedures and greater choice in dispute resolution; the reduction of moral hazard through requiring individuals to pay a deductible or co-payment for legal services. The memorandum concludes that only rationing not expanded funding will effectively contain costs and guarantee access to justice within a country’s means.

Methodology: Formal analysis; quantitative analysis
Subject Keywords: Access to justice; legal services; costs of the legal system; insurance; legal profession; nonlawyer advocates; litigation; state budget; legal reform
Law Keywords: Civil litigation; criminal law
Country/Region: United Kingdom


This article uses interview data with German, Kürdisch, and Lebanese subjects to investigate five aspects of the legal culture of these groups. These aspects are: attitudes toward the legitimacy of various sources of authority; the legitimacy of different norms of dispute resolution; preferences in procedure; the goals of dispute resolution; and the acceptability of discretion and particularism in dispute resolution. Bierbrauer reports that those groups with a collectivist orientation (the Kurds and the Lebanese) had statistically significant differences in all these dimensions from the Germans, who held a more individualist orientation. Specifically, the collectivistic groups showed a greater preference for following religious or traditional
norms, were less willing to use state law to regulate in-group disputes, and had a stronger preference in general for informal dispute resolution. Moreover, the collectivist groups saw the goal of dispute resolution primarily as restoring social harmony, and were more tolerant of judges using discretion and taking the personal characteristics (gender, social status, general impression) of disputants into account when making decisions. Overall, Bierbrauer concludes that this evidence lends further support to the distinction between collectivist and individualist orientations, and that this distinction has implications for law. He concludes by noting some of the implications of these findings for multiethnic societies, where different cultural groups may have very different attitudes toward the state legal system.

Methodology: Attitude surveys; quantitative analysis
Subject Keywords: Legal culture; culture/social norms/informal institutions; religion; mediation; informal dispute resolution; public opinion of the legal system; ethnic politics
Law Keywords: Civil litigation; family law
Country/Region: Germany


This wide-ranging discussion of land-related institutions and their impact on rural development summarizes the learning on the impact of land titling. Institutional arrangements for land records and title documents have beneficial implications for credit markets. For land to be useful as collateral, however, the lender needs to be assured that the borrower-operator has the right to dispose of the land by sale or transfer of use rights. Thus the documentation of land rights makes land a form of credible collateral, affects the willingness of lenders to make loans and may make credit markets more efficient. But a 1990 study from Africa reported that when the parcels were very small, lenders would not extend credit even when the parcels had been titled. According to the authors, assessments of the impact of individual titling on efficiency vary. In Thailand and Costa Rica private researchers report positive results, and a 1986 International Development Bank study of Bolivia and Ecuador also suggest that titles lead to higher farm income. But several studies have demonstrated that the positive impact of titles on income is all due to the fact that titles make it easier to obtain credit. Thus, where credit markets are poorly developed, as in parts of Africa, titling may be of little benefit.

Methodology: Qualitative description and analysis; literature review
Subject Keywords: Property rights; credit market; agricultural sector; legal reform
Law Keywords: Property law
Country/Region: Africa; Thailand; Costa Rica; Bolivia; Ecuador


This chapter proposes a system of corporate law for newly privatizing or developing countries. The proposal is based largely on the authors’ experience helping to draft a model corporate law for Russia. The authors claim, first, that corporate law can indeed work well and make a significant difference in new and emerging markets, but the law must be adapted to the characteristic conditions of such countries. These include relatively weak and unreliable legal systems, less sophisticated capital markets and related institutions, and the cultural expectations of the public. They advocate a “self-enforcing” model of corporate law, characterized by mandatory procedural (as opposed to substantive) rules that enable outside and minority shareholders to monitor and police controlling shareholders and management. This strategy reduces the need to turn to courts or other government agencies for enforcement, which is desirable when these institutions are weak. They also advocate simple and clear “bright line” rules, rather than standards, in order to detect and discipline improper conduct more effectively and efficiently. The chapter then discusses the specific proposals for company law in Russia. The most important of these relate to shareholder voting rules for the board of directors, safeguards for particular types of transactions (mergers, self-interested transactions, share
transactions, control transactions), and special rules and safeguards for certain classes of shareholders, such as employees, venture capitalists, and the state. In conclusion, the authors note that, as institutions and the economy evolve, changes in the corporate law may be appropriate and some of the safeguards built into their model may be relaxed. But, they stress, this does not imply that the Russian corporate law will necessarily move toward the US model.

Methodology: Qualitative description and analysis
Subject Keywords: Post-socialist transition; economic reform; economic development; privatization; institutional capacity; culture/social norms/informal institutions; capital market; credit market; judicial efficiency/court delay; law enforcement; organized crime; private enforcement organizations; nonlegal sanctions; bankruptcy; investment
Law Keywords: Commercial law
Country/Region: Russia; developing world (general)


Balancing efficiency and quality in the judicial system is a subject of frequent discussion in many countries. Therefore, the Dutch Council for the Judiciary has requested the authors to design and implement a method to periodically compare the judiciary system in the Netherlands with that in other countries, using quantitative indicators for the utilization of resources (i.e. expenditure and staff) and performance (i.e. number of cases concluded per euro spent or per employee). This report is the result of general research, with more in-depth research to be conducted at a later stage.

Methodology: Comparative analysis
Subject Keywords: Case management, civil litigation, costs of the legal system, court administration, court delay, court performance, judicial efficiency/court delay, state budget
Country/Region: Netherlands, Austria, Belgium, Denmark, England/Wales, United Kingdom, Finland, France, Germany, Italy, Poland, Sweden, Europe

Blankenburg, Erhard “Instrumentalizing the German Constitutional Complaint: The Use of an Open Access Procedure by Citizens, Politics, and by the Court Itself” [unpublished manuscript?]

This paper discusses the use of constitutional complaints to the Constitutional Court of the Federal Republic of Germany. The author notes that constitutional complaints have become increasingly popular with citizens who resort to them after other legal remedies have been exhausted, and constitutional challenges are also frequently used by political groups and parties on specific issues when they have not been able to win out in the political process. He also discusses the court’s increasing caseload, and the relationship of the court to the rest of the German political process.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial decision-making; access to justice; judicial review
Law Keywords: Constitutional law
Country/Region: Germany


The author argues that the scope of state legal aid schemes depends on the prosperity of the welfare state and the interests of lawyer lobbies. Legal aid movements have been shaped by supply rather than by demand, instigated by professionals rather than the poor themselves. A “perception gap” remains between the poor and professional researchers in identifying the needs of the poor; and an “action gap” persists between the identified needs and demands for their alleviation. In the 1960s and 1970s, a third historical legal aid wave originated with progressive lawyers establishing legal aid as a welfare state provision—and simultaneously serving their professional interests. In surveying a range of western common law and civil law countries, the
The author concludes that the strength of legal aid programs is linked to two factors: a highly developed welfare state, and either a weak lawyer lobby or a strong lobby that manages to retain its monopoly on the provision of legal aid. While government subsidies do not make up a significant part of most lawyers’ income, the legal profession can still serve its interests by persuading political actors that its services—with suitable remuneration—are required.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Access to justice; costs of the legal system; legal profession; legal services; social services

**Country/Region:** United States; Western Europe


In this article, Blankenberg seeks to explain the difference between the patterns of legal behavior and institutions in the Netherlands and Germany, despite the similarity of their substantive law, civil law family, and legal history. He compares how the two systems operate in terms of the size and composition of the legal profession, the provision of legal aid and access to justice, patterns of civil litigation, the handling of criminal disputes, and the use of special tribunals such as administrative courts. One of the most important differences is the relatively greater presence in the Netherlands of alternatives to courts. His main conclusion is that the comparison reveals that similarities in formal legal systems or substantive law are poor predictors of how the legal system actually works. Thus he suggests looking more closely at the “legal culture” — which he defines in terms of behavior patterns and institutions, rather than the more narrow definition of legal culture as popular values and beliefs about the legal system. He also notes the difficulty of sorting out causal relationships between the structure of legal institutions (“supply”) and the “demand” of the citizens. Thus, he suggests that we ought to think of legal culture as the interrelationship between various factors: patterns of legal behavior, legal consciousness, and institutional features such as training, the composition of the legal profession, the organization of courts, and patterns of scholarship and legal discourse.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Legal culture; civil law; access to justice; legal profession; administrative courts; legal education/training; legal aid; civil procedure; litigation; alternative dispute resolution; debt collection; arbitration; insurance; out-of-court settlement; crime control; judicial review

**Law Keywords:** Civil litigation; criminal law; administrative law; contract law

**Country/Region:** Germany; Netherlands


This article explores a specialized perspective of democratization and nation-building in one of the states restored from the former Soviet Union. The focus is on the reform of Lithuanian legal education. It concerns the interaction between the two main national law faculties, on the one hand, and society and the profession on the other. There has been a rise in legal work and the number of lawyers. Both legal education and the structure of the profession have undergone changes, facilitated by ways of regulation and the allocation of resources. The profession has become an active and necessary vehicle for institutional reform and European integration. The article covers the following areas: the reconstruction of the legal professions and legal education; the role of legal education in a changed society; and a discussion of how law faculties educate lawyers to solve legal problems in a new state. The examination is based mainly on qualitative interviews, the respondents being elite members of the legal profession, students, and citizens engaged in public debate. This is supplemented with an overview of the regulatory framework, university study programs, and some statistical data. A few comparisons are made to other similar reforms in post-socialist Europe. The author concludes that the new nation-state has invested considerable regulation and resources into a project of creating a new generation of lawyers, hinged on western constitutional values, taking the Lithuanian heritage back to an earlier tradition of the normative values of law. Professional forums have been created, as well as professional debate over legal education and other professional issues. However, the project does not seem to have reached its goals. The author analyzes the reasons for this.
Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Constitutional change, democracy, ideological role of law, institutional capacity, judicial training, legal culture, legal education/training, legal literacy, legal personnel, legal profession, legal reform, post-socialist transition, post-transition justice, regulation of legal services, rule of law
Country/Region: Lithuania/Europe

Böhret, Carl & Konzendorf, Götz “Handbuch Gesetzesfolgenabschätzung (GFA)” (Baden-Baden: Nomos Verlagsgesellschaft, 2001), 355 pages

(“Regulatory Impact Assessment (RIA) Manual”, in German) The authors distinguish three modules of regulatory impact assessment which they analyze in detail providing numerous very concrete examples: Prospective, concomitant and retrospective. Prospective RIA aims at identifying and developing different alternatives for regulation of a certain sector, compares and analyzes them in order to identify the best option in a given context. On this basis, concomitant RIA is used to examine and test legal drafts. Retrospective RIA aims at assessing the impact that regulation has had. In this case, the focus of the analysis is whether the projected goal has been achieved.

Methodology: Qualitative description and analysis
Subject Keywords: Costs of the legal system, equality/social justice, law drafting, legal culture, legal rationality, legislative process, politics of reform, state budget
Country/Region: Germany, Europe


This paper, written by a Consultant for the World Bank, focuses on the design of performance indicators for the World Bank’s operations in six areas: public financial management, civil service reform, public enterprise reform, institutional development, governmental decision-making, and decentralization. For each of these project areas, the paper proposes a methodology and a set of potential indicators appropriate for measuring the impact of World Bank projects. The author concludes that appropriate performance indicators and systematic collection and analysis of the relevant data is required for project success, since the reporting of performance information is needed to verify compliance with project goals, as well as for management, implementation, and the development of new policies.

Methodology: Qualitative description and analysis; project evaluation
Subject Keywords: Performance indicators; donor agency administration; outside assistance; World Bank; bureaucracy; economic reform; governance; state sector/public ownership; state budget; institutional capacity
Country/Region: Developing world (general)


This article critiques the interpretation of judicial independence advanced by William Landes and Richard Posner, and other public choice scholars. That view holds that judicial independence serves the interests of legislators because judicial independence (and a commitment by the judiciary to interpret statutes in a manner consistent with the intent of the enacting legislature) enhances the durability, and therefore the value, of legislative deals. The authors argue that the theory is seriously deficient. The weak version of the theory – that judicial independence is an exogenous fact that happens to benefit legislators – cannot explain how judicial independence emerged in the first place, and is inconsistent with the historical record. The strong form of the theory – that legislators preserve the independence of the judiciary because it serves their interests – ignores collective action problems on the part of both legislators and judges, and neglects the weakness of institutional mechanisms Congress has at its disposal. Even if the legislature generally has an interest in preserving judicial independence, any individual legislature has an incentive to infringe on judicial independence, in part because it can’t bind future legislatures. The authors re-interpret some of the empirical findings that allegedly support the Landes-Posner hypothesis, and argue in conclusion that the more
traditional explanation for the existence of judicial independence is probably more accurate: the Constitution’s framers saw judicial independence as a means of furthering sound government.

**Methodology:** Critical review  
**Subject Keywords:** Judicial independence; judicial decision-making; judicial review; separation of powers; legislative process; public choice; common law; constitution drafting  
**Law Keywords:** Constitutional law  
**Country/Region:** United States


(“The Rule of Law in Africa”, in French) The rule of law discourse is en vogue in Africa. The author first analyzes the role of constitutional courts and judicial review in Africa today before presenting issues related to administrative courts and international courts in Africa. He also describes mechanisms of alternative dispute resolution. Finally, he addresses the key question of the gap between the official systems and the population of the countries concerned. He questions the future of the rule of law in Africa by asking ‘Rule of law, but what State? What law? What justice?’

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, alternative dispute resolution, administrative law, administrative courts, constitutional law, culture/social norms/informal institutions, customary law/indigenous law, democracy, import of foreign law/legal transplants, judicial independence, judicial review, legal culture, legal pluralism  
**Country/Region:** Africa


This paper attempts to show that crime and violence are likely to be a socially costly by product of, among other factors, uneven or irregular economic development processes. Citing available evidence, it states that the rise in criminality is a proportionate consequence of the increase of the relative degree of poverty or income inequality in a country. Thus, through crime and violence, the social cost of inequality, poverty, and macroeconomic volatility may be large. Further, the paper suggests that it is not unreasonable to believe that in developing countries with already high levels of crime, if recessions comparable to those felt by many countries in the 1980’s were to hit, there could be social losses of up to 2% of the GDP. This order of magnitude would increase if only urban areas, where most of the increase in criminality would take place, were considered. The author notes that Latin America is the region with most crime, and greatest inequitable distribution of income. It has also been extremely volatile in terms of economic growth. The paper concludes that through less crime and violence, there may be substantial social benefit in ensuring that economic development takes place evenly and equitably.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Crime control, economic development  
**Law Keywords:** Criminal law  
**Country/Region:** Developing world (general)


This article reviews reforms undertaken or required to create an independent judiciary in Russia. The Soviet-era subordination of the judiciary to politics, public suspicion toward the courts, and the traditionally inquisitorial judicial system have posed challenges for establishing an independent judiciary. Boylan uses five criteria for judicial independence: judicial leadership in the establishment of the judicial branch; establishment of the judiciary as a separate branch of government; established terms, appropriate salaries, and adequate resources for judges; self-policing and supervision; and elected officials’ respect for judicial decisions. He examines seven areas in which Russia is implementing reform or where it is still needed:
lifetime appointment of judges; an independent and adequate budget for all courts; the security of the courts and judges, and enforcement of judgments; political respect for judiciary; expansion of the jury trial; application of the constitution by the courts; and pre-trial detention. He concludes that while reforms are underway, the success of judicial reform will turn on the political will of the legislature to implement it.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial independence; post-socialist transition; judicial reform; separation of powers; incentives of judges; law enforcement; judicial selection/promotion  
**Law Keywords:** Criminal law; constitutional law  
**Country/Region:** Russia


Since 1980, nearly half of all low-income countries have experienced conflict, and many others are adjacent to countries that have experienced war. As a result, the World Bank cannot avoid being involved in postconflict situations. However, the Bank’s involvement is complicated by problems arising from its governance. In the first part of his paper, the author discusses those aspects of the Bank’s governance that complicate its involvement in postconflict situation. In the second part, he considers the implications of these complications for three issues related to the Bank’s involvement in situations of conflict: the World Bank and international humanitarian law, the World Bank’s role in preconflict situations, and the World Bank and other actors in postconflict situations.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Donor agency administration, donor politics, human rights, human rights law, international law, outside assistance, political instability, political reform/regime change, post-transition justice, revolution, World Bank  
**Country/Region:** Developing world


Money can enhance access to litigation, but it does not guarantee access to justice. Access to justice is a more complex issue requiring that legal representatives and judges alike understand that an individual’s values will have a cultural setting. In Australia, lawyers and judges are primarily literate in the culture of the middle classes, from which they are likely to come. However, the interests of justice demand that issues of cultural disadvantage in the courts be addressed. The perception among people from ethnic and racial minorities that they tend to be losers in the courts undermines their confidence in the fairness of the legal system. The author seeks to illustrate these points by referring to probably the most disadvantaged sector of the Australian community, its indigenous peoples. After giving some information concerning indigenous Australians, she outlines the historical background of two current areas of legal disputation of great importance to Aboriginal and Torres Strait Islander Australians. The first is the issue of native title to land. The second is the issue of the forced separation between 1910 and 1970 of indigenous Australian children from their families. She identifies the efforts undertaken to ensure that legal advice and representation is available to indigenous Australians in these critical areas. Finally, she closes with an examination of some of the structural and other difficulties which nonetheless face indigenous Australians in their pursuit of justice through the legal system.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to Justice, colonialism/imperialism, customary law/indigenous law, equality/social justice, ethnic politics, group rights, human rights, import of foreign law/legal transplants, land disputes, legal aid  
**Country/Region:** Australia

**Breninkmeijer, A. F. M. (ed.)** *De taakopvatting van de rechter* (The Hague : Boom Juridische Uitgevers 2003) 241 pages
(“The Perception of the Role of Judges”, in Dutch) This collection of articles about the role of judges in the Netherlands provides a valuable insight in the judicial function in civil, criminal and administrative courts. The role of mediation, alternative dispute resolution (ADR), and judicial experts is also addressed.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative courts, alternative dispute resolution, bureaucracy, civil litigation, civil procedure, criminal sentencing, culture/social norms/informal institutions, democracy, informal dispute resolution, judicial decision-making, judicial review, legal culture, litigation, mediation, public opinion of the legal system  
**Country/Region:** Netherlands/Europe


This article describes the legal battle mounted by the Cherokees, a tribe of Native Americans, in the 1820s and 1830s to prevent their lands from being taken by the state of Georgia. Although the Supreme Court of the United States ruled in the Cherokee’s favor, the state of Georgia refused to obey the decision and the Executive branch declined to force it to do so. As a result, the tribe was ultimately forced off its land. While the author, a sitting justice of the Court today, says that one conclusion of this story might be that politics and force, not law, determine history, he argues for a different lesson. “A lesson about the insufficiency of a judicial decision alone to bring about the rule of law... [A] constitutional system does not consist only of legal writings. It consists of habits, customs, expectations, [and] settled modes of behavior engaged in by lawyers, by judges, and by citizens... all developed gradually over time.”

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Constitutionalism, judicial review, rule of law  
**Law Keywords:** Constitutional law  
**Country/Region:** United States

**Brinkerhoff, Derrick W.** “Rebuilding Governance in Failed States and Post-Conflict Societies: Core Concepts and Cross-Cutting Themes” *Public Administration and Development* 25, 3-14 (2005)

This overview article looks at the emergence of failed and post-conflict states on the international relations and assistance agenda, and at the importance of governance in establishing peace, pursuing state reconstruction and preventing conflict. It introduces the topic of the special issue, how effective governance can be re-established following societal conflict or war. After a brief review of the terminology of failed states, post-conflict and governance, the article discusses governance reconstruction in terms of three dimensions: reconstituting legitimacy, re-establishing security and rebuilding effectiveness. The article summarizes key points made by the contributors to the special issue, who look at donor governance reconstruction agendas, security-sector governance and subnational governance. Several common themes emerge and are elaborated upon: similarities between development and post-conflict assistance; linkages among governance’s legitimacy, effectiveness and security dimensions; rebuilding versus creating governance systems; local versus national governance reconstruction; formal versus informal governance. The article concludes with a call for further work to elaborate frameworks that can incorporate the particulars of individual countries in addressing legitimacy, security and effectiveness.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Crime control, criminal law, culture/social norms/informal institutions, democracy, divided societies, donor coordination, donor politics, ethnic politics, governance, human rights, institutional capacity, international law, judicial reform, legal reform, military operations, outside assistance, political instability, political reform/regime change, post-transition justice, property rights, rule of law


This article discusses an article by Segal and Spaeth on precedent in US Supreme Court decision-making, published in the same journal, that concluded that precedent plays little role in the voting decisions of
Supreme Court justices. While Brisbin generally approves of the research design and generally accepts their findings, he is concerned that Segal and Spaeth have attacked a straw-man. According to Brisbin, few legal scholars or political scientists actually believe that “law” as such determines judicial behavior; the legal model Segal and Spaeth criticize only exists as a prescriptive model of how some people think judges ought to make decisions, not as a positive model of how judges actually behave. Brisbin concludes by considering future directions for research on judicial behavior and reflecting on the implications for American politics of discrediting the political “myth” that judges interpret law in a neutral and principled way rather than following their political preferences.

**Methodology:** Critical review  
**Subject Keywords:** Judicial decision-making; legal precedent/stare decisis; legal ideology  
**Country/Region:** United States


This article argues that alternative dispute resolution in the UK construction industry (defined as alternatives apart from litigation and arbitration) is becoming increasingly “juridified” due to the involvement of lawyers. Brooker argues that arbitration now suffers from most of the same problems as litigation, including high cost, delay, and complexity. She surveys the theoretical benefits and drawbacks of ADR, and notes that government has encouraged ADR to the point that adjudication, one method of ADR, is now guaranteed as a statutory right in construction contracts. The UK construction industry has employed mediation, conciliation, adjudication, the Executive Tribunal (mini-trial), and the Dispute Review Board. Arbitration, which originally served as an alternative to the courts, was appropriated by the legal profession and turned into a formal adversarial system with complex procedures requiring legal assistance. Now, some worry that adjudication (issuance of a binding decision by a third-party neutral) may similarly be captured by lawyers. The article presents the results of empirical research on the attitudes of main contractors, sub/specialists, and legal advisers to the construction industry. The study found high levels of dissatisfaction with formal procedures (particularly their cost) and significant interest in ADR. However, it also found that most contractors viewed the non-binding nature of some forms of ADR as a weakness. In addition, while the avoidance of lawyers was seen as a benefit of ADR, contractors generally favored legal consultation in their disputes. Brooker concludes by predicting a greater reliance on lawyers in adjudication.

**Methodology:** Attitude surveys; qualitative description and analysis; quantitative analysis  
**Subject Keywords:** Alternative dispute resolution; commercial arbitration; private adjudication; legal profession; costs of the legal system; litigation  
**Law Keywords:** Commercial law; contract law  
**Country/Region:** United Kingdom

**Brown, Nathan** “Popular Uses of the Courts” Chapter 7 (pp. 187-220) in *The Rule of Law in the Arab World* (Cambridge: Cambridge University Press, 1997)

This chapter describes popular uses of the courts in Egypt and the strategic behavior of litigants. It opens with a discussion of the high volume of litigation and long court delays in Egyptian courts. The essay attributes delay chiefly to the many opportunities in the civil procedure system for strategic delay and to the courts’ reliance on expert opinions. Brown argues that ordinary Egyptians have come to depend heavily on the courts to meet political and personal goals. Two popular uses of the courts are then considered: divorce cases and housing disputes. In divorce cases, individuals and their families strategically use the courts and the provisions of personal status, civil, and criminal law, to achieve a stronger bargaining position in the dispute, while also continuing to use mediation and other out-of-court tactics. Brown contends that while debates over shariah and personal-status law are politically important, individuals seek concrete advantages rather than abstract justice, using the full range of tools available. Similar resourcefulness characterizes litigants in housing and real estate disputes. The law furnishes tools for landlords and tenants to pursue disputes, including the strategic use of delay and the employment of diverse civil and criminal law provisions to secure a stronger position. The author then compares this behavior with that of foreign domestic laborers in Kuwait, who have a far weaker legal position based on immigration and labor law, even when responding
to cases of rape or abuse, but who also use litigation as a bargaining tool. The chapter concludes with several reflections on court use in Egypt: people use many fora of dispute resolution at once, rather than “forum shopping” between them; law can have an unintended equalizing influence; the relationship between use of the courts and legitimacy is more complex than it is often presented.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; Islamic law; land disputes; culture/social norms/informal institutions; legal pluralism; civil procedure; gender/women’s rights; public opinion of the legal system; access to justice; religion; corruption; legal instrumentalism
Law Keywords: Family law; property law; labor law; civil litigation; criminal law
Country/Region: Egypt; Kuwait; Jordan

Brown, Trevor L. & Wise, Charles R. “Constitutional Courts and Legislative-Executive Relations: The Case of Ukraine” Political Science Quarterly 119/1: 143-169

The authors demonstrate that the Constitutional Court’s role in Ukraine as arbiter in the interbranch competition is due to the fact that the court has at times decided in favor of the president and at other times in favor of the parliament. They maintain that as a result of this balanced record of decision making, the court has established itself as a legitimate arbiter of disputes between the president and the parliament, diffusing potentially destabilizing interbranch conflict. According to the authors, despite the absence of a history of the rule of law in Ukraine, preliminary evidence suggests that both the legislature and the executive branch respect the decisions of the court and will continue to turn to the court for resolution of separation of powers disputes.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutional law, democracy, judicial decision-making, judicial review, litigation, post-socialist transition, post-transition justice, presidentialism vs. parliamentarism, rule of law, separation of powers
Country/Region: Ukraine/Eastern Europe


This article argues that, while mainstream economic development theory focuses on the efficiency of policy measures, the issue of the credibility of these policies is a more important problem for many countries. Many governments in developing countries – even democracies – wield broad discretionary powers. As a result, the government cannot credibly commit itself to policies that would protect property rights and spur the private sector to make long-term, productive investment. Because of uncertainty about government policy and the fact that the government has time-inconsistent preferences, the private sector will tend to keep most of its assets liquid, or operate primarily in the informal sector. The result of both low investment and a high proportion of the economy concentrated in the informal sector, according to the “new growth theory”, is a lower rate of economic growth. The authors conclude with some suggestions for overcoming the government credibility problem in developing countries. These include more aid directed toward institution-building, fostering an independent judiciary and checks and balances, and introducing constitutional limits on government policy. Promoting adherence to international law or submitting to international arbitration policies may also enhance the credibility of developing country government policy.

Methodology: Qualitative description and analysis; formal analysis
Subject Keywords: Economic development; informal sector; investment; executive decrees; property rights; economic reform; monetary policy; authoritarianism; democracy; separation of powers; judicial independence; taxation; nonlegal sanctions; noncontractual agreements/relational contract
Law Keywords: Constitutional law; international law
Country/Region: Latin America; developing world (general)

This article compares the role of constitutional courts in Western, Central and Eastern Europe and in the United States. A brief summary of the history of constitutional courts in Europe demonstrates how the specific trajectory of the development of the constitutional courts in Europe influences the contemporary debate on judicial activism versus judicial restraint. Then, the situation in Central and Eastern Europe is analyzed more in detail. The author also addresses the judicial activism/judicial restraint debate in the context of the Central and Eastern European economic and political transition. Eventually, the author examines more general issues, including the globalization of law and the global expansion of judicial power, attempting to draw conclusions that apply to the broad international legal community in addition to Eastern Europe.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Authoritarianism, constitutional change, constitutional law, democracy, European Court of Justice, human rights, ideological role of law, judicial activism, judicial independence, judicial review, legislative supremacy, political reform/ regime change, post-socialist transition, post-transition justice, rule of law, separation of powers
Country/Region: United States, Europe, Eastern Europe, Central Europe


This article discusses the history, organization, and activities of “sungusungu” groups in rural Tanzania. The sungusungu are traditionally-organized village self defense groups. These groups were created in the 1980s, largely in response to rising crime rates and a general perception that established institutions were unable to supply law and order. Bukurura discusses the origins and organization of the groups, and then discusses their various roles, including the returning of stolen cattle, settling of village disputes, dealing with suspected witches, and returning women who deserted their husbands or families. Bukurura argues that the sungusungu groups’ activities suggest a desire to avoid unpredictable interventions by external institutions, especially the police. He notes that the groups also highlight the growing perception in rural Tanzania of the value of local customs, even as the status of those customs in a modern state increasingly in doubt.

Methodology: Qualitative description and analysis
Subject Keywords: Popular justice; law enforcement; crime control; vigilantism; informal dispute resolution; culture/social norms/informal institutions; customary law/indigenous law
Law Keywords: Criminal law; family law
Country/Region: Tanzania


The authors, scholars from the disciplines of law, political science, history, economics and sociology, aim to break down the disciplinary barriers that have impeded scholarly analysis of, and public policy debates concerning, a subject of immense importance to the United States and other developed and developing democracies. The essays reflect a strongly interdisciplinary perspective that enables the reader to identify common myths in scholarlarly and public discussions of judicial independence and to engagewith the key debates. They address the definition of judicial independence and its theoretical basis, confront it with empirical findings and develop comparative dimensions as to selection systems and judicial reactions to political pressure.

Methodology: Qualitative description and analysis
Subject Keywords: Democracy, governance, judicial accountability, judicial decision-making, judicial independence, judicial selection/promotion, legal culture, legal profession, politics of resistance, rule of law, separation of powers
Country/Region: United States, Europe

Focusing on U.S. federal courts, this article argues that civil justice reform in the United States was propelled by two concerns: the need to reduce expense and delay and to ensure access to justice. Because 95 percent of cases reach a settlement rather than going to trial, most reforms were aimed at the pre-trial phase of litigation: these included changes to Rule 11 to deter unnecessary pleadings and motions; the Civil Justice Reform Act of 1990 provisions for federal districts to reform their systems; and federal mandatory disclosure rules. Access-to-justice reform has inspired class action suits, consolidation, litigation finance strategies (such as fee-shifting and contingency fees), and alternative dispute resolution. The authors emphasize that civil procedure is not neutral; fights over civil procedural reform reflect the contest over power between the judiciary, the bar, and Congress.

Methodology: Qualitative description and analysis
Subject Keywords: Civil procedure; legal reform; judicial efficiency/court delay; costs of the legal system; access to justice; alternative dispute resolution; litigation; settlement; separation of powers; class actions/representative actions/public interest litigation
Law Keywords: Civil litigation
Country/Region: United States


This article reviews the core literature of the Law and Development movement. Burg first overviews the debates over the definitions of both “law” and “development”, then outlines the instrumentalist conception of law as a tool of state-directed social change, a view prevalent in much of the literature, and then discusses criticisms of this view, and the movement in general. Discussion of the criticism focuses primarily on Trubek and Galanter’s 1974 article, “Scholars in Self-Estrangement”. Burg sympathizes with some of their criticisms, but argues that they overstated the prevalence of the instrumentalist view. According to Burg, a critical perspective had always been present in law and development scholarship. Burg concludes that the law and development literature lacks consensus on almost everything, and marked by a persistent strain of criticism aimed at the instrumentalist conception. He states that the field does not seem to have significantly increased knowledge, and argues that the field should shift from general theoretical models to more micro-level country specific research, and build from the specific to the general.

Methodology: Literature review
Subject Keywords: Law and Development Movement; economic development; legal reform; outside assistance; law drafting; legal culture; individual rights; access to justice; democracy; legal instrumentalism; legal education/training; import of foreign law/legal transplants; USAID
Country/Region: Developing world (general)


In this paper, the authors attempt to measure the impact of the organization of the judiciary on the level of judicial corruption. Specifically, they examine commercial cases in Santiago, Chile and Quinto, Ecuador between 1990 and 1996. In both Ecuador and Chile, there were structural changes in the courts in the early 1990s that the authors hypothesize may affect corruption. The authors measure the dependent variable by the instances of corruption reported in the media. The independent variables include: number of computer systems used by each court; number of steps followed in a typical commercial procedure; median time to case disposition; proportion of administrative and organizational roles concentrated in the hands of the judge; the number of alternative dispute resolution mechanisms found within the same jurisdiction. The authors predict that corruption will be higher when judges have more discretion, when cases and procedures are longer and more complex, and when alternative dispute resolution forums are lacking. Their empirical
analysis confirms these hypotheses. They conclude by discussing the implications of their findings for World Bank-sponsored judicial reform projects.

**Methodology:** Quantitative analysis

**Subject Keywords:** Corruption; incentives of judges; judicial reform; court administration; adjudicative competition; alternative dispute resolution; World Bank

**Law Keywords:** Commercial law

**Country/Region:** Latin America

**Buscaglia, Edgardo and Maria Dakolias** “Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account” (Washington: World Bank Legal and Judicial Reform Unit Series 1999)

This study uses statistical analysis to examine the effect of a number of factors related to court procedure, administration, organization, and infrastructure on judicial efficiency – measured in terms of procedural time, case clearance rates, and the elasticity of supply of court services. The sample includes commercial cases from federal first instance courts in the capital cities of France, Ukraine, Hungary, Singapore, Panama, Chile, Peru, Ecuador, Argentina, and Columbia between 1990 and 1996. The study concludes that technology, increases in the capital budget, an active case management style by judges generally have a positive effect on judicial efficiency. Increases in the overall budget, adding more personnel, and training levels were found not to have a significant effect. Furthermore, those countries that have introduced successful reforms seem to have been those that have concentrated on reforms at the administrative level of individual courts, rather than structural reforms aimed at the overall judiciary. The authors argue that their results challenge the assumptions of many current judicial reform programs, and demonstrate the need for more empirical data-gathering.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Judicial efficiency/court delay; court administration; judicial reform; access to justice; incentives of judges; legal education/training; corruption; legal personnel

**Law Keywords:** Commercial law

**Country/Region:** Latin America; Eastern Europe; France; Singapore


This World Bank technical paper addresses the judiciary in Argentina and Ecuador. Court delay, as measured by times to disposition of cases, increased substantially in Latin America in the 1980s, and public confidence with the judiciary is low. The second part of the paper identifies factors associated with time to disposition of cases in the federal district national court of first instance in Argentina and the first instance courts in Quito, Ecuador. The number of cases filed has increased as a result of social development, liberalization, and market reforms, and efficiency gains in the courts have not kept pace with the caseload. Increases in times to disposition in the mid-1980s caused the number of filings to decrease as potential litigants turned to informal dispute resolution means or gave up their claims. Buscaglia and Dakolias argue that the most important factors affecting time to disposition in these case studies were the number of case filings, case management, resources allocated for court personnel, and case complexity; in general, changes in budget were not a significant factor in time to disposition. The paper calls for the development of court performance standards based on the performance times of a hypothetical “best court.” It presents minimum and maximum time ranges for each type of case in Argentina and Ecuador, controlling for chance variation and assignable variation.

**Methodology:** Quantitative analysis; qualitative description and analysis

**Subject Keywords:** Judicial efficiency/court delay; court performance standards; litigation; court administration; case management; legal personnel; public opinion of the legal system

**Law Keywords:** Civil litigation

**Country/Region:** Argentina; Ecuador; Latin America

This article uses quantitative methods to examine the causes and consequences of court delay in Latin America. First, the authors argue that statistical evidence shows that the time between case filings and dispositions has been steadily increasing in Latin American countries (despite increasing productivity of the judicial sector) and that survey evidence indicates that this is perceived as a serious problem, and a deterrent to the use of the court, by Latin American businessmen. Second, the authors find no significant correlation between spending on the judicial sector and judicial efficiency. Third, the authors study a sample of commercial cases drawn from Argentina and Venezuela to evaluate other factors affecting the supply and demand of judicial services, and hence judicial efficiency, at different stages of the case. Their findings lead them to suggest a number of specific reforms, including the need for strict enforcement of procedural deadlines during the discovery process, the creation of additional courts, improving case-management techniques, and the adoption of uniform administrative management procedures.

**Methodology:** Quantitative analysis; attitude surveys  
**Subject Keywords:** Judicial efficiency/court delay; corruption; public opinion of legal system; alternative dispute resolution; litigation  
**Law Keywords:** Contract law; commercial law  
**Country/Region:** Latin America


This chapter argues that most contemporary societies are pluralistic and should secure access to justice through institutional pluralism. In African nations, the justice system has been shaped by a tension between promoting unitary state justice and acknowledging the pluralism of society. In the colonial period, two systems of justice existed separately and served different populations: a system of local, efficient, and participatory customary courts which existed within, and preserved, the socio-relational system of communities; and regular courts based on European models. After independence, the author argues, African countries have moved toward dynamic integration of these systems, increasing access to justice. Surveying changes in Senegal, Tanzania, and other cases, Bush describes the pattern of evolution: customary courts and highly formalized judicial systems are retained; intermediate lower courts are introduced; and other alternative dispute resolution mechanisms created. Thus, rather than lead to the erosion of institutional pluralism, independence led to even more “dynamic pluralism.” Bush concludes that in light of the African experience, developed countries might also benefit from greater pluralism and interaction between legal professionals and lay people within the justice system.

**Methodology:** Comparative analysis; qualitative description and analysis  
**Subject Keywords:** Legal pluralism; access to justice; culture/social norms/informal institutions; alternative dispute resolution; colonialism/imperialism; informal dispute resolution; popular justice; customary law/indigenous law  
**Law Keywords:** Civil litigation  
**Country/Region:** Africa; Senegal; Tanzania

Cadwell, Charles “Implementing Legal Reform in Transition Economies” Chapter 12 (pp. 251-269) in Clague, Christopher, ed. *Institutions and Economic Development* (Baltimore: Johns Hopkins University Press, 1997)

This chapter discusses obstacles to effective legal reform in Russia, and the implications of these problems, as well as the lessons of prior experience, for outside agencies interested in assisting Russia’s legal development efforts. The author concludes that there are four major principles donor and assistance agencies ought to keep in mind. First, efforts should focus on the most basic reforms – contract enforcement, property rights, and mechanisms for organizing peaceful political debate – since more elaborate market reforms are built on these. Second, it is important to organize assistance activities in such ways that illustrate the
competitive process and are transparent. Third, outside agencies should eschew creating a “counterpart monopoly” for receiving technical assistance, and should instead work with a broad array of actors including both government and non-government elites. Fourth, Cadwell argues that education is more important than technical assistance – outside agencies should concentrate on communicating basic concepts about property and incentives, and need to establish long-term interactive relationships with participants in the target countries.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Legal reform; economic reform; post-socialist transition; outside assistance; legal training/education; legal implementation; privatization; politics of reform; property rights

**Law Keywords:** Commercial law; contract law; property law

**Country/Region:** Russia

---


This article assesses empirically patterns of citations between different US State Supreme Courts. Caldeira attempts to evaluate alternative explanations for patterns of citation, including geographical distance, cultural proximity (measured by migrant populations), relative prestige, legal capital, caseload, and social complexity, among others. His empirical results, based on an analysis of cases from 1975, indicate the strong statistical significance of legal reporting districts, distance between courts, cultural linkages between states, and, most importantly, the characteristics of the cited court, i.e. its prestige and legal professionalism. He suggests that, on the whole, these results suggest the intensity of communication between pairs of courts has more to do with the characteristics of the cited court (the “attribute model” of citation) than with the traits of relationships between the jurisdictions (the “relational model”).

**Methodology:** Quantitative analysis

**Subject Keywords:** Judicial decision-making; federalism; legal precedent/stare decisis

**Country/Region:** United States

---


This chapter overviews the problem of insuring judicial responsibility, or accountability, and compares the mechanisms different countries have used to balance the need for accountability with the need for independence. Cappelletti develops a typology of four categories of judicial accountability. Political accountability includes accountability to other political branches, or to the constitution. Societal or public accountability means accountability of judges, or the judiciary as a whole, to the general public – either through direct mechanisms or indirectly. Legal accountability of the state would entail the ability of claimants to sue the state for damages that result from judicial misconduct or error. Related to this is the fourth type of accountability, accountability of the individual judge, which might be criminal, civil, or disciplinary. Cappelletti stresses that real systems blend some or all of these techniques, but they can be combined in different ways to create different overall models of judicial responsibility. He identifies three models. The first two, which he rejects, are the repressive (or dependency) model, in which the judiciary is subservient, and the corporative-autonomous model, in which the total insulation of the judiciary from government and society. He advocates what he calls the responsive, consumer-oriented model, characterized by a balance of independence and accountability in order to best serve the ends of the citizens, the “consumers” of judicial services.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial independence; judicial decision-making; impeachment of judges; judicial elections; public opinion of the legal system; democracy; socialism; judicial selection/promotion

**Law Keywords:** Tort law; criminal law; constitutional law

**Country/Region:** United States; France; Germany; Italy; United Kingdom; Spain; Soviet Union

In this chapter, Cappelletti examines the institution of judicial review as it evolved historically, and compares the different ways the process functions in different countries. He points out first how judicial review, and constitutionalism more generally, represented a synthesis of two contradictory schools of legal thought: natural law, which holds that laws that are inconsistent with “higher” or natural law are invalid; and positivism, which holds that valid laws are promulgated by state, and usually written down. After tracing the historical and philosophical roots of the institution of judicial review, Cappelletti contrasts the institution as it exists in common law countries and civil law countries. Whereas the former generally have decentralized judicial review, the latter – due to the continental theories of separation of powers, the absence of the doctrine of stare decisis, and the unsuitability of ordinary civil law courts – have specialized constitutional courts that are more overtly political. He is also careful to point out, however, that despite these differences, there has been some conversion, and that the variations in the institution are best thought of as a continuum rather than in strict terms of centralized/decentralized.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial review; constitutionalism; natural law; legal positivism; separation of powers; obligation to obey the law; legislative supremacy; common law; civil law; colonialism/imperialism; rule of law; judicial decision-making; political questions doctrine

**Law Keywords:** Constitutional law

**Country/Region:** Western Europe; United States; France; United Kingdom; Germany; Italy; Austria; Japan

---

**Cappelletti, Mauro** “The ‘Mighty Problem’ of Judicial Review and the Contribution of Comparative Analysis” *Legal Issues of European Integration* 2:1-29 (1979)

This article surveys the scope and type of judicial review in several Western European countries, especially France (which traditionally has resisted judicial review), comparing them to each other and to the United States. The article observes that judicial review has become more prevalent in Western Europe over the last several decades. Cappelletti notes especially the role of European Community Law, which has allowed domestic judges to review legislation on the basis of its conformity, not to domestic constitutional law, but to transnational Community law. Cappelletti also discusses the growing assertiveness of the European Court of Justice and the possibility of the emergence of a European bill of rights enforced transnationally.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Judicial review; separation of powers; individual rights; constitutionalism; federalism; democracy; European Community/European Union; European Court of Justice

**Law Keywords:** Human rights law; constitutional law; international law

**Country/Region:** Western Europe; France

---


This chapter serves as the introduction to a volume produced after the conclusion of the Florence Access-to-Justice Project of the 1970s, an extensive world comparison of access to justice around the world. The author describes three phases which characterized the access to justice movement of recent decades, a sequence drawn particularly from developments in the United States but also applicable to changes in Europe and elsewhere. The first phase centered around efforts to make legal aid and legal advice more available to the poor. In the 1970s, legal aid was expanded in the United States, United Kingdom, and other countries, and governments introduced different methods of legal services delivery, sometimes employing salaried lawyers (the “staff model”) and in other systems subsidizing private practitioners (the “judicare model”) or combining the two (“mixed systems”). The second reform wave promoted legal advocacy on behalf of collective interests and unrepresented groups; consumer group actions in France and Germany, public interest law firms and class action suits in the United States, and more liberal concepts of standing allowed group rights to be promoted. In the third phase, reformers went beyond expanding legal representation and sought to change the justice system more broadly. New mechanisms for dispute resolution were created, including
conciliateurs in France, consumer arbitration schemes in Britain, and neighborhood justice in the United States. The author argues that many modern access-to-justice reforms are the product of the idea that the state should protect social rights and commit to improving the position of disadvantaged groups—an idea that might be challenged in practice by growing costs of the welfare state and concerns about the continued expansion of bureaucracy and government.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Access to justice; legal services; alternative dispute resolution; mediation; equality/social justice; costs of the legal system; class actions/representative actions/public interest litigation; group rights; arbitration; social services

**Law Keywords:** Civil litigation; public interest litigation

**Country/Region:** United States; Western Europe


This essay serves as the introduction to the four-volume Florence Access-to-Justice project of 1978-1979. Cappelletti and Garth first describe the changing conception of access to justice: no longer seen as merely a formal right to press or defend a claim, it is now viewed as the effectiveness of that right, with a corresponding state obligation to secure that right for its citizens. They address primarily the procedural dimension of access to justice—equal access to the means of obtaining redress, rather than to just outcomes. The chapter identifies three barriers to access: the costs of litigation; party capability, (such as differences between the financial means or legal knowledge of the two parties); and the problems of diffuse interest (e.g. cases in which no one individual has enough of an incentive to press a claim). The authors describe three waves of reform that have addressed such barriers: the legal aid movement, expanding state assistance to poor litigants; legal representation for diffuse interests; and the broad modern “access to justice” movement toward changing the justice system. The third reform movement has led to new fora for alternative dispute resolution, and greater specialization of legal institutions and procedures. These new opportunities include small claims procedures, which provide more efficient, informal, and inexpensive litigation; neighborhood and social courts; special tribunals for consumer, environmental, or landlord-tenant disputes; changes in the delivery of legal services, such as the expanded use of paralegals or prepaid group legal service plans; and the simplification of the law. Cappelletti and Garth end by suggesting that ensuring wide access to the law is more important than creating a “beautiful” but remote legal system.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Access to justice; legal services; alternative dispute resolution; group rights; class actions/representative actions/public interest litigation; costs of the legal system; equality/social justice; judicial efficiency/court delay; legal profession; mediation; non-lawyer advocates; social services; environmental protection

**Law Keywords:** Civil litigation; public interest litigation

**Country/Region:** United States, Western Europe


In the introductory chapter to this volume, the authors contend that the degree to which executive decrees represent executive usurpations of legislative power has been overstated. While this is sometimes indeed the case, they argue, frequently executive decree is tolerated or preferred by legislative majorities. Various political and institutional variables determine the prevalence and toleration of executive decree within a given system. After differentiating different types of executive decree, the authors outline nine hypotheses, based on an analysis of the preferences of legislators, executives, and constitution drafters, about the likelihood of pervasive executive decree authority. In the concluding chapter, they draw on the case studies in the other chapters of the volume, as well as their own research, to evaluate these hypotheses empirically. They find strong support for some of the hypotheses. For example, constitutions drafted under the strong
influence of executives tend to provide for more constitutional decree authority. Also, systems that allow for
great deal of executive decree tend not to have executive veto power, and vice versa, suggesting that these
two mechanisms are substitute forms of legislative control over the executive. For some of the other
hypotheses, they find less support, and some cannot be tested due to measurement and data problems, though
the case study evidence is suggestive. The authors reassert their central conclusion: that the usurpation
interpretation of executive decree authority has been overstated, and that in some institutional frameworks,
legislatures provide the executive with decree authority, but try to do so in a manner that mitigates the ability
of the executive to hurt legislative interests.

Methodology: Qualitative description and analysis; quantitative analysis; comparative analysis
Subject Keywords: Executive decrees; democracy; legislative process; state of emergency; constitutional
drafting; constitutional change; judicial review; judicial independence; individual rights
Law Keywords: Administrative law; constitutional law
Country/Region: Latin America; Eastern Europe; Russia; Argentina; Brazil; Peru; Venezuela; France; Italy;
United States

Caterina, Raffaele “Comparative Law and the Cognitive Revolution” Tulane Law Review 78: 1501-47
(2004)

The polemical target of this article is an approach which is widespread among comparative lawyers and legal
anthropologists. This approach affirms that comparing legal systems is comparing different “world versions”;
that since human beings live in a world created by their culture, people from different cultures inhabit
different worlds, and therefore cannot ever reach perfect understanding between each other; that comparative
lawyers cannot expect but differences, that every discovery of similarities, of “common cores” of principles
across legal systems is the result at best of a reductionistic approach, at worst of more or less conscious
cultural imperialism. This approach has been called “difference theory.”

Today the development of cognitive science brings on stage human nature. Models of vision and object
recognition, generation and comprehension of language, reasoning and other cognitive processes elaborated
by cognitive science are universal models. The linking of the cognitive processes to deep mechanisms
characteristic of our species brings with itself the reconstruction of human nature.

The past few years have seen a resurgence of nativist theorizing. Today many psychologists, linguists,
anthropologists, philosophers, and ethologists accept (even if in rather different versions) nativistic theories
about the cognitive mind. These scholars believe that man has innate knowledge at disposal, or at least that
human knowledge is bound by substantive and universal properties of human psychology.

In the first part of the article, the author shows that even a rather moderate version of these theories is
sufficient to confute the most radical versions of difference theory, and the integrally cultural image of man
that they imply. In the second part, the author shows how some more controversial theses, formulated by
evolutionary psychology, or in any case in the context of massively modular conceptions of the human mind,
can contribute to the comparative study of law by posing new questions and by challenging traditional
approaches.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, common law, culture/social norms/informal institutions, legal culture

Carothers, Thomas “Promoting the Rule of Law Abroad – The Problem of Knowledge” Carnegie

Although the rule-of-law promotion field is expanding, it faces a lack of knowledge at many levels of
conception, operation, and evaluation. The author presents his uncertainties about the contribution of the rule
of law to economic development and democratization, the essence of the rule of law, the development of the
rule of law in societies and how such developments can be stimulated by outside assistance. He concluded
that many of the lessons learned are superficial and even those are often not really learned.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial reform, legal reform, outside assistance, politics of reform, rule of law
Country/Region: Developing world
This article discusses the recent wave of efforts to promote “rule of law” in developing and transition countries. Carothers argues that there are three basic categories of rule of law reform. The first type concentrates on efforts to reform or rewrite the laws themselves. The second type emphasizes reform in the basic legal institutions, especially the judiciary and the bar. The third type aims at increasing government compliance with the law and true judicial independence. Carothers claims that most rule of law aid to date has focused on the first two types of reform, while the third – the most difficult and important – has received much less attention. Thus current rule of law programs, while generally beneficial, are not likely to engender fundamental change. Carothers stresses that rule of law programs cannot solve the political, economic, and legal problems of developing and transition countries, and promoting the rule of law, while a worthy goal, should not be seen as a panacea.

Methodology: Qualitative description and analysis

Subject Keywords: Rule of law; individual rights; post-socialist transition; economic development; democracy; economic reform; legal reform; outside assistance; USAID; World Bank; public support for reform; judicial independence; democracy; law drafting; judicial reform; judicial efficiency/court delay

Law Keywords: Criminal law; commercial law; administrative law

Country/Region: Latin America; Eastern Europe; Russia; Asia; Middle East; Africa

This short handbook aims to help practitioners, especially USAID program managers, monitor the performance of democracy and governance projects in developing countries. The handbook begins with a general discussion of how performance indicators should be developed and utilized in these programs, stressing the need for indicators that are appropriate, objective, cost-effective, and sensitive to change over time. The handbook notes that, while performance indicators can be useful for monitoring, managing, and reporting on democracy/governance programs, they must not drive the program or consume too much of the budget. After the general overview, the second section of the handbook presents several specific indicators developed to measure each of USAID’s four democracy objectives: 1) strengthened rule of law and respect for human rights; 2) more genuine and competitive political processes; 3) increased development of a politically active civil society; and 4) more accountable and transparent government institutions. These draft indicators are then applied to four countries – Guatemala, the Philippines, Uganda, and Ukraine – and refined in light of this field-testing.

Methodology: Project evaluation; qualitative description and analysis

Subject Keywords: USAID; electoral process; democracy; court performance; civil society; governance; outside assistance; donor agency administration; individual rights; human rights; rule of law; performance indicators

Country/Region: Guatemala; Philippines; Uganda; Ukraine

This program was drafted by Bulgarian lawyers within the framework of the Judicial Reform Initiative which united the efforts of non-governmental organizations, representatives of State authorities and experts in order to support and further the successful development of judicial reform in Bulgaria. The various aspects of the program concern (1) the status of magistrates including their independence and liability, their selection and their training, (2) court administration including the legislative framework, institutional changes, court automation, status and training of judicial staff, and (3) legal reform including substantive and procedural laws in civil, criminal and administrative matters.

Methodology: Qualitative description and analysis
Subject Keywords: Legal reform, judicial reform, post-socialist transition, post-transition justice, public support for reform
Country/Region: Eastern Europe, Bulgaria


(“The Independence of the Judicial Power”, in Spanish) The transition to democracy in Mexico has implied as a necessary requirement the existence of a more independent judicial branch of government, solely subjected to the rule of law. This essay examines the problems derived as a consequence of the creation of the Federal Council of the Judiciary in the constitutional scene. According to the author, since the constitutional reform of December 1994, this Council has become a central player for an adequate functioning of the federal judicial power, with its contribution to the modernization of the federal administration of justice, by establishing new rules for the selection, appointment and training of clerks, judges, and magistrates. However, the author explains that its function as an institution that guarantees the independence of the federal judicial power has been affected by its relation with the Supreme Court of Justice; a relation that has not be definitely settled.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutional change, court administration, democracy, institutionalization, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal education/training, post-transition justice, separation of powers
Country/Region: Mexico/Latin America


This article examines the role of law in South Korea’s economic development and adjustment, focusing especially on the 1997 economic crisis and subsequent adjustment process. Chang begins with an overview of the role of law in Korea’s economic development from 1960-1995. He claims that during this period law was used instrumentally by the state to promote economic development; sometimes law had a positive impact, while in other periods it had negative side effects. Legal institutions and dispute settlement systems did not generally have much impact on economic development, he claims, and these institutions have yet to satisfy the increased demand for dispute resolution that have accompanied economic growth. Chang then discusses the 1997 financial crisis, as well as the bailout package and conditionalities presented by the IMF. He discusses how law was used as an instrument for implementing some of the structural economic reforms, but he also argues that there are inherent limits to these legal and economic reforms. He points out the need for judicial reform and strengthening of legal institutions, as well as the need for the government to allow the market rather than government agencies to decide which firms and banks will survive and which will fail. He stresses the need for a rule-based, market oriented economic system in Korea.

Methodology: Qualitative description and analysis
Subject Keywords: Economic development; financial sector; credit market; rule of law; legal reform; economic reform; labor unions; legal profession; judicial training; legal education/training; judicial reform; judicial independence; IMF; World Bank; outside assistance
Law Keywords: Commercial law; administrative law; labor law; civil litigation
Country/Region: South Korea


This article overviews the type of sanctions, other than those provided by the formal legal system, that private transactors use to enforce commitments. Charny contends that current understandings of contract and commercial law are incomplete because the role and relative efficiency of nonlegal as opposed to legal sanctions has not been taken into account. Charny overviews different types of nonlegal sanctions and discussing their costs and benefits, from an efficiency perspective, and argues that rational transactors often
choose to rely on nonlegal rather than legal sanctions to enforce their commitments, and in these situations courts should not interfere by making these commitments legally enforceable. However, in some circumstances – when rational transactors face high contract drafting and information costs, or when transactors have poor judgement – legal intervention to enforce commitments left by the parties to nonlegal sanctions may be appropriate. Charny’s analysis leads him to conclude that legal doctrines related to contract enforcement need to be reformulated, and where possible administrative regulations should be adopted to reduce information and drafting costs ex ante, rather than relying on legal intervention ex post.

Methodology: Formal analysis
Subject Keywords: Nonlegal sanctions; alternative dispute resolution; litigation; labor market; capital market; costs of the legal system
Law Keywords: Contract law; commercial law; employment law; tort law
Country/Region: United States


The relationship between a society’s culture and its socially-approved means of dealing with disputes has intrigued procedural comparatists and social theorists for decades. Notwithstanding wide acceptance that there is such a relationship, its relevance to pragmatic work of procedural reform remains controversial. The author focuses on the claim that court procedures reflect the fundamental values, sensibilities and beliefs of the collectivity that employs them. Using the United States as the case in point, he shows how the well-documented idiosyncrasies of American culture are reflected in the procedural rules that govern civil litigation.

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Civil law, civil procedure, civil litigation, common law, culture/social norms/informal institutions, import of foreign law/legal transplants, judicial decision-making, legal culture, litigation
Country/Region: United States


(“Law and Society in France and Great-Britain - 12th through 20th century”, in French) This series of reports analyzes various aspects of the interlinkages between law and society in France and in the United Kingdom between the 12th and the 20th century. The topics covered deal with aspects of access to justice, legal theory and practice, legal education, ethics of lawyers, gender, criminal law and legal acculturation across the centuries in general.

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Access to justice, civil litigation, civil society, codification, common law, constitutional change, criminal law, criminal sentencing, culture/social norms/informal institutions, democracy, equality/social justice, gender/women’s rights, ideological role of law, judicial reform, legal aid, legal culture, legal doctrine, legal education/training, legal ideology, legal profession, rule of law
Country/Region: France, United Kingdom/Europe

Chauvaud, Frédéric Experts et expertise judiciaire – France, XIXe et XXe siècles (Rennes : Presses Universitaires de Rennes, 2003), 283 pages

(“Experts and Judicial Expertise – France, 19th and 20th Centuries”, in French) The role of judicial experts is oftentimes an element of the debate on court delay and judicial performance. However, it is also a fairly neglected research topic. This publication analyzes in depth the role of judicial experts in the French judiciary during the 19th and 20th centuries. It provides detailed analyses about evolutions over time and explores relevant statistics that help to understand the interlinkages between judicial process, experts, and social, economic, and political development in French society in this period.
**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Civil procedure reform, civil litigation, civil procedure, costs of the legal system, court delay, judicial decision-making, judicial efficiency/court delay, litigation  
**Country/Region:** France/Europe

**Chauvaud, Frédéric** *Le juge, le tribun et le comptable – Histoire de l’organisation judiciaire entre les pouvoirs, les savoirs et les discours (1789-1930)* (Paris : Anthropos, 1995), 413 pages

(“The Judge, the Tribune and the Accountant – The History of Judicial Organization between Powers, Knowledge and Discourse (1789-1930)”, in French) The authors describes and analyzes the history of judicial organization and reform in France between the Revolution and the 1930s in its political, social and economic context. He devides the history of judicial reform in France in three main periods: (1) The matrix organization from the Revolution through the Empire (1789-1814), (2) The immobile order from the Restauration to the first years of the Third Republic (1814-1879), and (3) The Republican Administration – The Third Republic from Jules Grévy to Poincaré (1879-1930). The author analyzes a vast array of relevant topics such as the judicial map, the role of the ministry of justice, the role of judges and others.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to Justice, constitutional change, court administration, democracy, institutional capacity, judicial accountability, judicial independence, judicial reform, politics of reform, politics of resistance, separation of powers  
**Country/Region:** France/Europe


The author argues that since the late 1970s, a massive amount of foreign law has been imported into the Chinese legal system, but that law still serves as an instrument of Communist Party policy, developed through a non-participatory process of legal reform from above. The creation of new laws was initiated by Deng Xiaoping in the late 1970s in order to spur economic development. In 1992, the proclamation of a “socialist market economy” paved the way for the explicit and uninhibited introduction of foreign law, leading to new law codes on companies, arbitration, securities, banking, insurance, patents, criminal procedure, and other areas, in addition to the ratification of many international commercial conventions. Although the old ideological constraints and dogmas have largely disappeared – a welcome development – law is still treated as a tool of party domination. The concept of a “rule of law” where the goals are justice and humanity has yet to be recognized.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Authoritarianism; economic reform; economic development; import of foreign law/legal transplants; legal instrumentalism; legal reform; rule of law; socialism  
**Law Keywords:** Commercial law  
**Country/Region:** China


(“The State Subject to the Rule of Law”, in French) This book synthesizes the continental European concept of “Rechtsstaat” or “Etat de Droit”. After analyzing the theoretical foundations of it (French and German approaches, Kelsen), the author presents the formal and substantial elements: the subordination of the administration, supremacy of the constitution, integration of international law, legal certainty and human rights. Eventually, the influence of this concept is examined.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Authoritarianism, constitutional law, democracy, human rights, human rights law, ideological role of law, individual rights, judicial independence, legal culture, liberalism, rule of law, separation of powers

This article examines the use of the National Security Law (NSL) in South Korea, arguing that this law has been used more to suppress internal dissidents than to preserve national security and that it therefore should be repealed. The first sections of the article examine the political-historical background in which the NSL was enacted and outline the basic structure of the law. The author then analyzes how the NSL has been applied, and he criticizes recent Supreme Court and Constitutional Court decisions that have upheld the NSL’s constitutionality. He argues that the NSL violates international human rights standards and criticizes the argument that such a law is justified because of similar laws in North Korea. The next part of the article discusses the recent trend in lower courts toward regulating NSL abuses, and Cho suggests that this trend illustrates constitutionalism’s future in South Korea. The conclusion stresses that the NSL’s main purpose has been to suppress dissidents rather than to defend against North Korean threats, and that the South Korean government must repeal the NSL to complete the transition from authoritarianism to democracy.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; judicial review; human rights; individual rights; democracy; authoritarianism
Law Keywords: Constitutional law; criminal law
Country/Region: South Korea

Chodosh, Hiram E. Global Justice Reform – A Comparative Methodology (New York: University Press, 2005), 227 pages

Chodosh critiques and rethinks two inter-related subjects: the nature of comparison in the field of comparative law (part one) and the struggles of national judicial systems to meet global rule of law objectives (part two). When focusing on the weaknesses of comparative methodology in part one of the book, the author first evaluates explanations of the comparative method before detailing the practical significance of comparison for contemporary legal decision making. He develops a preliminary framework for comparing comparisons by raising questions about purpose, content, and modes of differentiation. In part two, the author explores comparative methodology in the context of global justice reform. After sketching the global context in which institutional failure within the most neglected branch of government is disturbingly common, the author identifies key features in reform failure and the predicaments they create. In response to the challenge, he advances a set of navigational tools for judicial systems to use in attempts to emerge from these many dilemmas.

Together, parts one and two underline the importance of developing a comparative methodology capable of providing a deeper set of justifications for accepting or rejecting comparative reforms of law, legal institutions, or process. The inquiry also cautions, however, against prematurely crystallized rationales for distinguishing comparisons or the selection of any one approach to common dilemmas in justice reform initiatives. Altogether, the author stresses that the full step ahead to the development of a comparative methodology for global justice reform does not merely represent a hurdle for reform proposals to sourmount. It also represents an essential intellectual foundation for the creativity that is so urgently needed.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, alternative dispute resolution, case management, civil procedure reform, civil litigation, civil procedure, corruption, court administration, court delay, court performance, culture/social norms/informal institutions, import of foreign law/legal transplants, incentives of judges, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, judicial selection/promotion, legal culture, legal personnel, legal profession, legal reform, litigation, lok adalat, outside assistance, politics of reform, politics of resistance, public support for reform, rent seeking, World Bank
Country/Region: India, Indonesia, developing world (general)/South Asia, East Asia

This article describes the methodology and findings of the Palestinian Legal Study, a two-year study (1995-1996) of the Palestinian legal system funded by USAID and facilitated by the Institute for the Study and Development of Legal Systems. The authors argue that a history of repeated occupation had resulted in overlapping, inconsistent, and barely functional legal systems in the West Bank and Gaza Strip. The Study used a systemic and functional approach to reform, identifying problems in the Palestinian legal system and then drawing on comparative law reform (particularly the U.S. experience) to propose remedies. In civil justice, the study recommended the introduction of court management, case management, and alternative dispute resolution. The most fundamental need within the criminal justice system, meanwhile, was to establish effective representation for the accused at all phases in the process; other requirements include new procedures for arrest, charging, and plea bargaining. The article concludes with recommendations for systemic reform to improve the judiciary and the courts; establish the police; provide alternatives to court; develop the legal profession; unify and codify law; and establish trust in the judicial system.

**Methodology:** Attitude surveys; comparative analysis; qualitative description and analysis

**Subject Keywords:** Legal reform; judicial reform; access to justice; judicial efficiency/court delay; alternative dispute resolution; criminal sentencing; due process; case management; civil procedure; institutional capacity; legal education/training; legal pluralism; legal profession

**Law Keywords:** Administrative law; civil litigation; constitutional law; criminal law

**Country/Region:** Palestine; Israel; Middle East


This article describes the reform of Egypt’s civil justice system. The authors argue that countries modernizing their legal system should reform civil procedure, as in Egypt, and not just substantive law. Court delay and backlog afflicts many legal systems around the world and has been addressed through litigation prevention; procedural streamlining and case management; and alternative dispute resolution. The similarity of the problem and approaches to resolving it suggest that reform efforts can benefit from comparative analysis of legal systems. The authors describe the comparative method, noting that civil law
and common law differences between countries have been overdrawn, and argue that the functional and systemic components of legal processes can be usefully compared across countries and provide models for solving court backlog. They then describe the process modernization effort in Egypt, initiated in 1992 and assisted by the Institute for the Study and Development of Legal Systems (ISDLS, a San Francisco-based NGO) and the US Information Service. They identify three causes of backlog in Egypt: judges are responsible for non-adjudicative processes including administrative tasks and the preparation of evidence; exacting standards of judicial impartiality and distrust of private settlement protract trials and discourage alternative dispute resolution; and the judicial rotation system leads to discontinuity and duplication of effort. The article elaborates on two recommendations resulting from the study, case management and judicial mediation.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial efficiency/court delay; civil procedure; legal reform; judicial reform; case management; court administration; alternative dispute resolution; mediation; costs of the legal system; import of foreign law/legal transplants; common law; civil law

**Law Keywords:** Civil litigation

**Country/Region:** Egypt


The authors build on existing research that demonstrates a link between various measures of institutional “quality” (including corruption, property rights, bureaucratic delays, etc.) and economic development. Specifically, they note that while empirical data has established a strong correlation between these variables, the question of causality has not been resolved. While the existing data are usually interpreted as supporting the idea that good institutions promote economic growth, research also suggests that economic growth may create better institutions. The authors use time-series data to test the causal relationship in both directions. They find that there is statistically significant evidence that the causality indeed runs in both directions – from institutional quality to growth and from growth to institutional quality – but that the effect is much stronger for the latter effect. Also, they find evidence which suggests that, the poorer the country and the longer the time period elapsed, the larger the effect of institutional quality on growth.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Economic development; property rights; corruption

**Country/Region:** Developing world (general)


The authors examine the implications of Thailand’s diminishing open land frontier on the state’s provision and enforcement of property rights. According to one theory, when an open land frontier is available, the gap between formal law and customary rules is wide, since the rural population has the option to “exit” to new land, but when open land decreases, the demand for clear, consistently enforced property rights will become stronger. However, the authors argue, the depletion of the open land frontier in Thailand has not led to the development of formal, legitimate property rights institutions, despite the fact that demand for such institutions has in fact increased. They offer several reasons for this. First, the constituents demanding rural property rights are diverse; there is not a cohesive rural landowning elite. Second, the lack of coordination between administrative agencies and the high degree of administrative discretion granted to officials has made the application of rules inconsistent, arbitrary, and unpredictable. The authors focus especially on issues related to forest land (reserves, squatters, commercial development, etc.) to illustrate their points. They conclude that the suppliers of the formal-legal property rights system (that is, the state administration) ought to take prevailing socioeconomic conditions into account and recognize alternative forms of land tenure, in order to develop an institutionalized system of legal pluralism.

**Methodology:** Qualitative description and analysis

Findings of cross-cultural psychology suggest that different approaches to rule enforcement have cultural roots. Individualist societies have established a rule of law, in which rules prevail; collectivist societies have a rule of man, which allows discretionary rule enforcement, which, in turn is recognized as an obstacle to sustained increases in productive long-term investment in developing countries. This paper presents a model that offers a unified framework to explain rule enforcement as social optimization processes in both individualist and collectivist societies and, on this basis, highlights the essential differences between a rule of law and a rule of man (i.e. between rules and discretion). The paper uses this framework to show that cross-country variations in rule enforcement are explained to a considerable extent by cultural values. The paper then uses the framework to show how the imported multi-stage rule enforcement institutions based on separation of powers in vertically-oriented collectivist societies, unlike in the individualist societies from which they originate, might not ensure as low a degree of discretion as intended. Finally, the paper uses these results to explore practical ideas that would help collectivist societies benefit from rule enforcement with low discretion.

Methodology: Qualitative description and analysis


In this article, Chua argues that the current law and development orthodoxy – promotion of marketization and democratization – neglects the important role of ethnicity and ethnic politics in the developing world. In many if not most developing countries, she argues, market reforms will tend to reinforce the economic dominance of certain ethnic minorities, exacerbating ethnic envy and resentment. Thus marketization in developing countries can often be destabilizing. Furthermore, democratization is often in tension with marketization, since political entrepreneurs have an incentive to use ethnic issues to appeal to the disadvantaged ethnic majority. Thus, far from curing ethnic tension, successful marketization and democratization are likely to worsen it. Chua argues that one of three outcomes is likely in such a situation: an ethnically fuelled anti-market backlash; ethnic eliminationist strategies; or a retreat from democracy. She then applies her theory to three current cases: South Africa, Kazakhstan, and Vietnam. She notes that all countries are different, but in general the most prudent policy may be narrowly tailored ethnically conscious interventions in the market, which, though economically inefficient, may be the best way to avert more extreme outcomes.

Methodology: Qualitative description and analysis

Clague argues that an important difference between societies or other types of organizations concerns their degree of rule obedience and organizational loyalty. He argues that rule obedience – that is, the tendency of people to follow society’s rules voluntarily – is an crucial requirement for economic success. However, an economic model of rule compliance (in the context of tax payment) suggests multiple equilibria; although it is possible for a society to achieve a high level of rule obedience, it is also possible to get stuck at a low level. Clague also discusses how behavior and attitude formation interact, and he suggests that rule-following or rule-violating behavior may tend to be self-enforcing, as people develop attitudes and beliefs to justify their behavior. Clague also discusses rule obedience and organizational loyalty in the context of a business firm, and argues that a firm’s ability to generate organizational loyalty, or esprit de corps, contributes to its economic success. Not only does a high level of organizational loyalty make monitoring of employee performance easier, but it tends to lead to the internalization of management goals by employees, causing them to go above and beyond normal requirements to help the firm achieve its goals. Clague concludes that a focus on the sources of different levels of rule obedience and organizational loyalty might generate new insights and testable hypotheses.

**Methodology:** Qualitative description and analysis; formal analysis

**Subject Keywords:** Economic development; taxation; bureaucracy; law enforcement; culture/social norms/informal institutions; obligation to obey the law


This article analyzes the protection of property and contract rights under autocracies and democracies. The authors argue that most studies of this relationship fail to consider the important effect of regime duration. In an autocracy, a leader or ruling group that expects to rule for a long time has an incentive to protect the property and contract rights of the citizens, since this will maximize future tax extractions. In new democracies, there is no reason to expect that property and contract rights will be protected, since the government can quickly change and even an elected leader can become a dictator. But, the authors argue, long-lasting democracies must protect some property and contract rights – the rule of law and protection of individual freedoms that are needed to sustain elections entail some property and contracting rights. Thus long-lasting democracies should provide better protections for property and contract rights than new democracies or autocracies. The authors test these hypotheses using sophisticated statistical analysis, and their findings generally support their hypotheses. Autocrats who have been in power longer (and therefore have an expectation to be in power for a long time to come) protect property and contract better than autocrats who have been in power only a short time. In general, democracies provided greater security of property and contract, but these benefits only emerged in democracies that had been around for a relatively long time. The authors further note that, consistent with their theory, in autocracies what matters is the duration in office of the individual leader or ruling group, whereas in democracies the duration of the system, rather than any individual leader, seems to be the most important factor. Their results, the authors claim, indicate why so many statistical studies of the relationship between regime type and economic performance are inconclusive: unless they take the different sources of incentives in the different regime types and take duration into account, the models will be misspecified.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Democracy; authoritarianism; economic development; property rights; political reform/regime change; judicial independence; rule of law; individual rights; military coups; taxation; investment

**Law Keywords:** Contract law; property law


The author compares and analyzes the organization of lawyers and judges around the globe and structures his presentation around the following topics: Studying the legal profession, the role of legal education, types of
lawyers, toward a European and global lawyer, mobility within the legal profession, the number of lawyers, law firms and specialization, professional associations, financial status and social prestige of lawyers, the judiciary, judicial accountability and independence, the general structure of courts, court structures in civil law Europe, court structures in common law countries, court structure in China, court structures in Latin America, court structures in Asia, supranational court structures in Europe, court caseloads, and the financial status and social prestige of judges.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Civil law, civil procedure, civil litigation, common law, court administration, court delay, court performance, European Court of Justice, judicial accountability, judicial decision-making, judicial efficiency/court delay, judicial elections, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal culture, legal education/training, legal personnel, legal profession, litigation, notaries

**Country/Region:** United States, England, United Kingdom, France, Belgium, Netherlands, Germany, Spain, Italy, Turkey, Israel, Singapore, Canada, Australia, China, Mexico, Ecuador, Japan, Indonesia, Taiwan, Europe, Asia, Latin America


This article surveys the literature on the factors affecting civil litigation rates. The emphasis is on the United States, but the article draws on research conducted in Europe and Africa as well. Clark discusses the relationship between socioeconomic development and litigation rates and the difference between urban and rural litigation patterns. He also surveys the current debates over whether the courts in the United States are taking on more of an administrative, rather than dispute-settlement, function, and over the role of non-judicial dispute settlement mechanisms and access to formal courts in determining litigation rates.

**Methodology:** Literature review; comparative analysis

**Subject Keywords:** Access to justice; legal services; alternative dispute resolution; informal dispute resolution; economic development; litigation; costs of the legal system

**Law Keywords:** Civil litigation; tort law

**Country/Region:** United States

**Clark, David S.** “Judicial Protection of the Constitution in Latin America” *Hastings Constitutional Law Quarterly* 2:405-442 (1975)

This article discusses judicial review of the constitutionality of legislation and administrative action in Latin America. The first section of the article surveys the history and evolution of relevant political and judicial institutions in the colonial and post-colonial periods. The next section of the article discusses different ways of empirically measuring the extent and effectiveness of judicial review. Clark acknowledges that available data limit the effectiveness of measures, but he uses what data do exist to compare the effectiveness of judicial review in different Latin American countries. He notes that the structural measures he uses do not take into account the possible declaration of a “state of siege”, under which normal constitutional protections might be suspended. He reaches several preliminary conclusions from the available data. First, contrary to popular stereotypes, the majority of Latin Americans live in countries with relatively effective judicial review. Second, he finds statistical correlation between economic development and effectiveness of judicial review, concluding from this that economic well-being is conducive to effective judicial review. He also finds that judicial review tends to be more effective in democracies, rather than authoritarian or totalitarian regimes.

**Methodology:** Qualitative description and analysis; comparative analysis; quantitative analysis

**Subject Keywords:** Constitutionalism; judicial review; judicial independence; separation of powers; economic development; democracy; authoritarianism; colonialism/imperialism; individual rights; state of emergency

**Law Keywords:** Constitutional law; administrative law

**Country/Region:** Latin America

According to Clark, New Institutionalists such as North and Weingast have argued that the political history of England – especially the Glorious Revolution of 1688 – demonstrates two propositions: first, that the establishment of secure property rights was a necessary and sufficient condition for the industrial revolution; and second, that the establishment of such rights depended on the creation of a representative democracy. However, Clark contends that the statistical evidence shows no significant change in the property rights regime took place in England in 1688, nor did the periods of political instability in the preceding century have any noticeable effect on the private economy, contrary to what institutionalist theory predicts. Clark analyzes data on land prices and return on assets from 1540-1770, collected from a report on private charities compiled in the early nineteenth century. He finds, in a number of different model specifications, that secure property rights existed in England at least as early as 1600, that there was a gradual trend over time of declining rates of return and rising land prices, no significant change in the private investor market occurred in 1688 or any of the periods of political instability. Thus, he concludes that both propositions advanced by North and Weingast are flawed. While secure property rights may have been a necessary condition for the industrial revolution, they could not have been sufficient, as they were established hundreds of years before industrialization took place. Likewise, the establishment of representative democracy was not a necessary condition for secure property rights.

**Methodology:** Critical review; quantitative analysis; qualitative description and analysis

**Subject Keywords:** Property rights; democracy; authoritarianism; political reform/regime change; political instability; revolution; economic development; capital market; agricultural sector; taxation

**Country/Region:** England; Holland


Focusing on Peru, this paper argues that in the absence of governmental commitment to judicial independence, donor-supported judicial reform projects are meaningless. It recounts the development of a judicial reform program by President Alberto Fujimori in 1996, which Peruvian human rights groups and other NGOs criticized as reinforcing executive control over the judiciary. The report criticizes the World Bank decision in December 1997 to approve a $22.5 million loan to support judicial reform in Peru, but applauds the Bank’s refusal the following year to disburse loan payments after further government crackdown on judicial independence.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial independence; judicial reform; World Bank; donor agency administration; donor politics; economic development; authoritarianism; human rights

**Country/Region:** Peru


The article examines the relationship between law and economic reform in China, focusing on the reform of state-owned industry. Clarke argues that the kind of economic reform envisioned by the Chinese leadership requires a transition from a system of ad hoc bargaining between individual enterprises and their bureaucratic superiors to a system of generalized rules. However, China’s legal institutions are currently incapable of meeting this need. The courts lack sufficient enforcement powers and are dependent on the local government. Additionally, most judges lack even basic training in the law, and corruption is also a significant problem. Clarke shows this weakness in three specific areas: illegal exactions imposed on enterprises; hiring and firing of workers; and bankruptcy legislation. In all these areas, the formal law reform is ineffective because of the weakness of legal institutions and other aspects of the political, social, and economic situation in China. Clarke concludes that the last decade of attempted legal reform has not solved these basic problems, and that dealing with them will require confronting difficult political problems.

The author defines the rights hypothesis as the school of thought in institutional economics holding that economic growth requires a legal order offering stable and predictable rights of property and contract because the absence of such rights discourages investment and specialization. In general, the legal order described by this school is something along the lines of the legal systems of the developed countries of the West. Without the security of expectations offered by such a legal order, according to the rights hypothesis, the risks of a great number of otherwise beneficial transactions far outweigh their expected return, and as a result such transactions simply do not occur. Society is mired in an economy of short-term deals between actors bound by non-legal ties such as family solidarity which by their nature cannot bind large numbers of strangers.

The author claims that the history of China’s post-Mao economic reform has provided interesting material against which to test the rights hypothesis. For the purposes of this article, the author focuses on two features: First, the institutions by which rights are enforced, in particular courts, are perceived to be weak, and thus rights are perceived to be unenforceable. Second, China has indeed enjoyed substantial economic growth in recent years.

The author maintains that the main problem with the rights hypothesis is that it is too sweeping and fuses concepts that ought to be kept separate. He then presents and analyzes them more in detail: contract rights and property rights, and the idea of rights versus the idea of predictability. He suggests to reformulate the rights hypothesis on this basis.

Classen, Claus Dieter; Heiss, Helmut & Suproń, Anna *Polens Rechtsstaat am Vorabend des EU-Beitritts* (Tübingen: Mohr Siebeck, 2004) 214 pages

(“The Rule of Law in Poland at the Eve of EU Accession”, in German) The rule of law as part of the Copenhagen criteria was a prerequisite for Poland’s EU accession. This book contains articles assessing various aspects of the rule of law in Poland. After describing the political process and defining the rule of law, the articles analyze the role of the Polish ombudsman, the protection of human rights and fundamental freedoms, the Polish administrative courts and the effectiveness of the Polish law on administrative procedure, access to justice, the legal profession, judicial infrastructure and civil service reform.

This chapter discusses the development of performance indicators for trial courts in the criminal justice system. Cole begins by noting that traditionally court performance assessments focused on efficiency and speed rather than quality of service. However, recent research has demonstrated both that efficiency is not the best measure of quality and that a number of factors other than formal institutional structures determine quality of performance. Therefore, Cole explains, the Bureau of Justice Administration and the National Center for State Courts undertook, in the Trial Court Performance Standards project, the difficult task of redirecting attention to outcomes rather than process and developed performance indicators to assess outcomes. Cole outlines the five performance areas covered by the Trial Court Performance Standards – access to justice, timeliness, fairness, independence and accountability, and public confidence – and the implementation and revision of the indicators used to assess each one.

Methodology: Qualitative description and analysis
Subject Keywords: Court administration; performance indicators; access to justice; judicial efficiency/court delay; judicial independence; judicial accountability; public opinion of the legal system; judicial reform; legal culture; court performance
Country/Region: United States


(“The Review of Administrative Decisions in Italy”, in French) After describing some basic notions of of Italian administrative law, the authors present the range of administrative activities that can be reviewed by the courts. They also present the institutional set-up of administrative justice. Subsequently, they analyze the extent to which discretionary power is subject to judicial review. Eventually, the authors describe extra-judicial ways of reviewing administrative action in Italy.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, bureaucracy, executive decrees, individual rights, judicial decision-making, judicial review, rule of law, separation of powers
Country/Region: Italy/Europe


In this article, the authors examine the proposition that Supreme Court doctrine on administrative law – particularly the question of judicial deference to administrative agencies – is determined largely by the court’s attempts to act strategically to realize its policy preferences. The authors first develop a game-theoretic model in which the Supreme Court, the president, two houses of Congress, the administrative agency, and the court of appeals all have policy preferences and the ability to influence policy. The Supreme Court is restrained from implementing its policy preferences by resource constraints (it can only hear so many appeals) and institutional constraints (the other players can set and execute policy, and court decisions can be overturned by legislation). The model leads the authors to hypothesize that the amount of deference the court endorses is a strategic decision oriented toward getting the equilibrium outcome closest to the court’s policy preference. This in turn depends on the preferences of the other institutions. The authors conduct empirical tests of this hypothesis using US Supreme Court decisions on administrative law in the 1980s. The results are consistent with their hypothesis: a relatively conservative court faced with relatively liberal appeals courts, a conservative president, and conservative executive agencies, adopted a doctrine calling for more deference to agencies. This conclusion is strengthened by their observation that the court did not call for nearly as much deference to independent agencies (distinct from the executive agencies) as these were relatively liberal. They note several areas where their model and empirical tests need refinement, but argue that their results bolster the conclusion that the Supreme Court is a strategic actor that uses jurisprudence to further its policy goals in regulation.
This article examines the factors affecting the sentences issued by judges in criminal antitrust cases in the U.S. between 1955 and 1980. Specifically, the article tests the hypothesis that judges are motivated partially by the personal desire for promotion when making sentencing decisions, in addition to the facts of the case and the judge’s ideological preferences. Cohen’s statistical analysis supports this hypothesis, showing that judges who were likely candidates for promotion to a higher court tended to hand down harsher sentences (as preferred by the White House and Justice Department, which have a significant role in promotion decisions) than judges who were not in position to be promoted. Cohen argues that this evidence supports the idea that judges may try to maximize their personal utility when making decisions, though he also notes that the judiciary still retains a high degree of independence, and judges frequently make decisions openly opposed by the executive or legislative branch.

Methodology: Quantitative analysis
Subject Keywords: Judicial decision-making; incentives of judges; collusive trade arrangements/cartels; judicial selection/promotion
Law Keywords: Antitrust law; criminal law
Country/Region: United States


In this article, Cohen uses statistical analysis to test the hypothesis that judges act as “utility-maximizing agents”, making decisions at the margins that are likely to promote their own self-interest. He examines district court rulings on the constitutionality of the Sentencing Commission. The Commission reduced judicial discretion, was believed to increase judges’ workloads, and was strongly favored by Congress and the executive branch. Cohen hypothesizes that judges with high workloads should be more likely to rule the Commission unconstitutional, judges who were candidates for promotion would be more likely to rule it constitutional, and there should be a general trend toward ruling it unconstitutional. Cohen finds statistical support for all of these hypotheses. Also, judges were more likely to rule the Commission unconstitutional once another judge in their district had. Furthermore, Cohen found that age, political affiliation, and other demographic information did not significantly predict decisions. He claims that this empirical evidence supports the proposition that judges are influenced by self-interest considerations, and that this has implications for the independence of the judicial branch.

Methodology: Quantitative analysis
Subject Keywords: Judicial decision-making; incentives of judges; judicial independence; separation of powers; criminal sentencing; judicial review; judicial selection/promotion
Law Keywords: Criminal law; constitutional law
Country/Region: United States


Increasing attention is paid to the judicial map when it comes to judicial reform. The judicial map is the tool for allocation of cases to courts across the territory, but also to the various layers within the court system (1st instance, appeal, supreme court etc.) and to the different branches (civil courts, administrative courts, labor courts etc.). Commaille analyzes in depth the financial, political, social, and managerial aspects of the way
cases are allocated to courts in France between 1930 and today. These lessons from France can be helpful to understand the various dynamics underlying the judicial map.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, administrative courts, appeals/cassation, case management, civil law, court administration, court delay, court performance, judicial efficiency/court delay, judicial reform, litigation, politics of reform, politics of resistance, public support for reform, state budget  
**Country/Region:** France/Europe

**Commission de Réforme de l’Accès au Droit et à la Justice**  
La Réforme de l’Accès au Droit et à la Justice  
(Paris : La Documentation Française, 2001) 232 pages

(“The Reform of Access to Law and Justice”, in French) The protest movement of lawyers in late 2000 has shown the need of a reassessment of the French system of access to law and justice. The Commission of Reform of Access to Law and Justice was established for this purpose and charged with this task. The report was published in 2001. It presents an analysis of the present mechanisms and aims at indicating perspectives for future changes balancing three main objectives: satisfaction of the most essential needs of users of the justice system, the fair payment of legal services and an optimal utilization of public funds. An important part of the report is dedicated to the presentation and analysis of foreign systems (Germany, Netherlands, England and Wales, Canada, European Court of Human Rights) of access to law and justice.

**Methodology:** Qualitative description and analysis, quantitative analysis  
**Subject Keywords:** Access to justice, costs of the legal system, equality/social justice, legal aid, social movements  
**Country/Region:** France/Europe, Germany, Netherlands, England, Wales, United Kingdom, Canada

**Conley, Marshall and Daniel Livermore**  
“Human Rights, Development and Democracy: The Linkage Between Theory and Practice”  
Canadian Journal of Development Studies Special Issue:19-36  
(1996)

This article argues that the three ideas of human rights, development, and democracy evolved separately but are now increasingly linked, in academic writing and in the practice of governments and international agencies. Yet the actual relationships between the three are generally discussed from the perspective of advocacy rather than of rigorous scholarship. Studies have been tentative in their conclusions and provide few broad policy prescriptions. International action to support human rights has a long history, especially at the United Nations, but evidence of the success of implementation (beyond standard-setting) is slim. The UN and Bretton Woods agencies have promoted economic development for decades, but recent years have seen several key changes, including the new adherence to the free-market model and new attention to the connections between development and human rights and democracy. Democracy promotion has been hindered by conservative views of international law and reluctance to open the possibility for state interventionism. In the 1990s, these three issues have been related much more than before, but without sufficient case-study-based determination of their interaction. The authors argue that states with sustainable democracies are marked by a lack of ideological extremism, and by the presence of devices for conflict resolution. Therefore, they argue that international action in support of human rights and other goals can best be directed at strengthening past or existing country frameworks (legal, political, and economic) for resolving conflict.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Human rights; economic development; democracy; donor politics; modernization theory; United Nations; UNDP; World Bank  
**Country/Region:** Developing world (general)

**Cooley, Thomas; Marimon, Ramon & Quadrini, Vincenzo**  
“Aggregate Consequences of Limited Contract Enforceability”  
Journal of Political Economy 112/4: 817-847  
(2004)

The authors study a general equilibrium model in which entrepreneurs finance investment with optimal financial contracts. Because of enforceability problems, contracts are constrained efficient. They show that
limited enforceability amplifies the impact of technological innovations on aggregate output. This implies that economies with lower enforceability of contracts are characterized by greater macroeconomic volatility. A key assumption for the amplification result is that defaulting entrepreneurs are not excluded from the market.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Contract law, court performance, credit market, debt collection, investment, law enforcement, financial sector


In this article, Cooter explores the relationship between law and social norms, especially social norms that arise in business communities. Cooter uses evolutionary game theory to explain the emergence of social norms. In his view, norms emerge when parties have an incentive to signal that they will behave in a certain way. (This incentive may exist even when the parties actually intend to behave a different way.) Because everyone signals the same way, a social consensus emerges on “proper” behavior, which is passed on and internalized by some (though not all) members of the community. Those who internalize the norm are both willing to follow the norm and to bear some cost of enforcing the norm on others in the community through informal punishment. The number of people who follow the norm in equilibrium depends on the relationship between the number of people who have internalized the norm and the costs of enforcement. Cooter argues further that some norms are socially efficient, whereas others are not, and whether a norm is likely to be efficient depends on the structural conditions affecting the norm’s creation. Judges, he contends, ought to enforce law as those social norms that emerge from a structure likely to generate efficient norms. Only when the incentive structure that produces norms is not efficient (what Cooter terms a “community failure”) should the state intervene with legislation. Cooter notes further that his theory may explain the finding that the common law tends to be efficient. In his view, this result is not due to some kind of efficient market for legislation, but rather stems from the fact that common law judges “find” law in social norms, and those social norms tend to be efficient in most cases.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions; customary law/indigenous law; common law; civil law; noncontractual agreements/relational contract; nonlegal sanctions; law merchant; legislative process; individual rights; democracy; litigation; rent seeking

**Law Keywords:** Commercial law; contract law; tort law; administrative law

**Country/Region:** United States; United Kingdom


In this article, Cooter examines land courts and the laws relating to ownership and exchange of land in Papua New Guinea. He notes first that almost all land in Papua New Guinea is under customary ownership – that is, its use and sale is governed by the customs of the local people – and custom usually does not allow the sale of land outside the kin group. However, changing conditions and exposure to the outside world have generated increasing pressure for developing markets in land, including the possibility of transacting outside the kin group. Cooter considers three possible approaches this problem. The first is the “freehold” solution, which would allocate customary land to individuals who would retain full property rights over their land. The second solution would be to restructure the kin groups as collective enterprises or cooperatives, and vest these collectives with property rights over land. Cooter rejects both these alternatives, arguing that they would both disrupt customary law and create serious social and economic inefficiencies. He instead endorses a third alternative – parliament should not attempt to impose a legislative solution, and should instead allow the customary law of property to evolve and modernize on its own, through a common law process. There are obstacles to this approach, however, and Cooter argues that the government could encourage the process through training magistrates in common law methods, and perhaps relaxing the rules excluding lawyers from the land courts.

**Methodology:** Qualitative description and analysis
This paper uses economic tools to analyze the interrelationship between state law and social norms. Cooter claims that in some systems— which he characterizes as those having “rule of law”— the law is consistent with social norms. In such a system, many obey the law out of respect, and private citizens supplement state law enforcement. This system lowers enforcement costs and information constraints on government, therefore promoting economic development. Under the “rule of state law”, laws are inconsistent with social norms and citizens either disobey or obey only out of fear. This system inhibits economic development. Cooter uses his framework to discuss law and development in European history, and extends the analysis to the problems of modern developing nations. He discusses the relationship between law, social norms, and the political system. He concludes that the lesson for the World Bank and other donor organizations should not focus on drafting new laws, but on helping to establish institutions and communities of judges, lawyers and scholars prepared to shape the law to conform to beneficial and efficient social norms.

Methodology: Formal analysis
Subject Keywords: Rule of law; economic development; law enforcement; culture/social norms/informal institutions; nonlegal sanctions; separation of powers; political parties; outside assistance; World Bank
Law Keywords: Commercial law; contract law; property law
Country/Region: Developing world (general)


This article assesses the political factors that affect the amount of discretion courts have in interpreting statutes. The authors argue that judges generally want to implement their policy preferences through statutory interpretation, but they are constrained by the fact that the legislature can overturn their interpretation by passing countervailing legislation. The space for judicial discretion therefore ought to expand as the passage of legislation becomes more difficult. The authors identify two variables that affect the difficulty of passing legislation: constitutional provisions specifying the number of bodies with an effective veto over legislation, and the strength and discipline of the ruling party, assessed indirectly by the average duration government coalitions. The authors predict that larger numbers of vetoes and shorter coalition durations ought to be correlated with more daring judiciaries. They test this hypothesis using three different dependent variables to assess judicial daring: a subjective experts’ ranking of judicial daring, the judicial role in the move to strict tort liability, and the adoption of pollution control regulations. They find that the empirical data support their hypothesis. They then conclude with predictions for the future, including the probable increase in judicial daring in Europe as party discipline declines, and an increase in the power of the European Court of Justice as the power of the European Parliament increases, thus making the European Union more of a bicameral system.

Methodology: Comparative analysis; quantitative analysis
Subject Keywords: Judicial decision-making; separation of powers; legislative process; political parties; judicial independence; European Community/European Union; European Court of Justice; environmental protection
Law Keywords: Constitutional law; tort law; administrative law
Country/Region: Western Europe; Israel; United States; Japan; United Kingdom

This article develops a formal economic model to explain the size of informal trading groups. Such groups, according to the authors, tend to arise because the costs of enforcing contracts between group members are often lower than the costs of enforcing contracts between individuals who do not belong to a common trading group. The authors then note that, as the size of a trading group expands, the members of the group benefit from a more diverse internal market. At the same time, however, the increase in group size increases the costs of enforcing agreements between group members because personal ties between members are, on average, weaker. The size of the group, and the total welfare benefits to society, depend on how entrance to the trading group is controlled. If the group controls membership, it acts as a monopolist, maximizing benefit to insiders. However, this generates a membership that is too small from the perspective of overall social welfare. If any individual has the right to join, the group will be too large, since trust between group members is a kind of common-pool resource. Finally, the authors show that improvements in the contract law, by lowering the costs of enforcing contracts between individuals not in the same trading group, reduces the importance and size of informal groups.

**Methodology:** Formal analysis

**Subject Keywords:** Noncontractual agreements/relational contract

**Law Keywords:** Contract law


This study uses monthly data from New York City over a 30 year period on the incidence of murder, assault, robbery, burglary and motor-vehicle theft, the corresponding arrest rate, the size of the police force, and a poverty indicator to examine whether increases in criminal-justice sanctions and a larger police force reduce criminal activity. This is the first paper to employ such a rich time-series data set, which thus permits the authors to circumvent many of the problems encountered in previous studies. They find that all five types of crimes are reduced by increases in the police force and that arrest rates have an impact on robberies, burglaries, and motor-vehicle thefts. “The policy implications of our results are straightforward: To combat serious felony crimes, local law-enforcement decision makers can increase the size of the police force, and they can allocate police in a way that maximizes deterrence of serious felonies.”

**Methodology:** Quantitative analysis

**Subject Keywords:** Crime control; law enforcement; illegal drugs

**Law Keywords:** Criminal law

**Country/Region:** United States


This chapter reviews and critiques the concept of legal culture, focusing on the use of the term by Professor Lawrence Friedman. Cotterrell argues that the concept is plagued by imprecision and vagueness, and lacks theoretical coherence or explanatory utility. He claims that the concept simultaneously explains too much – in that it is used too explain almost everything that happens in a legal system – and too little, since it encompasses such an indeterminate array of elements. He suggests that the concept of legal culture could be replaced in most contexts by other concepts. For example, he suggests “legal ideology” as a more precise concept that captures some of what is contained in legal culture. He also notes that in some circumstances the use of ideal types and the study of cultural aggregates may be useful. But overall, he concludes that the concept of culture is too imprecise to be useful, and should be replaced with other concepts. This chapter is followed immediately by a response from Friedman.

**Methodology:** Critical review; conceptual/philosophical inquiry

**Subject Keywords:** Legal culture; culture/social norms/informal institutions; legal pluralism; legal profession; legal ideology

(“The Renovation of Justice in Africa: The Role of Judges in Building the Rule of Law”, in French) According to the author, the dysfunctioning of the judicial systems in Africa is due to geographic distances and cultural alienation. Behind a harmonious façade of modernism hides a variety of ways to organize society entailing legal pluralism. The author describes the role of judges in this context and sees them as a kind of mediators: On the one hand, they are culturally close to the citizens. On the other hand, their legal education is entirely inspired by foreign concepts.

Methodology: Qualitative description and analysis  
Subject Keywords: Access to justice, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics, ideological role of law, import of foreign law/legal transplants, legal culture, legal pluralism, liberalism, popular justice, public opinion of the legal system, rule of law, separation of powers  
Country/Region: Africa


This pilot evaluation report is a first result of the Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ). The CEPEJ was established to improve the efficiency and quality of the 46 member States’ justice systems and thus reduce the caseload of the European Court of Human Rights. Its tasks are to analyze the functioning of these judicial systems, to identify the difficulties they meet, to define concrete ways and advice member States on how to improve their evaluation as well as their functioning. The CEPEJ designed a questionnaire for the cross-country evaluation of the justice sector, which was filled in by the countries. Their individual replies are available at <http://www.coe.int/cepej>. The pilot evaluation is based on data from 2002. The report first describes the evaluation process and method. Subsequently, the results are presented in chapters dealing with public expenditure on courts and legal aid, the functioning of the courts including infrastructure and staff, court performance in terms of caseload and delay, public prosecutors and legal professionals such as lawyers, bailiffs, and mediators. Additional information is provided in 6 appendices. The CEPEJ will continue this evaluation on a bi-annual basis.

Methodology: Comparative analysis; qualitative description and analysis  
Subject Keywords: Access to justice, administrative courts, alternative dispute resolution, appeals/cassation, arbitration, case management, civil litigation, corruption, costs of the legal system, court administration, court delay, court performance, criminal sentencing, due process, European Community/European Union, impeachment of judges, institutional capacity, international law, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, judicial review, judicial selection/promotion, judicial training, legal aid, legal culture, legal education/training, legal personnel, legal profession, legal reform, legal services, litigation, mediation, performance indicators, post-socialist transition, public opinion of the legal system, public prosecutors, regulation of legal services, rule of law, separation of powers, state budget  
Country/Region: Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italia, Latvia, Liechtenstein, Lithuania, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, United Kingdom/Europe

Council of Europe The Independence of Lawyers (Strasbourg: Council of Europe Publishing, 2003), 150 pages

These conference proceedings address the delicate issue of the independence of lawyers. In the authors’ opinion, independence is a prerequisite for lawyers to play their role within the legal and judicial system. The
proceedings underline, in particular, the challenges for the independence of lawyers, such as the problems arising from the development of electronic networks, the financial independence of lawyers linked with legal aid, as well as the independence of bar associations and their relationship with the public authorities.

**Methodology:** Comparative analysis; qualitative description and analysis  
**Subject Keywords:** Access to justice, civil litigation, costs of the legal system, criminal sentencing, due process, human rights, individual rights, legal aid, legal profession, legal services, litigation, regulation of legal services  
**Country/Region:** Europe

**Council of Europe** *The Execution of Administrative and Judicial Decisions in the Field of Administrative Law* (Strasbourg: Council of Europe Publishing, 2003), 20 pages

The Council of Europe member States are under the dual necessity of ensuring that their administrative authorities are subject to genuine judicial review, and that they can function effectively. In theory, two types of review are possible, though both normally coexist in practice: supervision of persons, with machinery to assess the liability – disciplinary or criminal – of public service staff, and supervision of action. Recommendation Rec(2003)16 and the explanatory memorandum contained in this booklet are mainly concerned with the latter type of review. The recommendation complements the existing framework of instruments adopted in the field of administrative law and justice. Its objective is not to unify European systems of execution, which are very different, but to indicate minimum common standards to be respected. It offers different options to member States, which they can implement in the light of their own legal systems.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to Justice, administrative courts, administrative law, bureaucracy, court performance, judicial efficiency/court delay, law enforcement  
**Country/Region:** Europe

**Council of Europe** *The Enforcement of Court Decisions* (Strasbourg: Council of Europe Publishing, 2003), 22 pages

The European Court of Human Rights decided that enforcement forms an integral part of the fundamental human right to a fair trial within a reasonable time in accordance with Article 6 of the European Convention on Human Rights. In 2003, the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2003)17 to give guidance to the member States on how to comply with European standards in this matter. This booklet contains the text of the recommendation as well as the explanatory memorandum.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, civil litigation, court delay, court performance, debt collection, human rights, judicial efficiency/court delay, litigation  
**Country/Region:** Europe

**Council of Europe** *Alternatives to Litigation Between Administrative Authorities and Private Parties* (Strasbourg: Council of Europe Publishing 2001), 54 pages

Independent courts are a sine qua non for genuine democracy and the rule of law as enshrined in the European Convention on Human Rights. Yet, litigation, in the strict sense of the word, is not an end in itself and even less an aspiration of modern society. Under certain circumstances and for specific cases there are alternatives to litigation that can genuinely guarantee justice while sparing resources and increasing the accountability of public administration. In this context, the Committee of Ministers of the Council of Europe adopted a recommendation on alternatives to litigation between administrative authorities and private parties, prepared by the Project Group an Administrative Law (CJ-DA). This recommendation aims to encourage further use and development of these processes within the council of Europe member states.
Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, administrative courts, administrative law, alternative dispute resolution, arbitration, bureaucracy, litigation

Country/Region: Europe

Council of Europe *Judicial Organization in Europe* (Strasbourg: Council of Europe Publishing, 2000), 348 pages

This publication contains a description of the structure and functioning of the judicial systems of most Council of Europe member states. Various aspects of judicial organization are presented and analyzed. In addition to general introductions, the general structure of the courts and their different types are described. The prosecuting authorities are also identified and explained. This synopsis allows a first look at the member states’ judicial systems in a broad sense.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Administrative courts, legal culture, legal personnel, legal profession, public prosecutors, court administration

Country/Region: Albania, Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, England and Wales, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland, Macedonia, Turkey, Ukraine/Europe


This article argues that US studies of ‘legal consciousness’ have much to offer UK socio-legal studies. Legal consciousness research seeks to understand people’s routine experiences and perceptions of law in everyday life. The focus is more on tracing the presence of law in society than on tracking the causal and instrumental relationship between law and society. The challenge to socio-legal studies of a legal consciousness approach is that it opens up a whole new arena of subjective experiences of law which is missed by scholarship which puts formally legal phenomena at the heart of its methodology. It consciously de-centers law as a social phenomenon. This article applies this analytical approach to a study of unsuccessful welfare applicants, under the homelessness legislation. The author draws on homelessness applicant interview data to discuss their legal consciousness, illustrating the importance of the value of dignity, how they make sense of their decisions, and the spaces in which legal consciousness may be produced.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Access to justice, culture/social norms/informal institutions, equality/social justice, individual rights, legal aid, legal information, legal literacy, public opinion of the legal system, social services

Country/Region: United States, United Kingdom/Europe


This detailed study of the lived experience of legal academics explores not only the culture of legal academia and the professional identities of law teachers, but also addresses some of the most pressing issues facing the discipline of law. Given the diverse nature of contemporary legal scholarship, where does the future lie? With traditional doctrinalism, socio-legal studies or critical scholarship? What does academic law have to offer its students, the legal profession and the wider society? How do legal academics “embody” themselves as law teachers, and how does this affect the nature of the law they teach and study?

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Common law, legal culture, legal doctrine, legal education/training

Country/Region: United Kingdom/Europe

This article outlines and discusses two general ways of using the term “rule of law”. The “formal conception” stresses the separation of rule of law from the substantive values promoted by the law, and defines the rule of law by the formal characteristics of the law and legal institutions. The “substantive conception” denies that such a separation is possible, and sees certain ideas of freedom, rights, and justice as integral components of the definition of the rule of law. Craig evaluates the arguments of major proponents of each of these positions, and he concludes by discussing possible “middle ways” between the formal and substantive conceptions.

Methodology: Literature review; philosophical/conceptual inquiry
Subject Keywords: Rule of law; individual rights; democracy; judicial independence; judicial decision-making; judicial review; equality/social justice; legal positivism
Law Keywords: Administrative law; constitutional law


This chapter surveys reforms to improve access to justice, particularly in India, Malaysia, and Indonesia. Cranston identifies five developments addressing access to justice in these countries. First, legal aid in the region is provided according to individual or structural approaches. In India, legal aid has a long history in law but is underfunded. In Indonesia, structural legal aid arose in response to political suppression, such as mass detentions in the late 1960s, and to conflicts stemming from economic development. Second, public interest litigation in such places as India has permitted advocacy for the poor, disabled, and the disadvantaged. Third, South and Southeast Asian countries have some forms of “informal justice,” such as the lok adalat (people’s courts) in India and the older nyaya panchayat village councils. Fourth, alternative dispute resolution has been practiced, including commercial arbitration in Malaysia and Singapore, and mediation through the region, such as Sri Lanka’s mediation boards and debt conciliation boards. Finally, Cranston looks at the increased efforts of business to seek legal remedies, which he argues is the most noteworthy recent development in access to justice. Banks and financial institutions have sought means of collecting debt—what Cranston calls “economic access to justice.” Responding to this need, Pakistan, Bangladesh and India have established special debt recovery courts. India and Sri Lanka have also passed laws making it easier for institutions to use “self-help” means of reclaiming money. The emphasis on the speedy collection of debt has been stimulated partly by the World Bank and pressure to create a favorable investment climate.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice; legal services; alternative dispute resolution; informal dispute resolution; class actions/representative actions/public interest litigation; group rights; debt collection; mediation; lok adalat; panchayat; investment; economic development; commercial arbitration
Country/Region: India; Indonesia; Malaysia; Sri Lanka; Singapore; South Asia; Southeast Asia


According to Crawford, Marbury v. Madison is a great symbol of constitutionalism. It has become emblematic, reaching far beyond the scope of what was actually discussed and decided by the Supreme Court. The principle of judicial review of the constitutionality of acts of Congress was not expressed in the U. S. constitution, nor was it an inevitable development. The author compares this case with approaches in Australasia and Great Britain. He then analyzes the significance of Marbury at the international level and raises the general issue of the relationship between international law and political decision-making, especially political decision-making by international organizations.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Constitutionalism, human rights, international law, judicial decision-making, judicial review, rule of law
Country/Region: United States, Australia, United Kingdom

Cuchillo i Foix, Montserrat “Le contrôle juridictionnel de l’administration dans l’ordre juridique espagnol” L’Actualité Juridique – Droit Administratif 1999, pp. 757-766

(“Judicial Review of Administrative Action in the Spanish Judicial System”, in French) After retracing the history of judicial review of administrative action in Spain, the author compares the system established in 1956 to the one created by the Spanish constitution of 1976 and the 1998 law on administrative procedure. She analyzes the competence of the courts, the object of the review, the control of administrative discretion, standing and provisional measures.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative law, administrative courts, bureaucracy, constitutional change, democracy, judicial decision-making, judicial reform, legal reform, litigation, rule of law, separation of powers
Country/Region: Spain/Europe


With the end of the Soviet block, the very concept of law and its role in society is being reformed in Central and Eastern Europe. The objective is to establish what is usually referred to as “the Rule of Law” or a “Law governed State”. Since a transition is taking place, one has to reflect on where the process should lead to, as well as the means of reaching it. Consequently, this article reflects on these two questions, using the reform of secured transactions law in Poland as an example illustrating the reality of legal transplants in Central and Eastern Europe today.

Methodology: Qualitative description and analysis
Subject Keywords: Capital market, contract law, credit market, import of foreign law/legal transplants, legal culture, legal reform, legislative process, outside assistance, property rights, rule of law
Country/Region: Poland, Central Europe, Eastern Europe


While many governments are undertaking reforms that aim to improve judicial and legal systems, there is a growing realization that civil society plays a vital and even necessary role in these efforts. Civil society is critical in these, as well as the reform, efforts which are outside of government-initiated programs. Drawing on a few selected examples, this Paper aims to show why civil society is a key player in such reform activities and how civil society has participated in the reform process in selected countries. Specifically, many of these examples are supported by projects financed by the World Bank. The World Bank, as well as other international development institutions, has made legal and judicial development a priority in the development agenda and is continually seeking ways to work effectively with civil society.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, civil society, gender/women’s rights, human rights, legal aid, legal development, legal reform, outside assistance
Country/Region: Developing world, Ecuador, Chile


This article first describes the importance of a fair and impartial judicial system. It is the belief of the authors that this cannot be achieved without judicial independence. Judicial independence allows the courts to be free from the political process and make their decisions unhindered by partisan or private influences, and if this is not the case, are considered illegitimate. In addition to independence, accountability of the judiciary is also
crucial to ensure impartial and equitable decisions. This is because without accountability there is danger of judicial corruption or impropriety. However, the authors state that there is an underlying tension between judicial independence and accountability that must be addressed when discussing corruption. They then explore this tension. After establishing the problems corruption poses to the legitimacy of the government and rule of law, this article discusses the consequences of corruption when it appears in the judiciary. Then the article describes possible situations in which, if allowed to persist, corruption may flourish. Finally, the article proposes possible oversight mechanisms and judicial reform programs designed to address corruption. Among the oversight mechanisms and judicial reform programs, some suggested are a department of justice, higher court supervision, nomination and appointment, rational jurisprudence, and impeachment.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Corruption, ideological role of law, impeachment of judges, incentives of judges, judicial accountability, judicial decision-making, judicial independence, judicial selection/promotion, public opinion of the legal system, rule of law


This article argues that judicial reform can strengthen democracy and promote economic development in Latin America, and identifies current problems and solutions. Six areas require special attention: judicial independence, judicial administration, procedural codes, access to justice, legal education and training, and bar associations. The author argues that judicial independence requires appointment, evaluation, and disciplinary systems that produce qualified and respected judges. Dakolias considers the idea that an independent judiciary may impede the executive from implementing economic reforms, but notes that it can also sustain reform in the long run. Judicial efficiency also depends on stronger court and case administration, and the reform of procedural codes, to reduce court backlog and improve service. Access to justice, one of the most important areas of judicial reform, can be expanded through alternative dispute resolution, reduced court costs, legal aid, and small claims courts. In the area of legal education and training, Dakolias identifies law school reform, training of judges, and continuing education as particular needs. Finally, bar associations can help regulate the legal profession and play an active role in legal reform. All legal and judicial reform projects should be based on creating ownership within the country itself: projects should be initiated from within and draw on social consensus. The author ends by differentiating current reform efforts from the failed Law and Development programs of the 1960s.

**Methodology:** Attitude surveys; comparative analysis; qualitative description and analysis

**Subject Keywords:** Judicial reform; economic development; judicial independence; judicial efficiency/court delay; public opinion of the legal system; court administration; access to justice; alternative dispute resolution; legal education/training; incentives of judges; small claims courts

**Country/Region:** Argentina; Chile; El Salvador; Latin America


This paper discusses the utility of pilot court programs as a way to promote judicial reform. The authors argue that judicial reform programs should start with activities that have a high probability of success and provide immediate benefits, to win over support for more extensive reforms, and can help change the legal culture of the judiciary. Pilot court modernization programs, they argue, can serve as the basis for larger projects. The authors claim that, to be successful, pilot court programs need the support of a political authority, strong support of the chief judge of each court, participation by the public in the reform process, and the strength of the personnel participating in the project. They also argue that there is a need for ongoing, independent evaluations of such projects. The authors draw their conclusions from analyses of pilot court programs in Columbia, Peru, Argentina, and Ukraine, as well as comparisons with such programs in the United States.

**Methodology:** Qualitative description and analysis; comparative analysis
**Subject Keywords:** Judicial reform; judicial efficiency/court delay; judicial independence; court administration; pilot programs; public opinion of legal system; public support for reform; politics of reform; legal education/training; legal culture

**Country/Region:** Colombia; Argentina; Peru; Ukraine; United States


The role of the judge, litigants, defendants and their counsel differ in various modern legal systems. The author provides a comparative analysis of how justice is administered in legal and judicial systems around the world and of the link between politics and justice by creating recognizable patterns from disparate procedural features.

After introducing the adversarial and inquisitorial systems, the legal process and the socioeconomic organization of the State as well as the legal process and the character of government, he analyzes the organization of authority, the process before hierarchical and coordinate officialdom, two types of State and the ends of the legal process, the conflict-solving type of proceeding, the policy-implementing type of proceeding, as well as the authority and types of justice.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Authoritarianism, civil procedure, common law, court administration, criminal law, culture/social norms/informal institutions, democracy, judicial decision-making, judicial independence, judicial reform, legal culture, legal proceduralism, legal profession, litigation, rule of law, separation of powers

**Country/Region:** Western Europe, Eastern Europe, United Kingdom, United States


From Bosnia to East Timor, and more recently Iraq, property rights have been at the center of many of the problems that individuals face in the aftermath of armed conflicts. The importance of a fair, transparent and effective property rights policy, as an element of post-conflict recovery and development, can hardly be overrated. Clear and undisputed property title plays a fundamental role in the economic recovery from conflict and is a prerequisite to attract foreign investment. The protection or restoration of property rights is closely linked to the return of refugees and displaced persons, the protection of human rights, and the restoration of the rule of law.

The author provides an overview of the property restitution processes in Bosnia and Kosovo. He then presents lessons with regard to the institutional design of the body mandated to decide property restitution claims, the administration of evidence, the enforcement of decisions and the issue of monetary compensation in lieu of restitution.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Divided societies, ethnic politics, group rights, human rights, institutionalization, land disputes, law enforcement, property rights, rule of law, United Nations

**Country/Region:** Kosovo, East-Timor, Bosnia-Herzegovina, Irak


The author states that the recent resurgence of optimism regarding the role of legal reforms in promoting development seems to be based in part upon cross-country statistical analyses that purport to show causal relationships between variables measuring characteristics of legal institutions and variables measuring levels of various kinds of development. However, the persuasiveness of these analyses is limited by the quality of the legal data upon which they rely. As it turns out, many of the variables that are commonly used to measure respect for the rule of law, enforcement of property rights and contracts do not capture information capable of shedding light upon the potential impact of purely legal reforms. In some cases the variables capture the interaction between legal and non-legal features of society. In other cases they aggregate the effects of a large
number of legal institutions. In still other cases they capture information about features of legal systems that are not amenable to reform.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Economic development, law and development movement, legal development, legal reform, outside assistance, performance indicators, public opinion of the legal system, rule of law

**Davis, Kevin E. & Trebilcock, Michael J.** “Legal Reforms and Development” *Third World Quarterly* 22/1 (2001): pp. 21-36

This paper canvasses the theoretical and empirical literature concerning the role that legal institutions play in development. The first part outlines six influential theoretical perspectives on development and their implications for the relationship between law and development. The second part surveys the relevant empirical literature. There is surprisingly little conclusive evidence that reforms in particular substantive areas of law such as property law, contract law and human rights law have been effective in furthering development, however conceived. There is, however, evidence that enhancing the quality of institutions that enact, administer and enforce laws can have positive and significant effects. This suggests that the wave of legal reforms must be situated in a broader agenda of public sector reform if they are to avoid the problems that led to the demise of the law and development movement of the 1960s.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Dependency theory, economic development, governance, ideological role of law, institutional capacity, law and development movement, law enforcement, legal development, legal implementation, legal reform, modernization theory, rule of law


This article attempts to synthesize various economic and socio-legal perspectives on contractual relations between firms. The authors focus especially on the important but ambiguous concept of “trust” in inter-firm relations. They argue that trust in this context does not imply an identity of interests, nor does it arise from intangible cultural factors. Rather, they claim, trust is related to the presence of norms that limit destructive types of competition and promote cooperation over time, thus enhancing welfare. The article discusses the perspective on this issue provided by neoclassical economics, game theory, economic analysis of law, and transaction-cost economics. The authors conclude from their preliminary analysis that the importance of cooperative norms and trust implies that the state should not view its role as promoting atomistic competition at all costs, and ought to recognize that one of the core purposes of contract law is the regulation of contractual power in long-term inter-firm relationships.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Noncontractual agreements/relational contract; culture/social norms/informal institutions; arbitration; nonlegal sanctions; collusive trade arrangements/cartels  
**Law Keywords:** Contract law; antitrust law

**Dekker, Paul; Maas-de Waal, Cora & Van der Meer, Tom** “Vertrouwen in de rechtspraak. Theoretische en empirische verkenningen voor een monitor” (The Hague: Social en Cultureel Planbureau [Social and Cultural Planning Office], 2004), 106 pages

(“Trust in the judiciary. Theoretical and empirical insights for a monitor.” In Dutch) Upon request of the Dutch Judicial Council, the Social and Cultural Planning Office analyzed the trust of the population of the Netherlands in their judiciary, the possibilities to monitor this trust, and the question whether it makes sense to monitor it. According to surveys among the population, the trust has decreased in passed decades, but tends to fluctuate in the short run. The trust of individuals strongly depends on the trust other public institutions and in politics. Moreover, the degree of trust in criminal justice is decisive. Instead of establishing a monitor of trust, the Social and Cultural Planning Office recommends to confront the population with difficult choices and dilemmas in the justice sector. This approach is more likely to incite the public to have more
nuanced opinions. By making public the reasons for certain choices may also help increase the trust in the judiciary in general.

Methodology: Qualitative description and analysis

Subject Keywords: Legal information, public opinion of the legal system, public support for reform

Country/Region: Netherlands, Europe


This article surveys the array of projects and programs, sponsored by US NGOs, academics, or the US government, intended to promote legal reform in the former Soviet bloc, China, and other parts of the world. After describing in detail many of these activities, as well as more indirect mechanisms by which US legal ideas and models are transferred to other parts of the world, deLisle attempts to draw some general lessons about what contributes to the success of American legal exports. He notes four major “process” lessons. First, US programs tend to be more successful when they are seen by relevant groups in recipient countries as responsive to local needs, and when those on the US side work closely with local counterparts. Second, more successful programs involve sustained, long-term commitments rather than short-term projects. Third, programs are more likely to be effective if those on the US side are familiar with the language, culture, laws, and local conditions in the recipient country. Fourth, programs are more likely to succeed if they avoid detailed, distinctively “American” prescriptions in favor of more general principles. In addition to these four process lessons, deLisle notes four lessons about substance. He argues that US programs have greater impact when: the US is able to use its power to press the recipient country to conform to US advice or standards; the ideals embodied in US advice enjoy high prestige in the recipient country; the field in which advice is offered does not seem highly political; and the gap between the pre-existing legal system and the US import are relatively small. However, he notes that these lessons do not lead to any simple generalization about the best way to proceed, since there are complex trade-offs involved, and sometimes certain lessons will be more relevant than others. Determining which lessons apply most forcefully, he claims, will depend on the specific circumstances of the recipient country, the law or advice being exported by the US, and a number of other factors. Finally, deLisle notes a final, overarching lesson: laws are not enough, and true legal, political, and economic change will also require changes in institutions.

Methodology: Qualitative description and analysis; project evaluation

Subject Keywords: Outside assistance; post-socialist transition; legal reform; political reform/regime change; economic reform; legal culture; rule of law; democracy; USAID; non-governmental organizations; legal education/training; donor coordination; donor politics; legal profession; law drafting; legal transplants/import of foreign law; judicial review; separation of powers; public support for reform; capital market

Law Keywords: Constitutional law; commercial law; property law; intellectual property law; administrative law; criminal law

Country/Region: United States; developing world (general); China; Eastern Europe; Central Europe; Russia

De Roo, A. & Jagtenberg, R. “De praktijk van mediation in o nse omringende landen; een vergelijkend onderzoek” (The Hague: Wetenschappelijk Onderzoek- en Documentatiecentrum WODC, 2003), 104 pages

(“The Practice of Mediation in Neighboring Countries; A Comparative Research”, in Dutch) The goal of this report is compare experiences with mediation in countries with similar degrees of development. The main focus was on court annexed mediation in civil and administrative matters. Such systems either have already existed for quite a while, are recent creations or are being planned. Given the huge structural differences between civil and administrative law as well as between the systems in different countries, the focus as to civil law is narrowed down on mediation in matters of family and labor disputes. In administrative matters, the focus is on environmental law. The study is structured around seven research questions.

Methodology: Qualitative description and analysis; comparative analysis
This book provides a panoramic view of the judiciary in Portugal with special emphasis on its performance. It focuses also on delays, access to justice, and standing aspects of the judicial system in the country. The book contains a wealth of information on identity of court users, types of cases litigated, costs, and other empirical data.

Methodology: Qualitative description and analysis; quantitative analysis
Subject Keywords: Judicial efficiency/court delay; access to justice; costs of the legal system; court performance standards
Country/Region: Portugal


This article surveys the recent – and ongoing – efforts of the French government to reform its judiciary, which, the government hopes, will improve citizen confidence in the legal system. These reforms have focused on three broad types of reforms: those aimed at improving citizen access to justice and increasing the efficiency of the legal system; those aimed at improving the protection of individual rights, particularly those of criminal defendants; and those aimed at strengthening judicial independence. This third type of reform focused especially on granting prosecutors and magistrates greater independence from the Ministry of Justice.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial reform; access to justice; judicial efficiency/court delay; individual rights; judicial independence; public opinion of legal system; alternative dispute resolution; public prosecutors
Law Keywords: Criminal law; constitutional law; civil litigation
Country/Region: France

De Waard, B. W. N.; Bok, A. J. & Gilhuis, P. C. Rechtsvergelijking Bestuursrechtspraak (The Hague: Boom Juridische Uitgevers, 2001), 205 pages

(“Comparative Administrative Law”, in Dutch) This study, commissioned by the Dutch Ministry of Justice, addresses critical questions of organization and functioning of administrative justice systems in five neighboring European countries: How is administrative justice organized? Is there a separation of administrative justice from civil justice or is there an integrated system? How many tiers does the court organization have? What are the ways to guarantee uniform case-law? The authors answer these questions and describe the organization of the administrative justice systems, but also analyze the question of competence, the relation of court procedures with administrative pre-court procedures, and the main features of the respective procedural approach.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, court administration, court performance, import of foreign law/legal transplants, judicial decision-making, judicial performance/court delay, judicial independence, judicial reform, judicial review, legal culture, legal reform, litigation, separation of powers
Country/Region: Netherlands, France, Germany, Denmark, United Kingdom, Belgium/Europe

This article takes up the issue of the supposed difference between economies based on formal law and those based on networks of personal relations. The authors argue that this supposed opposition is misleading. The social capital of lawyers – that is, there relational networks with one another and with other elites – can help resolve weaknesses or disruptions in the normal operations of relational capitalism between powerful elites. It is also important, the authors stress, to recognize that people trained in the law do not only go on to practice law, but many occupy numerous positions of social and economic power. There is less of a gap between the Western “rule of law” system and other (especially “Confucian”) forms of network capitalism than there might appear. The authors argue further that researchers ought to look for structural, rather than cultural, explanations for the different ways legal, business, and political elites are organized in different countries. They conclude that the spread of the “American model” of the lawyer has less to do with the merits of formal rationality and more to do with the fact that the combination of law schools and large law firms, with close ties between lawyers and business and government leaders, is an effective method for reproducing elites.

Methodology: Qualitative description and analysis; comparative analysis

Subject Keywords: Social capital; rule of law; noncontractual agreements/relational contract; legal profession; arbitration; legal education/training; legal culture; culture/social norms/informal institutions; outside assistance; Law and Development Movement; colonialism/imperialism; ideological role of law; symbolic use of law

Law Keywords: International law; commercial law

Country/Region: East Asia; Southeast Asia; Japan; Taiwan; United States; Latin America; Mexico


This paper examines legal reform – defined as changes to the legislative frameworks, the judiciaries, bars, and legal education systems – in five transition countries selected for their geographic, historical, and experiential diversity: Georgia, Kyrgyzstan, Poland, Romania, and Russia. The sections on lessons learned and future priorities rely as much as possible on the voices of those on the front lines of legal reform to tell their own stories, either through direct quotes or as summaries, of past successes – and failures – of this ongoing process. Listening to these voices can help chart a course forward that will enable the transition countries and the donor community to do a better job in the future. The report is based on interviews with more then 200 people representing the judiciaries, bars, legislatures, justice ministries, and state prosecutorial bodies (procuracies) of the five countries, as well as journalists and representatives of the academic, business, NGO, and donor communities. Stakeholders and donor representatives were asked, between September 1999 and June 2000, what successes and failures they have seen, how the donor community has contributed to – or hindered – the process, and what challenges legal reform still faces in their countries.

Methodology: Qualitative description and analysis

Subject Keywords: Judicial reform; legal reform, judicial decision-making, legal education/training, World Bank.

Country/Region: Central Europe

Di Federico, Giuseppe “Prosecutorial Independence and the Democratic Requirement of Accountability in Italy” British Journal of Criminology 38(3):371-387

This article deals with the role of public prosecutors, concentrating on the difficulty of balancing two different values: the need to preserve prosecutorial independence from the political process, and the need to subject prosecutorial discretion to the principle of democratic accountability. Di Frederico argues that these two values are in tension with one another, and that in recent years many countries – particularly in Western Europe – have been moving in the direction of greater prosecutorial independence. Di Frederico argues that the Italian experience demonstrates the dangers of excessive independence at the expense of democratic accountability, claiming that this grants prosecutors too much power in setting criminal policy, with negative consequences for both individual rights and crime control.
Methodology: Qualitative description and analysis  
Subject Keywords: Public prosecutors; crime control; individual rights; corruption; separation of powers  
Law Keywords: Criminal law; constitutional law  
Country/Region: Italy; Western Europe


This survey provides a method for quantifying the independence of a country’s judiciary. Noting problems encountered in previous attempts at this type of measurement, this study uses both subjective and objective criteria of measurement drawn from international norms of judicial independence (UN and Council of Europe standards). It spells out 33 statements describing conditions for judicial independence, equally weighted, against which a particular judiciary can be assessed. These fall into the categories of selection and appointment of judges; education and training; budget; salary of judges; safeguards from improper governmental and non-governmental influences; jurisdiction and judicial powers; transparency; ethics; caseloads and work conditions; assignment of cases; and support by non-governmental organizations. The survey is intended to assist CEELI, USAID, the World Bank and other organizations evaluate their judicial reform programs.

Methodology: Attitude surveys; quantitative analysis  
Subject Keywords: Judicial independence; judicial reform; judicial selection/promotion; judicial training


This article argues that sovereignty in South Africa now rests with the constitutional court, not parliament. The court, created in 1994 in the post-apartheid transition, has jurisdiction where there are disputes between state organs, where the constitutionality of a bill is in question (a concurrent function with other courts), where parliament or the president has failed to comply with a duty, and in the certification of provincial constitutions. The 1996 constitution, like the interim 1994 constitution, protects an extensive number of internationally recognized human rights. Early procedural decisions of the court focused on resolving three questions: the direct access of individuals to the court, the retroactive operation of the bill of rights, and the horizontal application of rights. The article describes a number of substantive human rights decisions taken by the court, the most important of which were separate 1995 rulings finding the death penalty and the whipping of juveniles unconstitutional. Other rulings also invalidated parts of the criminal procedure code and other legislation. Dickson concludes that with no demonstrations of political bias and a willingness to draw from other countries’ human rights experience, the Court remains a respected institution within South Africa and abroad.

Methodology: Qualitative description and analysis  
Subject Keywords: Judicial review; human rights; constitutionalism; constitutional change; political reform/regime change; individual rights  
Law Keywords: Constitutional law; human rights law; criminal law  
Country/Region: South Africa


Dilulio begins by noting the special management difficulties faced by public agencies. Because public managers have multiple, contradictory, and “nonoperational” (i.e. ambiguous and difficult to assess), the types of management strategies associated with the private sector are often inapplicable. The concepts of “efficiency” and the “bottom line” are often not meaningful in the context of public management. However, Dilulio argues that it is possible for public managers to strengthen the relationship between process and performance by translating agencies’ nonoperational goals into measurable process and performance criteria. He offers as an example the management of the Federal Bureau of Prisons. He notes that defining a
comprehensive and appropriate set of measures is difficult, but not impossible. In conclusion, he offers a number of caveats about the limits and potential problems of such an approach, but nonetheless believes that none of these considerations should discourage researchers and practitioners from exploring new and better indicators.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Performance indicators; law enforcement; bureaucracy; social services  
**Country/Region:** United States


In this introductory chapter, Dilulio argues that we need to look beyond crime and recidivism rates to accurately assess the performance of the criminal justice system. He suggests further that the search for better indicators should be driven by a new paradigm regarding the purposes of the criminal justice system. In the past, he notes, the system’s goals have been vague and/or inconsistent, and shifting public sentiment has caused frustration among criminal justice practitioners. Dilulio argues that the criminal justice system ought to advance four “civic ideals”: doing justice, promoting secure communities, restoring crime victims, and promoting noncriminal options. After a brief discussion of the meaning of each one, he points out that crime and recidivism rates alone do not capture how well the system is meeting these objectives. He suggests exploring new, “softer” kinds of indicators, as many corporations and the US military have done, to better assess performance.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Performance indicators; law enforcement; crime control  
**Country/Region:** United States


This article argues that Bulgaria’s new constitutional court serves an important function in protecting human rights and preventing arbitrary rule. The author discusses the structure and jurisdiction of the court, and its experience in the context of recent political developments. Since its establishment in 1991, the court has been petitioned most often by the political opposition in parliament, and has sometimes been subject to the ruling party’s attempts to intimidate the institution or block its funding. Nevertheless, the court has issued decisions protecting the independence of the media and the judiciary, and Dimitrov argues that it has developed into an effective check on government power. In particular, the Court’s jurisdiction to issue binding interpretations of the Constitution, not just review legislation, enables it to deter unconstitutional actions of government and develop constitutional jurisprudence. Dimitrov argues that especially in a civil law context, this power to issue authoritative and uniform interpretations of the constitution is unusual and significant.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial review; constitutionalism; judicial independence; separation of powers; judicial accountability; political reform/regime change; post-socialist transition; constitutional change  
**Law Keywords:** Constitutional law; human rights law  
**Country/Region:** Bulgaria; Eastern Europe


The author defines fairness in the judicial sphere as absence of fraud, injustice, prejudice or favoritism from decision making process of a court of law. The right to a fair trial is a fundamental principle in Western societies. In the traditional African context, the concept is somewhat different. Unawareness of cross-cultural
differences may affect the judges' perception of parties and witnesses, who might be used to a different concept of court or other ways of social interaction. A huge variety of examples is given as evidence.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions, customary law/indigenous law, due process, gender/women’s rights, informal dispute resolution

**Country/Region:** Africa


This article discusses how an accused person in Irish law can invoke excessive delay in criminal cases. Although Irish common law favored prosecution at any point in time, case law over the last two decades increasingly emphasizes the constitutional rights of the accused. A 1986 case established excessive delay as a grounds for a stay on proceedings. In evaluating the effects of delay, Irish courts have taken into account both the interests of the accused as well as broader social interests. Courts in recent years consider delay at any stage of the process, not necessarily only after the accused is formally charged, and consider four issues: the burden of proof, reasons for delay, behavior of the accused, and degree of prejudice caused by the delay. The article expresses concerns over a recent case in which the Supreme Court established child sexual abuse cases as “special category” cases where the court should balance the rights of the accused against society’s need to have criminal offenses prosecuted even when they are revealed after a substantial lapse of time.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial efficiency/court delay; human rights; individual rights; due process; criminal sentencing

**Law Keywords:** Criminal law

**Country/Region:** Ireland


In this chapter, Domingo summarizes the status of judicial independence and judicial reform in Latin America. She argues that the judiciary is a key institution for establishing credible mechanisms of government accountability and the protection of individual rights, which are in turn critical for the consolidation of democracy. She notes the courts have to be both independent – from other branches of government, parties to cases, populist pressures, and particular ideologies – but also accountable. She claims that although most Latin American constitutions provide for judicial independence, in practice there are many obstacles to achieving this goal. These obstacles include a tradition of a strong executive and a dependent judiciary, political and institutional instability, corruption, structural problems of court administration, and a limited scope for judicial review. In response to these problems there has been growing demand for judicial reform in Latin America, in both the administration of justice and the relationship between the judiciary and the other branches of government. However, she notes that progress in reform is bound to be slow, as it involves not only formal reforms but also changes in societal habits and the entrenchment of democratic rules. She also stresses that there is great variation between countries in Latin America, and that understanding judicial review in each of these countries would require more detailed analysis of their particular situations.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial independence; rule of law; democracy; judicial reform; individual rights; Constitutionalism; corruption; separation of powers; judicial efficiency/court delay; public opinion of the legal system; judicial review; institutional capacity; court administration; legal culture; civil society

**Law Keywords:** Constitutional law

**Country/Region:** Latin America
Legal globalization affects access to justice in many ways. The author identifies positive and negative ones. Globalization facilitates the formation of transnational communities that can promote access to justice more effectively than can national communities. Globalization also makes it easier for domestic actors seeking to promote domestic access to justice to learn about successful experiences abroad that might be useful to their cause.

But globalization can also inhibit access to justice and can do so in unexpected ways. This essay uses the experiences of international efforts to promote clinical legal aid in China to explore one such unexpected consequence of globalization: international assistance’s understandable focus on more familiar kinds of legal aid institutions and activities can unintentionally impede the development of indigenous legal aid practices and institutions that might ultimately be better suited for the particular domestic environment. In order to avoid this dynamic, international development projects need to shift their focus from one of simply replicating successful foreign models (what the author calls a reductive strategy) to one of promoting discovery of the indigenous developmental implications and possibilities inherent in the domestic environment (what he calls a pragmatic strategy).

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, alternative dispute resolution, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, donor politics, import of foreign laws/legal transplants, informal dispute resolution, legal aid, legal culture, outside assistance
Country/Region: China/East Asia

Draper, Matthew “Justice as a Building Block of Democracy in Transitional Societies: The Case of Indonesia” Columbia Journal of Transnational Law 40: 391-418

Scholars of transitional societies argue that new regimes lack the political capital and administrative capabilities to prosecute human rights violations of the old regime while simultaneously pursuing necessary institutional and constitutional reforms. The experience of Indonesia after the collapse of the regime of General Suharto suggests that this may be a false assumption. This note argues that accountability for the past in Indonesia is a prerequisite to any meaningful reform. It examines the Human Rights Tribunals and proposed Truth and Reconciliation Commission, and assesses the likelihood of their successful implementation. The author predicts that if pursued, these mechanisms of accountability will attract greater popular support for the government and lead to the removal of individuals and institutions undermining democratic reform efforts.

Methodology: Qualitative description and analysis
Subject Keywords: Authoritarianism, constitutional change, corruption, democracy, human rights, judicial decision-making, political crimes, political reform/regime change, post-transition justice, public support for reform
Country/Region: Indonesia/East Asia


The author explores the role of rule of law in redressing crimes and human rights abuses committed against women in Afghanistan. Mainstream discourse approaches the situation binarily, obliging women to choose between international and often distant human rights, on the one hand, or proximate cultural/religious norms, on the other, in order to adjudicate gender crimes. This can lead either to externalized justice or, in the case of the implementation of Afghan local law, to renewed vicimization of women in the name of redressing abuses suffered by other women. Local law in Afghanistan is reflected in codes such as the Pashtunwali. The Pashtunwali consists of a blend of custom and practice that emerges from a context of embedded conflict and is filtered through an Islamist lens. The Pashtunwali propounds a restorative approach to human rights abuse in which the abuse is rectified when the family of the abuser transfers money, goods, animals or,
preferentially, young girls or women to the family of the abused. Drawing from recent literature on law and culture, this article posits that custom and culture in Afghanistan as operationalized through the Pashtunwali are politically contingent (and at the moment defined by patriarchal elites) instead of statically or immutably oppressive to women. If thoughtfully constructed, transitional justice institutions can play an important collective role that transcends the adjudication of individual guilt or innocence. They can pluralize the number of domestic actors that contribute to the definition of customary and cultural norms. This implies that transitional criminal interventions could play a democratizing role insofar as they could advance claims by all members of local communities to a right to involve themselves in the formulation of customary law. In the end, this article links transitional criminal justice to the innovative conception of freedom within culture, instead of freedom from culture.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, criminal law, culture/social norms/informal institutions, customary law/indigenous law, gender/women’s rights, human rights, human rights law, import of foreign law/legal transplants, Islamic law, legal culture, legal pluralism, post-transition justice
Country/Region: Afghanistan/Asia


The Polish ombudsman is charged with dealing with citizen complaints about violations of the law by public officials, unlike the ombudsman model in some other countries where the focus is on “maladministration” rather than breach of the law. Both individuals who have so far held the position of Commissioner for Citizens’ Rights Protection favor a positivist reading of the law; the present Commissioner has resisted attempts by the Catholic Church to introduce natural law conceptions. The office has played an important role in raising legal standards, but faces problems stemming from insufficient assistance, the common disregard of the law by public officials, and political instability.

Methodology: Qualitative description and analysis
Subject Keywords: Ombudsman; democracy; post-socialist transition; rule of law; political reform/regime change; religion; legal positivism; natural law; individual rights; human rights
Country/Region: Poland


This article is a generalist survey of contemporary legal and developmental themes and patterns which characterize Africa in today’s globalized world. After analyzing the relationship between law and globalization, the author examines the nexus between law and development. He finally addresses some selected topics relevant for contemporary Africa.

Methodology: Qualitative description and analysis
Subject Keywords: Law and development
Country/Region: Africa


This article analyzes the constitution-making experience of the post-socialist countries of Eastern Europe. Elster initially notes the dilemmas faced by East European reformers in pursuing the goals of price reform, ownership reform, democracy, and constitutionalism simultaneously. He then discusses the content of current East European constitutions, especially the provisions related to the machinery of government, individual rights, and procedures for amendment. The emphasis of the article, however, is less on the substance of the constitutions than on the political process of constitution-making. Elster argues that a number of causal forces have been at work in the constitution-writing process, including a sincere desire to serve the public interest, pressure from political parties and factions, the institutional interests of different
parts of the government, the influence of foreign models and advisors, and the pre-communist past. By contrast, the personal interests of legislators and extra-parliamentary threats do not seem to have played a major role. Elster concludes with a detailed case study of the Polish experience with constitution-making.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Post-socialist transition; constitutionalism; ethnic politics; economic reform; democracy; property rights; separation of powers; judicial review; individual rights; constitution drafting; political parties; outside assistance; import of foreign law/legal transplants; electoral process; legislative process; post-transition justice

**Law Keywords:** Constitutional law

**Country/Region:** Eastern Europe


In this paper, Elster argues that constitutions affect economic performance to the extent that they promote stability, accountability, and credibility. He examines the effect of constitutions on both economic efficiency (maximizing total wealth or utility) and economic security (guaranteeing the well-being of the least well-off members of society.) He stresses in particular how constitutions can serve as a precommitment device, allowing the government to credibly bind its own hands. Such precommitment requires, according to Elster, citizens with political rights, a political system characterized by the separation of powers and democratic accountability, and a constitution that is more difficult to change than ordinary law. However, he also stresses that excessive rigidity can be a danger and that flexibility with regard to constitutional commitments might sometimes be necessary.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutionalism; economic development; equality/social justice; individual rights; democracy; authoritarianism; separation of powers; public choice; property rights; judicial review

**Law Keywords:** Constitutional law; contract law


Ensminger reviews why various programs to provide African farmers with secure land titles have failed. She documents how when land rights allocated formally in a way that does not fit with informal system of rights (lineage group control, heritability, and so forth) use of land titles for credit will not succeed.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Property rights; agricultural sector; legal reform; customary law/indigenous law

**Law Keywords:** Property law

**Country/Region:** Africa


(“Claims at the Courts”, in Dutch) This study analyzes the nature and categories of cases brought to civil courts. It provides valuable empirical data for the discussions and speculations about “claim culture” in the Netherlands. Two main findings are that, first, although the frequency of claims does not increase, the amounts do, and, secondly, that the amounts granted at the end by the courts are surprisingly stable.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Case management, civil law, civil litigation, judicial decision-making

**Country/Region:** Netherlands/Europe
This comparison of the legal status and duties of higher court officials/bailiffs or ‘greffiers’ (‘Rechtspfleger’ in German) who play an essential role in the administration of the justice system and the courts contains information about seventeen, mainly European, countries. It provides an overview of all aspects related to this profession: from training, recruitment, responsibilities, and areas of work to pay and disciplinary sanctions.

**Methodology:** Comparative analysis

**Subject Keywords:** Case management, court administration, judicial efficiency/court delay, legal culture, legal education/training, legal personnel

**Country/Region:** Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Italy, Japan, Luxembourg, Morocco, Netherlands, Poland, Portugal, Spain, Sweden, Tunisia/Europe


(“From Prefectoral Councils to Administrative Courts”, in French) The 1953 reform introduced the lower level of administrative courts in France. Their creation is the logical consequence of the evolution of the prefectural courts to real courts since their establishment by a law in the year VIII (1800). This evolution, that the author retraces in detail starting even before the French Revolution, is closely linked to regime changes in French history and the subsequent evolutions of the status of the Council of State.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative courts, administrative law, authoritarianism, democracy, constitutional change, revolution, judicial review, judicial independence

**Country/Region:** France/Europe


In this article, Evans examines the relationship of the state apparatus to economic development. He first critiques the “neoutilitarian” view, which holds that wealth-maximizing individuals will cause the state to become “predatory” and expand the range of rent-seeking activities at the expense of economically productive activities. Evans argues instead that although the state may sometimes conform to the predatory model, effective state involvement in the economy may often be necessary for successful economic development. He differentiates three types of states. Predatory states, such as Zaire under Mobutu, are characterized by incoherent absolutist domination. By contrast, developmental states such as Japan exhibit what he calls “embedded autonomy” – the state is both insulated and autonomous in policy, but at the same time embedded in the surrounding social structure through informal networks. Developmental state bureaucracies tend to be meritocratic with a strong sense of corporate identity. Most developing states combine some aspects of both extreme types. Evans discusses Brazil as one example of such an intermediate case. Evans concludes that the differing effectiveness of states as agents of economic development is connected to differences in their internal structures. The neoutilitarian picture of the state is only partially accurate, and the policy prescriptions of this neoutilitarian view – reducing the resources devoted to the state bureaucracy – may have the perverse effect of making states more predatory. A more sensitive policy would both increase the selectivity of state involvement, and at the same time try to reconstruct the state apparatuses themselves.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Economic development; corruption; bureaucracy; institutional capacity; institutionalization; authoritarianism; culture/social norms/informal institutions; public choice; rent seeking

**Country/Region:** Japan; Zaire; Brazil; Taiwan; Korea

Truth commissions and trials are now operating concurrently as mechanisms of transitional justice in settings as diverse as Peru, East Timor, and Sierra Leone. While truth commissions and trials play complementary roles in transitional justice, their concurrent operation also raises novel issues of coordination. Where left unresolved, these coordination issues – including information and resource sharing, handling of evidence and witnesses, and sequencing of investigations and outcomes – threaten to undermine individual mandates and the overall goals of transitional justice. Drawing on a case study of the Truth and Reconciliation Commission and Special Court in Sierra Leone, this note proposes a loose framework for making coordination decisions, which identifies context-specific transitional justice goals and then seeks out the arrangements that best achieve those goals. This totality-of-the-circumstances approach allows the specific characteristics of each transitioning society to shape coordination, while recognizing the common needs of justice, accountability, and reconciliation to which transitional justice responds.

Methodology: Qualitative description and analysis
Subject Keywords: Court performance, criminal sentencing, democracy, donor coordination, human rights, human rights law, institutional capacity, military coups, outside assistance, post-transition justice, revolution, United Nations
Country/Region: Sierra Leone/Africa


This article reviews Alan Watson’s work on law and society, as well as some of the criticisms that have been leveled against this work. According to Ewald, Watson’s primary purpose is to attack the so-called “mirror theories” of law and society which hold that law is wholly or largely determined by factors external to law, such as society, politics, economics, etc. Ewald claims that Watson at different times actually advocates two different versions of his basic thesis. A weak version holds merely that the historical evidence disconfirms the mirror theories. The strong version makes the claim that law is generally insulated from social forces, and legal change can be explained entirely by the dynamics of law and the legal profession, without reference to social, political or economic factors. Ewald endorses the weak version, but rejects the strong version. The strong thesis, he claims, cannot be established on the basis of Watson’s evidence. Nonetheless, the weak thesis is persuasive and important, since it undermines a great deal of contemporary law and society theory.

Methodology: Summary/synopsis; critical review
Subject Keywords: Legal development; import of foreign law/legal transplants; legal profession; legal culture; legal reform; legal evolution theory
Country/Region: Western Europe


Like systems and procedures in most areas of modern society, the functioning of courts throughout the world has been enormously affected by information and communication technologies (ICT). It has become crucial for lawyers to keep pace with technical changes in judicial systems, especially in international cases where an understanding of procedural variations from one system to another could spell the difference between success and failure.

The contributions in this book have been written by experts who, in various ways, have been actually engaged in the planning and implementation of ICT in the courts of their respective countries. To ensure information that is as homogeneous as possible, and to facilitate cross-border comparisons, the authors have followed a common and detailed ‘blueprint’ which includes a brief description of the judicial system under discussion. The papers were originally prepared for a seminar that brought together delegates from fifteen member countries of the European Union, the Court of Justice of the European Communities, Norway, Venezuela, and the World Bank, to discuss topics related to court technology.
The book offers an in-depth overview of methodology, difficulties encountered, and results so far achieved in the implementation of ICT in the European judicial systems. Specific areas of court technology covered include case management systems, electronic filing, and electronic data interchange. Although the emphasis is on EU member states, a general overview of ICT applications in some Latin American judiciaries is also provided.

**Methodology**: Qualitative description and analysis; comparative analysis

**Subject Keywords**: Access to justice, case management, civil procedure reform, court administration, court delay, court performance, European Community/European Union, European Court of Justice, institutional capacity, judicial efficiency/court delay, judicial independence, judicial reform, judicial training, public utilities/infrastructure

**Country/Region**: Finland, Austria, Ireland, Norway, Sweden, Belgium, Netherlands, Denmark, France, Italy, Germany, United Kingdom, England and Wales, Spain, Greece, Venezuela/Europe, Latin America


This comparative research project describes the main values and policies concerning the improvement of the quality of the administration of Justice in twelve European countries and Quebec. This volume contains the full length, which were written following a common format in order to ensure a certain level of homogeneity. They focus on issues such as: the institutional context of each judicial system, judicial independence and impartiality versus accountability, quality management, judges’ judicial decisions and court services, and policies to enhance quality. Annexed is an initial comparative description for each country.

**Methodology**: Comparative analysis

**Subject Keywords**: Case management, court administration, court performance, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, legal personnel, performance indicators

**Country/Region**: Europe, Austria, Belgium, Bulgaria, Denmark, Spain, Finland, France, Italy, Netherlands, Portugal, Quebec, Canada, Romania, Turkey

Fabri, Marco; Jean, Jean-Paul; Langbroek, Philip & Pauliat, Hélène (eds.) *L’Administration de la Justice en Europe et l’Evaluation de sa Qualité* (Paris : Montchrestien, 2005), 450 pages

(“The Administration of Justice in Europe and the Evaluation of Its Quality”, six articles in French and seven in English including a summary in the other language for each) The evaluation of the quality of the administration of justice is a painful but crucial exercise for judicial reform. A comparative research project on the evaluation of the quality of justice was recently undertaken for twelve European countries (Austria, Belgium, Bulgaria, Denmark, Spain, Finland, France, Italy, Netherlands, Portugal, Romania, and Turkey). It associated practitioners as well as scholars and suggests new directions as well as evaluation criteria. The results have now been published. The book contains numerous comparative grids that allow for cross-country comparisons. Highly relevant issues such as typologies of court administration, quality management, and policies to enhance the quality of justice are dealt with in detail.

In the first part, the main trends in thirteen countries are described and analyzed. After an introduction to the comparative analysis, a typology of the administration of justice and the influence on the quality is presented. Further attention is paid to quality management concerning judges, judgements and court services. Eventually, the policies to enhance the quality of justice in Europe are described.

The second part contains thirteen case-studies on the evaluation of the quality of justice in Austria, Belgium, Bulgaria, Denmark, Spain, Finland, France, Italy, Netherlands, Portugal, Romania, Turkey, and Quebec. It also contains a comparative grid allowing cross-country comparisons.

The third part deals with the Quality of Justice as seen by the Judiciary. After presenting general principles to push the debate on the evaluation of justice among legal professionals, the state of the debate in Italy and the Netherlands is summarized.

**Methodology**: Comparative analysis; qualitative description and analysis
**Subject Keywords:** Appeals/cassation, case management, civil procedure reform, civil litigation, costs of the legal system, court administration, court delay, court performance, European Community/European Union, impeachment of judges, incentives of judges, institutional capacity, judicial accountability, judicial decision-making, judicial efficiency/court delay, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal culture, legal education/training, legal personnel, legal profession, litigation, performance indicators, politics of resistance, public opinion of the legal system, public support for reform, separation of powers, state budget

**Country/Region:** Austria, Belgium, Bulgaria, Denmark, Spain, Finland, France, Italy, Netherlands, Portugal, Romania, Turkey, Quebec, Canada/Europe, North America


This article uses a 1992 World Bank survey of manufacturing and trading firms in Ghana to ascertain how commercial contracts are enforced in that country. The first section of the paper develops a formal model of contract decisions and various enforcement mechanisms. The remainder of the paper then tests the model’s implications using data from the survey. Fafchamps concludes that, in Ghana, compliance with contractual obligations is mostly motivated by the desire to preserve long-term, personalized relationships with suppliers or clients. Harassment of debtors is the main method of debt collection. Other enforcement mechanisms, such as resort to the formal legal system, reputation effects, and the use of illegitimate force are less important. Contracts are generally flexible, and renegotiation is frequent. Fafchamps concludes with some tentative policy recommendations, including the establishment of a credit rating system, setting up small claims courts, specialized commercial courts, or private arbitration panels, and putting more non-criminal sanctions at the disposal of state authorities. He stresses that the objective of such reforms should not be the reduction of contractual flexibility, but rather deterrence of opportunistic breaches so firms can conduct a greater portion of their business with firms with which they have little prior acquaintance.

**Methodology:** Formal analysis; attitude surveys; qualitative description and analysis

**Subject Keywords:** Debt collection; nonlegal sanctions; economic development; credit market; culture/social norms/informal institutions; arbitration; noncontractual agreements/relational contract

**Law Keywords:** Contract law

**Country/Region:** Ghana

**Fafchamps, Marcel et al.** “Contract Flexibility and Conflict Resolution in African Manufacturing” [unpublished paper, 1998]

This paper examines the contractual practices of African manufacturing firms using survey data collected from six countries (Burundi, Cameroon, Ivory Coast, Kenya, Zambia, and Zimbabwe). This data is analyzed using statistical techniques. The authors argue that in Africa, contractual flexibility and renegotiation are pervasive because African firms operate in a high-risk environment where contractual nonperformance frequently occurs for reasons outside of firms’ control. In such an environment, flexibility is advantageous because without it firms might be deterred from entering into contracts in the first place. The authors’ evidence suggests that most African firms expect contracts to be flexible, and that nonperformance is usually handled through direct negotiation; only if negotiation is unsuccessful do firms turn to lawyers or the police. Relational contracting is the norm, and these long-term relationships help firms negotiate. Relations based on family, ethnicity, or kinship make it easier to resolve disputes, but also seem to increase the frequency of non-performance. The authors conclude with two general points. First, they argue that regarding contracts as rigid is inaccurate and fails to recognize that flexibility is necessary for market exchange to take place. Second, their data suggests a connection between participation in international markets and contractual practices, a relationship that needs further study.

**Methodology:** Comparative analysis; attitude surveys; quantitative analysis

**Subject Keywords:** Nonlegal sanctions; noncontractual agreements/relational contract; manufacturing sector

**Law Keywords:** Contract law

**Country/Region:** Africa
This article discusses court congestion in ten Asian countries. After an extensive discussion of causes of court delay and possible reforms in South Korea, Indonesia, Thailand, Bangladesh, India, Pakistan, Malaysia, Singapore, Sri Lanka, and the Philippines, Falt turns to underlying causes of court delay. These include problems of inflow and problems of output. Economic development, he argues, has caused litigation rates to surge because customary systems of conflict moderation are no longer able to provide for the new demands created by a market economy; the increase in litigation in Asian countries will continue. Problems of output (resolution of disputes in courts) include material causes, personnel, procedures and practice, and external causes. Regarding personnel, Falt notes that most Asian countries have increased the number of judges, but that where the development process is still underway, this is unlikely to have more than a transitory effect. Delays stemming from procedures and practice include inadequate pre-trial discovery, lawyer fee arrangements that discourage settlement, and discontinuous trials that provide opportunities for postponement. The article offers other suggestions for reducing inflow and making output more efficient, including use of non-formal dispute management. It concludes by calling for rigorous empirical studies of court delay in Asia.

Methodology: Attitude surveys; comparative analysis; quantitative analysis

Subject Keywords: Judicial efficiency/court delay; court administration; litigation; economic development; access to justice; legal education/training; corruption; case management; legal profession; alternative dispute resolution; modernization theory; settlement

Law Keywords: Civil litigation

Country/Region: Asia; Southeast Asia; Bangladesh; India; Indonesia; Malaysia; Pakistan; Philippines; Singapore; South Korea; Sri Lanka; Thailand


This chapter discusses the new interest of the World Bank and other development agencies in financing legal reform. Faundez notes that despite the World Bank’s efforts to distinguish between policymaking and the “technical” provision of legal assistance, the line between the two is often blurry. The author argues that the new interest in legal reform stemmed from concern that inadequate institutional and legal frameworks stymied development, as in Eastern and Central Europe. Because of its Charter restrictions, the Bank uses a more limited conception of “governance” than bilateral donors, leaving open the question of whether a state is democratic; likewise, its stated concern with legal reform is limited to its concern with efficiency and the creation of a stable economic environment. Apart from specifying that a legal system should have known rules that are applied and enforced, and an independent system for resolving conflicts and amending rules, the Bank mandates a market-friendly system of laws. Faundez argues that recent interest in legal reform differs in important ways from the short-lived American law and development movement of the late 1960s and early 1970s. Most significantly, the new approach sees law as a means to facilitate market transactions rather than as an instrument of an interventionist state. Reviewing the chapters of the volume, Faundez identifies several themes. Legal reform projects, he argues, must take into account local conditions of the targeted countries, e.g. the unregulated nature of a country’s financial institutions or the existence of informal mechanisms for conflict resolution.

Methodology: Literature review; qualitative description and analysis; summary/synopsis

Subject Keywords: Legal reform; import of foreign law/legal transplants; World Bank; economic development; Law and Development Movement; alternative dispute resolution; modernization theory; governance; donor politics; state sector/public ownership

Country/Region: Developing world (general)

Feder, Gershon, Tongroj Onchan, Yongyuth Chalamwong, and Chira Hongladarom Land Policies and Farm Productivity in Thailand (Baltimore: Johns Hopkins University Press, 1988)

The authors examine the impact of World Bank project that is providing secure land titles to Thai farmers. The data comes from interviews with some 200 farmers in each of four provinces; interviews in Lop Buri,
Nakhon Ratchasima, and Khon-Kaen during 1984-85 and in Chaiyaphum in 1986. Both titled and untitled (squatters in forest reserve) farmers were interviewed. Because virtually all those outside forest reserve have titles, the authors claim that there is no bias arising from potential self-selectiveness in the sample of titled farmers. The main findings of the study are as follows. First, farmers with titles received larger loans from institutions even when land was not used as collateral. Second, when a group guarantee was used as collateral, titled farmers obtained 15 percent larger loans than untitled farmers, and on unsecured loans, titled received almost twice as much as untitled farmers. The authors conclude from this analysis that using land as collateral does significantly increase the amount of institutional credit farmers can secure, both because of the direct effect of land pledged as collateral and because of the indirect effect of the greater land value associated with possession of a title. By contrast, possession of usufruct certificates has no significant impact on provision of credit.

Methodology: Project evaluation; quantitative analysis
Subject Keywords: Property rights; credit market; agricultural sector; investment; World Bank; outside assistance; legal reform
Law Keywords: Property law
Country/Region: Thailand


Feeley evaluates the impact that laws requiring criminal cases to be decided within a fixed period of time, typically six months, has had on time to disposition in American federal and state courts. Drawing on a host of studies conducted by academics, the US Justice Department, and the National Center for State Courts, he concludes that the setting of time limits alone has been of little value. Trying to reduce overall time to disposition may be too broad a target. Delay is not a well-defined problem but a symptom of other problems that exist within a court system. Reformers would be more likely to succeed if they focus on the specific problems giving rise to delay. When tackling these problems, they must address the incentives court officials face.

Methodology: Qualitative description and analysis; critical review
Subject Keywords: Judicial efficiency/court delay; legal reform; incentives of judges
Law Keywords: Criminal law
Country/Region: United States


Rational politicians are interested in judicial independence in order to make their promises credible. But if politicians’ preferences deviate from the dicta of the judiciary, they also have incentives to renge on judicial independence. These two conflicting aspects are measured by two indicators: de iure judicial independence focusing on its legal foundations and a de facto judicial independence focusing on countries’ actual experience. Whether judicial independence affects economic growth is tested for a cross section of 57 countries. While de iure judicial independence does not have an impact on real GDP growth per capita growth, de facto judicial independence positively influences it.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Economic development, judicial independence, rule of law, separation of powers


Although women in Ghana cultivate forty percent of all land, they are far less likely than men to exercise control over their land as independent farmers or farm managers. Often they do not control the proceeds from the land and lack the ability to dispose of it through sale or inheritance. These conditions persist despite
Ghana’s commitments under international law to secure equality for women under law, both national and customary.

This report is the result of a year-long project undertaken to study the status of women’s inheritance rights in Ghana in light of these international commitments. Inheritance rights are a critical issue for Ghanaian women because traditionally in Ghana, as in many African countries, widows had no right to inherit property from their husband’s estate even when the property was acquired during the marriage. As a result, women were often left destitute and homeless upon the death of their spouse.

While important in its own right, the issue of inheritance rights also illustrates more broadly women’s inequality in the ownership of property and in marriage and provides a window into the persistently unequal conditions of women’s lives in Ghana. Because Ghana adopted a national statute in 1985 designed to address the problem of gender inequality in inheritance under customary law, the issue also illustrates the sometimes problematic intersection of statutory and customary law. Finally, the issue of women’s inheritance rights provides an opportunity to assess the efficacy of legislation in guaranteeing women’s rights and changing longstanding social practices.

Methodology: Qualitative description and analysis

Subject Keywords: Agricultural sector, culture/social norms/informal institutions, customary law/indigenous law, democracy, equality/social justice, gender/women’s rights, land disputes, legal pluralism, property rights

Country/Region: Ghana/Africa


In the ten years since the collapse of the Soviet Union, law reform in most of the new republics of the Commonwealth of Independent States (CIS) has been a high priority. The leaders of those countries and numerous international, American and European organizations have committed considerable resources to creating legal structures that will support a market oriented economy. Only recently has the reform of the historically oppressive and currently corrupt system of administrative law in these republics received much attention.

This article examines the role of and the problems related to administrative violations codes and the general supervisory powers of the Procuracy. After a presentation of both, the need for reform is analyzed and the importance of behavioral and attitudinal change are identified as a key challenge.

Methodology: Qualitative description and analysis

Subject Keywords: Administrative courts, administrative law, authoritarianism, bureaucracy, constitutional change, corruption, due process, ideological role of law, judicial review, legal culture, legal ideology, post-socialist transition, post-transition justice, public prosecutors

Law Keywords: Procuracy, administrative violations code

Country/Region: CIS, Armenia, Georgia, Russia, Ukraine, Eastern Europe


This paper outlines a theory and simple model of judicial interpretation of statutes, and investigates how the political context might affect judicial decision-making and substantive outcomes. In particular, the authors examine the implications of the fact that judicial statutory interpretations can potentially be overridden by legislation. Judges may take this into account when making their decisions, and judges who don’t do so will often have their decisions overturned by legislation. The basic formal model is based on an intertemporal conflict of interest between the legislature that enacted a piece of legislation and the current legislature, which may have different preferences. The authors consider three types of interpretive stances a court might adopt: the “naïve textualist” interprets legislation as close as possible to the intent of the enacting legislature, regardless of whether this is politically viable; the “sophisticated honest agent” selects the viable outcome closest to that preferred by the enacting legislature; and the unconstrained policy advocate has its own policy preferences and selects the closest viable outcome. The authors investigate the consequences of each of these
three interpretive stances. They find, first, that the interpretation chosen depends on the interaction between the court and the legislature; second, that the court’s interpretation depends on its interpretive stance; and third, that the intentions of the enacting legislature have only a modest effect on outcomes. The authors then extend the model to include congressional committees and administrative agencies.

**Methodology:** Formal analysis

**Subject Keywords:** Judicial decision-making; legislative process; judicial review; bureaucracy; legal doctrine

**Country/Region:** United States


With the dismantling of herding collectives in Mongolia in 1992, formal regulatory institutions for allocating pasture vanished, and weakened customary institutions were unable effectively to fill the void. Increasing poverty and wealth differentiation in the herding sector, a wave of urban-rural migration, and the lack of formal or strong informal regulation led to a downward spiral of unsustainable grazing practices. In 1994, Mongolia’s parliament passed the Land Law, which authorized land possession contracts (leases) over pastoral resources such as campsites and pastures. Implementation of leasing provisions began in 1998. This article examines the implications of the Law’s implementation at the local level, based on interviews with herders and officials in all levels of government, and a resurvey of herding households. Amongst many findings, the research shows that poorer herders were largely overlooked in the allocation of campsite leases; that the poor had become more mobile and the wealthy more sedentary; that there had been a sharp decline in trespassing following lease implementation, but that many herders and officials expected pasture leasing to lead to increased conflict over pastures. The Land Law provides broad regulatory latitude and flexibility to local authorities, but the Law’s lack of clarity and poor understanding of its provisions by herders and local officials limit its utility. The existing legal framework and local attitudes stand in clear opposition to the implied goal of land registration and titling – an all-embracing land market and the supremacy of private property rights.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Land disputes, law enforcement, legal information

**Country/Region:** Mongolia


(“Some Proposals for a Freedom of Information Law”, in Spanish) The main idea of this essay is to recognize that the right to have access to public documents (subjective perspective) and the corresponding principle of administrative transparency (objective perspective), represent an advanced stage of democratic systems, considering that democracy is not a static concept but an open process. However, and after considering the insufficiencies of the perspective that tries to foster social participation in the administrative process, the author turns his attention to the alternative that seeks to expand the citizens’ access to public information in order to control administrative activities through public opinion. On the basis of these premises, the author studies the main formal elements of a law on access to information, identifying the subjects of the respective right, the objective of regulation of the law, the limits of the citizens’ rights on this matter as well as the procedures to exercise them and their legal guarantees.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative law, bureaucracy, freedom of information legislation, law drafting

**Ferrarese, Maria Rosaria** “Civil Justice and the Judicial Role in Italy” *Justice System Journal* 13:(2)168-185 (1988-89)

This article describes what it deems the quantitative and qualitative roots of Italy’s civil justice crisis. The traditional model of judges in Italy was bureaucratic in its methods of selection, education, organization, and
the norms of judicial decision-making. Ferrarese argues that in the Italian system, the direction of the case is left to the parties, but the judge operates as the finder of legal truth. This concept of legal truth—and the role of the Corte di Cassazione at the apex of the system—is challenged by the actual lack of uniformity in the Corte di Cassazione judgments as well as the long delays in producing decisions. There is a tension between concern for due process (protection of the parties from wrong or arbitrary decisions) and efficiency (demand for speedy dispute resolution). Ferrarese argues that Italy’s civil justice system is closer to the due process model but is embracing concerns for efficiency, as well. Beyond the traditional bureaucratic role of the judge, judges are now playing a social role (deciding cases in a practical, problem-solving mode more cognizant of protecting new rights) and a policymaking role (providing general answers to political problems). Yet the greater creativity in judicial decision-making also tempts litigants and their lawyers to exploit the uncertainty for their own purposes: for example, the right to appeal and other devices are used to delay final judgment.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; court administration; judicial decision-making; judicial selection/promotion; bureaucracy; civil law; civil procedure; due process; judicial activism
Law Keywords: Civil litigation
Country/Region: Italy


(“The Rights of Citizens in their Relation with the Administration”, in French) The author comments on the law voted in 2000 that improves access to information, and administrative and financial transparency. The law also reforms administrative procedures established by previous laws to the benefit of citizens. Eventually, the law strengthens the institution of the French ombudsman.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative law, bureaucracy, freedom of information legislation, judicial review, ombudsman
Country/Region: France/Europe


Firmin-Sellers argues that the contemporary debate over property rights in the development field is ill-formulated. She claims that, while the current debate pits advocates of individual private property against advocates of “customary” land tenure, both sides neglect the problem of enforcing whatever property rights scheme is adopted. In order for a property rights system to be effective, the ruler of a state or local community must have enough coercive authority to impose a property rights system on others who favor a different system, but the ruler must also be able to establish a credible commitment to the system. Firmin-Sellers examines this issue by studying the politics of property rights in Akyem Abuakwa, a traditional state in colonial Ghana, discussing in detail how different factions and leaders competed to establish a distributionally favorable property rights scheme. She concludes that the paramount chief of the state was able to use both coercive and cooperative means to establish, impose, and credibly commit to a new system of property rights, and that this led to increased investment and provision of public goods.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; customary law/indigenous law; agriculture sector; economic development; investment; taxation; judicial reform; corruption; colonialism/imperialism; law enforcement; land reform; culture/social norms/informal institutions
Law Keywords: Property law
Country/Region: Ghana

This article argues that judicial independence should be optimized rather than maximized. Fiss notes three meanings of judicial independence: party detachment (impartiality); individual autonomy (independence from other judges); and political insularity (independence from political institutions and the public). Focusing on political insularity, he identifies two limits to this form of judicial independence: democratic commitment to majority rule and the regime-relative nature of independence. Addressing the first limit, he shows that in the United States, where commitment to judicial independence is legendary, it is actually constrained by methods of selecting judges, financial ties to other branches, the jurisdictional powers of the legislature, and dependence on the executive for enforcement of decisions. But these restrictions are suitable, since in a democracy, too much judicial independence would mean a lack of accountability to the public.

Turning to the second limit, he argues that in transitioning democracies, successor regimes should not be bound to respect the independence of a judiciary left over from the previous regime. In the case of Latin American republics such as Chile and Argentina, regime changes—which involve a decisive break with the past, not merely a change in administration—make normally unacceptable practices such as the impeachment of judges or court-packing worth considering in the context of a shift to democratic rule.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; political reform/ regime change; judicial reform; democracy; post-transition justice; impeachment of judges; separation of powers
Country/Region: United States; Chile; Argentina; Latin America


In this article, Fitzpatrick argues that “popular justice” is impossible in Western countries. He claims that popular justice can be seen as a mythology, set in opposition to formal state law. However, he argues that there are important similarities between formal law and alternative or popular justice. He supports his argument with observations from the San Francisco Community Boards and post-modern theory. He concludes his article by arguing for an “alternative legality” that could meet the original goals of popular justice, by challenging certain aspects of formal law.

Methodology: Qualitative description and analysis
Subject Keywords: Popular justice; informal dispute resolution; mediation
Country/Region: United States


The author explores the socio-legal context of economic rationality in the legal and judicial systems. He examines the meaning and relevance of the concept of efficiency for the operation of courts and court systems, seeking to answer questions such as: in what sense can we say that the adjudicative process works efficiently? What are the relevant criteria for the measurement and assessment of court efficiency? Should the courts try to operate efficiently and to what extent is this viable? What is the proper relationship between “efficiency” and “justice” considerations in a judicial proceeding?

To answer these questions, a conceptual framework is developed on the basis of empirical studies and surveys carried out mainly in the United States, Western Europe and Latin America. Two basic ideas emerge from it. First, economic rationality has penetrated the legal and judicial systems at all levels and dimensions, from the level of society as a whole to the day-to-day operation of the courts, from the institutional dimension of adjudication to the organizational context of judicial decisions. Far from being an alien value in the judicial process, efficiency has become an inseparable part of the structure of expectations we place on the legal system. Second, economic rationality is not the prevalent value in legal decision-making, as it is subject to all kinds of constraints, local conditions and concrete negotiations with other values and interests.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, alternative dispute resolution, case management, civil litigation, costs of the legal system, court administration, court delay, court performance, incentives of judges, institutional capacity, judicial decision-making, judicial efficiency/court delay, judicial reform, litigation
This article cautions against misinterpreting the U.S. experience with case management. Some U.K. reformers have taken the results of the RAND Institute for Civil Justice study to mean that judicial case management in the United States failed to reduce costs. The author argues, however, that the methodology of the RAND study, and the research strategy identified by the Civil Justice Reform Act of 1990, were both flawed. The RAND project was useful in furnishing an enormous database of U.S. court statistics, but its conclusions did not demonstrate a causal relationship between case management and increased cost.

Methodology: Qualitative description and analysis; critical review

Subject Keywords: Case management; judicial efficiency/court delay; civil procedure; legal reform; court performance standards; costs of the legal system; judicial reform; litigation

Law Keywords: Civil litigation

Country/Region: United Kingdom; United States


(“The Administrative Courts in Contemporary French Society”, in French) Established in 1954, the lower administrative courts are part of the judicial picture of France today. The authors first analyze the volume of cases before the French administrative courts before having a closer look at who uses them. Subsequently, they elaborate on what kind of cases are brought to the administrative judge and what the outcomes are. After a detailed analysis of the caseload of the administrative courts, the authors conclude on the perception and influence of these administrative courts.

Methodology: Qualitative description and analysis; critical review

Subject Keywords: Administrative courts, administrative law, bureaucracy, case management, court delay, court performance, judicial review, litigation, public opinion of the legal system

Country/Region: France/Europe


(“The Organization and the Financial Means of the Administrative Courts: Stock Taking 50 Years Later”, in French) Although the lower administrative courts inherited certain procedures and the locations of the conseils de prefecture (Prefectoral Councils), they soon established their position as independent courts. Essentially, since the 1986 law a new identity has evolved based on two major modifications. First, the administration of administrative judges is the task of an independent body: the Conseil supérieur des tribunaux administratifs (Higher Council of Administrative Courts). Second, the administration of these courts that was formerly done by the Minister of the Interior was given to the Conseil d’Etat (Council of State) in 1990. Since 1954, the number has been increased to 38 administrative courts each of which has at least to chambers in order to avoid conflicts of interests. In addition, the Cours Administratives d’Appel (Administrative Courts of Appeals) were created in 1987. Their number has increased from initially 5 to 8. The number of judges and administrative staff has been constantly increased too. The needs of the administrative courts are not always compatible with the recruitment of administrative judges through the Ecole Nationale d’Administration (National School of Administration, ENA). Similarly, the management of administrative staff by the Ministry of the Interior also has limits. Administrative courts face serious challenges as to delay because of the constant increase of the caseload. However, the issue is addressed. Work places are reorganized and work procedures revised. Modern management processes and technology are used to improve court performance.

Methodology: Qualitative description and analysis; critical review
**Subject Keywords:** Administrative courts, administrative law, appeals/cassation, bureaucracy, case management, court administration, court delay, court performance, judicial efficiency/court delay, judicial independence, judicial reform, legal culture, litigation, separation of powers

**Country/Region:** France/Europe


Written by an Australian judge, a quasi-personal, quasi-academic review of the problems faced and posed by judicial systems in the modern Anglo-American systems. Reviews such issues as delays, costs, accessibility, and juridical security, and finds that the current “model” falls short on all counts. Interestingly some of the techniques incorporated into many reform programs for developing countries (accusatory criminal justice system, discovery and oral trials) are identified as posing problems, at least as they have developed in the past decades. The book also incorporates suggestions for change, and includes a series of short articles written by other experts.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial efficiency/court delay; cost of the legal system; access to justice; judicial independence; legal reform

**Law Keywords:** Criminal law; civil litigation

**Country/Region:** Australia


This article summarizes the findings of a series of country studies in Asia and Africa to assess the prospects for American legal assistance in these countries. Frank argues, first, that developing countries are pursuing concurrently three development goals that were pursued consecutively in the West – unification, industrialization, and social welfare. The challenges faced by developing nations are similar to many of the new challenges emerging in the United States. Therefore, despite significant differences in the legal culture of the United States and most developing countries, there are areas for fruitful cooperative activities. He stresses in particular the need for legal education for nonlawyers, the use of social science investigation of problems prior to legal reform, providing legal and paralegal services to the masses, and the development of simple procedures for control of corruption and redress of bureaucratic grievances. He also argues that lawyers may be especially skilled at balancing the need for radical change with the need for predictability and consistency, but he is careful to point out that law and lawyers are not inherently good or conducive to development.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Law and Development Movement; import of foreign law/legal transplants; USAID; outside assistance; economic development; equality/social justice; democracy; legal culture; legal instrumentalism; individual rights; rule of law; legal education/training; legal profession; corruption; law enforcement; access to justice; judicial reform; legal reform

**Law Keywords:** Commercial law; criminal law; administrative law

**Country/Region:** Africa; Asia

**Friedland, Martin.** *A Place Apart: Judicial Independence and Accountability in Canada.* (Toronto: Canadian Judicial Council, 1995)

This massive study surveys judicial independence in Canada and proposes modest changes to enhance its independence and accountability. The author argues that alongside the fundamental value of independence, judicial accountability is also important, and can actually strengthen the institution’s independence by enhancing respect for it. Chapters address the protection of the judiciary (physical, political, and legal); security of judges’ tenure; financial security; discipline; codes of conduct; performance evaluation; judicial education; court administration; chief justices; and appointment and elevation. Among other reforms, Friedland advocates the adoption of a uniform code of conduct for the federal and provincial judiciary, a disciplinary system by which a complaint against a judge is first handled by the chief justice of that court,
some form of performance evaluation for judges, and a greater role for the judiciary in the judicial administration.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Judicial independence; judicial accountability; judicial reform; impeachment of judges; incentives of judges; judicial selection/promotion; judicial review; court administration; separation of powers

**Country/Region:** Canada; United States


This article discusses the attempts by Westerners to help developing nations modernize their legal system. Friedman is critical of these efforts, noting that Western advisors are generally unfamiliar with the history and culture of the target countries, and have no general theory of law and society or law and development. What theory they do have is an inadequate theory of evolution toward legal rationality, based in part on Weber. He argues that existing theories of law and society place too much emphasis on the structure and substance of law, while neglecting the important element of legal culture, which determines the actual impact of substance and structure in practice. Friedman then discusses what he sees as the salient characteristics of modern legal culture, the most important of which is that law is now seen as a means to an end, and its basis for legitimacy rests on its perceived rationality. Law reform movements in the West are a response to the growing demand that law be rational, orderly, and just. However, Friedman argues, law reform is unlikely to have any significant effect on society, since it will necessarily be limited to those types of reform that don’t threaten vested economic or political interests. He goes on to claim that this is also true in the developing world; attempts to make the legal system more “rational” and “modern” are unlikely to have any real effect. He stresses again the need for attention to legal culture, which determines how the law in books actually operates in society, and criticizes excessive attention to law reform efforts directed at rationalization and modernization, claiming that they are at best meaningless and at worst a distraction from the real issues.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Outside assistance; import of foreign law/legal transplants; legal reform; Law and Development Movement; modernization theory; legal evolution theory; culture/social norms/informal institutions; legal culture; legal instrumentalism; common law; customary law/indigenous law; legal rationality; legal profession; public opinion of legal system; legal education/training; colonialism/imperialism; revolution; economic development; legal implementation; law enforcement; legal development

**Law Keywords:** Commercial law; criminal law; constitutional law

**Country/Region:** United States; developing world (general)


This article discusses the characteristics of the “legal culture” of modern countries. Legal culture, according to Friedman, encompasses the ideas, values, and attitudes people in some society hold about law and the legal system. He claims legal culture is in principle measurable through attitude surveys, inferences drawn from observed behavior, or both. This essay, however, puts forward hypotheses, rather than examining empirical data. Friedman claims that modern legal culture is characterized by six traits: law is rapidly changing; it is dense and ubiquitous; the basis of its legitimacy is instrumental; it stresses fundamental rights; it is individualistic; and globalization is leading to convergence between modern legal systems. In conclusion, he stresses that legal reform efforts that do not take legal culture into account are doomed to failure. He also argues that there is a need for more collection of empirical data to test hypotheses about law, society, and legal culture.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Legal culture; individual rights; legal instrumentalism; constitutionalism; liberalism; equality/social justice; judicial decision-making; litigation; democracy; legal reform

**Law Keywords:** Administrative law; constitutional law; civil litigation

**Country/Region:** United States; Western Europe

This chapter is a direct reply to Roger Cotterrell’s critique (in the preceding chapter of the book) of the author’s concept of legal culture. Friedman acknowledges that legal culture is not a variable that it is easy to measure, and is to some extent vague and general. But, he argues, many of the most fundamental concepts of social science are similar in this regard. Furthermore, the concept of legal culture is useful. Legal culture, as Friedman defines it, consists of ideas, values, expectations, and attitudes toward law and legal institutions which the public or part of the public holds. It is an intervening variable between social change and legal change. While no two individuals are alike in their attitudes, one can still note general trends or patterns; thus the argument that legal culture describes an aggregate of individuals does not undermine the concept’s utility. Friedman also notes that the concept Cotterrell advocates – legal ideology – is just as vague and general as legal culture. He stresses in conclusion that legal culture is in principle a useful social scientific concept and shouldn’t be discarded simply because it is difficult to measure precisely.

Methodology: Critical review; conceptual/philosophical inquiry
Subject Keywords: Legal culture; culture/social norms/informal institutions; legal profession; legal ideology

Friedman, Lawrence M. & Pérez-Perdomo, Rogelio Legal Culture in the Age of Globalization – Latin America and Europe (Stanford: University Press, 2003) 528 pages

This volume of essays examines how the legal systems of the chief countries of Latin America and Mediterranean Europe – Argentina, Brazil, Chile, Colombia, Mexico, Puerto Rico, Venezuela, France, Italy, and Spain – changed in the last quarter of the 20th century. Through essays that provide a wealth of data on the courts and the legal profession in these countries, the book attempts to relate changes in the operation of the legal systems to changes in the political and social history of the societies in which they are embedded. The details vary, in accordance with the particular history and structure of the countries, but there are also key commonalities that run through all of the stories: democratization, globalization, and changes in the legal order that seem to be worldwide; more power to courts; a growing legal profession; and the entry of women into what was once a masculine club.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Access to justice, authoritarianism, case management, civil procedure reform, civil litigation, civil procedure, constitutional change, court administration, court delay, court performance, criminal law, democracy, human rights, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, judicial training, legal culture, legal education/training, legal profession, legal reform, political instability, public prosecutors, rule of law, separation of powers
Country/Region: Argentina, Brazil, Chile, Colombia, France, Italy, Mexico, Puerto Rico, Spain, Venezuela, Latin America, Europe

Fromont, Michel La Justice Constitutionelle Dans le Monde (Paris: Dalloz, 1996), 140 pages

(“Constitutional Courts around the World”, in French) This book surveys the expansion of the ideal of constitutional justice from the late eighteenth century to the present. In the first part, it describes the origin of constitutional control in the United States in the late 1700s, its limited spread to Latin America and Europe in the nineteenth century, and widespread acceptance of constitutional control in the twentieth century. Fromont notes the great diversity in constitutionalist models, the major line of division between the North American model in which all courts can address constitutional issues and the Latin American/Austrian model where the function is exercised by a special court, and points out deficiencies in each system. In the second section of the book, Fromont notes the limitation of this classification and proposes that systems be instead categorized according to whether the constitutional review procedure is concrete (triggered by individuals in particular cases) or abstract (triggered by political actors in consideration of questions regarding norms or organs of the state). He then argues that constitutional justice has created restraints on legislative power as well as on authorities charged with the application of the law. The book then turns to the influence of constitutional justice on the content of constitutional laws regarding the organization of state power and human rights.
This article reports the results of a survey of small businesspeople in Warsaw and Moscow done to assess the regulatory environments in Poland and Russia after both countries adopted a similar radical reform program. The general results of the survey suggest that, while shopkeepers in neither country seem to like to use the courts, Russians appear to need them more. Furthermore, private protection agencies are much more widely used in Moscow than in Warsaw, and the Russian respondents reported greater bureaucratic delays, more frequent inspections and fines, and a higher overall sense of “legal vulnerability” to government bureaucrats. Thus, the authors conclude that the Russian government is closer to the model of the “grabbing hand” government, while the Polish government is closer to the “invisible hand” model. The more general conclusion they reach is that knowing the economic reforms a transition country has adopted is not enough; information about the regulatory stance of the national and local governments toward business is critical, and requires more research.

Methodology: Attitude surveys
Subject Keywords: Corruption; bureaucracy; commercial licensing; post-socialist transition; privatization; economic reform; private enforcement organizations; public opinion of the legal system
Law Keywords: Commercial law
Country/Region: Poland; Russia

("Access to Justice of the Poor and Underprivileged in England: Evolution during the 19th and 20th Century", in French) This study summarizes and analyzes the evolution of legal aid in England over the last two centuries. It is in three parts: access to justice of the poor under the Poors Laws, the impact of the 1942 report on Social Insurance and Allied Services, and the comeback of English liberalism in the late 1970 and its impact on legal aid.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, costs of the legal system, equality/social justice, legal aid, state budget
Country/Region: United Kingdom/Europe

In this chapter, Gadbois uses criteria developed by Samuel Huntington to evaluate the level of “institutionalization” of the Indian Supreme Court. Huntington’s framework suggests four components to institutionalization: adaptability, complexity, autonomy, and coherence. Gadbois assesses the performance of the Indian Supreme Court in these four areas, and finds that it is difficult to conclude how institutionalized the Indian Supreme Court is overall. In some areas, the court seems to demonstrate high institutionalization, while in others the level of institutionalization appears quite low. However, he concludes that, overall, the Indian Supreme Court demonstrates a relatively high level of institutionalization according to these measures, at least when compared with other constitutional courts. He also notes that the difficulty of applying Huntington’s criteria suggests the need for more precise tools for measuring and assessing judicial institutionalization.
Methodology: Qualitative description and analysis
Subject Keywords: Institutionalization; institutional capacity; judicial independence; judicial review; judicial efficiency/court delay; judicial decision-making
Law Keywords: Constitutional law
Country/Region: India


The French Conseil d’Etat (Council of State) has served as a model for administrative courts around the globe. The influence has been direct and indirect. The author first presents the specificity of the French approach which lies in the fact that the French administrative courts form a special order of courts and that unlike their German counterparts, the French administrative judges are not members of the ordinary judiciary but civil servants. Eventually, the author addresses the expansion of the French model by analyzing factors promoting this expansion and presenting the different local adaptations before concluding with the European influence and France and vice versa.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, bureaucracy, European Court of Justice, import of foreign law/legal transplants, individual rights, judicial independence, judicial review, legal culture, rule of law, separation of powers
Country/Region: France/Europe


An analysis of the lower courts of India which criticizes policymakers for giving up on trying to reform them. Although by comparison with other nations Indians are not very litigious, the lower courts appear to be heavily used. This is because there are relatively few courts compared to other common law countries and these courts are poorly equipped and inefficient. Potential users thus avoid them whenever possible. The courts are of value only to those satisfied with the status quo, those wishing to postpone payment of taxes or debts or to forestall eviction or other legal action. Because so many meritorious claims are not brought, it is not surprising that a disproportionate share of claims filed are “frivolous,” that is, brought for purposes of harassment or delay.

The bringing of cases directly to the High Courts and most recently the creation of the Lok Adalat or people’s court to resolve auto accident claims and consumer claims are instances where reformers have sought ways around the lower courts. But as the experience with Lok Adalats shows, informal procedures that supplant formal adjudication only function effectively against the backdrop of a strong court system. The outcome of the Lok Adalat procedure is conditioned by the bargaining endowments conferred by law. The willingness of those responsible for accidents to compensate victims through Lok Adalat proceedings will depend on their calculation of what they would have to pay if the case were adjudicated. Likewise, the amount victims are willing to accept is a function of what they would expect to recover if the case were tried. When the courts work as poorly as they do in India, injurers do not have to pay adequate compensation with the result that wrongdoing is under-detereimed. Reforms that attempt to channel litigation to informal mechanisms such as Lok Adalats will work only if formal legal institutions are reformed as well.

Methodology: Critical review; qualitative analysis
Subject Keywords: Litigation; alternative dispute resolution, judicial reform, lok adalat
Law Keywords: Civil litigation; tort law
Country/Region: India


In this article, Galanter attacks what he contends are persistent myths about the United States civil justice system. These myths include the claims that the US has an excessive number of lawyers compared to other
countries, that the United States is the most litigious society in the world, that litigation rates and awards are increasing dramatically, and that high litigation rates are undermining US economic competitiveness. Galanter argues that these claims are based on false, flawed, or misrepresented evidence. Galanter argues further that the persistence of these myths and the unsound evidence used to support them is due to the lack of an adequate knowledge base on the state of civil justice in the US and elsewhere. His article also includes an appendix with his estimates of the number of lawyers in 45 countries.

**Methodology:** Critical review; quantitative analysis; comparative analysis  
**Subject Keywords:** Litigation; legal profession; legal services; economic development; costs of the legal system  
**Law Keywords:** Civil litigation; tort law  
**Country/Region:** United States


An analysis of the role of dispute resolution through the courts and other formal agencies and its relationship to informal dispute resolution mechanisms and “indigenous law,” defined as “concrete patterns of social ordering found in such institutional settings as universities, sports leagues, and the like.” The author argues that it is a mistake to conceive of the courts solely in terms of the adjudication of disputes. Most disputes are never brought to court and even those that are are seldom fully litigated. Instead, the courts’ role is to provide a backdrop of norms and procedures against which negotiations and regulation of conduct in both private and governmental settings takes place. Using examples from both the developed and developing world he shows how these norms and procedures influence, and are influenced by, a variety of social norms. A prerequisite to expanding access to justice is understanding the interaction between the courts and these other influences.

**Methodology:** Qualitative description and analysis  
**Subject:** access to justice; alternative dispute resolution; informal dispute resolution; legal pluralism; court delay; court performance; legal culture; legal proceduralism; litigation;  
**Law:** civil litigation  
**Country/Region:** developing world; United States


This report discusses administrative law and institutions in Hungary, Poland, Bulgaria, Estonia, and Albania. The first part of the paper focuses on each of these countries’ administrative procedures. Among the aspects of administrative procedure discussed are the scope of administrative actions, constitutional factors, public participation, notice and disclosure procedures, administrative appeals, and the requirement of giving reasons for administrative decisions. The second section of the report focuses on the various institutions and procedures, external to the administrative agencies themselves, that supervise and oversee administrative action. These institutions and procedures include judicial review, the prosecutor’s office, ombudsman devices, internal complaint procedures, appeals on the merits, and parliamentary supervision. Galligan notes that judicial review of administrative action has been adopted in all five countries, though its use and effectiveness in practice is another question. He also notes that most of the review processes in place can only assess the legality of administrative actions; appeal on the merits is generally not available. He points out that ombudsman devices and parliamentary supervision have also shown promise, and perhaps should be further developed. Galligan includes specific recommendations for reforms in each of the countries discussed in the report.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Judicial review; legal reform; post-socialist transition; ombudsman; rule of law; public prosecutors; individual rights; freedom of information legislation; access to justice; import of foreign law/legal transplants; law drafting; legal education/training  
**Law Keywords:** Administrative law; constitutional law
**Country/Region:** Hungary; Poland; Bulgaria; Estonia; Albania


This article examines the impact of the Thai government’s 1986 Land Titling Project in northern Thailand. Ganjanapan begins by describing the traditional system of land ownership, use, and inheritance, and then focuses on the consequences of introducing a new titling system. According to his research in several villages in Chong Mai Province, a majority of farmers understand the benefits associated with title deeds, which include increased security of tenure, greater access to credit, and an increase in land prices. However, many farmers are still reluctant to use the title system, for fear of losing benefits associated with the traditional system, and other negative consequences. The most important problems Ganjanapan identifies are: the contradiction between the law and traditional practices with regard to inheritance, demarcation, and selling of land; controversies over the government’s survey methods and fees; disputes between family members; loss of security of tenure for small farmers as speculators buy up land. He concludes by suggesting several policy measures that could mitigate these negative effects while preserving the advantages associated with titling. These measures include zoning according to land use, limiting the size of landholdings, implementing programs to guarantee the prices of agricultural products and to ensure that cultivators own their land, and learning more about traditional systems in each locality and organizing a committee, which includes local leaders, to resolve conflicts.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Property rights; land disputes; agricultural sector; credit market; legal pluralism; customary law/indigenous law; investment; equality/social justice  
**Law Keywords:** Property law  
**Country/Region:** Thailand


(“Good Judgement – Essay on the Judicial Ritual”, in French) The way in which justice is stage-managed is deeply rooted in a country’s culture. The author analyzes what he defines as the judicial ritual in the context of the French system, but also compares it to foreign or historic examples. This thorough analysis of how justice is administered, how witnesses testify, how legal professionals argue, how they prove, listen and decide is devided into chapters dealing with various aspects of the judicial ritual: the spatial arrangements, the timing, the clothing, the actors, the gestures, and the wordings. Eventually, Garapon examines the archeology of the judicial stage, its topography, the way in which a conflict is stage-managed and the role of the judicial ritual in a modern multi-media society.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Civil procedure, criminal sentencing, culture/social norms/informal institutions, due process, informal dispute resolution, judicial decision-making, judicial independence, legal culture, legal doctrine, legal ideology, legal personnel, litigation, obligation to obey the law, popular justice, public prosecutors, rule of law, symbolic use of law  
**Country/Region:** France/Europe


(“Judges – An Irresponsible Power?” in French) French judges, lawyers and legal scholars address the question of judicial accountability and reflect on how and when long delays, mismanagement and negligence can and should be sanctioned. Despite the dominant attitude towards judicial independence among intellectuals, the authors incite the judiciary to rethink its position and to reconsider its accountability and the quality of the service provided. After presenting cases of miscarriage of justice, the authors analyze public expectations and the judiciary’s reaction to it by hinding being its independence. Having analyzed the impact of judicial decisions on social life, they eventually focus on accountability mechanisms and their rationale.
Methodology: Qualitative description and analysis
Subject Keywords: Court performance, democracy, judicial accountability, judicial efficiency/court delay, judicial independence, legal culture, separation of powers
Country/Region: France/Europe


(“Judicial Decision Making in America and France”, in French) The authors explore the origins of different judicial cultures in the United States of America and France. They analyze judicial reasoning among American and French judges, the value of the process, the relationship between truth and proof, the role of prosecutors, the task of judges, the nature of the jury, the function of punishment, and the very sense of justice. Different underlying concepts are identified and examined. The chapters focus on particular aspects and oppose different approaches: access to justice – common prerogative or alienable right, the process – moment or progression, proof – truth or probability, the judge – arbiter or investigator, the jury – judicial or political institution, the judgement – syllogism or opinion, judiciary – public service or forum, punishment – tariff or rehabilitation.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Access to justice, civil procedure, civil society, codification, common law, court performance, criminal sentencing, culture/social norms/informal institutions, democracy, due process, ideological role of law, judicial decision-making, judicial independence, legal culture, legal personnel, litigation, public prosecutors, rule of law, separation of powers
Country/Region: France/Europe, United States


The authors argue that greater attention to improving the performance of Latin American judiciaries is essential if public confidence in the judiciary is to be restored. They then show how the performance of judges serving in two courts -- Juzgados del Fuero del Criminal y Correccional Federal (a federal criminal court in Buenos Aires) and the Juzgados Comerciales de la Capital Federal (a Buenos Aires commercial court) – can be measured by combing indicators of the speed at which cases are decided with those suggesting the quality of the decision. For the criminal court simple quantitative measures of the pace at which each judges resolves cases are paired with indicators of how frequently his or her decisions have been disturbed on appeal. For the commercial court the same measures of litigation pace are combined with litigants’ ratings of the judge taken from survey data. In both instances the authors find that those judges who decide cases faster tend to score better on the indicators of quality than those who decide cases more slowly. Besides contradicting the Argentine proverb that justice must be slow to be good, they assert that these results show that simple, low-cost methods for accurately measuring the performance of judges can be devised.

Methodology: Attitude surveys; quantitative analysis; qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; public opinion of the legal system; judicial reform
Law Keywords: Criminal law; commercial law
Country/Region: Argentina


This chapter opens with the claim that judicial reform is an important aspect of economic, political, and social development, and then focuses on the question of how international financial institutions can contribute to effective judicial reform in developing countries. Garcia-Sayan argues that international
financial institutions can provide two important resources. First, they can offer funding for projects that will yield only long-term results, or will benefit the politically weak, and would therefore be politically impossible for countries to fund entirely themselves. Though Garcia-Sayan stresses that throwing money at the problems is insufficient, this is an area where international institutions can make a significant contribution. Second, international institutions can enhance sharing of information and provide valuable know-how based on their involvement in judicial reform projects many different countries. However, Garcia-Sayan stresses a number of reasons why countries should not rely excessively on international financial institutions in judicial reform. These institutions have their own ideological biases, and are often constitutionally prohibited from dealing with political matters. Garcia-Sayan then discusses the importance of judicial independence, and a civil society that maintains this independence. He concludes by stressing the long-term nature of the judicial reform process and the necessity of creating sustainable reform programs that continue even when external assistance ends.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial reform; legal reform; outside assistance; World Bank; economic development; human rights; corruption; judicial independence; judicial accountability; politics of reform; judicial efficiency/court delay; access to justice; costs of the legal system; public opinion of the legal system; civil society; legal education/training
Law Keywords: Commercial law; criminal law
Country/Region: Developing world (general); Latin America


This book documents the flaws and lessons of the U.S. Law and Development Movement of the 1960s in Latin America. Gardner presents case studies from authoritarian Brazil, socialist Chile, and democratic Colombia to show how American lawyers attempted to introduce U.S. models of lawyers and the law to Latin American countries. He focuses on four U.S. legal models which American lawyers misguidedly attempted to transfer to Latin America: the methodological model of case law and Socratic teaching; the model and structure of U.S. legal education; the professional model of the lawyers as problem-solver and social engineer; and the jurisprudential model marked by rule-skepticism and instrumental notions of the law. On occasion, American lawyers and programs ended up aiding authoritarian governments or state elites. Gardner argues that missionary hubris, a lack of understanding of the countries they sought to help, and an ethnocentric perspective thwarted the efforts of the law and development scholars and led to a widespread disillusionment with the movement. In chapter 6 he notes too that the failure of a legal education program in Brazil stemmed at least in part from a failure to consider the incentives of both the teachers and the students. Most law professors practice law full-time. They teach for the prestige it affords them and the ability to expand their practice and have little or no interest in spending time outside the classroom preparing. Most students attend law school part-time. A law degree is a means to a better job or a promotion, and they have no interest in a rigorous curriculum.

Methodology: Qualitative description and analysis
Subject Keywords: Law and Development Movement; legal profession; legal reform; legal training; legal instrumentalism; liberal legalism; authoritarianism; socialism; democracy; outside assistance; legal profession
Country/Region: Latin America; United States


This article surveys the systems of judicial review in socialist Eastern Europe. Garlicki traces the growth and change of judicial review systems over the last several decades, and argues that, overall, judicial review of administrative decisions plays an important role in Eastern Europe and is gradually growing in significance. Garlicki notes that the systems of judicial review in Eastern Europe are quite diverse. In general, according to Garlicki, judicial review in Eastern Europe serves to protect individual rights and liberties, and also ensures that executive administrative actions are consistent with parliamentary statutes, which are supposed
to be supreme in these countries. There is generally little review of the constitutionality of legislation or regulations, although Garlicki notes that there is a system of constitutional review in Yugoslavia, and constitutional review institutions in Hungary and Poland are growing.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial review; individual rights; constitutionalism; legislative supremacy; rule of law; socialism

**Law Keywords:** Administrative law; constitutional law

**Country/Region:** Eastern Europe


(“The Usefulness of Comparative Law for the Harmonization of Legal Systems”, in Spanish) The author highlights the usefulness of comparative law in the harmonization of current legal systems. The function of comparative law focuses on the use of the comparative method, as a previous step towards harmonization. The comparison may lead to finding equality, similarity or identity of legal reasons, being a decisive step to design a system that contains a new reason, which is the product of a combination of the reasons of the different legal systems that are the object of the harmonization process. This is the reason why comparative law helps to recognize and understand other perspectives, oscillating between explanation and understanding.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Civil law, common law, import of foreign law/legal transplants, law drafting, legal culture, legal reform

**Garro, Alejandro M.** “Access to Justice for the Poor in Latin America” In Mendez, Juan, Guillermo O’Donnell and Paulo Sergio Pinheiro, eds. *The Un(Rule) of Law and the Underprivileged in Latin America* (Notre Dame: University of Notre Dame Press, 1999)

Garro contends that legal aid programs to increase access to justice must be complemented by institutional reform of a country’s judicial processes. Legal aid programs in Latin America can be distinguished according to the geographical area of focus (urban/rural), the subject matter of claims, and sponsoring institutions. Garro argues that current programs focus too heavily on the representation of individual claims, which are unlikely to bring justice to the poor or increase their bargaining power as a whole. Instead, he advocates institutional reform to address court costs and delays, the aggregation of suits to advance collective interests, small claims courts, substantive legal reform, alternative dispute resolution, and legal education and training.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Access to justice; legal aid; judicial efficiency/court delay; judicial reform; class actions/public interest litigation; alternative dispute resolution; small claims courts; legal training

**Country/Region:** Latin America


This article argues that based on U.S. court data from the RAND Institute for Civil Justice and Federal Judicial Center studies, most U.S. civil cases are handled routinely, with minimal time for discovery, while a few high-stakes, high-conflict cases require much more time and expense. According to Garth, the current system of discovery works well for most cases; relatively few cases involving high-stakes business litigation create the problem. These cases, he argues, constitute an elite legal services market that should be considered and evaluated separate from the routine litigation market. In this market, lawyers and the businesses they represent have incentives to engage in “litigation warfare,” and thus do not respond to procedures to speed up the process. For example, lawyers may simply treat early mandatory disclosure as another opportunity for conflict. The division between ordinary and high-stakes, high-conflict cases helps explain some of the apparently conflicting findings of the RAND and FJC studies. Garth calls for more
empirical research to explore the different opportunities and incentives at work for the clients, lawyers, and judges involved in these separate markets.

Methodology: Qualitative description and analysis; quantitative analysis
Subject Keywords: Judicial efficiency/court delay; case management; judicial reform; legal profession; incentives of judges; civil procedure; litigation
Law Keywords: Civil litigation; commercial law
Country/Region: United States


This article uses formal, rational-choice analysis to develop a theory of US Supreme Court constitutional decision making, with special emphasis on how Supreme Court decisions are affected by changes in the political composition of legislative bodies. The Supreme Court, in this model, is a utility-maximizing agent, constrained only by the possibility of reversal by a constitutional amendment. Because constitutional amendments require the approval of the House, the Senate, and the state legislatures, the Supreme Court has a great deal of discretion when interpreting the constitution. However, shifts in the preferences of these legislative bodies can cause the Supreme Court to change its interpretation, if the new political alignment makes the old interpretation vulnerable to reversal through amendment. The authors interpret the shift in the Supreme Court’s position on New Deal legislation after the 1936 election as a case in which this happened. Prior to the 1936 election, despite the opposition of Congress to the Court’s decision, a constitutional amendment was impossible because Congress lacked the support of the state legislatures. But after the 1936 election, more state legislatures were controlled by Democrats. It was this shift, more than the landslides in the House or Senate, or Roosevelt’s popular support, that caused the Supreme Court to change its position on the New Deal legislation.

Methodology: Formal analysis
Subject Keywords: Judicial review; judicial decision-making; constitutional change
Law Keywords: Constitutional law
Country/Region: United States


Written in the context of the debate over reforming the English civil justice system, this article argues for more empirical research on the operation of the civil justice system and the necessity of conducting debates about the system within a broader theoretical framework that address the social function of law and the role and responsibility of the state in civil justice. The absence of any sort of framework can be explained by a lack of any convincing description of what the civil justice system is doing and, more significantly, the lack of any normative arguments about what the civil justice system should be doing. Three factors lie behind the difficulty in achieving an understanding of the civil justice system. First, there is a lack of interest in how the civil justice system operates, of which the most visible consequence is an absence of reliable data on who is uses the courts for what kinds of cases at what cost and with what success. Second, when compared to the criminal justice system, the civil justice system is quite heterogeneous, comprising a rag-bag of matters and participants. Third, it is difficult to unravel cause and effect when studying civil justice. The work of the civil courts represents the cumulative choices of thousands of decision-makers, and each decision is sensitive to a panoply factors such as procedural and substantive laws, legal costs, delays, and the like. How these variables interact is largely unknown. Despite all these hurdles, empirical research on user needs and perceptions can help policymakers decide what kinds of cases should have priority in terms of court resources and why.

Methodology: Qualitative description and analysis
Subject Keywords: Litigation; civil procedure; costs of the legal system; judicial efficiency/court delay; judicial reform
Law Keywords: Civil litigation
This book presents the findings of the 1996 Paths to Justice survey of 4,000 households in England and Wales, which investigated how individuals respond to problems. The study concluded that 8 of 10 non-trivial “justiciable” problems (where legal issues are involved) are dealt with without any legal proceedings undertaken, although a large number were abandoned without resolution. The likelihood of a problem being referred to the legal system varied principally by type of problem: some concerns, like divorce or injury needs, were referred directly to lawyers while others were usually addressed through self-help. In general, respondents sought quick and cheap solutions to problems, and avoided the courts because of the perceived cost, time, and discomfort involved in legal proceedings. The book argues that knowledge and advice provision is a major need, but that the effect of broader awareness on use of the courts is unclear: it could bring more disputes to court, or it could limit court use by enabling people to solve their own problems. Turning to the relevance of the survey results for recent U.K. civil justice reforms, the author argues that the simplified procedures for small claims are most likely to be relevant for most people; that ADR has so far been negligible as a means of resolving civil and family disputes; and that there is a large unmet need for legal advice that the new Community Legal Services might be able to address.

Methodology: Attitude surveys; quantitative analysis; qualitative description and analysis

Subject Keywords: Access to justice; legal services; public opinion of the legal system; costs of the legal system

Law Keywords: Civil litigation; family law

Country/Region: United Kingdom

This article concerns the relationship between the Basic Law governing Hong Kong’s status after reunification with China, the rule of law, and Hong Kong’s market economy. Ghai’s argument is built around three propositions. First, the Basic Law is designed to safeguard the capitalist system of Hong Kong. Second, there is a widespread perception that capitalism requires the rule of law, and the legitimacy of the Basic Law has been anchored in this belief that the rule of law will ensure Hong Kong’s future prosperity. Third, however, and most important is the claim that the legal system has not been particularly important to Hong Kong’s development. Rather, Hong Kong has fostered a kind of “Chinese capitalism” in which personal relationships and families are more important. After reunification with the PRC, Ghai argues, the law will become even less important, and this could undermine the legitimacy of the Basic Law. He argues that the future of the economy in Hong Kong will depend more on the nature of political authority than on the formal rules established by the Basic Law, and that relationships between economic actors will likely be governed by connections and patronage.

Methodology: Qualitative description and analysis

Subject Keywords: Economic development; noncontractual agreements/relational contract; culture/social norms/informal institutions; common law; colonialism/imperialism; judicial independence

Law Keywords: Commercial law; constitutional law; administrative law; contract law; property law

Country/Region: Hong Kong

This article surveys the experience of governments in East Africa with the rule of law and the principle of legality. Ghai argues that, while many societies have used the rule of law or legality as an organizing principle and a source of legitimacy, governments in East Africa have valued these concepts only as rhetoric. He examines both constitutional and “ordinary” law and finds that, although some regimes have selectively emphasized legality in those sectors of importance to foreign investors, in general law is used as a tool of the
ruling party or is ignored entirely. The legitimacy of East African regimes rests more on the stature and capability of a leader or ruling party. He notes that a move toward greater reliance on formal legality might actually undermine legitimacy, because the law is seen as esoteric and alienating, and because true rule of law requires constraints on government authority. Ghai concludes that a move toward greater legality, and systems of government based on democratic accountability rather than personal power, would be a positive development, but he is pessimistic about the likelihood of such a change.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Rule of law; symbolic use of law; property rights; equality/social justice; individual rights; economic development; socialism; constitutionalism; colonialism/imperialism; political parties; electoral process; federalism; law enforcement; public prosecutors; judicial independence; informal dispute resolution; ethnic politics  
**Law Keywords:** Administrative law; constitutional law; criminal law  
**Country/Region:** Africa


This article uses survey data from nine Western European countries to assess and compare their legal cultures. Legal culture, as the authors use the term, encompasses the values and attitudes of the general public toward law. The authors assess three dimensions of legal culture: support for the rule of law, perception that the law is neutral, and support for individual liberty. They find significant cross-national variation in these dimensions. However, they also note substantial within-country variation in legal culture. They use demographic variables to try to account for this variation, and find evidence that social class and education level are generally significant predictors of attitude toward law. At the national level, they offer some suggestive evidence that level of modernization (as opposed to traditionalism), degree of societal division, and commitment to individualism may explain some of the variation in national legal cultures. They conclude by noting the need for more research to investigate the behavioral consequences of variation in legal culture.

**Methodology:** Comparative analysis; attitude surveys; quantitative analysis  
**Subject Keywords:** Legal culture; rule of law; individual rights; public opinion of legal system; obligation to obey the law; divided societies; European Community/European Union; modernization theory  
**Country/Region:** Western Europe


Following the market reforms in 1986, the Vietnamese government urgently required commercial laws capable of regulating the rapidly emerging private sector. Along with contract and property laws, lawmakers considered company law essential for a market-based legal framework. Since reforms could not wait the decades required to distil normative standards from local commercial practices, lawmakers turned to Western laws for inspiration. The author’s working postulates suggest that the profound ideological, institutional and political-economic incongruities between transplanted Western company law and Vietnamese conditions, are likely to impede legal reception. They also imply that reception is not uniform across Vietnamese society. The working postulates offer the valuable insight that individual consent need not be given to the norms embedded in rules, but rather to the representations and forms of legal power. Company law norms are important in societies that emphasize complementary economic and cultural ideals such as commercial freedom, robust non-state market institutions, secure property rights and corporate governance. They are less meaningful in countries like Vietnam. Instead of posing a reception-rejection dichotomy, analysis based on the working postulates suggests that company law reception in Vietnam is layered or textured. The analysis reveals a fragmented legal landscape where foreign corporate ideas transfer rapidly to educated elites, but take much longer to penetrate informal rules below the surface.

**Methodology:** Qualitative description and analysis
Subject Keywords: Commercial law, culture/social norms/informal institutions, customary law/indigenous law, ideological role of law, import of foreign law/legal transplants, legal culture, legal pluralism, legal reform, outside assistance, post-socialist transition, socialism
Country/Region: Vietnam/East Asia


Gillman critiques Tate and Haynie’s study of the functions performed by the Philippine Supreme Court after the onset, consolidation, and breakdown of Marcos’ authoritarian regime. More generally, Gillman attacks the positivistic, quantitative social science methodology Tate and Haynie adopt for their study. Gillman argues that the search for general deterministic laws in the social sciences – similar to those found in the natural sciences – is inappropriate, because most social and political action is made up of contingent decisions of purposeful actors in particular contexts. For example, he attacks Tate and Haynie’s method of counting cases as a way to measure the performance of certain political functions, since according to Gillman quantifiable “behaviors” cannot be understood without understanding the mind-states and particular contexts of the people who carried them out. Instead, Gillman advocates a historical and ethnographic interpretivist approach to the study of judicial politics, and social life more generally.

Methodology: Critical review
Subject Keywords: Judicial decision-making; judicial independence; authoritarianism; state of emergency/martial law
Country/Region: Philippines


In recent decades, new democracies around the world have adopted constitutional courts to oversee the operation of democratic politics. Where does judicial power come from, how does it develop in the early stages of democratic liberalization, and what political conditions support its expansion? This book tries to answer these questions through an examination of three constitutional courts in Asia: Taiwan, Korea, and Mongolia. In a region where law has traditionally been viewed as a tool of authoritarian rulers, constitutional courts in these three societies are becoming a real constraint on government. In contrast with conventional culturalist accounts, this book argues that the design and function of constitutional review are largely a function of politics and interests. Judicial review – the power of judges to rule an act of a legislature or executive unconstitutional – is a solution to the problem of uncertainty in constitutional design. By providing “insurance” to prospective electoral losers, judicial review can facilitate democracy.

Methodology: Qualitative description and analysis
Subject Keywords: Authoritarianism, constitutional change, constitutional law, constitutionalism, democracy, human rights, individual rights, institutionalization, judicial independence, judicial review, legal culture, legislative supremacy, obligation to obey the law, rule of law, separation of powers
Country/Region: Taiwan, Korea, Mongolia/East Asia Pacific


Since 1990, Mongolia has undergone peaceful constitutional change and has conducted several democratic elections. Human rights are well-respected, the media is free and political competition exists. During the early years of transition, Mongolia’s Constitutional Court played an important role in facilitating democratic change. The court occasionally overturned parliamentary legislation while serving as a vehicle to protect human rights and the constitutional scheme. However, in recent years, Mongolia’s constitutional court has found itself at the center of a major controversy regarding the very structure of the political system. Through a series of decisions that has placed it at odds with the legislature, the court has raised questions about its ability to play an appropriate role in a constitutional democracy. This article traces the origins of the
problems with the Mongolian constitutional scheme and describes the Court’s role in precipitating the political crisis.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutional change, constitutional law, democracy, judicial decision-making, judicial review, legal culture, litigation, political instability, post-socialist transition, post-transition justice, rule of law, separation of powers
Country/Region: Mongolia/East Asia Pacific


This article discusses the increasing politicization in the selection of U.S. state judges. In more than 40 U.S. states, judges are elected. Judicial elections are now marked by much more campaign spending, aggressive advertising, and ideological confrontation than in the past. The issues in controversy are diverse, but polarization in government, the shift in political battleground from the federal government to the states on a number of fractious issues, and state legislature efforts at tort reform are possible reasons. Critics argue that the impartiality of the judicial process will suffer as a result.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; judicial elections; political parties; judicial selection/promotion
Country/Region: United States


The contemporary voices of jurists and judges of different legal traditions, within mixed jurisdictions, is an indication of ongoing mixité. The existence of dialogue is an indication of meaningful comparison and commensurability. The content of the dialogue is most fruitfully directed towards the merits of particular legal propositions. Arguments which reify concepts of legal culture, or legal systems, or legal civilizations, and urge their necessary preservation, are philosophically untenable, self-defeating, and incompatible with the underlying character of human organization. The effect of ongoing dialogue is to open the range of available legal sources.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, common law, legal culture, import of foreign law/legal transplants


After defining the concept of incommensurability, the author applies it to the field of comparative law. He argues that legal systems are not closed entities. In the past, they have also been open to foreign influences. Legal traditions exist as large amounts of detailed and communicable information. They contain much second-order information as to the criteria and means for storage and reproduction of their own information. That their information is communicable is proven by legal practice, which displays considerable uniformity in response to the stimulus provided by the information of the tradition.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, colonialism/imperialism, common law, culture/social norms/informal institutions, customary law/indigenous law, import of foreign law/legal transplants, Islamic law, legal culture

Goldin, Bennie The Judge, the Prince, and the Usurper – from UDI to Zimbabwe (New York: Vantage Press, 1990)

The author, a judge of the High Court of Rhodesia (now Zimbabwe) from 1964 to 1981, discusses the position of judges and the judiciary during the so-called “unilateral declaration of independence” (UDI) period between 1965 and 1980. In this period, the colonial government of Rhodesia declared independence
from Great Britain and promulgated a new constitution, but Britain refused to recognize that the colony was independent. However, there was no military conflict, and, except for the British governor in Rhodesia, all government officers, including judges, stayed in their posts. The position of judges was difficult because the legal authority under which they sat was not clear. Goldin recounts how the judiciary and various individual judges handled the situation, and he discusses some of the most important constitutional test cases. His account concludes with the termination of the UDI period and the establishment of the Republic of Zimbabwe in 1980.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; colonialism/imperialism; political reform/regime change; secession; constitutional change
Law Keywords: Constitutional law
Country/Region: Zimbabwe


In this article, Golding comments on the ideal of the rule of law, taking as the point of departure the phenomenon of transitional regimes attempting to restore or institute the rule of law. He notes that while countries around the world are trying to establish the rule of law, the ideal itself has come under attack in the West, mostly from left-wing legal academics. Golding uses Lon Fuller’s concept of the rule of law as the internal morality of law, arguing that deviation from his standards of legal morality is a kind of legal pathology that can be more or less severe. An important aspect of this issue concerns the reasonable expectations of citizens. Golding further maintains that the differences of degree of legal pathology have moral significance, and that it would be a mistake to refuse to recognize the qualitative difference between a regime such as Nazi Germany and that of a modern Western state simply because both of them diverged from the ideal of rule of law.

Methodology: Conceptual/philosophical inquiry; qualitative description and analysis
Subject Keywords: Rule of law; post-transition justice; political reform/regime change; constitutionalism; legal positivism; obligation to obey the law; state of emergency; authoritarianism
Country/Region: France; Germany


Judicial control over public power has expanded greatly of the past fifty years. Public decision-making has come under close scrutiny by courts. At the same time, the abuse of power by public bodies has also increased over the past fifty years. This is a dilemma. In expanding their control over public power, the courts have stretched existing legal concepts, introduced novel concepts and embraced new techniques of interpretation. The author looks at how public power has been controlled by the courts and some of the issues the courts are likely to face in the coming years. The article examines the new benchmarks the courts have set for those who wield public power: what new concepts they have introduced, what old ones have been expanded, what types of interpretative approaches have guided the courts.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, judicial review
Country/Region: Sri Lanka


This paper argues that judicial reform projects in Latin America must take into account both the transitional nature of the state at this time, and the relevant economic considerations. With regard to the former, Pena points out that globalization and the fact that the state is ill-equipped to meet increasing demands on it calls for strategic adaptation of state institutions, including the judiciary. Such adaptation would include increased privatization and use of alternative dispute resolution, improving performance evaluation and human resource development, decentralization of the judicial bureaucracy, and treating citizens as citizens rather
than as subjects. With regard to economic factors, Pena argues that, because justice is in general a private good, court fees and other mechanisms should be used to make litigants pay for the costs of the system. Furthermore, since courts are often not the most efficient way to provide justice, there should be greater investment in other alternative mechanisms such as arbitration and mediation. Additionally, he argues, the question of access to justice must be addressed.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial reform; judicial efficiency/court delay; judicial independence; economic development; equality/social justice; alternative dispute resolution; arbitration; mediation; court administration; democracy; access to justice; costs of the legal system; litigation; legal education/training
Law Keywords: Civil litigation; criminal law
Country/Region: Latin America


In this chapter, Goodin discusses the problems of constitutionalism in societies characterized by “radical social diversity” – where ethnic, religious, and cultural cleavages are so deep that groups demand special recognition and protection in the constitution. This radical difference, Goodin stresses, is different from pluralism, which is present in all societies. He argues that political constitutions depend for their success on social conditions which the constitution itself cannot necessarily generate. He then discusses the potential and problems of different ways of accommodating radical difference, and emphasizes the importance of searching for achievable second-best solutions rather than striving after an unobtainable ideal. His analysis leads him to conclude that wholesale borrowing of constitutional provisions is almost always inappropriate. In some situations secession is the only solution; otherwise, to be successful constitutions require a certain amount of trust between groups, just as a capitalist market depends on trust between economic agents, rather than simply the institutions of contract and law enforcement.

Methodology: Conceptual/philosophical inquiry; qualitative description and analysis
Subject Keywords: Constitutionalism; import of foreign law/legal transplants; ethnic politics; federalism; group rights; constitution drafting; secession; individual rights; noncontractual agreements/relational contract; culture/social norms/informal institutions; divided societies
Law Keywords: Constitutional law

Goriely, Tamara “Debating the Quality of Legal Services: Differing Models of the Good Lawyer” Legal Profession 1(2):159-171 (1994)

Goriely discusses, in the context of proposals to reform the UK Legal Aid Board, different conceptions of the “quality” of legal service. She argues that while most people would agree on the essential elements of legal service quality – client-oriented service, accurate advice, efficiency, and effectiveness in securing tangible results – people differ widely as to the stress that should be placed on these different dimensions. While the traditional view of the lawyer’s job stresses accuracy, specialists prefer results-oriented measures while funders are more concerned with efficiency and consumer groups care most about client satisfaction. She concludes that the Legal Aid Board’s decision to try to measure the quality of legal services as part of its reform proposal presents the difficult task of developing a system of quality controls that is both workable and broad enough to capture these various aspects of “quality”.

Methodology: Qualitative description and analysis
Subject Keywords: Legal aid; legal services; legal profession; legal reform; performance indicators
Country/Region: United Kingdom

This article discusses the proposal of the UK Legal Aid Board to establish new “quality assurance criteria” for solicitors and to give preferential treatment to those firms that meet these criteria. Goriely generally endorses this focus on quality control, but she points out that the Legal Aid Board’s proposal as presented does not include any role for client feedback. She argues that this omission is a serious concern, since only clients can provide adequate feedback on important aspects of the quality of legal services, including information about charges, adequate client-solicitor contact, and the handling of complaints. She concludes that meaningful and relevant information can be gathered from clients by using properly-designed questionnaires, and that including client surveys in performance evaluations would motivate solicitors to take the client-oriented aspects of their jobs more seriously.

Methodology: Qualitative description and analysis
Subject Keywords: Legal aid; legal services; access to justice; costs of the legal system; performance indicators
Law Keywords: Family law; civil litigation
Country/Region: United Kingdom


As assessment after two years of the Woolf reforms to the civil procedure rules governing actions in England and Wales. It is based on interviews with lawyers, insurers, and claims managers supplemented by analysis of case files. Practitioners were generally pleased with the rules establishing procedures that claimants had to follow before filing suit. They believed that these rules helped focus the parties on the key issues at an early stage in the litigation, thus encouraging more openness and a greater likelihood of settlement. Four main criticisms were leveled. 1) There were no sanctions on those who failed to act reasonably in pre-filing negotiations. 2) The use of a joint expert rather than one loyal solely to one side or the other. 3) Outside London, case management reforms were seen as ineffective because the courts were unable to list applications quickly enough for the new procedural timetables to have any real bite. 4) The reforms had not reduced litigation costs.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice; legal reform; judicial reform; judicial efficiency/court delay; civil procedure; case management; small claims courts; costs of the legal system; judicial review; out of court settlement
Law Keywords: Civil litigation
Country/Region: United Kingdom


This chapter is an inquiry into the rationale for, and development of, legal aid schemes. The authors begin by considering several arguments for state subsidization of legal services. The access argument holds that legal services are necessary to secure equal access to procedural justice, because without legal assistance not all citizens can effectively realize their rights. The instrumentalist view, by contrast, addresses substantive equality: legal aid should contribute to material improvement for the poor. The authors locate their own view—that legal services should enable an “equality of citizenship”—between these “equality of rights” and “equality of fortune” theories. Turning to the development of legal aid schemes, the authors survey several explanations for differences among western democracies’ levels of legal aid, none of which they find sufficient: common law/civil law distinctions; strength of the legal profession; overall state welfare spending; and religious identity (Catholic vs. Protestant). By the 1980s, they note, expansive ideas on access to justice were in retreat everywhere: the United Kingdom, Canada, United States, and Australia have all restricted their legal aid programs. Costs have continued to rise, only in part because of “supplier-induced demand.” The U.K. government’s response, however, was to make tactical rather than strategic changes to its programs. Only recently has the government moved beyond the existing legal aid scheme and tried alternative delivery methods. The authors argue that reforms should be based on orienting legal services toward social rather than private benefit: legal services should be focused on information efforts, advocacy,
and collective representation, rather than on individual dispute resolution. That approach would realistically address the problem of limited resources while setting priorities straight.

**Methodology:** Conceptual/philosophical inquiry; qualitative description and analysis  
**Subject Keywords:** Access to justice; legal services; costs of the legal system; equality/social justice; social services  
**Law Keywords:** Civil litigation  
**Country/Region:** United Kingdom, United States, Western Europe

---


(“The Reform of Access to Administrative Documents”, in French) The law about the rights of citizens in their relation with the administration of April 2000 improves the access to administrative documents in France. The authors describe the scope of the reform and analyze the extension of the competence of the institution set up to this purpose by previous laws (CADA, Commission for Access to Administrative Documents). They also present how the new law strengthens the CADA and the rights of the citizens.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative law, bureaucracy, freedom of information legislation  
**Country/Region:** France/Europe

---


The idea of the state is Western and foreign to the African tradition and rather arbitrary in the form imported by the colonial powers. As a consequence, legal transplants usually take place from more complex societies to less complex ones. By contrast, the alternative dispute resolution (ADR) movement that has developed in modern societies has been described as a return to a simple model of dispute settlement used in the past and in modern non-Western societies. The author argues that this is not the case.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, alternative dispute resolution, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, import for foreign law/legal transplants, informal dispute resolution, legal pluralism  
**Country/Region:** Eritrea, Ethiopia, Somalia, Djibuti/Africa

---

**Gray, Cheryl W.** “Reforming Legal Systems in Developing and Transition Countries” *Finance and Development* (September 1997) pp. 14-17

Gray introduces the problems posed by an inadequate legal system for market economic development, and discusses the factors necessary for successful legal reform. She identifies three critical factors. First, there must be a supply of market-friendly laws. Frequently the best way to develop such laws is to adapt models general ideas from international “best practice”, though sometimes these models will be inadequate for the particular country’s situation. Second, there must be adequate supporting institutions. These include not only courts and other formal legal institutions, but also institutions to disseminate information and monitor the behavior of market participants. Third, there must be demand for law among market participants. This demand will only be generated to the extent that economic agents depend on the market and their reputation in it for survival. Gray argues that these three factors are inextricably linked and are all necessary for successful legal and economic reform.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Legal reform; economic reform; economic development; noncontractual agreements/relational contract; corruption; organized crime; legal transplants/import of foreign law; post-socialist transition  
**Law Keywords:** Commercial law; contract law
**Country/Region:** Russia; Eastern Europe; developing world (general)


This article develops a formal model of the institutions regulating agency relationships among the Maghribi traders, Jewish merchants who operated in the Mediterranean region around the eleventh century. Greif contends that these traders were able to overcome the problems inherent in hiring overseas agents in an environment where monitoring was difficult and agents had an incentive to cheat, thereby reaping the gains from expanded trade and lower transaction costs. Specifically, he argues that agency relations among the Maghribi traders were governed by a coalition – that is, a group whose members only hire each other – in which information was shared and cheaters were collectively punished. Greif also claims that, since contracts were usually incomplete, “cheating” was defined by reference to a culturally shared code of conduct. Greif concludes by noting that this coalition reduced agency and transaction costs, thereby promoting efficiency, but may also have been relatively inflexible and unable to take advantage of new welfare-enhancing opportunities.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Noncontractual agreements/relational contract; nonlegal sanctions; culture/social norms/informal institutions

**Law Keywords:** Contract law; commercial law

**Country/Region:** Western Europe; North Africa


Analyzing the topic of “Suing the Sovereign” from a Latin American perspective, the author raises awareness of a “hierarchy gap” before discussing the creation and role of the Inter-American system of human rights, the law of torts, and the goals for the future in Latin America.

The massive human rights violations in the 1970s and 1980s including disappearances, summary executions, and torture by government officials have a strong influence on the present perception of this issue. The regulation of emergency situations and the need for an independent judiciary are considered to be important.

Within the Organization of American States (OAS), the Commission of Human Rights (IACHR) and the Inter-American court of Human Rights play a central role to sanction violations of the Pact of San José.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative law, authoritarianism, due process, human rights, human rights law, individual rights, military courts, state of emergency/martial law, tort law

**Country/Region:** Latin America


Survival analysis, a statistical technique borrowed from the biological sciences, is used to compare the rate at which courts terminate their cases, identify the pace of litigation for different types of cases and different courts, and determine which stages of the litigation process contribute most to “delay.” The sample analyzed consists of 300 cases from each of five federal judicial districts with half drawn from the federal court and half from the state court in the district. The sampling method is discussed as well as the practical problems encountered in drawing the sample and coding the entries. Different theories of delay are reviewed, and the concept of delay is subjected to a searching and critical analysis which concludes that its application to civil litigation is ambiguous and can ultimately be misleading.

Among the findings are that “local legal culture” is not a useful concept for accounting for differences in case termination times, that the relationship of time to case outcomes is more complex than the literature posits, and that pleading reforms are unlikely to systematically reduce case processing times.

**Methodology:** quantitative analysis

A discussion of the origin of the English concept “rule of law” and the related German and French doctrines Rechtsstaat and Etat de Droit. Although all three are concerned with imposing effective limits on the exercise of public authority to safeguard the rights and liberties of citizens, the precise definition of each depends on ideas about law and public authority. Because these ideas themselves are constantly changing, all three doctrines are open-ended concepts, subject to debate and redefinition to meet the needs of an ever-changing political and legal environment. Historically, the German and French doctrines were less effective in checking state power because they reduced the problem to compliance with prescribed procedures, ignoring the substance of the rules and the democratic or undemocratic manner of their adoption. Developments since World War II have narrowed the differences in practice. Today in Western Europe, and increasingly in Eastern Europe as well, all three terms are used to refer to a system with a written constitution enforced by courts remote from the political process. This enforcement allows for flexibility in the adaptation of ordinary law to the changing needs of society while at the same time preserving the idea of a body of fundamental rules of special dignity and stability.


In this article, Gundersen examines the “popular tribunals” instituted in Mozambique by the post-independence revolutionary government. Gundersen argues that the popular tribunal exists in the borderland between the formal and informal, or customary, systems of law operating in Mozambique. She notes first that the ideology of popular justice in Mozambique stresses popular participation, procedural informalism, and accessibility. She then discusses how the popular tribunals operate in practice, focusing especially on how the tribunals deal with disputes between husbands and wives. In her conclusion, Gundersen claims that the system of popular justice to some extent succeeded in transforming some discriminator aspects of customary law, but traditional attitudes toward gender roles continue to persist in the tribunals. She argues that, in general, the tribunals function as mediators between the various legal orders operating in Mozambique. She also notes that the system of popular justice has the advantage of flexibility – that is, the ability to adjust to rapid social changes – but that this flexibility comes at the cost of possible abuse by lay judges wielding wide discretionary powers.


(African Constitutions and the Language of Justice) This study touches on an area of research totally ignored but particularly important in the context of judicial life. It deals on the one hand with the languages of justice in francophone Africa and the abnormal judicial communication which results from the use of an official and foreign language, and on the other hand with the help brought by the African Constitutions in matters of language and freedom of speech. It shows that these texts could be considered either as a frame of rules for the use of African languages during investigations and trials, or as the foundation for the elaboration of a set
of regulations. It concludes by underlining the paradox presented by the use of a minority language to judge the majority of the population.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Colonialism/imperialism; constitutional law; due process; human rights; import of foreign law/legal transplants; individual rights; legal culture; language policy  
**Country/Region:** Africa


This paper uses statistical methods to study judicial elections in the United States. Hall argues, first, that contrary to the image of judicial elections often presented in the literature, elections reflect rational voting on the part of the electorate. Second, she argues that “retention races” – a reform found in the “Missouri Plan” – do not effectively insulate judicial elections from politics, as proponents often claim. Retention races are in fact affected by external political forces. Thus, she argues that two of the main arguments often used against judicial elections are incorrect. She notes in conclusion that there is extraordinary variation in electoral competition across systems and over time, which requires further study.

**Methodology:** Quantitative analysis  
**Subject Keywords:** Judicial elections; judicial independence; judicial reform; crime control; state budget; judicial selection/promotion  
**Country/Region:** United States


There has been skepticism within administrative law scholarship about the impact of judicial review on administrative action. This article presents some of the findings of a doctoral research project which investigated the influence of judicial review on the decision-making practices on homelessness of local government administrators. According to the author, although judicial review of course continues to act as an individual form of dispute resolution, this fieldwork suggests that judicial review has failed to control the bureaucratic cultures of the three research subjects. Although the impact is a question of degree, unlawful decision-making was rife in each authority despite extensive and prolonged exposure.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative law, bureaucracy, judicial review, legal implementation  
**Country/Region:** United Kingdom


This report is one of a series of four papers prepared by USAID, dealing with practical lessons of USAID’s experience with justice reform projects in Latin America. This paper focuses on efforts to reform and revise the law codes of several Latin American countries, and points out the strengths and limitations of the approach to code-drafting adopted by USAID and its Latin American partners. Hammergren notes that some progress has been made in drafting and adopting new codes, but also points out that the implementation of these new laws has been problematic and sometimes nonexistent. Part of the problem, she argues, is the tendency of both external advisors and Latin American reformers to see code-drafting as an end in itself, and to pay inadequate attention to questions of institutional capacity, social and political context, public support for reform, costs, and other factors affecting implementation. She offers a number of recommendations, based on USAID experience, for more effective law reform.

**Methodology:** Qualitative description and analysis; comparative analysis

This report is one of a series of four papers prepared by USAID, dealing with practical lessons of USAID’s experience with justice reform projects in Latin America. This paper focuses on efforts to reform and strengthen institutions in three sectors related to criminal justice: legal assistance and public defense, prosecution, and the judiciary. Hammergren discusses the experience of attempted institutional reform in each of these areas, noting the accomplishments and limitations of reform efforts in different countries. She notes that legal assistance and public defense has been the easiest of the three to work with and offers the clearest model of how to proceed; prosecution, and especially the judiciary, are much more complex and ambiguous. Overall, she emphasizes that reform strategies must work at both the individual and organizational levels, and that institutional reform should be incorporated in broader legal reform programs from the start, rather than put off until the end. While this does not mean institutional reform must, or should, be achieved first, Hammergren argues that other reforms should be designed with institutional capabilities in mind, and that institutional strengthening is best accomplished over the entire course of a reform.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Legal reform; institutional capacity; outside assistance; access to justice; legal services; public prosecutors; legal training/education; judicial efficiency/court delay; court administration; judicial independence; corruption; legal profession; costs of the legal system; USAID

**Law Keywords:** Criminal law

**Country/Region:** Latin America


This report is one of a series of four papers prepared by USAID, dealing with practical lessons of USAID’s experience with justice reform projects in Latin America. This paper focuses on judicial training programs. Hammergren overviews the general characteristics of judicial training programs in Latin America, and assesses their design and implementation. She stresses that, while effective training is an important part of legal reform, it needs to be integrated with other aspects of reform and respond to a specific need. Hammergren argues that training has often been identified as the “solution” before the problem is adequately understood, leading to ineffective program design. The report includes an appendix describing judicial training programs in different Latin American countries.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Legal reform; institutional capacity; outside assistance; legal training/education; politics of reform; public support for reform; USAID

**Law Keywords:** Criminal law

**Country/Region:** Latin America


This report is one of a series of four papers prepared by USAID, dealing with practical lessons of USAID’s experience with justice reform projects in Latin America. This paper focuses on the so-called “demand side” of justice reform projects – which includes such factors as political will, constituency support, and general public support for legal reform. Hammergren focuses on the “demand-side model”, which stresses the importance of political will, building constituencies, and generating public support for reform prior to undertaking substantive reform efforts. While Hammergren concurs with the model’s focus on political
factors, she argues that the key concepts (political will, constituency, public support) have been inadequately
developed, and she also disputes the sequencing of demand-creating efforts before substantive reform. She
argues that political will is often created as projects progress, and that overemphasis on generating
constituency and public support in the early stages might actually undermine reform.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Legal reform; outside assistance; politics of reform; public support for reform; civil
society; judicial independence; access to justice; legal implementation; institutional capacity; USAID

**Country/Region:** Latin America


Hayek maintained that English common law reflected the underlying notion that law was not so much
created as uncovered and that its principles were identical to the fundamental canons of justice upon which all
fee societies rest. The author retraces the history of English common law and equity. He suggests that while
Hayek’s characterization has some merit it fails as an accurate description of the genesis and development of
the common law. His account is defective in that it does not reflect the severe limitations of the early
common law, but his conclusions regarding the origin of its rules are questionable. Hayek’s claim that the
common law, because it reflected customary rules, was superior to the statues and ordinances that issues
from the kind and his council, cannot stand up to historical scrutiny. In fact, the legal and procedural rules of
civil and criminal procedure comprised statute as much as custom. The forms of action and the writs
associated with them, creatures of the Chancery, an integral arm of the curia Regis, were of singular
importance. The common law of which Hayek was such a proponent operated in what was primarily an
agrarian society. The laws that developed in England that proved necessary for the operation of an advanced
commercial society seem to have been far too complex to have relied solely on rules that were never made
explicit and that did not grow by deliberate design.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Absolutism, access to justice, authoritarianism, civil litigation, civil procedure, common
law, culture/social norms/informal institutions, customary law/indigenous law, ideological role of law,
judicial activism, judicial decision-making, judicial independence, legal culture, legal formalism, legal
proceduralism, litigation

**Country/Region:** England/Europe

Hanssen, F. Andrew “The Effect of Judicial Institutions on Uncertainty and the Rate of Litigation: The

This article investigates the relationship between the method of judicial selection (election v. appointment)
on the rate of litigation, using data from US state courts. Hanssen draws on the theoretical literature which
suggests that litigation rates will be higher when parties are more uncertain as to the outcome of litigation;
when both parties are more certain of the outcome, they are more likely to settle and save litigation costs.
Hanssen suggests that the method of judicial appointment might effect uncertainty in two ways. On the one
hand, appointed judges are shielded from political pressure, and this may make their decisions (especially in
politically sensitive cases) less certain, leading to more litigation. On the other hand, appointed judges are
likely to be in office longer, thus giving them a chance to establish a reputation. This effect ought to lead to
less litigation. Hanssen tries to determine which effect is stronger using three data sets: a sample of high
court decisions relating to public utility regulation during the 1970s energy crisis; total annual high court
filings; and annual civil filings in state trial courts. He finds strong and statistically significant evidence that
states with appointed judges have higher litigation rates in each of the first two data sets, but there is no
statistically significant effect in the third. This null result, he suggests, may be due to the fact that trial court
judges have less discretion, or because it is a more “noisy” sample. Overall, he concludes that mechanisms
that give judges more independence also increase uncertainty over outcomes, and hence increase litigation
rates. Thus higher litigation rates may be the price we have to pay for a more independent judiciary.

**Methodology:** Formal analysis; quantitative analysis
**Subject Keywords:** Judicial independence; judicial accountability; judicial selection/promotion; judicial elections; litigation; out-of-court settlement; public utilities/infrastructure; incentives of judges  
**Law Keywords:** Civil litigation; administrative law  
**Country/Region:** United States


This paper examines the hypothesis that relatively more independent reviewing courts make administrative agencies more likely to implement regulatory policies in ways that inhibit judicial review. Hanssen derives this hypothesis from a formal spatial model of regulatory policymaking, and he tests it using 1983 data on administrative staff size of insurance, utility, and education agencies in the 50 states of the US. His dependent variable is agency size, which is taken as a proxy for agency resources devoted to insulating regulation from judicial review, and his independent variable is whether the state in question appoints or elects its judges, which is taken as an indicator of judicial independence. He also controls for a number of other political, ideological, economic, and demographic variables. He finds, consistent with his hypothesis, that states with appointed (and therefore more independent) judges have agency staffs that are significantly larger. These results are robust to the possibility that judge appointment is endogenous, and to the use of an alternative measure for the dependent variable (administrative lawyers per capita). He concludes that the statistical evidence supports the proposition that agencies facing independent courts respond by adopting costly strategies that make review more difficult, but that understanding the more general efficiency implications of this phenomenon will require more research.

**Methodology:** Formal analysis; quantitative analysis  
**Subject Keywords:** Judicial review; judicial independence; judicial elections; judicial activism  
**Law Keywords:** Administrative law  
**Country/Region:** United States


The relationship between the global and the local is one of critical importance to all regions of the world. In the resolution of the tension between the irresistible surge of globalization and the undeniable facts of society as it actually exists in the various localities which together comprise the very world which is presumably the object or the subject-matter of globalization, law lies at the forefront. The author therefore investigates, in a somewhat narrative fashion the relationship between the global and the local in the context of law in South East Asia.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, ideological role of law, import of foreign law/legal transplants, legal culture, legal pluralism, litigation, popular justice  
**Country/Region:** East Asia, South Asia


This article presents and discusses the key events surrounding the 1988 judicial crisis in Malaysia, in which the Lord President of the Malaysian Supreme Court, as well as two other Supreme Court justices, were dismissed. According to Harding, the judiciary in Malaysia from independence up to the mid-1980s had been independent, but generally conservative and deferential to the executive. However, in 1986-88, a number of politically-charged decisions went against the government, and another extremely important case that could have threatened Prime Minister Mahatir’s position was pending. The executive felt threatened by the independence and activism of the judiciary, and took steps to reign it in. Harding concludes that the 1988 crisis suggests the need for stronger constitutional safeguards to protect judges against summary dismissal by the executive. He also concludes that, in this case, the executive sacrificed the valuable asset of judicial
independence for a temporary political advantage. However, he notes further that the damage to the judiciary may be limited if judges act to reassert their right to interpret and develop Malaysian law, and that there is some evidence that judges have continued to decide against the government even after the 1988 crisis.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial independence; impeachment of judges; separation of powers; judicial decision-making; political question doctrine/judicial deference; constitutionalism; constitutional change; judicial review

**Law Keywords:** Constitutional law; administrative law; criminal law

**Country/Region:** Malaysia


In this chapter, Harding discusses the legal issues raised by Article 13 of the Malaysian constitution, which provides that “no person shall be deprived of property save in accordance with law” and that “no law shall provide for compulsory acquisition or use of property without adequate compensation”. His discussion covers several issues, including the definition of “property”, the requirements imposed by the phrase “in accordance with law”, whether the two prongs of the Article should be read separately or together (i.e., whether all deprivations are also acquisitions), and the meaning of “adequate compensation”. He discusses existing Malaysian case law on these points (including opinions issued by the Privy Council in London) and offers his own suggestions for the proper interpretation and application of the Article.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Property rights; eminent domain; due process

**Law Keywords:** Constitutional law; property law

**Country/Region:** Malaysia


This article first provides an overview of offices of the ombudsman and human rights commissions before drawing on examples from institutions worldwide to focus on four key areas where the new challenges are to be found: dealing with privatization, developing transnational and cross-border co-operation, dealing with the military and paramilitary groups, and strengthening remedial powers. These four challenges are analyzed in detail. Ultimately, the author draws a number of conclusions and makes recommendations for the design of such institutions.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative law, authoritarianism, corruption, human rights, lok adalat, ombudsman, outside assistance, privatization

**Country/Region:** New Zealand, Australia, India, Pakistan, Fiji Islands, Papua New Guinea, Samoa, Solomon Islands, Sri Lanka, Vanuatu, Philippines, Indonesia, Malaysia, Ghana, Uganda


This book discusses the uses and abuses of so-called “states of emergency” in Africa, focusing particularly on the experience of Zimbabwe before and after the transition to majority rule in 1980. Hatchard argues that while the suspension of individual liberties under a constitutionally-declared state of emergency is sometimes necessary to ensure the very survival of the state, the device can be and has been abused by the executive to stifle political opposition and unjustly deprive people of their rights. He discusses, primarily in the context of Zimbabwe but with reference to some other African countries as well, how emergency legislation has been employed, and the analyzes the effectiveness of safeguards intended to prevent abuses. The conclusion
offers some suggestions for how to better protect individual rights and liberties without jeopardizing the state’s ability to ensure its own survival.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** State of emergency/martial law; constitutionalism; individual rights; colonialism/imperialism; judicial independence; political crimes; political instability; executive decrees; ombudsman  
**Law Keywords:** Constitutional law; criminal law  
**Country/Region:** Zimbabwe; Africa


The author argues that the performance of the first-generation ombudsman model in Africa was disappointing, but that expanded powers for the ombudsman in Uganda and Namibia might make a second-generation model more effective. Nine African states had established an ombudsman position from 1966 and 1985 to investigate abuse of power and maladministration by government officials, but two of these positions were since disbanded, and many proved ineffective due to resource or jurisdictional constraints. Uganda and Namibia have both now given the ombudsman power to investigate complaints of human rights violations as well as corruption. This expanded mandate, Hatchard argues, will increase government accountability and protection for citizens. In Namibia, the ombudsman has the power to bring proceedings, challenge the validity of unreasonable statutes, and recommend prosecution. The article notes that in most African countries, the ombudsman is a presidential appointee, and most officials held the position for short terms, possibly undermining their effectiveness. The recent change in Namibia and Uganda give encouragement that the newer ombudsmen will be more effective.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Ombudsman; human rights; corruption; judicial review  
**Country/Region:** Namibia; Uganda; Africa


The first Russian constitutional court was suspended by President Yeltsin in 1993 after it ruled that the president’s actions were unconstitutional and provided grounds for his removal. From 1991 until its suspension, the court produced a limited number of rulings, and particularly few on civil rights issues; at the same time, it played an excessively political role outside its primary role of judicial review. The chairman’s public partisanship in the power struggle between parliament and the president damaged the court’s credibility, although Hausmaninger notes that in a period of political transition and crises, trial and error is to be expected. The article then considers the new constitutional court, established (with restricted powers) in the 1993 constitution. The New Law passed by the Duma in 1994 spelled out the powers, functions, and procedures of the new institution. Surprisingly, most of the old justices retained their seats, and many of the new court’s functions were continuous with those of the abolished court. At the same time, Hausmaninger argues, the new law did not benefit from the lessons of the earlier failure, and does not provide sufficient safeguards to prevent the resumption of excessive political involvement, nor removes procedures that hampered the court’s efficiency. The new law could also have drawn to a greater extent on the experience of similar courts in foreign countries.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial review; constitutional change; constitutionalism; judicial deference; post-socialist transition; separation of powers; judicial independence; politics of reform; democracy; rule of law  
**Law Keywords:** Constitutional law; administrative law  
**Country/Region:** Russia

This essay reviews the law and economics literature on settlement of litigation. The essay begins with a description of the basic model of the choice between settlement and litigation, and then discusses the factors that influence whether or not a settlement is reached. Obstacles to settlement – such as asymmetric information, divergent interests of lawyer and client, non-rational behavior, and inability to agree on how to divide the surplus from settlement – are discussed. The essay analyzes the implications of the litigation-settlement models for different legal rules, and reaches the general conclusion that the effect of different rules is highly sensitive to the litigation context and the exact specification of the rule. The piece concludes by noting that rules designed to improve the accuracy of decisions at trial may have unintended adverse consequences on settlement.

Methodology: Literature review; formal analysis
Subject Keywords: Litigation; out-of-court settlement; costs of the legal system
Law Keywords: Civil litigation


This article describes the characteristics of what the authors call a dysfunctional legal system, in which the expense or inefficiency of the legal system is such that parties turn to other dispute resolution mechanisms, such as organized crime or private arbitration. The authors then address the question of how to get more people to use the legal system. They argue that court and police reforms should not be the starting point, since these reforms take a long time to be effective. Rather, legal reform should begin with the adoption of simple legal rules that imperfect courts can use effectively. These rules, according to the authors, should have three main characteristics. First, bad rules that inhibit market activity must be abolished. Second, the new rules should be as consistent as possible with existing business practice. Third, new rules should tell courts what to do in cases where existing laws are most conspicuously incomplete. The authors develop a simple economic model to support their case that a legal system based on simple, clear rules can generate substantial advantages over a dysfunctional legal system, even if it is not quite as efficient as a more sophisticated and complex legal system. The basic conclusion is that it is best to begin with a system of simple rules, and allow this system to develop over time as the needs of private agents and the capabilities of courts develop.

Methodology: Formal analysis; qualitative description and analysis
Subject Keywords: Legal reform; organized crime; private enforcement organizations; alternative dispute resolution; adjudicative competition; corruption; judicial efficiency/court delay; judicial reform; costs of the legal system; litigation; law enforcement; politics of reform; public support for reform
Law Keywords: Contract law; commercial law
Country/Region: Russia; Eastern Europe


This article begins by pointing out the poor economic performance of Russia as compared to Eastern Europe, and attributing much of Russia’s performance lag to deficiencies in its institutions, especially the legal system. According to the authors, parties in Russia avoid the public legal system both because the legal system is inadequate and because the parties want to avoid contact with the government. In response to the failure of the state to provide an effective public legal system, parties have turned to private enforcement mechanisms, both legal and illegal. However, though these mechanisms sometimes work well, they are often inefficient, largely because the rules private enforcement agents use often differ and are not well known. As a solution, the authors propose that the state create public rules, but leave the enforcement to private agents. They argue further that such rules ought to be clear and simple, create a clear private remedy to disputes, and agree with prevailing practice or custom. In the long term, public enforcement will be necessary, but in the short and medium term, they claim, a system of public rule-making and private enforcement is best suited to Russia and many other developing or transition economies.
Methodology: Qualitative description and analysis
Subject Keywords: Legal reform; economic development; post-socialist transition; law enforcement; legal implementation; culture/social norms/informal institutions; nonlegal sanctions; organized crime; private enforcement organizations; arbitration; corruption; incentives of judges; debt collection; import of foreign law/legal transplants
Law Keywords: Contract law; commercial law; administrative law
Country/Region: Russia

Hayden, Robert M. *Disputes and Arguments Amongst Nomads: A Caste Council in India.* (New Delhi: Oxford University Press, 1999.)

A description of how the Nandiwallas, a caste of nomads in western India, settle disputes through the panchayat. A panchayat is composed of senior members of a caste and was the traditional way disputes were resolved in the Indian subcontinent before the introduction of formal courts. The author argues that the success of the panchayat depends on the strength of caste ties, and thus as these have weakened the use of the panchayat has declined accordingly. He also contends that his work supports the view that the panchayat is a caste, not village, institution, and that those who have seen in the panchayat as the basis for village democracy have misapprehended its nature.

Methodology: Qualitative description and analysis
Subject Keywords: Panchayat; alternative dispute resolution; culture/social norms/informal institutions; access to justice; informal dispute resolution
Country/Region: South Asia; India, Bangladesh, Pakistan


In dealing with the negative consequences of increased international interaction and globalization, the costs and distress resulting from legal conflict can be mitigated by reducing differences in legal systems, so that the same or similar “rules of the game” apply no matter where the participants may find themselves. The effort to reduce difference among national legal systems is commonly referred to as “harmonization”. Another method for reducing differences is “approximation”, meaning the process of reforming the rules of various legal systems so that they approximate each other. There is still a lot to be done as to harmonization of procedural law.

The project presented in this paper endeavors to draft procedural rules that a country could adopt for adjudication of disputes arising from international transactions. It is inspired by the desire to unite many diverse jurisdictions under one system of procedural rules. The authors describe and analyze the fundamental similarities in procedural systems, the differences among procedural systems, the rules for formulations of claims, discovery, procedure at plenary hearings, second-instance review and finality, as well as the adoption of these rules, and their purpose.

In 2000, UNIDROIT joined the American Law Institute (ALI) in this project. The extensive comments to each of the established rules aim at assuring their uniform application in different countries.

Methodology: Qualitative description and analysis
Subject Keywords: Civil procedure, civil procedure reform, civil litigation, codification, legal drafting, law reform


This article considers the problem of court delay and attempts to remedy it. Hazard claims that, although proposed solutions to court delay are often presented as technical fixes, they all have a significant political aspect. He argues that political commitment and support is therefore critical in addressing the problem. He also argues that modern political communities are unable to provide high quality public judicial services, due to collective action problems. He proposes that we ought to consider the possibility of privatizing the administration of justice in many areas, whether through greater use of arbitration, dispute resolution by
private voluntary associations, the family, or other social institutions. He suggests further that we could consider making resort to a mechanism of nonpublic justice a precondition of resorting to the public courts for many types of controversies.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Private adjudication; judicial efficiency/court delay; litigation; court administration; judicial reform; legal reform; politics of reform; costs of the legal system; alternative dispute resolution; arbitration  
**Law Keywords:** Civil litigation  
**Country/Region:** United States

Hazdra, Peter *Afrikanisches Gewohnheitsrecht und “modernes” staatliches Recht* (Frankfurt: Peter Lang Europäischer Verlag der Wissenschaften, 1999), 194 pages

(“African Customary Law and ‘Modern’ State Law”, in German) When they colonized Africa, all European Nations introduced their respective legal and judicial systems in their territories. These systems were based on values that were very different from those of African ethnic groups. The coexistence of these two systems and the resulting legal pluralism still characterizes the African legal and judicial landscape. The author demonstrates the distortion of the local systems due to European colonization and change of the role of traditional authorities in these societies. Based on examples from Southern Africa, the author examines the relevance of African customary law. He identifies conflicts and common points. Eventually, he suggests various reform approaches.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, colonialism/imperialism, customary law/indigenous law, culture/social norms/informal institutions, family law, gender/women’s rights, ideological role of law, legal pluralism, import of foreign law/legal transplants, legal culture, popular justice  
**Country/Region:** South Africa, Botswana, Lesotho, Swaziland/Africa


This article discusses the increasing activism of South Korea’s new Constitutional Court. The first section of the article provides a brief overview of the history of judicial review in Korea from 1948 to 1987. During this period, though the constitution and the system of judicial review went through many revisions, there was never a great deal of actual constitutional review in practice. However, under the Sixth Republic, which was established following pro-democracy demonstrations in 1987, the new Constitutional Court has emerged as an activist institution that, according to Healy, has made great strides in establishing its legitimacy and protecting individual rights. After describing the structure, composition, and powers of the Court, Healy analyzes decisions in a few specific areas – the National Security Law and criminal procedures, press freedom and censorship, and family law. He concludes that the Court has done a great deal to increase individual freedom and strike down undemocratic laws promulgated by previous authoritarian regimes. He also argues that, as democratic institutions mature in Korea, the Court will have to evolve to take a role consistent with the new shape of government and society.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial review; constitutional change; political reform/regime change; individual rights; separation of powers; judicial independence; judicial selection/promotion; press freedom; gender/women’s rights  
**Law Keywords:** Constitutional law; criminal law; tort law; family law  
**Country/Region:** South Korea

(“Bridging the Legal Cultures of the Baltic Sea”, four articles in English, ten articles in German) These conference proceedings present and analyze the similarities and differences of the legal cultures of the countries around the Baltic Sea, their common roots and the harmonization of these different systems within the process of European integration.

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Authoritarianism, civil law, codification, common law, constitution drafting, constitutional change, contract law, democracy, economic reform, European Community/European Union, import of foreign law/legal transplants, legal culture, legal reform, political reform/ regime change, post-socialist transition, rule of law
Country/Region: Denmark, Germany, Sweden, Poland, Estonia, Latvia, Lithuania, Finland, Russia/Europe


Hendley examines the reason why legal and institutional reforms in Russia do not seem to have increased the reliance of Russian businessmen on the formal legal system. After briefly surveying some of the major theories related to the emergence of formal legal rationality, she examines the incentives and behavior of businessmen in contemporary Russia. She finds that most Russian businesses continue to rely on personal trust, patron-client networks, political connections, and private enforcement, rather than the formal legal system, when making contracts and resolving disputes. Hendley argues that the reason has less to do with shortcomings with the court system (though these problems do exist) than with the attitudes of Russian businessmen. Law is still viewed with distrust, as an instrument of state power rather than a means to protect individuals. Russian businessmen are also reluctant to cede their personal power by relying on impersonal rules. Hendley further points out that, even if reliance on universalistic legal rules would ultimately be more efficient and profitable for everybody, a collective action problem makes the shift to this system difficult. She concludes that, if Russian legal reforms are to succeed, reformers must pay greater attention to changing attitudes and developing a legal culture.

Methodology: Qualitative description and analysis
Subject Keywords: Post-socialist transition; economic reform; privatization; economic development; legal reform; legal culture; culture/social norms/informal institutions; nonlegal sanctions; organized crime; private enforcement organizations; outside assistance; legal instrumentalism; public opinion of the legal system; law enforcement
Law Keywords: Contract law; commercial law
Country/Region: Russia


A description of Guatemala’s Justice Centers, a structure that brings together police, prosecutors, judges, public defenders, local civil society, and private attorneys to solve problems collaboratively. The key elements of the Centers are (1) organizational and administrative structures that reduce delay and create accountability; (2) use of standardized, user-friendly legal forms; (3) user-friendly case management and records systems that reduce opportunities for corruption and generate accurate statistics; (4) interpreters and culturally appropriate outreach and education programs to make the legal system accessible to non-native Spanish speakers; and (5) availability of procedures that promote ADR, plea bargaining and other consensual means for resolving disputes.

Methodology: Qualitative description and analysis
Subject: access to justice; alternative dispute resolution; donor agency administration; donor coordination; legal services; public prosecutors;
Law keywords: criminal law
Country/region: Guatemala

Written by the Justice Sector Advisor in the U.S. Agency for International Development’ Guatemala Mission, this article describes the steps the government of Guatemala has taken to overhaul its criminal procedure code. The new code does away with an archaic written system based on the inquisitorial system. In its stead it substitutes an oral system that is much more adversarial in nature. The system also introduces such heretofore unknown concepts as plea bargaining, the presumption of innocence, and shortened pre-trial detentions. To promote justice at the local level and make the new code operational, Guatemala has taken positive steps to investigate, prosecute, and convict persons who have committed crimes. New justice centers are providing increased access to justice at the community level, and training programs have been instituted to increase the quality of judges, and attorneys. The actions of USAID and the UN in assisting Guatemala in making the transition to the new code and in creating a more modern and responsive justice system are also described.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** crime control; judicial reform; donor agency administration; United Nations  
**Law Keywords:** criminal law  
**Country/Region:** Guatemala


This article attempts to establish an explicit link between objective measures of political constraints and economic growth rates. According to Henisz, current theoretical work posits an important link between the credibility of government policy and economic growth. However, these hypotheses are not testable in their current form. The extant empirical literature on political institutions and economic growth generally uses ratings from private firms that assess “country risk” to measure the quality of institutions. But, as Henisz points out, these measures are subjective and are available for only a small number of countries and years. He attempts to derive a more objective and testable measure of political constraint by drawing on formal spatial modeling theory. Specifically, he constructs an index of “political constraint” based on the number of “veto players” (independent branches of government that have the power to block policy change) and the distribution of preferences across and within these players. His empirical analysis (on 157 countries from 1960 to 1994) shows that this political constraint index has a positive and statistically significant effect on economic growth. He also finds that it is highly correlated with the existing subjective indexes, suggesting that they are tracking the same phenomenon. (However, there are important differences between the measures – especially in the case of East and Southeast Asia – which Henisz argues suggest the superiority of his index to the subjective measures.) He concludes by suggesting ways his simple model could be refined and extended.

**Methodology:** Formal analysis; quantitative analysis; comparative analysis  
**Subject Keywords:** Economic development; investment; property rights; rent-seeking; separation of powers; political parties; democracy; authoritarianism; legislative process; bicameralism  
**Country/Region:** Developing world (general); Asia; North America; Western Europe; Africa; Latin America


This short piece summarizes the findings of research on the use of alternative dispute resolution (ADR) after the 1990 Civil Justice Reform Act in the US. The data shows that ADR is not widely used, and where it has been used it has not had noticeable success in reducing time-to-disposition or costs. However, Hensler cautions against an overly negative conclusion, pointing out that ADR may still have positive effects that don’t show up in this data. First, ADR may increase the chances of resolving disputes before a case is ever filed. Second, ADR may have benefits for specific kinds of cases, even if those benefits don’t show up in aggregate effects. Third, ADR may increase quality of judgements, even if it doesn’t improve efficiency. Fourth, the type of ADR implemented thus far may be inadequate, and may not reflect the type of ADR
likely to have a real transformative effect on dispute settlement. Hensler concludes that more research is still
needed to assess the real benefits and limitations of ADR.

Methodology: Qualitative description and analysis
Subject Keywords: Alternative dispute resolution; arbitration; mediation; judicial efficiency/court delay; costs of the legal system
Law Keywords: Civil litigation
Country/Region: United States


This article briefly summarizes the key events of the 1988 Malaysian judiciary crisis, in which the Lord
President of the Supreme Court, Tun Salleh Abas, and two other Supreme Court justices were dismissed.
According to many commentators, the actions against Salleh Abas and the other justices were driven by
Prime Minister Mahatir’s desire to limit the independence of the judiciary and avoid an unfavorable ruling in
an upcoming politically-charged case. Although the bulk of this article is a straight chronology of events,
Hickling offers some concluding thoughts on the significance of this executive-judicial confrontation. He
suggests that Malaysia and other Asian countries have inherited a British common law, separation-of-powers
system which is based on confrontation, but that many Asians do not like confrontation and would prefer a
system based on consultation between the branches of government.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; impeachment of judges; separation of powers
Country/Region: Malaysia

Mohamed Suffixian, H.P. Lee, and F.A. Trindade, eds. The Constitution of Malaysia: Its Development 1957-

This chapter provides an overview of constitutional developments in Malaysia from 1957 (the date of
Malaysian independence) up to 1977. Hickling begins by discussing the original constitutional concepts of
the framers of the Malaysian constitution, and he then goes on to discuss how the constitution evolved in the
subsequent twenty years. He stresses in particular how political events – the fight against communist
insurgents, the changes in the composition and structure of the federation, and the persistent tensions between
different ethnic groups – shaped these constitutional developments. The chapter discusses both legislative
actions and judicial interpretation.

Methodology: Qualitative description and analysis
Subject Keywords: Democracy; constitutionalism; constitutional change; constitution drafting; common
law; parliamentary supremacy; state of emergency/martial law; federalism; individual rights; ethnic politics;
judicial decision-making
Law Keywords: Constitutional law; administrative law
Country/Region: Malaysia


This article attempts to model and empirically test the constraints imposed on judges’ discretion by concerns
with their “wealth” – especially the possibility of promotion. The key intermediate variable is the rate of
reversal; the authors hypothesize that frequent reversal is detrimental to a judge’s future wealth. In their
model, the amount of discretion the judge exercises to maximize utility (balancing the desire to influence
society with concerns for future wealth) is determined largely by age and seniority. Thus the authors
estimate a model using rate of reversal as the dependent variable and age, seniority, and control variables as
the independent variables. If the hypothesis that concerns over reversal constrain judicial discretion is
correct, then the coefficients on the age or seniority variables ought to be significant. However, the result of
running this regression (using a sample of US district court judges from 1974) is negative. Their evidence
provides no basis for rejecting the null hypothesis that there is no trade-off between discretion and wealth.
The authors conclude that, if their results are correct, then constraints on judges – if they exist – must come from sources other than the possibility of reversal by a higher court.

**Methodology:** Formal analysis; quantitative analysis
**Subject Keywords:** Judicial decision-making; incentives of judges
**Country/Region:** United States


South African courts face challenges in the application of indigenous customary law in a constitutional framework. The recognition of customary law has created a new dimension to the whole question of the application of customary law and the related issues of its conceptualization, ascertainment and proof in the courts. The paper suggests that solutions will be complex and seeks to push the debate further. While the right to culture would demand the application of the living customary law than official customary law, the right to equality requires an inclusive approach to the ascertainment of this customary law to accommodate previously marginalized groups within the African communities.

**Methodology:** Qualitative description and analysis
**Subject Keywords:** Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, equality/social justice, gender/women’s rights, human rights, legal pluralism
**Country/Region:** South Africa


The Promotion of Administrative Justice Act 3 of 2000 provided an opportunity to further the integration of South African administrative law, and thereby to reduce its heavy dependency on judicial review. It was also an opportunity to address the potential problems created by judicial review itself: to lay the foundations for a more balanced approach to judicial intervention and non-intervention. According to the author the Act disappoints in both respects.

**Methodology:** Qualitative description and analysis
**Subject Keywords:** Administrative law, authoritarianism, democracy, judicial review
**Country/Region:** South Africa

**Hoffmann-Riem, Wolfgang** *Modernisierung von Recht und Justiz* (Frankfurt: Suhrkamp, 2000), 364 pages

(“Modernization of Law and Justice”, in German) In this book, Justice at the Constitutional Court Hoffmann-Riem formulates his programmatic proposals for changes in the German Legal and Judicial System within the European context. His thoughts are structures around four parts: (1) Public and Private Responsibility for the Implementation of Law, (2) In Transition Towards a Renewed Legal System, (3) Modernization of Judicial Administration, and (4) Privileges and Responsibilities. The 26 chapters deal with: From Results to Service - A Chance for the Overstretched State; Sharing Responsibilities Between Public and Private - The Realization of the Rule of Law is not a Public Domain Only; Judicial Competition - Conflict Resolution in a Supply-Driven Legal Order; Mediation - An Example of a New Conflict Culture; Justice for the Poor - Legal Aid; Private Law and Public Law - The Transition from a Civil to a Social ‘Rechtsstaat’; Europe as a Challenge - Phase-out Models of German Law; The State of Judicial Remedies - How many Instances and Jurisdictions Do We Need?; Innovation Through Law - Innovation In Law; Law for Modern Network Management - Transition Towards a Service Oriented Society; 1984 or 2004 - Data Protection from the Perspective of Increasing Threat by Private Instances; The German Basic Law - A Foundation also for the Future?: Law and Reality - Shift of Perspective of Legal Sciences in Dialogue with Social Sciences; Truth, Justice, Independence, and Efficiency - The Magic Quadrangle; Crisis or Chance of Chance - The Justice Sector Struggling for Its New Functions; "Justiz 2000" as Example - Structural Elements of Reform; Reforming and Reform-Learning - On the Culture of Innovation in the Justice Sector; Cooperation Between Powers - Another Way of Modernization; Judicial Service - A Crucial Element of Service; Justice as Object -
Changes in Budgeting; Between Autonomy and Anatomy - On Functional and Personal Privileges in the Justice Sector; Notaries in Transition - Public Service Deliverers or Entrepreneurs?; Initial and Ongoing Education - An Investment in the Future; The ‘Einheitsjurist’ - A Self-Delusion of German Lawyers; Competition - Also During Legal Education

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, appeals/cassation, civil litigation, civil procedure, civil procedure reform, court administration, court performance, democracy, European Community/European Union, federalism, judicial accountability, judicial decision-making, judicial independence, judicial reform, judicial training, legal education/training, legal reform, mediation, litigation, notaries
Country/Region: Germany/Europe


Holmes argues that Russia’s current situation demonstrates how liberal rights are dependent on a strong, accountable state. He suggests that an overemphasis on negative liberties and protection of individuals from intrusive government has obscured how important a strong state, capable of extracting resources and enforcing its own laws, is for ensuring the protection of liberal freedoms. In Russia, Holmes claims, state weakness and insolvency have created a system in which corruption and organized crime are rampant, state institutions such as courts are incapable of functioning effectively, property rights and contracts are insecure, and democracy is a sham. The lesson, Holmes concludes, is that liberal values are threatened just as much by state incapacity as by despotic state power.

Methodology: Qualitative description and analysis
Subject Keywords: Liberalism; individual rights; democracy; organized crime; crime control; corruption; institutional capacity; state budget; property rights
Law Keywords: Criminal law; contract law; property law; commercial law
Country/Region: Russia


This report was co-authored by nine graduate students who participated in a workshop at the Woodrow Wilson School. The report analyzes foreign aid programs intended to assist Russia in reforming its legal system. The report first surveys the history of efforts to promote development through law, then outlines current foreign assistance projects in Russia, focusing in-depth on policies under the auspices of USAID and the World Bank. The report concludes with several lessons drawn from these attempts at legal reform in Russia, noting especially the need for improved donor coordination, the importance of Russian input and control in the administration of many reform projects, the need to build on existing institutions rather than attempting radical transformation, and the need for greater attention to criminal and human rights programs in addition to commercial law reform. The report includes numerous other suggestions on how the administration of foreign aid programs could be improved.

Methodology: Qualitative description and analysis
Subject Keywords: Legal reform; law drafting; legal training/education; outside assistance; politics of reform; donor coordination; donor agency administration; Law and Development Movement; economic development; USAID; World Bank; import of foreign law/legal transplants; corruption; organized crime; legal information; law enforcement; donor politics; informal sector/black markets; crime control
Law Keywords: Criminal law; intellectual property law; commercial law
Country/Region: Russia

This article discusses the role of the Brazilian judiciary in promoting social justice. Holston argues that the Brazilian judiciary traditionally has been, and largely still is, conservative, elitist, resistant to democratic change, and disconnected from real social issues. These tendencies are reinforced, he claims, by the system of legal education in Brazil, which is excessively positivist and idealist in its view of law, and is isolated from the social sciences. However, Holston claims that since the mid-1980s, three developments have put pressure on the judiciary to become more active and reformist. The first is the promulgation of the new Federal Constitution in 1988, which establishes many public rights that the existing Civil Code seems to violate. Second, new social movements have generated the social basis to legitimate a judicial reformist approach. Third, the “alternative law movement” – which draws on legal pluralism and the Critical Legal Studies movement – has been gaining ground in Brazilian law schools. But Holston emphasizes that the Brazilian judiciary is still overwhelmingly conservative, and that reform will take time.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial reform; social movements; individual rights; constitution drafting; legal pluralism; judicial independence; judicial review; judicial decision-making; access to justice; civil society; legal education/training; property rights; equality/social justice; land disputes; politics of resistance; legal positivism; civil law; Critical Legal Studies

**Law Keywords:** Constitutional law; civil litigation

**Country/Region:** Brazil

---


This article examines recent Islamic law reform in Malaysia against theories of legal change. The Islamic revival has led to legal reform in many Muslim countries, including major systemic change in the Malaysian legal system. Horowitz argues that evolutionist, utilitarian, and social structure-based approaches to legal change fail to explain the changes in Malaysia. Rather, he adopts a primarily *intentionalist* approach in focusing on the innovators who drove legal change in Malaysia. While broader social factors are at work, Horowitz emphasizes the role of the “visible hands” enacting legal change: movements of Islamic resurgence and political competition with the Islamic opposition. After 1988, the constitution was amended such that the *shariah* courts were made a parallel system rather than a subordinate part of the main court system. Other recent changes include formalization of *shariah*-based legal proceedings, better education and training of *kadi* judges, and attempts to make Islamic law more uniform across the federal states. Horowitz discusses new Islamic statute drafting in the 1980s; different Islamic models of family law, and controversies arising in areas such as divorce and polygamy; and new rules governing Islamic business transactions. Islamic reform, he argues, shows the influence of English law, liberal borrowing across Islamic schools of law, and hybridization that have made the Malaysian legal system simultaneously more Islamic and more Western.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Islamic law; religion; legal development; legal pluralism; legal reform; import of foreign law/legal transplants; legal evolution theory; gender/women’s rights; legal education/training; public support for reform

**Law Keywords:** Family law; commercial law; civil litigation

**Country/Region:** Malaysia

---

Hourquebie, Fabrice  *Sur l’émergence du contre-pouvoir juridictionnel sous la Cinquième République* (Bruxelles : Bruylant, 2004), 678 pages

(“On the Emergence of the Judicial Branch as a Counter-Power in the Fifth Republic”, in French) The law-centered conception of parliamentarism has historically marked French legal culture entailing distrust vis-à-vis the judiciary. Today, there is truly trust in the judiciary, according to the author. The new status of the judge in the French legal system as a counter-power to the legislative and executive branches of government is both visible prior and subsequent to the rise in importance of legal affairs in a rule of law system based on a Constitution. The author traces this evolution and analyzes its theoretical underpinnings.
Methodology: Qualitative description and analysis

Subject Keywords: Access to justice, administrative courts, constitutional change, constitutional law, constitutionalism, democracy, human rights, individual rights, judicial activism, judicial decision-making, judicial independence, law drafting, legal culture, legal ideology, legislative supremacy, rule of law, separation of powers

Country/Region: France/Europe

Houwerzijl, H. S. *De toekomst van de gefinancierde rechtshulp* (The Hague: Boom Juridische Uitgevers 2003) 145 pages

(“The Future of Subsidized Legal Aid”, in Dutch) This collection of contributions to a conference on subsidized legal aid in the Netherlands addresses current challenges in the Dutch legal aid system and presents a variety of views of and attitudes towards changes to the existing system. The different stakeholders discuss a multitude of arguments in favor and against projected changes.

Methodology: Qualitative description and analysis

Subject Keywords: Access to Justice, costs of the legal system, legal aid, legal services, litigation

Country/Region: Netherlands/Europe


According to the author, the development of law and economics is a success story in the expansion of economics into other social sciences since the 1960s. The success has been attributed to the fact that economics offer a powerful set of analytical tools with a forceful theory of human behavior. But if this is the only reason, then the move of economics into other social sciences such as political science and sociology should have been equally successful. This, however, has not been true, and the discrepancy calls for an explanation. The commonalities between economics and law in both subject matter and analytical approach provide a more convincing explanation; some of the difficulties faced by the legal economists can also be explained by an appreciation of the commonalities between economics and law.

Methodology: Qualitative description and analysis

Subject Keywords: Legal culture, legal doctrine, legal ideology, legal rationality, legal reform


The authors attempt to explain the correlation (and alleged causal relationship) between economic development and democracy, using comparative historical analysis. The cases they focus on are the advanced countries of Western Europe, and the countries of Central and South America and the Caribbean. Their central conclusion is capitalist development is related to democracy because it shifts the balance of class power by weakening the power of the landed aristocracy and strengthening the working and middle classes. Capitalist development strengthens these lower classes by increasing their ability to organize, due to developments such as urbanization, factory production, and improvements in transportation and communication. In contrast to other theories, the authors argue that the bourgeoisie, though sometimes supportive of democracy, played only a marginal role in its development, and sometimes actually opposed democratization. They also qualify their argument, noting that factors other than the shift in the balance of class power – such as the international structure of power and the impact of colonialism – were critically important in different contexts. They conclude by noting some of the implications of their argument for democratization in the modern third world.

Methodology: Comparative analysis; qualitative description and analysis

Subject Keywords: Democracy; economic development; political reform/regime change; civil society; modernization theory; dependency theory; colonialism/imperialism; authoritarianism

Country/Region: Western Europe; Latin America

This article uses data from medical malpractice claims in the state of Florida to evaluate the results of applying the English rule to civil litigation. The English rule of fee-shifting requires losers to compensate winners for the costs of legal representation. Hughes and Snyder evaluate six hypotheses regarding the effect of the English rule. Using the data from Florida, which introduced the English rule between 1980 and 1985 for medical malpractice, they suggest that the adoption of the English rule led to an increase in the quality of claims pursued. They draw this finding from several observed effects in the data: plaintiffs won more frequently under the English rule than under the American rule, the value of claims won by plaintiffs increased, and the value of settlements rose under the English rule. At the same time, in contrast to the prevailing assumption, the English rule did not lead to the filing of more small, meritorious claims, but encouraged increased legal expenditures. The authors argue that it is unclear to what extent the higher plaintiff win rate reflects an improved quality of claims or the censoring out of low-value claims purely because the English rule increases the prospects of costly litigation.

Methodology: Formal analysis; quantitative analysis
Subject Keywords: Settlement; litigation; civil procedure; costs of the legal system
Law Keywords: Civil litigation
Country/Region: United States


This report describes the finding from an interview study conducted in 1999 of a representative sample of thirty-two Bosnian judges and prosecutors with jurisdiction for national war crimes trials. The purpose of this study was to assess the understanding of attitudes among these legal professionals towards the International Criminal Tribunal for the former Yugoslavia and prosecution of war crimes. The finding suggest that across national groups, participants supported the concept of accountability for those who committed war atrocities. Yet, the extent of support for the ICTY varied by national group. Professionalism, Justice, Western European Tradition, corruption and decline in standards, politics and the international community are topics treated by this report.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, criminal sentencing, democracy, divided societies, ethnic politics, human rights, religion, United Nations
Country/Region: Bosnia and Herzegovina, Eastern Europe, Central Europe


Witchcraft accusations, killings and violence are current phenomena in South Africa. According to the author there is some evidence of a positive correlation between the criminalization of customary court involvement in witchcraft accusation cases and the advent of witch-killings. South African state courts do not recognize the existence of witchcraft. As a result, mobs take the law into their own hands and consider that state courts side with witches. The author rather tries to define witchcraft than to present possible legal approaches. He suggests a model somewhere between the Cameroonian model and the Commission Report’s proposal without going into further details.

Methodology: Qualitative description and analysis
Subject Keywords: Colonialism/imperialism, criminal law, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics
Country/Region: Africa, South Africa, Cameroon
Empirical studies of land rights privatization have tended to underemphasize the unintended impacts of land rights reform relative to establishing whether the predicted impacts have occurred. This article, in reviewing some of the unintended consequences of the 1998 Uganda Land Act, draws attention to ways in which intended impacts may be undercut by lack of both consultation and foresight in anticipating responses to new legal provisions and by lack of adequate resourcing of the reform process. It also recognizes that unintended outcomes may sometimes reflect appropriate adaptations of legal provisions at the local level, and briefly considers what light the Ugandan experience can throw on recent proposals for formalization of informal property rights in the Third World.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Agricultural sector, credit market, culture/social norms/informal institutions, equality/social justice, gender/women’s rights, land disputes, law drafting, property rights

**Country/Region:** Uganda/Africa

---

Hurst reviews the role of law and legal institutions in the economic development of the United States. He concludes, among other things, that the variety and bulk of actions taken in legal form to assure the validity and security of titles are persuasive circumstantial evidence that people have organized much market activity in reliance on law. Their reliance has been most marked where they loan or advance money and want security. In this domain, at least, their activities have shown that they act with sober attention to the legal consequences of possible breakdowns in relations.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Property rights; credit market; investment

**Law Keywords:** Property law

**Country/Region:** United States

---

Ietswaart argues, comparing data by socioeconomic area of dispute (e.g. landlord-tenant relations) is a more promising approach, although here, too, there are significant gaps in available data. From analyzing these specific areas of litigation, Ietswaart argues that litigation of certain types of cases has risen appreciably while in other areas it has not increased, and points to the complex factors causing these differential increases. She also suggests that based on data from the five countries compared, the more special courts and procedures simplifying access, the higher litigation rates will be. The article concludes by recommending more cross-national comparison and analysis focused on categories of litigation.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Litigation; access to justice; judicial efficiency/court delay

**Law Keywords:** Civil litigation

**Country/Region:** Western Europe

This chapter discusses federalism, using the perspective of positive political economy and public choice. The authors review the classical and modern economics literatures on federal constitutions, and compare the political and economic characteristics of two types of constitutional structure: the confederate republic (consisting of independent city-states, each of which has veto power and right of secession) and the compound republic (which has a relatively strong central government). After reviewing the alleged advantages and disadvantages of these government structures, the authors argue that there is a central tension between economic efficiency and democratic rights and virtues. Hence, some trade-off or balance of these competing objectives is required. While the decentralized confederate republic tends to favor the goals of democracy and participation, the more centralized compound republic is often advantageous from the perspective of economic efficiency. The authors also develop a formal framework for analyzing federal systems, which vary along two important dimensions: local representation in the central government, and the assignment of responsibility over different policy areas. Finally, they discuss the factors that contribute to the stability of federal constitutions.

Methodology: Qualitative description and analysis; formal analysis; literature review

Subject Keywords: Federalism; democracy; economic development; public choice; political instability; secession; constitutionalism; individual rights; political participation; legislative process

Law Keywords: Constitutional law


This document reports the findings of an international mission sent by the International Bar Association to Zimbabwe in March 2001 to investigate allegations that the Zimbabwean government was subverting the independence of the judiciary and threatening to undermine the rule of law. After providing the relevant background information and describing the composition of the fact-finding team and its mission, the report summarizes recent clashes between the executive and the judiciary over the issue of land redistribution and election violence. The refusal of the government to enforce court orders, public statements made by government officials attacking the judiciary, the forced resignation of former Chief Justice Anthony Gubbay, and the situation of the legal profession are all discussed. The report concludes that the rule of law in Zimbabwe is in grave peril, and conduct committed or encouraged by the executive has put judicial independence and the fabric of democracy at risk. The report emphasizes that land reform and social justice more generally are indeed pressing concerns in Zimbabwe, but argues that these concerns do not justify the assaults on the rule of law committed and permitted by the Mugabe government. The report suggests further that much of the lawlessness and intimidation of judges may have more to do with a base desire to cling to power at any cost rather than a principled commitment to ideals of social justice.

Methodology: Qualitative description and analysis

Subject Keywords: Agricultural sector; democracy; electoral process; equality/social justice; judicial independence; judicial review; land disputes; law enforcement; legal profession; property rights; rule of law; separation of powers; human rights

Law Keywords: Constitutional law; human rights law

Country/Region: Zimbabwe


This article describes bilateral and multilateral donors’ new integration of governance concerns into development, beginning in the 1980s and increasing in the 1990s. In 1989, the World Bank attributed Africa’s failures in development to a crisis in governance, while bilateral donors in the early 1990s found it politically possible to establish ideological criteria for development aid. The article describes the policies of
a number of major donor agencies and the extent to which they incorporate democracy and human rights principles or conditions. In the mid-1990s, Canadian government policy statements incorporated governance/democracy/human rights priorities into the development agency’s framework. The article argues that the general emphasis on governance in development is occurring at the same time that liberal democratic states in the North are suffering from crises of legitimacy and governance. The authors contend that the new theories of development are simplistic in calling for a limited state, and overstate the potential of democracy to achieve economic and social transformation. They also discuss other critiques of the current ideas, noting debates over convergence, accountability and democracy, and an elite-driven aid regime. The article concludes with an overview of articles in the special issue of the journal.

**Methodology:** Summary/synopsis; literature review; qualitative description and analysis  
**Subject Keywords:** Democracy; human rights; governance; economic development; donor politics; donor agency administration; dependency theory; modernization theory; World Bank  
**Country/Region:** Developing world (general); Canada; Africa

**Jacob, Herbert; Blankenburg, Erhard; Kritzer, Herbert M; Provine, Doris Marie & Sanders, Joseph**  

This comprehensive book compares the intersection of political forces and legal practices in five industrial nations. The authors, political scientists and legal scholars, investigate how constitutional courts function in each country, how the adjudication of criminal justice and the processing of civil disputes connect legal systems to politics, and how both ordinary citizens and large corporations use the courts. For each of the five countries, the authors discuss the structure of courts and access to them, the manner in which politics and law are differentiated and amalgamated, whether judicial posts are political prizes or bureaucratic positions, the ways in which courts are perceived as legitimate forums for addressing political conflicts, the degree of legal consciousness among citizens, the kinds of work lawyers do, and the manner in which law and courts are used as social control mechanisms. The authors find that although the extent to which courts participate in policymaking varies dramatically from country to country, judicial responsiveness to perceived public problems is not a uniquely American phenomenon.

**Methodology:** Comparative analysis, qualitative description and analysis  
**Subject Keywords:** Access to Justice, civil litigation, constitutional law, criminal law, democracy, judicial decision-making, judicial independence, judicial selection/promotion, legal culture, legal literacy, legal personnel, legal profession, public opinion of the legal system, rule of law, separation of powers  
**Country/Region:** USA, England, France, Germany, Japan


This chapter discusses the various legal remedies available for violations of the constitution in the Malaysian legal system. Jain first discusses the issue of constitutional judicial review generally, and argues that courts need to be active and creative in interpreting the constitution, finding an appropriate balance between the public interest and the individual interest. Jain claims that the role of the judiciary in constitutional interpretation is becoming even more crucial with the rapid expansion of the administrative bureaucracy and regulatory state. The author then goes on to discuss various specific forms of constitutional remedy in Malaysia, including writs of *habeas corpus*, *mandamus*, and *certiorari*, injunctions, and declarations. Recent developments in Malaysian case law with regard to each one are discussed. In the concluding section, Jain argues that the remedial law in Malaysia is relatively restrictive when compared to other common law countries. In Jain’s view, this may be a problem, as the remedial law as it currently exists is not equipped to deal with the rapid expansion of public power in Malaysia. He argues that, to address this problem, Malaysia courts ought to start taking a broader view with respect to things like “standing” and “jurisdictional error”.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial review; constitutionalism; separation of powers; individual rights; common law  
**Law Keywords:** Constitutional law; criminal law; administrative law  
**Country/Region:** Malaysia

The author argues that in East Asia, rule of law reform serves as an instrument of consolidating state power rather than a liberal development complementary to the growth of democracy and free markets. Jayasuriya argues that rational choice institutionalist theories underpinning current rule of law programs are as questionable as the modernization theories which propelled the now defunct law and development movement. Both sets of theories are marked by several flawed assumptions: that there is a nexus between economic modernization and legal development; that market development will lead to the growth of a strong middle class which will stimulate legal reform and representative institutions; that pressures for legal reform come from within the nation-state; and that rule of law is part of a package including the rise of democratic life and civil society. But the experience of East Asia challenges most of these assumptions, and the particular historical model on which they are based. In East Asian countries, many market transactions are based on relationships that lie outside the legal framework, including linkages between the state and economic actors. The enormous interest in legal reform stems from state elites – pursuing a state-building agenda – rather than from civil society. As a result of these political and ideological agendas of “activist” East Asian states, notions of the role of the judiciary also depart from the western liberal model of judicial independence.

Methodology: Literature review; qualitative description and analysis
Subject Keywords: Rule of law; legal reform; public choice; Law and Development Movement; modernization theory; culture/social norms/informal institutions; noncontractual agreements/relational contract; democracy; judicial independence; economic development; liberalism; politics of reform
Law Keywords: Administrative law; commercial law
Country/Region: East Asia


The author argues that the liberal Western conception of legal institutions presupposes a market economy and an autonomous civil society reflecting pluralistic social arrangements. Because East Asian economies are state-directed and civil society is managed and regulated by the state, legal institutions fulfill a different function than in the West, fostering state policies rather than, as in liberal societies, resolving conflicts between individuals. Case studies of the Chinese, Singaporean, and Indonesian court systems are presented to show how this different function affects judicial-executive relations. Rather than being characterized by a separation of power, he asserts that relations between the two branches in each of three countries are better described as a division of power based on close consultation and collaboration.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Judicial independence; civil society; individual rights; judicial review; judicial deference; liberalism; separation of powers
Country/Region: Singapore; Indonesia; China; East Asia


(The Legacy of Colonial Justice in Black Africa) Colonisation which turned upside down social structures in Black francophone Africa couldn’t spare judicial institutions. Colonial power had progressively put into place a so called “indigenous justice” attending to superior colonial interests. It was based on an ambiguous system which would respect traditional institutions in the name of public order and integrate in an authoritarian way indigenous people into an imported judicial order. Of foreign origin, this colonial justice was imposed, authoritarian, organized into a centralized hierarchy and based on inequality. But how to get rid
of what has become with the passing of history a common legacy for Africans? Clarity of Justice in Africa and therefore its effectiveness necessarily involves the breaking away from institutional colonial logic.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Colonialism/imperialism; culture/social norms/informal institutions; customary law/indigenous law; import of foreign law/legal transplants; judicial reform; legal culture  
**Country/Region:** Africa


The author explores the history of the denial of a right to free legal counsel in civil cases in the United States and compares this situation to the evolution in other developed countries, in many of which this right exists. Moreover, he explores the funding for legal aid in the United States and compares it to legal aid expenses in other countries. Other developed countries spend from 2.5 times as much of their GNP as the United States to seventeen times as much to provide access to justice for their lower income population. The author then analyzes the consequences of this fact for access to Justice in the United States.

**Methodology:** Qualitative description and analysis, comparative analysis  
**Subject Keywords:** Access to justice, civil litigation, constitutional law, costs of the legal system, human rights, legal aid, legal profession, state budget  
**Country/Region:** United States, Switzerland, France, Germany, Austria, Sweden, Europe, Canada


This article recounts the increasing use of class action lawsuits in China. In the village of Peijiawan, for example, 12,000 farmers are awaiting judgment on a class action suit against the local government, which levied illegal and exorbitant taxes in 1995. At least two dozen class action suits are pending in China, made possible by legal changes in 1991 that authorized group suits. Although cases have been won, others have been stymied in the courts, and villagers and lawyers alike approach suing the government with considerable trepidation.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Class actions/representative actions/public interest litigation; access to justice; group rights; litigation; legal reform; socialism; rule of law  
**Law Keywords:** Civil litigation; tax law; public interest litigation  
**Country/Region:** China


This collection of essays addresses such topics as the function of representative actions, the impact of civil procedure reform in common law countries, methods for reducing overload in courts of appeal, cassation, and amparo, and the likely effect of the Woolf reforms on civil litigation in England. Throughout the author argues that judicial policymakers have paid too little attention to the public purposes served by civil justice systems. As a result, reforms have focused solely on how courts and judges can deal with cases quickly and economically, matters chiefly of interest to the parties to the litigation. But the civil justice system serves important public ends. It clarifies and develops the law, serves to maintain citizen confidence in the legal system as a whole, and provides a background of norms and procedures against which the negotiation and regulation of conduct in both the public and private spheres takes place. Reformers should be mindful of these purposes when considering changes to the system. Comparative and historical studies can help in this respect. Thus, a study of the role of the judge in the civil law countries, particularly the part played by the French *juge de la mis en état*, can help to illuminate how reforms in common law jurisdictions that give the judge more authority to manage the pace of pretrial proceedings are likely to affect the way litigation is conducted.
This article focuses on how a group of landholders in Mexico used the law to resist the state’s attempt to expropriate their land for an urban development project. Jones argues that the law was used by this group as a means of resistance, in order to represent their claims against the state in the form of rights. Their legal discourse also exposed deeper concerns about justice, ethnicity, and national identity. In the end, the conflict was resolved in a way bearing little relation to the legal principles involved in the dispute. Nonetheless, Jones concludes that the law and legal discourse played an important role in this conflict with wider implications for judicial reform and the promotion of rule of law elsewhere in the developing world.

The author analyses the state of accession countries regarding Justice and Home Affairs. The enlargement of 2004 is the first one to include this area. Three challenges remain: reform of the judiciary and the administration, the mutual recognition and execution of judgments and the efficient management of border controls. A functional judicial system is considered to be a prerequisite for the rule of law.

In this article, Kagan notes that in the preceding 35 years, despite large increases in the volume of lending and the number of delinquent debts, the number of state supreme court debt cases has declined rapidly, and the number of trial court debt cases appears to have declined as well. This decline cannot, according to Kagan, be explained by a decline in potential problem-causing incidents. Rather, he argues that the decline of debt cases is due to the increased costs of litigation relative to alternative means of resolving debt problems, such as arbitration, bankruptcy, refinancing, etc. Kagan claims that three factors have increased the attractiveness of nonlitigation alternatives: legal rationalization of credit transactions, so that fewer cases appear contestable; increased litigation costs to creditors as a result of successful political lobbying by debtors for “debtors’ rights”; most importantly, systemic stabilization – welfare state measures, economic regulation, insurance arrangements, and market diversification that facilitate spreading of financial losses and encourage refinancing or absorption of losses rather than litigation.

An extended analysis of the conditions under which a legal rule or institution operating in one nation can successfully be transplanted to another. While the impact of geographical, economic, social, and cultural factors used to be stressed in determining whether a foreign law would “take,” industrialization, urbanization, and advances in communications have made these factors less of an obstacle. The most significant obstacles to successful transplants today are political factors. Among these the greatest one is the degree to which the law to be transplanted is linked with either formal constitutional functions or interest groups in the originating country. The former encompasses laws allocating rule-making, decision-making, or other policy-making powers. An example of the latter would be those institutions and procedures that express the power of the legal profession and the distribution of power within it. Illustrated throughout with copious examples of legal transplants among developed nations and between developed and developing nations.

Methodology: Qualitative description and analysis
Subject Keywords: Import of foreign law/legal transplants; politics of reform; legal profession; legislative process
Law Keywords: Constitutional law; administrative law
Country/Region: Developing world (general)


This article presents the RAND Institute for Civil Justice’s conclusions on the effect of case management in U.S. courts. The RAND data was drawn in part from a comparison of ten “pilot” federal court districts which had adopted case management principles following the 1990 Civil Justice Reform Act and ten other districts which had not. This data, based on statistics from January 1991 to December 1995, showed no significant differences between the districts in terms of time to disposition, costs, or participants’ satisfaction and views of fairness. At the same time, a separate RAND comparison of case management across districts and judges showed that early case management was associated with reduced time to disposition but increased litigation costs. The article also reviews implementation of the specific case management principles encouraged by the Civil Justice Reform Act.

Methodology: Quantitative analysis; attitude surveys
Subject Keywords: Case management; judicial efficiency/court delay; costs of the legal system; civil procedure; legal reform; alternative dispute resolution; mediation; court administration; judicial reform; pilot programs
Law Keywords: Civil litigation
Country/Region: United States


This article surveys notions of judicial review and judicial independence in Islamic law, arguing that both concepts are Islamically legitimate. Kamali argues that religious scholars are divided over whether an independent judicial status is valid in Islam, but that judicial independence is more in accordance with Quranic precepts of impartial justice. The historical record is mixed: judges sometimes enjoyed independence, but other periods saw widespread executive interference with judicial decisions. Kamali argues that in contrast to the dominant view that Islamic law does not recognize appellate review, the evidence supports only the more limited idea proscribing review of decisions based on ijihad (personal reasoning), in order to prevent judgments from being overturned simply because of differences in opinion. Using evidence from the Quran and sunnah, as well as from Islamic history, Kamali argues that a decision can be reviewed by other judges, especially when a judge’s error deviates from the clear principles of shariah. Islamic jurists have discussed a number of possible grounds for judicial review, including cases
where a ruling opposes the clear text of the Quran and *sunnah* and consensus, where there is suspicion of personal bias, or where there is an oppressive ruling issued by a disreputable judge.

**Methodology:** Conceptual/philosophical inquiry; literature review  
**Subject Keywords:** Islamic law; judicial independence; judicial review; religion; judicial decision-making; legal pluralism; separation of powers  
**Country/Region:** Middle East


The authors argue that the rule of law is important in the rhetoric of Asian governments modernizing their legal systems, but that it departs significantly from Western liberal conceptions of rule of law. In case studies of corporate insolvency law in six Asian legal systems—China, Taiwan, Hong Kong, Singapore, Malaysia, and Indonesia—they find that while these laws were based largely on European law, their manifestation is shaped by cultural, ideological, political and institutional features particular to these countries. The application of insolvency laws in these countries shows varying degrees of statism, strongest in China and weakest in Malaysia and Hong Kong. In addition, formal insolvency law is often marginalized in practice by informal and extra-legal networks of debt collection or interest protection, especially in Taiwan and Indonesia.

**Methodology:** Attitude surveys; comparative analysis; qualitative description and analysis  
**Subject Keywords:** Bankruptcy; culture/social norms/informal institutions; import of foreign law/legal transplants; rule of law; debt collection; nonlegal sanctions  
**Law Keywords:** Commercial law  
**Country/Region:** East Asia, Southeast Asia


This paper discusses the development and use of different types of indicators to track the performance of aid projects intended to improve human rights and democracy in developing countries. Kapoor first reviews the various types of indicators used by government development agencies, international financial institutions, and non-governmental organizations. He then discusses the methodological problems inherent in developing appropriate indicators. He argues for a mix of quantitative indicators, qualitative indicators, and what he calls “participatory indicators”, which are generated by engaging in dialogue with program stakeholders through techniques like focus groups, group workshops, the recording of oral histories, etc. Kapoor argues that these participatory indicators have many strengths, including better access to “local knowledge” and greater sensitivity to local socio-cultural conditions, and that such indicators are no more subjective than other types of indicators. However, he does note some limitations, and therefore concludes that more traditional qualitative and quantitative indicators ought to supplement participatory indicators. He concludes with specific recommendations for what CIDA ought to do to design new and better indicators. The report also includes an appendix listing various types of potential democracy and human rights indicators. Kapoor stresses, though, that this list is illustrative, not exhaustive, and specific programs should use indicators that are tailored to their needs.

**Methodology:** Qualitative description and analysis; literature review  
**Subject Keywords:** Performance indicators; human rights; democracy; CIDA; outside assistance; donor agency administration; political reform/regime change  
**Country/Region:** Developing world (general)

This article examines whether the mixed legal system presents a model for law teaching. The author observes that in most mixed legal systems, legal education does not focus attention on the encounter between legal traditions that is inherent in the idea of the law’s inherent mixedness. He argues that legal education might better be imagined as including a cross-cultural dialogue in law rather than as training for experts in a particular place or set of places. By imagining the mixed legal system more as an experience in encounter than a jurisdiction, legal education might be reoriented around ideals of nomadic and dialogic jurisprudence in place of jurisdictionally based concerns. The author invoked the concept of métissage advanced by scholars in other disciplines as a basis for arguing that legal education should ally itself with the encounter between different legal traditions as an organizing theme in law teaching. Instead of seeking a double or even multiple-tradition expertise, law teachers and their students would aspire to no allegiance at all before law’s nomadic identities and traditions.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, common law, import of foreign law/legal transplants, legal culture, legal education/training


In this article, Katz reflects on the current debate in the law and economics literature on the efficiency of social norms. He contends that too much scholarship has been addressed to a government audience and focused on the question of which institution (public or private) ought to have jurisdiction in setting rules and norms. Although this research is useful and should continue, there needs to be more research addressed to private parties and focused on the solution to specific substantive problems. Katz argues that if law and economics scholars really take private ordering seriously, they should place more emphasis on helping private parties develop efficient rules. The reasons for this emphasis, Katz suggests, are norms within the legal academic community, which ought to be changed.

Methodology: Critical review
Subject Keywords: Culture/social norms/informal institutions


Much of the work of the American federal courts involves interpreting laws passed by the Congress. Often these laws are ambiguous, contain gaps, or otherwise create problems of interpretation for the courts. This paper describes a project to facilitate communication between the courts and the Congress when the statutes are poorly drafted.

Methodology: Qualitative description and analysis
Subject Keywords: Law drafting; judicial decision-making; judicial review; legal implementation; legislative intent
Country/Region: United States


In this book, Kaufman examines the US Forest Service as a case study in administrative control. He points out that most of the actual work of the Forest Service is done by individual forest rangers, assigned to specific geographical districts. Given all of the factors that would tend to undermine central control of forest ranger behavior – including problems of internal communication, “capture” of field officers by local pressure groups, and the personal preferences of individual rangers, which are sometimes inconsistent with Forest Service policy – it is surprising to find that the Forest Service actually exhibits a relatively high degree of unity and administrative control of policy. Kaufman argues that the Forest Service has been relatively successful in achieving administrative control through its use of a variety of means, including reporting requirements, central budget control, regular inspections, transfer and promotion policies, hearing appeals
from the public, and the shaping of ranger preferences themselves. He stresses this last point in particular. The Forest Service, according to Kaufman, has combined recruitment and socialization policies in such a way that the rangers generally feel solidarity with the larger organization, and conform to central directives because of their personal desire to do so. This phenomenon, he claims, is very important for the administrative control of policy implementation.

**Methodology**: Qualitative description and analysis  
**Subject Keywords**: Bureaucracy; environmental protection; legal implementation; culture/social norms/informal institutions  
**Country/Region**: United States


According to the authors, while early neoclassical economics predicted that poor countries would grow faster than rich countries – because of the higher rate of return to capital and the ability to take advantage of technological advances developed elsewhere – in fact the reverse has been the case. Poor countries have been falling further behind, rather than catching up. The authors suggest that one reason this may be so is the deficiency of institutions to protect property and contract rights in much of the developing world. When institutions are poor, the high rates of return to capital normally associated with a scarce capital stock will not obtain because of the risk associated with investment. Likewise, it becomes difficult to adopt foreign technologies, because these usually require long-term capital investments. The authors test this hypothesis using several different measures of “institutional quality” – two indexes compiled by private firms that do country-risk analysis, and a measure of executive constraint developed by political scientists – and several control variables. They find that institutional quality is indeed a powerful determinant of a country’s ability to achieve a high relative growth rate and catch up with richer countries. This result is robust to numerous different specifications, the inclusion of additional control variables, and tests for reverse causality.

**Methodology**: Quantitative analysis; comparative analysis  
**Subject Keywords**: Economic development; rule of law; corruption; investment; property rights  
**Country/Region**: Developing world (general)


This article purports to catalogue and refute a number of arguments regarding the efficiency of private property and free contract. Specifically, with regard to private property, the authors criticize the following arguments for private property: that security in property increases productivity; that theft is inefficient; that private property reduces uncertainty; that private property facilitates coordination; and that private property leads to a more efficient allocation between work and leisure. Similarly, they attack the arguments for free contract which hold that: gains from trade depend on enforcement; breaches that don’t increase welfare are inefficient; enforcement reduces uncertainty; free contract reduces coordination failure; and that lack of free contract distorts the tradeoff between present and future goods. All these simplistic arguments are flawed, the authors assert, and while in some situations private property and contract may be efficient, whether or not this is so depends on the specifics of the particular circumstances, and cannot be deduced simply from the assumption of rational utility maximization. In the final section of their article, the authors generalize their argument and claim that any actually efficient system must contain a combination of rules drawn from private property/free contract and their opposites.

**Methodology**: Critical review; qualitative description and analysis  
**Subject Keywords**: Property rights; economic development; investment; taxation  
**Law Keywords**: Property law; contract law

**Kennett, Wendy** “*The Enforcement of Judgments in Europe*” (New York: Oxford University Press 2000), 435 pages
The application of rules, particularly those governing jurisdiction and recognition of judgments, substantially similar to those applicable in an international context is perceived not to be appropriate any more between European Union Member States. This book deals with enforcement of judgments between Member States and the Union. The main focus is on the Brussels Convention and mechanisms for the enforcement of judgments under it. This involves investigation and comparison of rules of procedure operating in Member States.

In a first chapter, the author describes the European Union Framework. She then describes, compares and analyzes the enforcement structures in various Member States before dealing with the problem of transfrontier execution of judgments.

Methodology: Qualitative description and analysis; comparative analysis

Subject Keywords: Civil procedure reform, civil procedure, debt collection, European Community/European Union, legal culture, legal profession

Country/Region: Europe, European Union


This article deals with the way judgments and other enforceable instruments are forcibly executed against the debtor for the benefit of individual creditors as opposed to collective satisfaction of all creditors of the same debtor in bankruptcy and other insolvency procedures. The five chapters discuss subsequently the foundations and organization of enforcement, including its classification, organs and constitutional underpinnings. Since enforcement is both a public law and procedural activity, the prerequisites for it to develop take a preeminent position: in the first place the delineation of enforceable instruments but also the issues connected to parties and to the principles governing enforcement proceedings (second chapter). Of primary importance is the judicial control over enforcement. The third chapter therefore starts with the sanctions against noncompliance with enforceability and goes on with instances and consequences of illegal enforcement as well as with litigation pertaining to enforcement. The last two chapters are devoted to what might be called the special part of enforcement, i.e. the particular modes and methods by which the creditors may obtain satisfaction for their substantive claims. Chapter four deals with the most important enforcement of money judgments and assimilated instruments, including the distribution of proceeds among several creditors, while chapter five reviews the peculiarities of nonmonetary enforcement.

Methodology: Qualitative description and analysis; comparative analysis

Subject Keywords: Common law, civil law, civil procedure reform, civil litigation, civil procedure, court administration, court delay, debt collection, judicial efficiency/court delay, legal culture, private enforcement organizations

Country/Region: Austria, Switzerland, Belgium, Netherlands, Brazil, Venezuela, Canada, Australia, Mexico, Argentina, India, Israel, Hungary, Japan, Guatemala, Uruguay, Sweden, Finland, Spain, United States, United Kingdom, Germany, France, Italy, Central Europe, Europe, Asia, Latin America, Africa


One focal point of Uganda’s Law Reform Commission has been the drafting of a Domestic Relations Bill proposing significant changes in women’s legal status within the institutions of marriage and succession. The author argues that the denial of property rights to women is a relatively recent development in Ugandan legal and social history. She distinguishes three periods in this evolution: From the 1940s through 1964, the courts interpreted customary law in terms favourable to women. The second period (mid 1960s through the late 1970s), is a period of transition and instability as magistrates struggle to reconcile the contradictions among women’s property rights, increased scarcity of land, and polygamy. The third phase highlights the agency of activist judges in orienting and consolidating shifts in judicial doctrine including restrictions against women signing land documents: women are not financially capable of purchasing property and there is a presumption that, unless proven otherwise, property belongs to men.
Methodology: Qualitative description and analysis
Subject Keywords: Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, equality/social justice, family law, gender/women’s rights, individual rights, judicial activism, land disputes, legal culture, legal doctrine, legal pluralism, property rights
Country/Region: Uganda/Africa

Khan, B. Zorina “Litigation and Settlement of Civil Disputes During Economic Development: Evidence from New South Wales” (unpublished manuscript, 1997-8?)

This paper uses data on litigation and settlements in the Australian province New South Wales between 1860 and 1900 to examine patterns in litigation in regions undergoing economic development. Khan compares two hypotheses about law in frontier regions: one holds that frontier regions are generally lawless at the beginning, and litigation therefore increases over time as economic development proceeds. The other holds that elements of market and legal institutions are established early on, but initial uncertainty exists as to how the rules will be applied; in this case, litigation decreases as economic development proceeds. Khan finds that litigation in New South Wales fell steadily over time, even as population increased. She also found a non-linear relationship between population density and litigation rates – litigation rates are higher in low-density areas, but are also higher in the areas with the highest population density. She also notes that the number of disputes settled out of court also increased over time, but this trend varied by type of case. Overall, she concludes that the institutional conditions for a market economy were established quickly in New South Wales, and, more generally, the supposed rejection of inherited institutions in frontier regions may have been overstated.

Methodology: Quantitative analysis
Subject Keywords: Litigation; economic development; property rights; out-of-court settlement; frontier regions
Law Keywords: Civil litigation
Country/Region: Australia


This chapter surveys the status of the judiciary in Malaysia since 1957, with a focus on executive-judicial confrontations and the executive attacks on judicial independence – most notably the dismissal of the Lord President of the Malaysian Supreme Court in 1988. Khoo begins by reviewing the history of the Malaysian judiciary prior to the mid-1980s. He notes that, while the judiciary in this period was widely held to be independent, much of the reason for this was that the judiciary was conservative and deferential to the government, avoiding politically controversial decisions. However, in the mid-1980s, when the courts made a number of decisions that went against the Mahatir government, the executive took action, dismissing the Lord President (via a “special tribunal”) and passing legislation and constitutional amendments to limit judicial review of executive decisions. Khoo concludes that, in the 1990s, judicial independence is sharply limited. While the government has refrained from further direct attacks on the courts, there is little room for meaningful judicial review and the courts are now, for the most part, conservative and deferential to the government.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; judicial decision-making; judicial deference/political questions doctrine; judicial review; impeachment of judges; legal formalism
Law Keywords: Constitutional law; administrative law
Country/Region: Malaysia

This article discusses changes in the attitudes of the South Korean public toward law over the last 30 years. After a brief overview of historical and cultural background, Kim discusses the recent rapid economic development and industrialization, and he argues that these changes have brought about enormous social changes and the displacement of traditional Confucian values. Some of the social changes he identifies are the emergence of a middle class, increased labor union activism, the proliferation of religious groups and non-governmental organizations, rapid urbanization, and changes in the family structure and the role of women. All of these changes have influenced the attitude of the Korean people toward law and legal institutions. Kim also discusses two other factors that have influenced public attitudes toward law. First, he notes the example set by the leadership, and claims that while President Park set a positive example for the people, the corruption under the Chun, Rho, and Kim Young Sam governments has made people cynical about the need to obey the law and defer immediate gratification for longer-term gains. However, he suggests that as democracy develops, this problem may subside. Second, he notes the role of the newly-established Constitutional Court. He argues that the court’s independence and activism, as well as its accessibility, has given the people an incentive to place greater trust in the legal system and to see law as a protector of individual rights. He notes a number of examples of cases where the Court has taken important stands against the executive.

Methodology: Qualitative description and analysis
Subject Keywords: Public opinion of the legal system; economic development; legal culture; culture/social norms/informal institutions; rule of law; democracy; colonialism/imperialism; legal transplants/import of foreign law; religion; labor unions; gender/women’s rights; corruption; judicial review; judicial independence; access to justice; individual rights; press freedom
Law Keywords: Constitutional law; commercial law; tort law; labor law; administrative law; labor law
Country/Region: South Korea


Kirchgassner critiques the arguments advanced by Moe and Caldwell regarding the institutional implications of presidential and parliamentary governments, and the apparent benefits of the latter. He argues that their theory suffers from several important defects. First, it is not falsifiable, and it is not tested against evidence from countries other than those used to construct the theory – the US and Britain. Second, some of the existing empirical evidence does not support the theory. British environmental policy is not as successful as Moe and Caldwell claim, Kirchgassner asserts, and, more importantly, the case of Switzerland – with its strong separation of powers and small but effective bureaucracy – seems inconsistent with theory. Finally, he claims that Moe and Caldwell do not address the most fundamental institutional question of democracy – the extent to which systems should use direct versus representative democracy.

Methodology: Critical review; qualitative description and analysis
Subject Keywords: Separation of powers; legislative process; democracy; bureaucracy; environmental problems
Country/Region: United States; United Kingdom; Switzerland


Regulatory impact assessment (RIA) offers the means to improve regulatory decision-making and practice. RIA involves a systematic appraisal of the costs and benefits associated with a proposed new regulation and evaluation of the performance of existing regulations. So far, the adoption of RIA has been confined to OECD countries. The purpose of this article is to assess the contribution that RIA can make to ‘better regulation’ in developing countries. Results from a survey of a small number of middle-income countries suggest that a number of developing countries apply some form of regulatory assessment, but that the methods adopted are partial in their application and are certainly not systematically applied across government. The article discusses the capacity building requirements for the adoption of RIA in developing countries, in terms of regulatory assessment skills, including data collection methods and public consultation.
practices. The article also proposes a framework for RIA that can be applied in low and middle-income countries to improve regulatory decision-making and outcomes.

**Methodology:** Qualitative description and analysis, comparative analysis

**Subject Keywords:** Administrative law, European Community/European Union, law drafting, legal reform, legislative process

**Country/Region:** Korea, Mexico, Canada, USA, Australia, United Kingdom, Denmark, France, Germany, Netherlands

**Kleinfeld Belton, Rachel** *Competing Definitions of the Rule of Law: Implications for Practitioners* (Washington, DC: Carnegie Endowment of International Peace, 2005), 44 pages

Definitions of the rule of law fall into two categories: (1) those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or Providing predictable and efficient judgments), and (2) those that highlight the institutional attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies). For practical and historical reasons, legal scholars and philosophers have favored the first type of definition. Practitioners of rule-of-law development programs tend to use the second type of definition. This paper analyzes the challenge of effectively defining the rule of law, through an examination of both types of definitions, the historical background of each, and the implications of each for rule-of-law development efforts.

From this definitional analysis, two main points follow, according to the author. First, as ends-based definitions make clear, the rule of law is not a single, unified good but is composed of five separate, socially desirable goods, or ends: (1) a government bound by law, (2) equality before the law, (3) law and order, (4) predictable and efficient rulings, and (5) human rights. These ends are distinct, likely to meet different types of support and resistance within countries undergoing reform, and often in tension with one another in practice. Second, a number of the widely acknowledged problems with current rule-of-law reform strategies spring directly from pitfalls inherent in a definition based on institutional attributes. Consciously switching to an ends-based definition would provide conceptual clarity to strengthen rule-of-law reform efforts. By considering the rule of law as a series of separate goods that must advance together, practitioners can improve their measurements of the rule of law within an dbetween various countries, better anticipate likely supporters of and opponents to different reform efforts, and avoid various unintended side effects of reform efforts that now sometimes undermine the rule of law in countries attempting reform.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Donor politics, European Community/European Union, governance, human rights, IMF, ideological role of law, import of foreign law/legal transplants, institutionalization, judicial reform, legal culture, legal doctrine, legal ideology, legal reform, outside assistance, performance indicators, political reform/regime change, politics of reform, politics of resistance, post-socialist transition, public support for reform, rule of law


This working paper surveys the various governance indicators currently used by governments, international development agencies, and academics. The authors include brief summaries of the major indexes, including their coverage (in terms of both countries and years), their methodology, and the specificity of the variables they purport to measure. The authors then discuss common problems encountered in using these sorts of governance indicators, including sample selection bias, problems of cross-country comparability, and the possibility of reverse causality and omitted variable bias when these indicators are used as independent variables in regressions. The paper concludes with an addendum discussing “policy volatility” as another, potentially more objective measure of one aspect of effective governance.

**Methodology:** Literature review; quantitative analysis

**Subject Keywords:** Governance; performance indicators; corruption; rule of law; bureaucracy; individual rights; economic development

In this article, the authors assess the impact of institutions that protect property and contract rights on the rate of economic growth in developing countries. They argue that previous studies, which used rates of political violence (coup, revolutions, assassinations, etc.) or indexes of civil and political liberties as explanatory variables, do not fully capture the potential economic impact of secure property rights. Instead, the authors use assessments compiled by private firms that provide country risk information to foreign investors. They find that these institutional measures have a statistically significant effect on economic growth and investment, and that the other indicators mentioned above—political violence and civil liberties—do not sufficiently capture the impact of quality of institutions. They find furthermore that institutions have an effect on growth even when investment levels are controlled for, suggesting that insecure property rights not only deter investment, but also lead to inefficient allocation of resources. The authors also note that, when institutional quality is controlled for, there is stronger evidence of conditional convergence.

Methodology: Quantitative analysis; comparative analysis
Subject Keywords: Economic development; property rights; rule of law; political instability; individual rights; investment; corruption
Country/Region: Developing world (general)

Knieper, Rolf “Anmerkungen zur Reform der staatlichen Gerichtsbarkeit sowie der Schiedsgerichtsbarkeit in Kirgistan,” Wirtschaft und Recht in Osteuropa, June 2002 vol. 6 pp. 161-64

(“Remarks on the Reform of the Judiciary and the Courts of Arbitration in the Kyrgyz Republic”, in German). After some general reflection on judicial systems in transition countries and the indication of possible focuses of reform, the author examines reform efforts in the Kyrgyz Republic. He analyzes the role of juries, state courts of arbitration and especially administrative litigation. The importance of judicial independence to get people’s trust is stressed. Alternative Dispute Resolution mechanisms can only complement the formal judiciary, but they cannot substitute it. The key element of these ADR mechanisms is that they are determined by the parties themselves. Enforcement however requires the intervention of public authorities. Finally, the relevance of ADR for economic agents is meditated on.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, administrative courts, alternative dispute resolution, arbitration, impeachment of judges, informal dispute resolution, judicial independence, judicial reform, post-transition justice, public opinion of the legal system, public prosecutors, separation of powers
Country/Region: Kyrgyzstan, Central Asia


This article describes the new Civil Code of the Russian Federation (“C.C.R.F.”) as being one of the major pillars of stability of a country that has been plagued by the many complex problems of transition. It places the C.C.R.F. into the broader context of the history of European codification where the core has remained clear but certain areas were continually contested. Examples are the methodological question of finding a convenient level of abstraction, the division between a civil and a commercial code, and the place of family law and consumer protection. The writer concludes through critical analysis of salient topics in the above areas that the legislator could improve quality through more thorough systematization, and by eliminating remnants of central planning and Soviet practice.

Methodology: Qualitative description and analysis
Subject Keywords: civil law; ; legal reform; codification; law drafting
Law Keywords: civil law; commercial law
Country/Region: Russia

The authors discuss the effect of legal precedents on decision-making in the US Supreme Court. They argue that an empirical assessment such as that offered by Segal and Spaeth, which considers only whether precedent is the primary reason Justices make the decisions that they do, overlooks another possible role for precedent in judicial decision-making. They argue that precedent is a norm that Justices feel constrained to follow, and this constraint influences the substantive legal rules that they develop through their decisions. In this view, judges may have political preferences, but their pursuit of these preferences is constrained by a societal view that judges must adhere to precedents. The authors offer, as empirical support for their hypothesis, evidence that references to precedents predominate over all other types of argument in attorney’s briefs, Justices’ conference discussions, and published opinions. All this energy devoted to precedent-based argument would be irrational, they argue, if precedent was irrelevant. They also note that overruling of established precedent is exceedingly rare in the history of the US Supreme Court. The authors also address the criticism that precedent-based argumentation is strategic rather than sincere; they counter that such behavior only makes sense strategically if someone in the system sincerely believes precedent is important, which makes precedent a real constraint on decision-making.

Methodology: Qualitative description and analysis; quantitative analysis; critical review
Subject Keywords: Judicial decision-making; legal precedent/stare decisis; culture/social norms/informal institutions; incentives of judges; rule of law; public opinion of the legal system
Country/Region: United States


This article describes the administrative law aspect of judicial review in Japan, while also noting the constitutional law aspect of the system. Administrative review was modeled on a mix of the continental European and Anglo-American models: there are dual systems of regular civil procedure and administrative litigation, but within a unitary court system. Kobayakawa describes the procedure by which plaintiffs can sue to annul the actions of administrative agencies, and the administrative complaint procedure. Other issues, such as the differentiation between the two procedures, questions of legal standing, ripeness of cases, distribution of burden of proof, the scope of the court’s review over discretionary actions of the agencies, and provisional remedies are then discussed.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; administrative courts; civil procedure
Law Keywords: Administrative law; constitutional law
Country/Region: Japan


This article describes proposals to solve the acute court congestion problem in Japan. Civil procedural reform abroad (especially in West Germany), pressure from citizens and businesses, the greater complexity of court cases, and lawyers’ exposure to more efficient court systems elsewhere have stimulated recent interest in procedural reform. Previous opposition to reform from lawyers has given way to greater common ground between the judiciary and legal profession. Separate proposals from two Tokyo bar associations and two district courts recommend a three-session hearing as a standard model. In this model, the first hearing would weed out and categorize cases and clarify the issues involved; the second hearing would be an informal roundtable hearing with the lawyers, litigants, and judge present in a setting conducive to settlement; and the final hearing would comprise the evidentiary stage, proof-taking, and closure. Kojima applauds these proposals as comprehensive, noting they adopt case management principles and show greater cooperation between judges, clerks, and lawyers. The reforms would lead to a more active role for the court in selecting appropriate dispute resolution procedures. Kojima notes that the informal roundtable hearing should be reconciled with the constitutional guarantee of a “public hearing.” He also recommends the
implementation of a continuous hearing and judicial encouragement (but not requirement) of an attempt at settlement. Finally, he considers the question of whether there should be two separate tracks for cases destined for settlement and judgment.

Methodology: Qualitative description and analysis
Subject Keywords: Civil procedure; legal reform; judicial efficiency/court delay; judicial reform; court administration; case management; legal personnel; legal profession; alternative dispute resolution; public support of reform
Law Keywords: Civil litigation
Country/Region: Japan


Kommers discusses separation of powers and the role of the constitutional court in the Federal Republic of Germany, concentrating especially on court decisions regarding political parties. He argues that German separation of powers theory and practice has begun to place increasing stress on the role of opposition in parliament – that is, the role of opposition parties – rather than opposition of parliament to the executive branch. In Germany, parties serve a dual role as constitutional organs and organizations of civil society, and the courts have had to deal with a number of cases involving the relationship of the government and political parties. Kommers surveys and excerpts a number of the most important decisions regarding party finance and the proper role of the government.

Methodology: Qualitative description and analysis
Subject Keywords: Separation of powers; judicial review; political parties; federalism; electoral process; democracy; constitutionalism; taxation
Law Keywords: Constitutional law; tax law
Country/Region: Germany


(“Requests for Justice and Access to Law in Guinea”, in French) The depth of crisis in Guinea’s judicial institution reveals the spark inadequacies of at referent or judicial models of strictly Western inspiration. To overcome this crisis, the path of negotiated conflict regulation needs to be rediscovered rather than that of an institutional response seen by most as a poorly mastered westernization. This negotiated path has never ceased to provide the regulatory framework for Guinean society and remained legitimate and efficient despite the fact that its value has been denied. The majority believe that customary life works well within the contexts and stakes identified by the investigations and subsequently analyzed further in this article.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, alternative dispute resolution, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, import of foreign law/legal transplants, informal dispute resolution, judicial reform, legal culture, legal information, legal pluralism, legal reform, popular justice
Country/Region: Cameroon, Africa


This article applies economic reasoning to the practice of stare decisis in an effort to elucidate this aspect of the judicial process. Kornhauser first frames the problem of why judges ever ought to follow a decision they believe to be wrong, and suggests that the justifications for stare decisis may vary with the institutional framework. He surveys the various jurisprudential justifications for the practice – fairness, competence, and certainty – from an economic perspective, pointing out problems with all three justifications. Kornhauser
then presents and analyzes a heuristic model of *stare decisis*, focusing on two possible justifications for this type of decision-making: legal uncertainty and uncertainty about the world. These models, according to Kornhauser, demonstrate the difficulty of justifying *stare decisis* when the nature of the practice and the institutional context are articulated precisely. He concludes that his economic perspective on *stare decisis* has not resolved the problems presented, but has clarified them and revealed how inadequate our understanding of *stare decisis* has been.

**Methodology:** Qualitative description and analysis; formal analysis (economic modeling)

**Subject Keywords:** Legal precedent/stare decisis; judicial decision-making; legal ideology


The intensification of commercial relations with Russian partners leads investors or foreign contracting parties to be confronted with its judicial system more and more frequently, since numerous Russian public policy rules exclude the jurisdiction of foreign courts as well as that of arbitration bodies for some types of dispute. This article therefore aims at presenting an overview of the Russian judicial system with which investors or foreign contracting parties may be confronted. For the most part, the ‘arbitration’ courts have jurisdiction in relation to these parties. Other courts, the ordinary courts, may also intervene. The author places these courts in their context within the Russian judicial system in a first part before setting out the main elements of Russian procedure in part two of the article.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Arbitration, civil law, civil litigation, civil procedure, investment, judicial reform, legal culture, litigation, post-socialist transition, property rights, rule of law

**Country/Region:** Russia/Eastern Europe, Central Asia


In Kötz’s view the experience of the mixed legal systems may make a significant contribution to the great project of developing a European common law, and perhaps even of a European civil code. This experience may show, for example, that the use in a statute of broad statements of principle (such as a good faith clause) does not, as man English lawyers seem to believe, sound the death-knell of established techniques of developing the law by way of an orderly process of reasoning from case to case. This experience may also show that a more rational style of legislative drafting than the one prevailing in England under the influence of the Parliamentary Draftsmen is perfectly compatible with the common law tradition.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Civil law, common law, codification, European Community/European Union, import of foreign law/legal transplants, law drafting, legal culture, legal reform

**Country/Region:** England, United Kingdom/Europe


In this paper, the authors argue that the introduction of civil court enforcement of debt contracts in India under British rule had unanticipated negative consequences. Prior to the introduction of British civil courts, moneylenders relied on informal enforcement mechanisms; this created a situation in which a limited number of lenders loaned to a limited number of farmers in their village. The lenders could act as monopolists, extracting high rents from the farmers. This situation, however, also gave the lenders an incentive to preserve the long term productivity of the farmers. Thus, they were more willing to roll over or forgive debt in the event of a negative economic shock to the farmers, rather than forcing them to sell their assets. The introduction of formal contract enforcement in the courts allowed much greater competition in the credit market. Competitive pressure interest rates, as expected, but also made lenders unwilling to forgive debts. Farmers who were hit with negative shocks therefore had to sell their assets. The authors support their argument with an economic model and historical evidence from the Bombay Deccan region. They are
careful to point out that formal contract enforcement has many benefits and may improve the functioning of credit markets. But, they stress, since institutional reform takes place in a world in which not all contracts are enforced (for instance, British courts enforced simple debt collection but not exclusive-dealing contracts) and markets are incomplete, reforms can have negative as well as positive effects.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Economic development; credit market; debt collection; colonialism/imperialism; legal reform; law enforcement; nonlegal sanctions; agricultural sector; riots

**Law Keywords:** Contract law

**Country/Region:** India


This essay explores how political economists have studied problems of legislative organization. The author first summarizes three rudimentary models to illustrate the important relationship between asymmetric procedural rights and disproportionate policy benefits. The paper then turns to the two major problems of legislative organization. Many policies confer benefits that are divisible and geographically targeted, which creates a problem of distributive politics. For any specific distributive policy, the number of supporting legislators is much smaller than the majority or supermajority required for passage. How, then, are distributive policies passed? An analogous problem arises for a more general class of policies. Many issues that come before legislatures are complex. Legislators are accordingly uncertain about the consequences of policymaking, which creates a problem of informational politics. How can a legislature organize itself to provide incentives for its members to specialize and to share truthfully their private information? According to the author, in each case there is a growing body of empirical and theoretical work that is indicative of an increasingly vibrant and well-rounded field in which political economy approaches are prominent.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Democracy, governance, law drafting, legal reform, legislative process

Kritzer, Herbert M. (ed.) *Legal Systems of the World* (Santa Barbara: ABC Clio, 2002), 4 volumes, 1883 pages

This book explores the structure, operation, and history of legal and judicial systems in every country on earth, every state in the United States of America, and every province in Canada. The descriptions also comprise transnational systems such as the WTO and the African Commission on Human and People’s Rights, general legal systems from Islamic, Jewish, and Roman law to the Soviet system, and philosophical approaches, such as natural law and Marxist jurisprudence.

**Methodology:** Summary/synopsis

**Country/Region:** Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, European Union, Fiji Islands, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kribati, Korea, Kuwait, Kyrgyz Republic, Lao, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden,

In this article, Kritzer notes that, despite the low percentage of cases that actually go to trial, judges play an important adjudication role in a much larger percentage of cases. Using data on civil litigation in the United States, Kritzer claims that judges are actively involved in the processing of civil cases, even those that never come to trial. He notes further that this does not take into account the indirect influence of anticipated judicial action in cases where such action was never taken. He notes that the enthusiasm for alternative dispute resolution is based in part on the low number of cases that actually go to trial, but his data suggest that the settlement of many if not most cases rests on third party adjudication. Also, he suggests that clear and predictable adjudication on the part of judges helps facilitate the disposition of cases. The general lesson is that a simple adjudication/settlement dichotomy misses a fundamental aspect of the way the system works.

**Methodology:** Quantitative analysis; qualitative description and analysis  
**Subject Keywords:** Out-of-court settlement; litigation; judicial efficiency/court delay; judicial decision-making; alternative dispute resolution  
**Law Keywords:** Civil litigation  
**Country/Region:** United States

Kritzer, Herbert M. “Rethinking Barriers to Legal Practice” *Judicature* 81(3):100-103 (1997)

In this article, Kritzer argues that, for many types of cases, nonlawyers can provide legal services as well as or better than lawyers, and the barriers to entry to the practice of law need to be reconsidered. He points out that the common claim that nonlawyers are more prone to errors is supported only by anecdotal evidence; systematic studies do not show a significantly greater incidence of nonlawyer error. Furthermore, nonlawyer advocates could be regulated by the same mechanisms used to control lawyers – institutional controls, liability controls, and disciplinary controls. He notes, however, that while allowing some types of nonlawyer practice may make sense, it is likely to encounter stiff opposition from the legal community.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Legal profession; nonlawyer advocates; regulation of legal services; legal malpractice; legal services  
**Law Keywords:** Administrative law; civil litigation  
**Country/Region:** United States


This article presents a comparative analysis of one aspect of the propensity to sue: the behavior of English and Americans in cases involving seeking compensation for injury. The article first surveys the literature on the topic, most of which has found a significantly higher claiming rate among Americans than among the English. Kritzer examines this “claiming gap” in more detail, and also asserts that there is a “blaming gap”: Americans are more likely to externalize fault and/or causation for their injury. Furthermore, he argues, in England externalization appears to be a necessary condition for claiming, while in the US it is often a sufficient condition. Kritzer argues that while some of the difference in behavior may be attributed to the incentives and disincentives of the court system (cost rules, etc.) comparative analysis shows that such factors can only explain a small part of the blaming and claiming gaps. He argues that the key difference has to do with expectations of compensation. These expectations are related to the compensation system, and also to the cultural system. He concludes by contending that there needs to be more work on the cultural and symbolic sources of litigation behavior.

**Methodology:** Comparative analysis; literature review; attitude surveys  
**Subject Keywords:** Litigation; legal culture; insurance
This article reports the results of a 1995 survey of user attitudes toward courts in Wisconsin. The survey found that people who had recent experience with the courts were extremely positive in their evaluations, and that these individuals also had a much more positive evaluation of the courts than the general public. The authors argue that these results suggest that the general public dissatisfaction with court performance does not seem to reflect the experiences of those who have actually used the court system, and that greater familiarity with the courts actually improves people’s opinion of them, contrary to the findings of earlier studies. The authors note that these results suggest the need for more research on the factors affecting public opinion of state courts.

**Methodology:** Attitude surveys  
**Subject Keywords:** Public opinion of legal system; judicial efficiency/court delay  
**Country/Region:** United States

Krynen, Jacques  
(“The Election of Judges – A Historical French and Contemporary Study”, in French) Although the election of judges is not a hot topic in judicial reform debates in France at the beginning of the 21st century, it has some precedent in French legal history and other legal traditions. This book comprises a series of articles on the topic of judicial elections from a French perspective.  

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Judicial elections  
**Country/Region:** United States, France/Europe

Küpper, Herbert  
“Our Forderung der deutschen Justiz nach Selbstverwaltung – Modell Osteuropa?” *Jahrbuch für Ostrecht* 44/2003 pp. 11-44  
(“The Claim of the German Judiciary for More Self-Government – Eastern Europe as a Model?”, in German). The German judiciary made a claim in 2001 for more autonomy and suggested the creation of state and federal judicial councils. After analyzing the structure of the proposed councils, the author presents the Eastern European experience with councils of the judiciary. The latter are called 3rd generation councils following a first generation in France and Italy and a second one in Spain and Portugal. The author presents their composition and their competences regarding the personal status of judges and court administration. He also describes the somewhat different experience in Russia and Ukraine. Comparing these experiences, the authors draws conclusions for the debate in Germany.  

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Court administration, democracy, import of foreign/legal transplants, judicial accountability, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal culture, legal profession, legal reform, political parties, post-transition justice, separation of powers  
**Country/Region:** Germany, Central Europe, Eastern Europe, Europe

Kurzman, Charles, ed.  
This book is a collection of essays by prominent Muslim thinkers on such issues as democratic government, women’s rights, the rights of minorities, and freedom of thought in the Islamic tradition. The editor of the anthology argues that the essays represent a tradition of liberal Islam, as opposed to customary Islam or revivalist Islam, that is seldom represented in the Western media or scholarship. He traces the evolution of liberal Islamic thought from eighteenth century roots to the present. Topics covered include legislative
authority in Islam, feminist reinterpretations of women’s rights in Islam, human rights and the shariah, and the renewal of Islamic thought.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Islamic law; religion; democracy; gender/women’s rights; human rights; modernization  
**Country/Region:** Middle East; South Asia; Africa; Southeast Asia


(“Review of administrative decisions in Italy”, in French) The author analyzes the different mechanisms of review of administrative action in Italy. After presenting the extra-judicial ways of review, he analyzes the reasons for their crisis. Eventually, he explains the strengths and the weaknesses of judicial review of administrative action focusing on the duality of jurisdictions, the extent to which decisions can be reviewed and the effectiveness of the existing procedures.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative law, administrative courts, bureaucracy, litigation, judicial decision-making, judicial review, separation of powers  
**Country/Region:** Italy/Europe


This article analyzes data on legal rules covering protection of corporate shareholders and creditors, the origin of these rules, and the quality of enforcement, in 49 countries. The authors find that investor protection laws differ significantly between countries, and also that there are significant differences between different legal “families”. Specifically, they find that countries with a common law system tend to provide the strongest shareholder and creditor protections, while French civil law countries offer the weakest protections, with German and Scandinavian civil law systems in between. Furthermore, the authors find that the quality of law enforcement also differs substantially across legal families, with enforcement strongest in German and Scandinavian civil law countries, also strong in common law countries, and weakest in French civil law countries. Finally, they note that their data support the hypothesis that countries develop substitute mechanisms to compensate for poor investor protection. These mechanisms can take the form of statutory remedial rules, such as mandatory dividends or legal reserve requirements, or high ownership concentration. Both of these “substitutes” are more prevalent in French civil law countries. The authors conclude that their findings, coupled with other research linking investor protection to economic growth, suggests a link between the legal system and economic development, but also note that problems associated with the legal system are not likely be insurmountable, as demonstrated by the rich French civil law countries.

**Methodology:** Quantitative analysis; comparative analysis  
**Subject Keywords:** Common law; civil law; law enforcement; investment; capital market; credit market; legal transplants/import of foreign law; debt collection; rule of law; economic development  
**Law Keywords:** Commercial law  
**Country/Region:** Western Europe; North America; Asia; Africa; Latin America; Australia


This article assesses the effect of investor protections – measured by the character of legal rules, their origin, and the quality of law enforcement – on the size and development of capital markets. The authors analyze data on legal rules, law enforcement, and capital market size in 49 countries. They find that countries with poorer investor protections have smaller and narrower capital markets. Moreover, they find that French civil law countries have both the weakest investor protections and the least developed capital markets, especially in comparison with English common law countries. They find that French civil law countries have smaller capital markets even when quality of investor protection laws is controlled for, suggesting that the investment
environment in these countries is even less hospitable than the measures of investor protection (which are themselves negatively correlated with the French civil law system) would suggest. The authors note that, although some research is suggestive, the reasons that the French civil law system seems not to be conducive to capital market formation are not well-understood and require further investigation.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Capital market; credit market; investment; rule of law; law enforcement; common law; civil law

**Law Keywords:** Commercial law

**Country/Region:** Western Europe; North America; Asia; Africa; Latin America; Australia


The object of this study is to assess the determinants of the “quality of government”, defined narrowly for this study as those aspects of government institutions that affect economic development. (These include measures of government intervention, public sector efficiency, public good provision, and political freedom.) The authors state that the existing literature suggests three types of theory that might explain variation in the quality of government: economic, political, and cultural. Economic theories hold that, as the scale of economic activity expands, countries can afford higher-quality institutions. Political theories suggest that institutions are created by politically powerful groups in order to redistribute wealth to themselves or their supporters, and thus institutions reflect the balance of political power in society. Cultural theories hold that certain cultural traditions (often embodied in religion) are inimical to effective government, while others are helpful. The authors use cross-national statistical data to compare these theories. They find a high correlation between wealth and government quality, as economic theories would predict, but note that it is not clear which way the causality runs. Furthermore, there is strong evidence that other factors matter, even controlling for income. In particular, countries that have socialist or French civil legal systems have worse institutions, as do countries with substantial ethnolinguistic fractionalization, and those with high proportions of Muslims or Catholics. These results are consistent with both political theories and cultural theories. However, the authors suggest that political history may be more important than culture per se, and the generally worse performance of Catholic and Muslim countries may have to do with the political histories of the struggles between the state and religious institutions. The authors also find that the better performing governments tended to be larger and collect more taxes, casting doubt on the supposition that smaller government is better government.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Economic development; property rights; religion; culture/social norms/informal institutions; democracy; bureaucracy; taxation; ethnic politics; divided societies; socialism; corruption; common law; civil law; public ownership/state sector; individual rights; social services/welfare state; rent seeking; colonialism/imperialism

**Country/Region:** Western Europe; North America; Latin America; Asia; Eastern Europe; Developing world (general)


In this article, Landa examines the question of how traders cope with environments where the legal framework for contract enforcement is weak or nonexistent. Drawing on economic theory and field research in Chinese middlemen in the rubber trade in Singapore and Malaysia, she develops the theory of the “ethnically homogenous middleman group”. According to this theory, individually rational traders in an environment lacking dependable legal contract enforcement will associate in networks of personalistic exchange relationships with traders known to be reliable and trustworthy. These networks will generally include members of the same kinship or ethnic group, since social proximity reduces transaction and information costs, and a shared code of ethics and value of status rights in particular groups deter breaches of contract. The result is the formation of kinship/ethnic middleman groups whose members rely on trust and credit when dealing with each other, but demand cash payments and spot-market transactions when dealing
with outsiders. Landa concludes by noting two other areas where her theory of ethnically-based exchange networks might apply: homogenous groups engaged in illegal activities (e.g. the Mafia) and an economic theory to explain optimal political jurisdictions.

Methodology: Qualitative description and analysis  
Subject Keywords: Noncontractual agreements/relational contract; culture/social norms/informal institutions; nonlegal sanctions; public choice; property rights; organized crime  
Law Keywords: Contract law  
Country/Region: Singapore; Malaysia


This article examines whether adjudication can be viewed as a private good, the optimal level of which would be generated in a free market. The paper is divided into two parts. The first part analyzes the demand for and supply of judicial services, applying this analysis to judicial systems of primitive societies and modern commercial arbitration, and also examines judicial competition when more than one adjudicative forum exists. In this section they note that courts generally perform two functions – dispute resolution and rule-formation – and while a free market in private adjudication tends to produce an efficient level of the former, the same does not hold for the latter. They also note that courts differ from private dispute resolution mechanisms in two important respects. Courts have the power to compel a party to appear and defend a claim, and the power to enforce a judgement against a party. The second part of the article examines the recent literature on the efficiency of rules generated by the public court system in common law countries. The authors develop a formal model to analyze this topic. They reach two main conclusions. First, they find that the literature has overstated the tendency of common law courts to produce efficient rules, suggesting that the mechanism for the apparent efficiency of much judge-made law is still not understood. Second, they find that the practices and law governing private adjudication do appear to be strongly influenced by economic considerations and explicable in economic terms.

Methodology: Formal analysis  
Subject Keywords: Litigation; costs of the legal system; private adjudication; arbitration; legal services; adjudicative competition; judicial efficiency/court delay; common law; customary law/indigenous law; incentives of judges; law enforcement  
Law Keywords: Civil litigation; tort law; commercial law; contract law


In this article, the authors use economic analysis of interest group politics to explain the existence of an independent judiciary. Legislative politics, they argue, is essentially a bargaining game between interest groups and legislators, who supply legislation in exchange for “payment” in various forms. However, because legislative bargains cannot be enforced the way legal contracts can, the risk that a future legislature will repeal or overturn legislation reduces the net present value of legislation, lowering the price legislators can demand. Legislative contracts can become more valuable if they can be made more durable. An independent judiciary can help perform this function. Although an independent judiciary in some ways reduces the value of legislation, since it could overturn it, overall it makes legislation more valuable since the judiciary will continue to interpret legislation in line with the intent of the enacting legislature. Thus, the authors claim, an independent judiciary facilitates rather than limits the practice of interest group politics. They then discuss some of the positive and normative implications of this view of judicial independence. In an appendix they attempt an empirical test of some of their hypotheses about the stability of legislation, but the results are inconclusive.

Methodology: Formal analysis; quantitative analysis  
Subject Keywords: Judicial independence; judicial review; incentives of judges; judicial decision-making; legislative process; individual rights  
Law Keywords: Constitutional law; administrative law
The subject of this comparative study concerns a special aspect of judicial administration: the ways in which cases and judges within a court organization and within a judicial system are brought together: case assignment. The authors found that case assignment is at the heart of case management, and therefore one of the main issues in judicial administration. It touches upon basic values of adjudication: efficiency and timeliness on the one hand and judicial independence and impartiality (and integrity) on the other. That is why the authors chose to compare the very different ways in which countries like Italy, Portugal, England and Wales, Quebec, Norway, Austria, and the Netherlands arrange their case assignment systems. Following different policies in order to respond to an increasing demand for justice, these countries attach different weights to the value of efficiency and the value of judicial impartiality, resulting in different balances concerning their organization of case assignment. The first part of the book contains a comparative analysis whereas the second part analyzes each of the national practices.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Case management, court administration, court delay, court performance, judicial efficiency/court delay, judicial independence, judicial reform  
**Country/Region:** Italy, Portugal, England and Wales, United Kingdom, Quebec, Canada, Norway, Austria, Netherlands


In this article, Larkins explores the concept of judicial independence, especially in the context of democratizing regimes. He argues that, although an independent judiciary that will enforce the rule of law is critical in transitional regimes, the concept of judicial independence is not well-understood. His preferred definition of judicial independence includes three things: judges who are not manipulated for political gain, who are impartial toward the parties to a dispute, and who are part of a judicial branch that has the power as an institution to regulate government behavior and determine significant constitutional and legal questions. Larkins then discusses problems with observing or measuring judicial independence. He critiques several existing approaches, and suggests that scholars would be better off looking for evidence of dependence rather than independence, since perfect independence is never likely to exist. He identifies the use of the “political questions doctrine” in particular as a potentially valuable type of comparative evidence. He concludes by considering the difficult questions related to fostering judicial independence in transitional states, and the extent to which a new regime ought to remove judges appointed under previous, authoritarian regimes.

**Methodology:** Qualitative description and analysis; conceptual/philosophical inquiry  
**Subject Keywords:** Judicial independence; democracy; political reform/regime change; rule of law; judicial review; separation of powers; public opinion of the legal system; judicial selection/promotion; political questions doctrine/judicial deference  
**Law Keywords:** Constitutional law  
**Country/Region:** Latin America; Costa Rica; Chile; Argentina; Mexico; Spain

**Lasserre, Bruno** (ed.) *Pour une meilleure qualité de la réglementation – Rapport au Premier ministre* (Paris : La Documentation Française 2004) 58 pages

(“For a Better Quality of Regulation – Report to the Prime Minister”, in French) This report to the Prime Minister assesses European and international good practice in the field of regulatory impact assessment (RIA). It suggests to change the French system of regulatory impact assessment established in 1993. The number of assessments should be decreased, whereas their substance should be increased. They should focus more on economic impact, be adapted to project specificities, and should be the object of counter-expertise and public debate.
Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Administrative law, bureaucracy, costs of the legal system, executive decrees, law drafting, legal reform, OECD
Country/Region: Canada, Netherlands, United Kingdom, France, European Community/European Union/Europe


In an August 1999 report, entitled “Kosovo: Protection and Peace building; the Protection of Refugees, Returnees, Internally Displaced Persons and Minorities,” the Lawyers Committee for Human Rights highlighted the urgent need to protect the physical security of minorities in Kosovo, among other human rights concerns. Building on the findings of this report, the Lawyers Committee carried out a second mission to Kosovo to assess the international community’s efforts to establish the rule of law in Kosovo, and, in particular, to clarify the applicable law, establish an independent and impartial judiciary, and ensure effective policing capacity.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, court administration, crime control, divided societies, donor politics, ethnic politics, European Community/European Union, group rights, human rights, institutional capacity, judicial independence, judicial reform, legal reform, legal services, political instability, rule of law, secession, state of emergency/martial law, United Nations
Country/Region: Kosovo/South Eastern Europe


This report evaluates the Venezuelan Judicial Infrastructure Project, approved by the World Bank in 1992 as its first project devoted solely to judicial reform. It criticizes the Bank’s interpretation of its articles of agreement, prohibiting consideration of non-economic factors in loan decisions. The report also discusses human rights violations in Venezuela in the early 1990s, including government repression of social protest stemming from structural adjustment, and assesses problems in the Venezuelan justice system. Six problems with the World Bank’s project are identified: the absence of a comprehensive reform strategy; no broad-based government commitment to reform; insufficient attention to judicial independence; the artificial distinction between economic and non-economic factors; the lack of an access to justice component in the project design; the failure to secure broad-based participation and input from the legal and judicial community, non-governmental organizations, and other actors. The report concludes with recommendations that it believes would strengthen the Bank’s judicial reform project in Venezuela and new initiatives elsewhere.

Methodology: Project evaluation; qualitative description and analysis
Subject Keywords: Judicial reform; World Bank; donor politics; donor agency administration; judicial independence; human rights; civil society; access to justice; legal training; court delay
Law Keywords: Civil litigation; criminal law
Country/Region: Venezuela; Latin America


This book describes the transition of Russian legal system and its increasing, though incomplete, protection of human rights. Between 1987 and 1991 legal developments in the Soviet Union were shaped by countervailing efforts to promote the rule of law as well as to retain Communist Party control. The report argues that two documents adopted in 1991—the Declaration of the Rights and Freedoms of the Individual and Citizen and the Conception of Judicial Reform—present a new and comprehensive conception of human rights and law in Russia. The Declaration, albeit non-binding, incorporates many international human rights standards and marks a significant departure from the Soviet-era legal human rights framework. The
Conception identifies problems in the existing judicial system and strategies for creating an independent judiciary, a restructured court system, and reforms in criminal law. Legal scholars and practitioners also devised proposals for a new criminal code and a new criminal procedure code that would also go further toward protecting human rights. Despite these important conceptual changes, the authors argue that actual institutional reform has occurred to a lesser extent. Three areas of institutions and laws are then discussed: the legislature, state structure and the constitution, and the judicial system. New laws or amendments to existing laws have been passed regarding a number of human rights issues: criminal procedure, the corrective labor code, state of emergency, rehabilitation of past victims of human rights abuses, citizenship, media, and psychiatry. The report is critical of a number of recent laws related to law enforcement, which fail to adequately control the state security apparatus and protect against state abuses. It ends with a series of recommendations for improving the legal protection of human rights.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Human rights; legal reform; due process of law; individual rights; constitutional change; due process; criminal sentencing; rule of law; post-socialist transition; law enforcement

**Law Keywords:** Criminal law; constitutional law; human rights law

**Country/Region:** Russia


This report discusses the 1986-88 executive-judiciary conflict in Malaysia, which culminated in the dismissal of the Lord President of the Malaysian Supreme Court, as well as two other Justices, and the passage of several constitutional amendments restricting the power of the courts. According to this report, which was based on a fact-finding mission conducted in 1988, the actions of the Mahatir government violated basic principles of judicial independence under international human rights law. Mahatir’s public statements and threats, his passage of legislation, and the dismissal of Lord President Salleh Abas by a biased and manipulated tribunal all contributed to the weakening of the Malaysian judiciary. The report concludes pessimistically that the future of judicial independence in Malaysia is dim.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial independence; judicial accountability; separation of powers; individual rights; human rights; impeachment of judges; state of emergency/martial law; political question doctrine/judicial deference

**Law Keywords:** Administrative law; constitutional law; human rights law

**Country/Region:** Malaysia


Following preliminary comments about judicial review in Canada, the author describes the country’s most recent attempt to justify the legitimacy of judicial review through the dialogue approach. According to this approach, judicial review under the Canadian Charter of Rights and Freedoms is legitimate. The rationale being that, in most cases where courts strike down legislation, legislatures possess the necessary latitude to re-enact laws having the same or similar objectives as the impugned legislation. After describing the essential features of the Canadian constitutional order that are the basis for this claim of an institutional dialogue between courts and legislatures, this article briefly addresses some of the problems raised by the dialogue approach.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutional law, constitutionalism, democracy, informal dispute resolution, judicial decision-making, judicial review, legislative supremacy

**Country/Region:** Canada/North America

**Lee, H.P.** *Constitutional Conflicts in Contemporary Malaysia* (Kuala Lumpur: Oxford University Press, 1995)
In this book, Lee surveys major constitutional conflicts in recent Malaysian history. He begins with an overview of the evolution of the Malaysian constitution from independence through the early 1980s. He then discusses three major constitutional crises. In the first, which took place in 1983, the government’s attempted to weaken the position of the Malaysian King and Conference of Rulers with respect to law-making. The second crisis, in 1988, involved the executive’s confrontation with the judiciary. This conflict ultimately resulted in the dismissal of the Lord President and two justices of the Malaysian Supreme Court, and it significantly weakened the power and independence of the Malaysian judiciary. The third constitutional confrontation, in 1992, again involved a conflict between the executive and the Rulers, with the executive successfully reducing the Rulers’ personal immunity from lawsuits. Lee’s concluding chapter considers the broader issue of constitutionalism in Malaysia. He notes that the three constitutional conflicts discussed, especially the 1988 judicial crisis, have concentrated power in the hands of the executive and weakened constitutional safeguards. The concentration of power in the executive is exacerbated by a number of other features of Malaysian law and politics, including the frequent and unchecked use emergency powers, expansive sedition laws, and the relative ease of constitutional amendment. However, Lee maintains that some relatively straightforward constitutional reforms could substantially strengthen constitutionalism and the rule of law, if Malaysian leaders are willing to implement them.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; constitution drafting; constitutional change; separation of powers; judicial independence; judicial accountability; impeachment of judges; monarchy; state of emergency/martial law; legislative process
Law Keywords: Constitutional law; criminal law; administrative law
Country/Region: Malaysia


This chapter analyzes the 1983 Malaysian constitutional crisis, in which the Ruler (or Sultan) or Malaysia refused to give consent to a constitutional amendment passed by parliament that would have weakened the constitutional position of the Ruler and strengthened the executive. This crisis, according to Lee, was most likely sparked by a fear on the part of the government that the next Ruler of Malaysia might take a confrontational stand vis-à-vis the government, and so the government sought to preemptively make it more difficult for the Ruler to create difficulties for the government. However, this attempt precipitated a crisis. The crisis was eventually resolved by compromise. Lee notes that the crisis may have had a couple of positive effects. First, it engaged public attention and was therefore educational for the Malaysian public. Second, the government’s retreat on the provision of the original proposed amendment that would have given the government more power to pass emergency legislation prevented the introduction of an easily abused constitutional power that would have allowed unscrupulous leaders to introduce dictatorial rule.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; monarchy; constitutional change; state of emergency/martial law
Law Keywords: Constitutional law
Country/Region: Malaysia


This chapter discusses the process of amendment of the Malaysian constitution from independence in 1957 up to 1977. Lee notes that, while the Malaysian constitution is relatively young, it has been amended quite frequently, with 23 amendments in 20 years. He then examines whether the aims of the original constitutional drafting commission have been frustrated by the ease and frequency of constitutional amendment. He points out that the states in the Malaysian federation have only a negligible voice in the amendment process, and that the senate’s power has also been reduced substantially by the growing number of appointed senators relative to elected state senators. On the other hand, the Conference of Rulers has had
its power enhanced, and this has entrenched the power of the government in many respects. Lee concludes from this that the amendment procedure now in place is very different from that envisioned by the original drafters. Lee also points out several other concerns related to constitutional amendments, including the haste with which many amendments are pushed through, the apparent acceptance of retroactive amendments, and the ability of parliament and the government to circumvent the ordinary amendment procedure by using the Constitution’s emergency provisions, which allow for the passage of unconstitutional laws if a simple majority of parliament declares an “emergency”.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutionalism; constitution drafting; constitutional change; federalism; bicameralism; monarchy; individual rights; state of emergency/martial law

**Law Keywords:** Constitutional law

**Country/Region:** Malaysia


This article discusses constitutional developments in Korea between 1948 and 1980, especially with regard to the influence of U.S. constitutional doctrines. Lee focuses in particular on two aspects of constitutional law: the constitutional position of the chief executive and the provisions for judicial review of the constitutionality of statutes. He notes, among other observations, that the constitution of the Third Republic (1961-1972) was largely based on the American system, with a presidential system, separation of powers, and judicial review. However, as President Park’s regime became progressively more dictatorial, constitutional limitations such as judicial review became burdensome, and these limitations were discarded after Park’s “Yushin revolution” in 1972, which established essentially authoritarian presidential rule. This Fourth Republic ended with Park’s assassination in 1979. Lee concludes his article by discussing some of the main constitutional debates during the Fifth Republic, among which the most important are those surrounding the procedure for electing the president.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutionalism; constitution drafting; constitutional change; judicial review; electoral process; separation of powers; state of emergency/martial law; presidentialism v. parliamentarism; import of foreign laws/legal transplants

**Law Keywords:** Constitutional law

**Country/Region:** South Korea


This article discusses the role of courts in economic transactions in Shanghai in the century before the Communist takeover in 1949. Lee uses the Shanghai case to analyze how new legal institutions can take root and exert an influence on an economy, even in a cultural environment initially hostile to those institutions. Lee discusses how civil courts in Shanghai, initially established to protect foreigners in commercial dealings with Chinese, took root and grew rapidly, so that they were widely used by the local Chinese as well, despite Chinese cultural stigmas on litigation. These courts transformed both the economic and legal culture of Shanghai. Lee draws two major lessons from this analysis. First, contract-enforcing courts can quickly come into being and affect the economy even in places where the “legal culture” is hostile to civil litigation. Legal culture is not immutable, but in fact can change rapidly in response to economic pressures. Second, the existence of courts can open up markets in several ways: reducing the risk inherent in property transactions, lowering barriers to market entry, allowing merchants to operate independent of guilds or other collusive networks, and promoting the economic culture of individual rights, strategic calculation, and competition.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions; economic development; property rights; credit markets; collusive trade arrangements/cartels; law enforcement; litigation; adjudicative competition; access to justice; debt collection; legal culture; land disputes; commercial licensing

(“Conciliation and Mediation in Administrative Matters”, in French) Court delay and alternative dispute resolution (ADR) have already been dealt with by the National Assembly in 1790. The debate went on for centuries. The author opposes ADR in civil and administrative matters. In the former, there is generally no attempt of conciliation before parties go to court. In the latter, the situation is quite different as administrative review generally precedes judicial review of administrative action. Le Gars first describes and analyzes the different institutions and processes for conciliation in administrative matters. Subsequently, he addresses the issue of judicial conciliation. The latter had always been practiced informally, but a law voted in 1986 finally established a legislative framework.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative law, administrative courts, alternative dispute resolution, bureaucracy, informal dispute resolution, judicial efficiency/court delay, judicial review, litigation, mediation, ombudsman
Country/Region: France/Europe


(“Comparative Administrative Litigation”, in French) This book presents the three main systems of judicial review of administrative activity in the Western world. In the systems inspired by the French legal model, administrative courts are competent for claims concerning the legality of administrative action and questions of compensation. In the legal systems of Anglo-American origin, the ultimate jurisdiction is with the ordinary courts. In between, there is a whole range of so-called mixed systems where only questions relating to legality are brought to independent administrative courts, whereas litigation concerning compensation is considered to be private and is thus of the competence of the ordinary courts.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, civil litigation, judicial review, legal culture, rule of law, separation of powers
Country/Region: France, Germany, Italy, Belgium, Netherlands, United States, United Kingdom


(“Africans and the Institution of Justice”, in French) According to the author, Africa is sick of its institutions. The state justice systems are based on the colonial system and turn out to be unable to respond to the needs of the rule of law and to the aspirations of the vast majority of Africans. Based on a thirty year working experience in the field, Le Roy suggests to abandon the post-colonial attitude to imitate the systems of the former colonial powers. He explores ways to build an institutional set-up based on pluralism and hybridity that would fit to the way of life of nowadays Africans. The book focuses mainly on francophone Africa.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, authoritarianism, civil law, civil society, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, democracy, ideological role of law, import of foreign law/legal transplants, informal dispute resolution, institutional capacity, judicial reform, legal culture, legal pluralism, popular justice, public opinion of the legal system, rule of law
Country/Region: Africa


Levi considers the different ways that rulers can get people to pay their taxes. She argues that there are three main methods for creating compliance with tax policies: the use of coercion; the creation of an ideology
and/or norms of compliance; and the creation of what she terms quasi-voluntary compliance. Levi focuses especially on the third source of compliance. Quasi-voluntary compliance describes a situation in which most citizens voluntarily pay their taxes, but only if they believe, first, that rulers will keep their bargains to provide promised public goods, and, second, if they are convinced that other citizens will pay their taxes as well. Thus, in order for rulers to encourage quasi-voluntary compliance – an attractive strategy, since it is much cheaper than reliance on coercion – rulers must both establish a credible commitment to their side of the tax bargain and convince citizens that everyone is paying their fair share. Levi notes that quasi-voluntary compliance, though voluntary, is backed by both material incentives and the threat of coercion. Also, she points out that, because quasi-voluntary compliance rests on the belief that almost everyone else is complying, once defections rise, the whole system may unravel. Once quasi-voluntary compliance has declined, she argues, it is very difficult to re-establish. Thus, the government is concerned with occasional defections less because of the marginal loss in revenue than because of the risk that such defections could quickly snowball if not deterred.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Taxation; law enforcement; culture/social norms/informal institutions; social services/welfare state


In this introductory chapter, the authors argue that the credibility and effectiveness of a regulatory framework – and hence its ability to encourage efficiency and private investment – depends on the fit between the regulatory scheme chosen and a country’s political and social institutional endowments. They focus especially on regulation of the telecommunications industry in five countries: the United Kingdom, Chile, Argentina, Jamaica, and the Philippines. Some of the important institutional variables they identify are: the independence of the courts, the strength of the administrative bureaucracy, the structure of the legislature and executive, the unity or division of the government, and informal norms of government behavior and legitimacy. In order to be successful in encouraging private investment and efficiency, they argue, regulatory frameworks must establish substantive restraints on the administration, restraints on changing the system, and effective enforcement of the restraints that are in place. But how these goals may be achieved depends on the nature of each country’s institutions, and what works in one country will not necessarily work in a country with different institutions. For those countries where domestic institutions do not provide an adequate basis for any effective regulatory system, the authors suggest that international mechanisms might be a possible substitute.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Privatization; institutional capacity; rent seeking; judicial independence; separation of powers; legislative process; state sector/public ownership; culture/social norms/informal institutions; legislative supremacy; commercial licensing; corruption; investment; outside assistance; public utilities/infrastructure

**Law Keywords:** Administrative law; contract law

**Country/Region:** United Kingdom; Chile; Argentina; Philippines; Jamaica


This article assesses whether China’s Foreign Economic Contract Law (FECL) can be administered in accordance with the principle of rule of law. Lewis uses an institutional, rather than value-based, definition of the rule of law. These institutional characteristics include laws against public and private coercion, laws that are general and apply equally, an independent judiciary and legal profession, a commitment to natural justice, and a social attitude of legality. Lewis argues that although the FECL is written to reflect market-oriented freedom of contract, institutional problems may still prevent it from being implemented according to the rule of law. These obstacles include a shortage of trained legal personnel, the lack of an attitude of
legality, and a government that still makes arbitrary decisions. Lewis notes, however, that the PRC will be able to implement the rule of law, at least in the area of foreign contracts, because the market incentives are so strong. Furthermore, he argues that implementing the rule of law in this area is likely to lead to political change.

Methodology: Qualitative description and analysis
Subject Keywords: Rule of law; legal instrumentalism; economic reform; mediation; arbitration; law enforcement; judicial independence; legal profession; access to justice; legal personnel; legal education/training; institutional capacity; legal culture; economic development
Law Keywords: Contract law
Country/Region: China


This detailed article describes the rapid development of legal aid in China in the 1990s. The author argues that starting in 1994, China has been creating the framework for national legal aid programs, justifying legal aid on the grounds that it contributes to a society based on law, a mature legal system, the alleviation of poverty, and the balance between development and social welfare. China’s legal aid programs, most of which are local or state initiatives, consist of centers that employ full-time lawyers; others which assign work to law firms; lawyer-staffed legal aid centers; university-based/NGO programs; and pro bono work by law firms. Liebman considers five issues pertaining to legal aid in China: appropriate recipients of civil legal aid in the face of possibly unlimited demand; the lack of counsel for many criminal defendants, who are not served by civil legal aid programs; the large role that mandatory lawyer assistance plays in legal aid; funding sources for legal aid; and the ambivalent state view of NGOs providing legal assistance. The author argues that the growth of legal aid is impressive given the very recent emergence of legal reform, and the concept of law as protection for individuals, in China. He concludes by raising three issues important in the evaluation of legal aid. First, he argues that domestic concerns are driving law reform but that international human rights and legal norms are shaping the domestic debate on legal aid. Second, there is growing space for lawyers, once tied to the state, to shape the development of their profession, and law itself, in China. Third, the role of law remains an issue in this debate: one motivation for legal aid may be the state’s interest in strengthening the implementation of government policy and promoting social stability, but legal aid development is driven by many different rationales.

Methodology: Qualitative description and analysis
Subject Keywords: Legal services; access to justice; legal profession; pilot programs; rule of law; individual rights; human rights; authoritarianism; civil society; economic development; socialism
Law Keywords: Civil litigation; commercial law; family law; labor law; public interest litigation
Country/Region: China


According to the author, many lawyers have formulated far-reaching and complex versions of legal culture in their discussion concerning judicial independence. From a comparative approach, in the political-legal tradition of many European countries, the notion of state judicial power involved in the settlement of criminal cases and even civilian disputes as a neutral party is quite acceptable. However, the author discusses the fact that in the history of Asian countries such as China and Japan, judicial power and administrative power have long been one integrated mass, and thus, it is difficult to establish an independent image of judicial power, which may be the situation in China today. After analyzing the concept of judicial independence and its meaning in legal culture, the author describes the course towards judicial independence in Japan and extracts lessons from the Japanese model. Eventually, the author puts these lessons into a Chinese perspective.

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Authoritarianism, civil litigation, colonialism/imperialism, constitutional change, criminal sentencing, culture/social norms/informal institutions, democracy, import of foreign law/legal
transplants, judicial independence, legal culture, litigation, political reform/regime change, separation of powers

**Country/Region:** Japan, China/East Asia


This report, the first large-scale, systematic study of donor support to legislatures in developing and transition countries, synthesizes the results of program evaluations in Bolivia, El Salvador, Poland, Nepal and the Philippines. It notes that all assistance can be categorized as either staff support, institutional development, the provision of infrastructure, or support for civil society organizations that monitor legislative performance or advocate before the legislature. It provides a series of questions involving the legislature’s relationship with the other branches of government, political parties, and civil society and a set of questions about the legislature’s function to use as diagnostic tools. Different objectives that a legislative assistance program might pursue, and some observations and lessons from USAID’s early legislative aid programs are also included.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Parliaments; law drafting; political parties; USAID; outside assistance; separation of powers; legislative process

**Country/Region:** Bolivia; El Salvador; Poland; Nepal; Philippines


(Administative Justice) In continental Europe, administrative justice originated as a part of the executive branch and this apparent violation of the separation of powers still shapes the debate, although administrative courts are nowadays independent. The author describes the origine of administrative justice in France and its subsequent evolution. The analysis of the status of administrative justice in France addresses elements such as the role of the Conseil d’Etat, the balance between independence and politicization, the relation between administrative courts and administration. The presentation of the function of administrative justice in the French legal and judicial system examines aspects such as litigation, control of the administration, and the normative and political functions.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative courts, administrative law, authoritarianism, bureaucracy, democracy, human rights, ideological role of law, individual rights, judicial independence, judicial review, legal culture, litigation, rule of law, separation of powers

**Country/Region:** France/Europe


This article discusses the Supreme Constitutional Court of Egypt’s interpretation and jurisprudence regarding article 2 of the 1980 amended constitution, which declared Islamic sharia to be the principle source of legislation. The author argues that two questions were left to the Court to decide: what is meant by “principle source”, and what constitutes the sharia? The Court, adopting an unconventional interpretation of sharia advocated by some Muslim thinkers, defined sharia as a body of broad principles to promote divinely ordained and useful social goals. The methodology the Court proposed for determining compliance with sharia leaves a great deal of discretion to judges to determine the fundamental principles of the sharia, and the Court in deciding cases has ruled in favor of progressive liberal interpretations. Two cases are discussed in greater detail: a 1994 case involving child support and a 1996 case involving schoolgirls’ wearing the veil. In both cases, the author argues, the Court analyzed the Qur’an, *sunna* (traditions), and views of various Islamic schools of thought in a cursory manner and did not explain many of its assumptions or conclusions in determining the fundamental principles to be applied. The article contends that the Court’s interpretation is
directed at satisfying both Islamists and secularists, the main political rift in Egypt in recent years, but that ultimately the doctrine will not satisfy either group. Two problems of the current theory are the use of civil judges untrained in Islamic law to interpret the sharia and the fact that, in leaving a great deal of discretion to the judiciary, the Court’s doctrine does not ensure the success of progressive legislation.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Islamic law; legal pluralism; religion; constitutional change; culture/social norms/informal institutions; judicial decision-making; judicial training; divided societies; gender/women’s rights  
**Law Keywords:** Constitutional law  
**Country/Region:** Egypt


This article discusses mediation and the courts in China today. China now has a large body of rules and the government officially promotes the rule of law, but legal reform is still constrained by the Party agenda and laws are often indeterminate and open to abuse. The article discusses extra-judicial “people’s mediation,” revived after the Cultural Revolution and less politicized than in the past. Although mediation committees handle more cases than the courts, the number of cases mediated has declined each year since 1990, and Lubman predicts mediation will continue to recede. While Communist Party concern for social control and Chinese cultural norms support mediation, the growing number of conflicts, changing values, rights-consciousness, and the declining authority of mediation committees favor its decline. Chinese scholars are divided between those who would protect the autonomy of mediation from the legal system, and others who prefer it to be more closely tied to law to reduce its potential for arbitrary interference. Turning to the court system, Lubman reviews the Chinese judicial system, court organization, selection of judges, the judicial process, and other issues. Common problems include meager judicial education, pressure on judges from local party and government officials, the difficulty of enforcing judgments, and an appeals/review process that undercuts the finality of judgments. Lubman notes that the courts use mediation extensively in civil and economic cases, but that judges are often pressured to mediate even when inappropriate or against the parties’ consent. He argues that courts are increasingly enforcing legal rights, but that rampant political interference compromises the independence of the judicial process, and that the Chinese courts are bureaucratic institutions rather than impartial providers of justice. The article concludes with a discussion of forces opposing and supporting law reform, and recommendations for US policy.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Mediation; alternative dispute resolution; legal reform; judicial reform; civil procedure; judicial independence; corruption; authoritarianism; state sector; bureaucracy; economic development; legal instrumentalism; legal education/training; legal profession; noncontractual agreements/relational contracts; judicial efficiency/court delay; socialism; state sector/public ownership  
**Law Keywords:** Civil litigation; commercial law; contract law; property law  
**Country/Region:** China


Analysis of both changes in substantive law, particularly those involving commercial matters, and reforms to courts and other legal institutions since the late 1970s. Contains extensive comparisons to Western law and legal institutions and those in Imperial China.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Mediation; alternative dispute resolution; legal reform; judicial reform; civil procedure; judicial independence; corruption; authoritarianism; state sector; bureaucracy; economic development; legal instrumentalism; legal education/training; legal profession; noncontractual agreements/relational contracts; judicial efficiency/court delay; socialism; state sector/public ownership  
**Law Keywords:** Civil litigation; commercial law; contract law; property law
Country/Region: China


After defining the concept of constitutional culture, the author analyzes the process of constitution making and its consequences. He then describes the role of the citizenry, the legislatures and the courts. As far as the latter are concerned, different approaches of constitutional review are examined in their political context. According to the author, the existence of just one constitutional tribunal and limited cooperation of regular courts in the process of review, combined with relatively short tenures of justices, strengthens accountability and restrains the tendency to challenge democratically elected legislative organs.

Methodology: Qualitative description and analysis
Subject Keywords: Bicameralism, constitution drafting, constitutional change, constitutional law, constitutionalism, democracy, import of foreign law/legal transplants, judicial review, legal culture, political reform/regime change, post-socialist transition, post-transition justice
Country/Region: Eastern Europe, Central Europe


This article presents the practical daily problems facing a senior resident magistrate in one of the most developed regions of northern Tanzania. It illustrates how an excellent system of laws and conscientious judges and magistrates harms the legal interests of litigants when the infrastructure and training, even for the most basic non-judicial personnel like watchmen, messengers, and cashiers, are lacking. The many practical suggestions give us insight into the most basic of implementations problems.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, court administration, legal personnel
Country/Region: Tanzania, Africa


In this article, Macaulay argues that academic contract law and doctrine is not a descriptively accurate reflection of the way contractual relationships operate in the real world. According to Macaulay, traditional contract doctrine rests on three false assumptions: that parties plan their relationships carefully in light of legal requirements; that contract law is a body of clear rules that can facilitate planning; and that contract litigation is a primary means of deterring breach and resolving disputes. Contract law operates at the margins of social systems; relational sanctions – often structured by asymmetric power relations – are much more important than legal rules in enforcing agreements. Macaulay concludes with speculations on why a descriptively inaccurate view of contract persists in legal scholarship and education.

Methodology: Qualitative description and analysis
Subject Keywords: Nonlegal sanctions; legal education/training; noncontractual agreements/relational contract; litigation
Law Keywords: Contract law
Country/Region: United States


In this article, Macaulay reports the results of surveys conducted with Wisconsin businessmen on their use of contracts. He finds that businessmen often fail to plan their exchange relationships completely, and very rarely resort to legal sanctions to resolve disputes. Macaulay suggests that these observations stem from the
fact that the costs of detailed contracts often outweigh the benefits. Businessmen prefer to maintain a degree of flexibility in their dealings, creating detailed contracts requires time and resources, and frequently there are adequate nonlegal sanctions – especially damage to reputation – that make reliance on legal contracts unnecessary. However, Macaulay also points out that there are still circumstances in which businessmen will resort to more legistic contracting and dispute resolution. Nonetheless, his analysis suggests that many if not most business relationships in the sector and region he studied rely more on noncontractual mechanisms than on the formal contract law.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Noncontractual agreements/relational contract; nonlegal sanctions; manufacturing sector  
**Law Keywords:** Contract law  
**Country/Region:** United States


This article critiques prevailing notions of access to justice as overly concerned with legal institutions and procedural justice. Access to justice reform has been preoccupied with improving the delivery of state legal processes. Since this conceptualization treats justice as a product, scholars focus too heavily on the objective barriers to its acquisition, while underestimating the subjective barriers to access to justice or redefining them as informational shortfalls. Macdonald criticizes five assumptions of the access to justice logic: justice is inseparable from formal law, law is inseparable from the state, following the rules is the best guarantee of justice, adjudicative due process is the best means for ensuring substantive justice, and access to justice requires access to legal professionals. This critique, he argues, should open space for alternative means of dispute resolution and non-legal avenues for empowerment. Macdonald argues that the 1991 recommendations of the Quebec Ministry of Justice Working Group on access to justice, which he chaired, span the gamut from traditional access to justice themes to a broader conceptualization. He further recommends that reformers open up the access to justice agenda to non-legal-professionals, confront the costs of legalism directly, promote the ideology of legal pluralism, and resist reactions of the existing legal order to change.

**Methodology:** Conceptual/philosophical review; qualitative description and analysis  
**Subject Keywords:** Access to justice; popular justice; legal profession; non-lawyer advocates; legal pluralism; alternative dispute resolution; informal dispute resolution; legal proceduralism  
**Country/Region:** Canada


This article responds to Kornhauser’s economic analysis of *stare decisis*, which appears in the same journal volume. While Macey finds Kornhauser’s discussion interesting and provocative, he believes Kornhauser misses several of the most important economic benefits of the practice of *stare decisis* in a common law system. First, Macey argues, *stare decisis* is efficient because it minimizes error costs within the judicial system, both because it provides redundancy and because it allows for judicial specialization. Second, it maximizes the “public good” aspect of judicial decision-making. Third, it minimizes the costs associated with judicial review. Fourth, from the judiciary’s perspective, *stare decisis* is desirable because it increases the demand for judge-made rules and enhances the power of the judiciary relative to the legislature. It also enhances the influence of legally creative judges while allowing lazy judges to have more leisure, since the latter can free-ride on the efforts of the former.

**Methodology:** Critical review; qualitative description and analysis  
**Subject Keywords:** Legal precedent/stare decisis; judicial decision-making; common law; incentives of judges; judicial review; litigation; costs of the legal system

This survey analyzes different aspects of judicial independence focusing on appointment and removal of judges. While every country examined purports to subscribe to the concept of an independent judiciary, there are a number of areas of concern in Southern Africa, most of which become more visible in the light of the comparisons made with neighboring countries. Among the more important areas of concern are presidential dominance of the system of appointment of judges (as in Zimbabwe, Tanzania and Mozambique), an unclear role for Parliament in ratifying proposed appointments (as in Uganda, Zambia and Malawi); a weak protection of judges from removal (as in Malawi) and an uncalled role for the executive in extending terms of office of judges (as in Tanzania and Zambia).

**Methodology:** Qualitative description and analysis, comparative analysis

**Subject Keywords:** Authoritarianism, constitutional law, democracy, impeachment of judges, judicial accountability, judicial independence, judicial reform, judicial selection/promotion, separation of powers

**Country/Region:** Uganda, Zambia, Malawi, Zimbabwe, Tanzania, Mozambique/Africa


The transformations in Central and Eastern Europe since the late 1980s have dramatically changed the relationship between the state and the economy. This article intends to offer a general and more theoretical overview of the main trends of development rather than a detailed positive-law analysis of the innumerable legal institutions and modalities operating through the current laws and practices of the countries in question. While looking for the main trends, the laws and other sources are presented with varying intensity both in regards to their subject matter and their emergence in time, depending on how and when their nature expresses the substance of these developments. The author structures his ideas around the following topics: the process of transformation, the legal institutions and instruments channeling the transformation (restoration of property, enterprises, banking and financial system, contract system, policies i. e. channeling legal norms and institutions), and transformation of international economic relations.

**Methodology:** Qualitative description and analysis, comparative analysis

**Subject Keywords:** Authoritarianism, bankruptcy, civil law, commercial law, contract law, credit market, democracy, economic reform, ideological role of law, import of foreign law/legal transplants, legal culture, legal ideology, post-socialist transition, post-transition justice, property law, rule of law

**Country/Region:** Albania, Armenia, Azerbaijan, Belarus, Bosnia, Bulgaria, Croatia, Czech Republic, Yugoslavia, Georgia, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Serbia & Montenegro, Slovakia, Tajikistan, Turkey, Turmenistan, Ukraine, Uzbekistan, Eastern Europe, Central Europe

Magendie, Jean-Claude (ed.) *Célérité et Qualité de la Justice – La Gestion du Temps dans le Procès* (Paris: La Documentation Française, 2004), 217 pages available online at http://lesrapports.ladocumentationfrancaise.fr/BRP/044000433/0000.pdf

(“Speediness and Quality of Justice – Time Management during Court Proceedings”, in French) This comprehensive report to the French Minister of Justice describes and analyzes various aspects of time management during civil and criminal court proceedings. The report is devided in four main chapters dealing each with civil proceedings, experts, criminal proceedings, and the use of information technology (IT) in the courts.

In the first part, the role of the two main actors in civil proceedings is analyzed: the parties and the judge. As to the parties, the report elaborates on the notion of procedural loyalty. As far as the judge is concerned, the report indicates that her role is to manage time and negotiate delays with the parties.

The second part explores various ways to deal with experts. The third part is about criminal proceedings. It deals with the role of public prosecutors, the inquiry, the judgement, and the execution of the decision. The last part analyzes the role of IT in the courts.

The report concludes with recommendations concerning all four areas: civil proceedings, experts, criminal proceedings and the use of IT in the courts.
Methodology: Qualitative description and analysis

Subject Keywords: Case management, civil procedure reform, civil law, civil litigation, civil procedure, court delay, court performance, criminal law, criminal sentencing, due process, judicial decision-making, judicial efficiency/court delay, legal proceduralism, legal reform, litigation, public prosecutors

Country/Region: France/Europe

Magendie, Jean-Claude & Gomes, Jean-Jacques Justices (Paris : Economica, 1986), 143 pages

(“Justices”, in French) The authors analyze the challenges of the French judicial system in the mid-nineteen-eighties. Despite the official discourse, they find that the face of justice is wrinkled, its sword broken and its balanced falsified. They identify a vast array of weaknesses of the system and make thought-provoking suggestions to improve it. In their introduction, they identify permanent and cyclical elements of crisis: cultural heritage, role of the state as well as a crises of values and politicization. The first part of the book focuses on the inside of the justice system (lack of independence, weak infrastructure, divided sector), whereas the second one analyzes the interface with civil society.

Methodology: Qualitative description and analysis

Subject Keywords: Access to Justice, civil litigation, civil society, corruption, court administration, court delay, court performance, democracy, equality/social justice, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, public opinion of the legal system, public support for reform, separation of powers

Country/Region: France/Europe


This paper investigates the Landes-Posner thesis on judicial independence using data on public law decisions in which the government was the defendant decided in the New Zealing High Court over the period 1958-2001. The authors use survival analysis to examine whether successive New Zealand governments have promoted judges from the High Court to the Court of Appeal (which stands above the High Court) on the basis of political considerations, the quality of the judge’s decision-making or both. Their findings suggest that the quality of decision-making has generally been important. Consistent with the weak form of the Landes-Posner hypothesis the authors find no evidence that governments have used their powers to punish judges who decided cases against them. On the contrary, they find some support for the strong form of the Landes-Posner thesis that governments positively use their powers to secure judicial independence.

Methodology: Qualitative description and analysis

Subject Keywords: Administrative law, judicial accountability, judicial decision-making, judicial independence, judicial selection/promotion, separation of powers, parliamentary supremacy

Country/Region: New Zealand/East Asia Pacific


This paper surveys some development in the Asia Pacific region towards judicial reform. After analyzing the concept of judicial independence, the author presents different models of court administration. Although the appointment of administrative staff seems to indicate independence of courts, the wages and salaries of administrative staff are paid either from consolidated revenue or the budget of a government department, following its appropriation from a national budget. The government thus seeks to retain some control over the management of administrative staff. As far as case management and listings are concerned, this aspect of the administrative management of the courts is under the direct control of the judiciary and thus largely free from interference by the executive or the legislature. Three models of court administration are presented: the traditional model, the separate department model and the autonomous model.
The legal systems of approximately 25 modern Nation-states in the Middle East are as much a product of a sophisticated and ancient history as it is the result of heavy requirements imposed by the pace of the recent transformation of the area. The author shows that concern with law in the region is a century-old phenomenon. Yet, the complexity of the system, as it presently operates in a motley assortment of democratic, republican, monarchical or tribal states is challenging. With all the historical and synchronic diversity in the region, a comprehensive approach to the discipline departs from the premise that the common law of the Middle East is Islamic. If there is one shared, dominant, and distinctive historical background to Middle Eastern legal systems, it would vest in the special historical role taken by Islam in the development of the law.

The author presents and analyzes the legal layers that existed before the establishment of Islamic law in the region: Hammurabi’s Code, the Syro-Roman Law Book, and others. He then presents Islamic law in depth.


This article assesses claims that systems of performance appraisal would undermine the independence of the judiciary. Many U.K. judges oppose recent government support for performance evaluations for reasons of judicial independence, yet Malleson argues that the nature of the threat posed is rarely elucidated. Twenty years ago, most judges opposed judicial training on the same basis, but the creation of a Judicial Studies Board run by judges decreased fears of external interference. The article then distinguishes between the constitutional independence of the judiciary from other branches of government and the freedom of individual judges in decision-making, and argues that analyzed from either perspective, judicial independence is not threatened by judicial training and performance reviews. Training and appraisal, Malleson argues, do not affect the constitutional position of the judiciary relative to other parts of government. And at the level of decision-making, performance evaluations are directed only at the processes by which decisions are made, not the content of decisions. However, while neither element of independence from external sources is threatened by training and performance appraisal, Malleson contends that the internal independence of judges may be more at risk. In recent decades, the evolution of a career judiciary in England, with a clear promotion ladder, is part of a move away from the traditional culture of individualism. The view of judges as social service providers has led to greater insistence on standards and consistency in the approaches of judges. Calls for a more managerial collective role for judges similarly mark a departure from the traditional model. These developments may together eventually compromise the independence of mind and individualism of judges.
The author starts from the premise that the judiciary can no longer be regarded as an apolitical institution and thus that many assumptions about its operating rules, relations with the public, and composition require revision. Largely based on the English experience, she reviews past changes in size (from 288 judges in 1970 to just under 3,000 in 1998) and scope of powers and their impact on the way judges are appointed, trained and scrutinized. She argues that the growing formalism and professionalism of these process has increased pressure for accountability and openness.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial reform; judicial selection/promotion; judicial accountability

**Country/Region:** United Kingdom

**Mani, Rama** *Beyond Retribution – Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), 246 pages

Today’s wars leave a crippling legacy of deprivation and suffering, of physical and structural injustice, long after they submit to peaceful resolution. Survivors of war must find ways to live with the stultifying injustices littering their past and haunting their present – acts of discrimination and violence committed before, during and even after conflict. Confronting the vexed challenge of re-marrying peace with justice out of the morass of war’s injustices is the complex but imperative task facing post-conflict societies and the international community today.

Using current examples from conflicts around the world, ranging from Africa and Asia to Latin America and Eastern Europe, Mani argues for a holistic and integrated approach to justice after conflict. She proposes that we must address all three dimensions of injustice embedded in conflict – symptom consequence and cause, and that subsequently we must rebuild all three dimension of justice – legal, rectificatory and distributive, in the aftermath. This book explores the difficulties and dilemmas confronted on the ground in restoring these and concluded with recommendations for dealing with such challenges of rebuilding peace with justice after contemporarty conflicts.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Access to justice, democracy, divided societies, equality/social justice, group rights, human rights, military operations, outside assistance, political instability, popular justice

**Maraval, José María & Przeworski, Adam** *Democracy and the Rule of Law* (Cambridge:University Press, 2003), 321 pages

The question posed in this book is why governments sometimes do or do not act according to laws. The traditional answer of jurists has been that law has an autonomous causal efficacy: law rules when actions follow anterior norms; the relation between laws and actions is one of obedience, obligation, or compliance. Contrary to this normative conception, the authors defend a positive interpretation according to which the rule of law results from the strategic choices of relevant actors. Rule of law is just one possible outcome in which political actors process their conflicts using whatever resources they can muster: only when these actors seek to resolve their conflicts by recourse to law, does law rule. What distinguishes “rule of law” as an institutional equilibrium from “rule by law” is the distribution of power. The former emerges when no one group is strong enough to dominate the others and when the many use institutions to promote their interests. Conflicts between rule of majority and rule of law are simply conflicts in which actors use either votes or laws as their instruments of power.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Authoritarianism, democracy, judicial review, legal culture, obligation to obey the law, rule of law, separation of powers

The author explores the merits and demerits of the differences in style and reasoning of judgments in Germany and England. The verdict is a mixed one suggesting strengths as well as potential dangers in the English approach when it is compared to those found in France or Germany. In Germany, the frequency with which a court will make use of earlier judicial work is less significant than in England. German courts, however, do quote academic literature in addition to earlier court decisions. The author also explains the different systems of legal education. The author also shows that codification in Germany implies that judges do not discuss policy issues in their judgments to the same extent as their English colleagues do, because these debates take place in different fora. In Germany, the substance of policy debate is done during the preparation of the law or code (travaux préparatoires).

Methodology: Qualitative description and analysis; project evaluation
Subject Keywords: Civil law, common law, European Community/European Union, European Court of Justice, judicial decision-making, judicial training, law drafting, legal culture, legal doctrine, legal education/training, legislative intent
Country/Region: England, United Kingdom, Germany/Europe


This working paper documents the World Bank’s recent (past eight to ten years) involvement in helping countries reform their legal systems and describes initial lessons from that experience. First, the lending instruments and other means used by the Bank to support legal systems are described. These include adjustment loans, investment loans, free-standing assistance and institution/capacity building loans, grant funding, legal assistance not related to projects, and execution of projects funded by external donors. The report states that legal reform usually includes not just changes in the rules governing a society, but also in the processes for implementation and enforcement and the institutions through which these processes occur. The paper then discusses issues raised in legal reform and presents lessons learned. Among these lessons, the report stresses that countries must choose the direction for legal reform, prioritize their reform needs, and exhibit a clear commitment to the reform process; the World Bank cannot be involved in financing legal reform that is not directly related to economic development, but assistance to the judiciary may be necessary for its support of a stable business environment; loan strategies should reflect the long-term nature of the legal reform process; broad participation enhances the success of legal reform; reform efforts must involve local advisers and training suited to local conditions. The report includes a lengthy annex documenting legal components of World Bank projects.

Methodology: Qualitative description and analysis; project evaluation
Subject Keywords: World Bank; Legal reform; judicial reform; donor agency administration; donor politics; economic development; legal training; outside assistance; public support for reform; politics of reform
Law Keywords: Commercial law; administrative law
Country/Region: Developing world (general)


In this paper, Mattei suggests that the study of law and society could benefit by bringing together the insights of two different methodologies: comparative law and law and economics. He claims that comparative law has demonstrated the importance of legal transplants as a source of legal change; however, comparative law currently lacks a satisfactory theoretical explanation of when and why legal transplants take place – or fail to take place. Also, this perspective does not well account for apparent convergences in legal solutions in countries without significant contact with one another. Economic efficiency and the market of legal culture may enhance understanding of legal transplants and other types of legal change, he argues. Moreover, lack of communication or knowledge about other legal systems (legal parochialism) can create the equivalent of a market failure in the market for legal culture, leading to inefficient rules. He illustrates his point with examples from different areas of property law in different Western countries, both civil and common law.

Methodology: Qualitative description and analysis
In this chapter, Mattei critiques the new Ethiopian constitution. He argues that the language of the constitution is borrowed from Western countries – especially the United States – and there is very little in it that corresponds to Ethiopian social reality. He contends that the constitution has three major problems. First, the constitution’s emphasis on individual rights and competition is inappropriate, and may lead to destabilization of Ethiopian society. Such a rights-based rule of law, he claims, depends on a particular kind of legal culture which does not exist in Ethiopia. Second, the constitution lays the foundations for an ethnically-based federalism, which could threaten national unity. Third, the constitution is excessively complex and institutionally weak. He also notes that the Western conception of the rule of law involves the separation of law from both religion and politics, but that this may not necessarily be a good thing for Africa.

Methodology: Qualitative description and analysis

This paper considers problems raised by the export of institutions to developing countries. Good institutions are required for economic growth and performance, but they cannot be exported in the same way as technology: they require a much greater investment in infrastructure. When exported institutions are at odds with the informal institutions in place in a country, transaction costs may actually increase as a result of the transfer. Mattei argues that the law is path dependent, with legal change strongly shaped by the history, tradition, culture and politics of a particular country; as a result, attempts to build a new legal system in a vacuum or to make normative judgments with the presumption of universality should be avoided. Yet despite the uniqueness of every case, some generalizations ought to be attempted in order to reach “economies of scale” in knowledge and reform agendas. Mattei argues that neither the area study classification nor the civil law/common law distinction is very useful for grouping developing country legal systems. The civil law/common law distinction fails mainly because it refers to only one layer of a very layered legal system. Many African legal systems have as many as five tiers: traditional customary law; religious (Islamic) law; colonial law; post-independence formal law; and socialist law. Legal pluralism and relations of power between layers of the law can provide useful characteristics by which to group developing country legal systems. Mattei concludes by criticizing the metaphor of a market for legal institutions and the assumption that formal (state) law ought to be the object of reform.

Methodology: Conceptual/philosophical inquiry
In this article, Mattei proposes a new taxonomy for classifying legal systems. This tripartite scheme groups legal systems according to which pattern of law plays the leading role: politics, law, or tradition (religious/philosophical). He argues that all three patterns of social incentives exist in every society, but the relative hegemony, quantity, and acceptability of these patterns determine classification. One group consists of countries, mainly in the Western legal tradition, where professional law is dominant based on a historical separation between law and politics and between law and tradition. A second group of countries is marked by the rule of political law, where the legal process is dominated by political relationships. Mattei includes the majority of the ex-socialist legal systems and the less developed countries of Latin America and Africa (minus a number of North African states) in this category. The third set of countries are those characterized by rule of traditional law, including Islamic law countries, countries with Indian/Hindu law, and Asian/Confucian conceptions (China or Japan). Mattei notes that the rule of traditional law is not the same as the absence of law, or rule of informal law; some of these legal systems are highly formalized. But common features include a reduced role of the lawyer compared to other authority figures, a hierarchical society, and divisions between legal context of urban areas and the countryside.

Methodology: Qualitative description and analysis
Subject Keywords: Rule of law; religion; legal development; legal profession; import of foreign law/legal transplants; culture/social norms/informal institutions; religion; Islamic law
Country/Region: North America; Western Europe; Asia; Africa; Latin America; developing world (general)


Mauro analyzes the effect of corruption on economic growth, using data assembled by a private risk-assessment firm for a cross-section of countries. He finds statistically and economically significant evidence that corruption causes lower economic growth by reducing the overall level of investment. He finds no evidence for the claim sometimes made that corruption may facilitate growth in countries with slow, inefficient bureaucracies. Furthermore, he argues that corruption/bureaucratic inefficiency appears to be at least as significant for economic growth as political instability. He tests for reverse causality by using “ethnolinguistic fractionalization” as an instrumental variable, and concludes that there is a causal relationship between corruption (and other measures of poor institutional quality) and low growth. He concludes by noting areas for further research.

Methodology: Quantitative analysis; comparative analysis
Subject Keywords: Economic development; corruption; investment; political instability; bureaucracy; colonialism/imperialism; divided societies
Country/Region: Developing world (general); Asia; Europe; North America; Latin America; Africa


This article uses public choice theory to analyze the economic impact of African constitutions, and to propose reforms. Mbaku argues that African countries generally wasted their post-independence opportunity to construct new institutions to promote development. The political economy of most of these countries is characterized by opportunism and rent-seeking. According to Mbaku, in order to promote economic development, a constitution must establish rules that are efficient and self-enforcing. Public choice theory holds that for such a constitution to be designed and adopted, the participants in the process must have exit options, and the final constitution must be adopted voluntarily by all parties. These conditions, however, did not obtain in post-independence Africa. Rather, the institutions allowed whichever group could take control of the state apparatus to redistribute resources to itself. Mbaku argues that the end of the Cold War has given African countries another chance to design appropriate institutions. He argues for a federal political system with free movement between jurisdictions, the requirement of legislative supermajorities, the right of secession as an exit option during negotiations, and restraints on the government’s ability to regulate markets and redistribute wealth.

Methodology: Qualitative description and analysis

This chapter argues that the World Bank-led legal reform agenda bypasses concerns over access to justice and government accountability in its exclusive focus on market development. Donor projects are often based on the idea that formal law reform will lay the foundation of a modern market economy. In the absence of hard evidence about the results of legal reform, however, projects based on this idea sometimes involve an “act of faith.” Another important challenge to law reform, best articulated by Jean-Philippe Plateau, is that in the absence of certain cultural endowments, introducing market institutions to facilitate development will be futile. McAuslan does not reject the potential benefit of law reform in economic development, but he argues that market-oriented law reform cannot be expected to facilitate good governance on its own. Rather than seek less government, reforms should lead to more accountable and differently structured governance. Drawing on land law reform as a case study, McAuslan argues that law reform is political, not technical, in nature, and that it requires national ownership and a long-term time frame. Preconditions include a legitimate government and a range of social conditions which are lacking in most of Africa and parts of South Asia. Analyzing a major World-Bank led project in Tanzania, the Financial and Legal Management Upgrading Project (FILMUP), McAuslan approves of the significant national ownership in the management of the project. Yet he argues that in Tanzania and other developing countries, law reform oriented solely at producing an efficient market economy neglects the need for fairer administrative justice. Compared to the Law and Development Movement of the 1960s, academics today are much more aware of the limitations of using law to facilitate social and economic change, but development practitioners have not absorbed those lessons.

Methodology: Qualitative description and analysis; project evaluation


The author argues that “access to justice” can be seen as an implicit requirement of international human rights treaties. Cases before the European Court of Human Rights (especially Golder v. UK, 1975) have discovered the right to access to justice as an element of the “fair hearing guarantee” in the European Convention on Human Rights. The existence of such a right has implications for all three kinds of factors that might restrict one’s ability to institute proceedings: formal, procedural, and practical/financial restrictions. In surveying European case law, the author argues that formal restrictions (e.g. agreements not to resort to the courts in case of dispute) can be sustained provided that a compelling justification exists for such restrictions. States can also establish procedures to regulate court access (e.g. time limits for appeals), but such requirements ought to be proportionate. Regarding practical/financial restrictions, the European Court has on occasion found a right to access to justice violated in cases where legal costs were prohibitive or legal representation impeded.

Methodology: Conceptual/philosophical inquiry


The author argues that “access to justice” can be seen as an implicit requirement of international human rights treaties. Cases before the European Court of Human Rights (especially Golder v. UK, 1975) have discovered the right to access to justice as an element of the “fair hearing guarantee” in the European Convention on Human Rights. The existence of such a right has implications for all three kinds of factors that might restrict one’s ability to institute proceedings: formal, procedural, and practical/financial restrictions. In surveying European case law, the author argues that formal restrictions (e.g. agreements not to resort to the courts in case of dispute) can be sustained provided that a compelling justification exists for such restrictions. States can also establish procedures to regulate court access (e.g. time limits for appeals), but such requirements ought to be proportionate. Regarding practical/financial restrictions, the European Court has on occasion found a right to access to justice violated in cases where legal costs were prohibitive or legal representation impeded.

Methodology: Conceptual/philosophical inquiry

Subject Keywords: Access to justice; human rights; individual rights; civil procedure; judicial efficiency/court delay; legal services

Law Keywords: Civil litigation; international law
Country/Region: Western Europe


First published in 1960, this classic text on the role of the United States Supreme Court in governing the American polity has been updated by one of the author’s students, himself an authority on the Court. McCloskey’s discussion divides into three parts: the role the Court played in deciding the relative power of the central government vis-à-vis the states prior to the Civil War, its decisions on the degree to which the federal government could regulate business in the period from 1867 until 1937, and its emerging views on civil liberties. For those looking for lessons for developing countries the early chapters on where McCloskey summarizes the most important activities and decisions of the Court under Chief Justice John Marshall may be most useful. The topics covered include Marshall’s efforts to achieve two interrelated goals – the protection of private property rights and the principle of nationalism (as opposed to localism) – and more generally his efforts to strengthen the power of the court as an institution. McCloskey points out that, though the Marshall court was vocally opposed by States’ Rights advocates, this opposition was often fragmented. The court also had significant public and political support, particularly among the influential community of lawyers and judges, and this support helped it establish its authority despite its apparent political weakness vis-à-vis the executive, legislature, and states. McCloskey concludes that, though the Marshall court could not and did not resolve the contentious issues of federal-state conflict and judicial authority completely, it laid the foundations for federal control and established the principle of judicial sovereignty. He also shows how Marshall was able to establish the principle of judicial review in *Marbury v. Madison* through an act of judicial statesmanship. While the case announced the principle, it did not demand of the executive branch that it take any action senior officials opposed. Marshall realized that the there was little support for the Court and that were he try and assert the Court’s authority at this time, the result would have probably been a refusal to comply and the loss of the Court’s institutional authority.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; federalism; property rights; judicial review; democracy; public opinion of legal system
Law Keywords: Constitutional law
Country/Region: United States


This book describes Ford Foundation-supported programs that use law to promote human rights and social justice. It presents case studies of projects in South Africa, the Andean region and Southern Cone of South America, the United States, Bangladesh, China, the Philippines, and Eastern Europe. Among the themes explored in the book are: the growing presence of university legal aid clinics that give free legal assistance and even litigate test cases; the use of public interest litigation to expand access to justice and improve domestic protection of human rights; the increasing use of nonlawyers in law-related work; and the response of non-governmental organizations to political challenges.

Methodology: Qualitative description and analysis; project evaluation
Subject Keywords: Access to justice; class actions/representative actions/public interest litigation; donor agency administration; legal aid; human rights; Law and Development movement; political reform/ regime change; alternative dispute resolution; legal reform; nonlawyer advocates; outside assistance
Country/Region: Bangladesh; China; developing world (general); Eastern Europe; Latin America; Philippines; South Africa

This article uses formal theory to explain the choice of doctrine by the Supreme Court, and how the organization of the judiciary and external political factors affect the choice of legal doctrines. The authors model the Supreme Court, the lower courts, and the elected branches as rational actors with policy preferences. The Supreme Court, when choosing doctrine, has to consider two important factors that constrain its pursuit of its policy objectives. First, there is the problem of how to induce lower courts to adhere to the Supreme Court doctrine when the Supreme Court has the resources and the time to review only a subset of lower court decisions. Second, the court must avoid statutory reversals or other punishments by the elected branches of government. The court’s decision to adopt a narrow doctrine that allows minimal discretion, or a more broad doctrine that allows greater discretion, is largely a strategic decision, as the court tries to achieve its policy goals given these constraints. The most important implication of their model is that a change in the number of cases or in the distribution of lower court preferences will cause a shift in the judicial doctrine adopted by the Supreme Court. A further implication of this idea is that the elected branches can affect Supreme Court legal doctrine by indirect means such as changing the composition of the lower courts or adopting new rules for litigation and administrative regulation. They argue further that the rule of law and the doctrine of stare decisis emerge as by-products of a self-enforcing equilibrium in which judges have no incentive to break with established precedent. They discuss several changes in doctrine in twentieth century US history which support their conclusions.

Methodology: Formal analysis
Subject Keywords: Judicial decision-making; legal doctrine; rule of law; separation of powers; legal reform; judicial reform; judicial review; public choice; incentives of judges
Law Keywords: Civil litigation; administrative law; constitutional law
Country/Region: United States


In this article, the authors use formal economic analysis to investigate the incentives of different types of rulers to redistribute wealth to themselves and to provide public goods to society. In the case of autocratic governments, though “roving bandits” or autocrats with a short time horizon will confiscate a large proportion of society’s wealth and provide little in the way of public goods, “stationary” autocrats with a relatively long time horizon will select much more favorable tax and public goods policies. This is because a self-interested autocrat has an encompassing interest in the economic well-being of the territory under his control, and therefore has an incentive to provide a certain level of public goods and to keep taxes relatively lower. The authors then investigate the incentives of the ruling group in a democracy. They find that, because the political leaders in a majority-rule democracy are also market participants, a majority rule democracy will set even lower tax rates and provide higher levels of public goods than a stable autocracy. Furthermore, if the ruling interest is sufficiently encompassing (what the authors refer to as a “super-encompassing interest” there is no redistribution whatsoever, and the ruling majority treats those with no power as well as it treats itself. The authors note in a concluding section several factors their model has not included, especially the problems associated with interest groups and free-riding, and with short time horizons. Nonetheless, they argue that their results highlight an important phenomenon that is generally overlooked in the economics literature.

Methodology: Formal analysis
Subject Keywords: Democracy; authoritarianism; economic development; taxation


In this article McKechnie, the Director of Public Prosecutions for Western Australia, discusses the issue of prosecutorial independence and accountability. The conflict between independence and accountability, McKechnie claims, is an illusion. Rather, it is by ensuring accountability at all levels that the independence of the prosecution is sustained. McKechnie bases his argument on his personal experience as a prosecutor, and discusses the relationship between prosecutorial accountability and independence with regard to the Attorney General, parliament, courts, media, published prosecution policy, the prosecution service, the local
legal profession, the police, and victims. He also notes that funding issues may constrain the effectiveness of the prosecutor’s office, but they do not influence its independence.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Public prosecutors; judicial independence

**Law Keywords:** Criminal law

**Country/Region:** Australia


Managers of 259 privately owned firms in Hanoi and Ho Chi Minh City were asked during 1995-1997 how they assured the performance of contracts in the absence of a functioning court system. Respondents’ median number of employees of 32 was and median annual sales were $56,000. Most had been in operation four years or less. Theory suggests the risk of contract breach is affected by whether goods are produced to order or for inventory, the availability of alternative customers (the thinness of the market), and the distance between supplier and customer. The authors examine three governance structures -- written contracts, timing of payment for goods, and use of intermediaries -- to determine whether their use consistent with what the theory would predict. They find that written contracts and staged payments were more frequent where risk of breach higher but intermediaries infrequently used.

In a related article authors report that gossip among suppliers on reliability of customers significant source of information and possible route to use of community sanctioning for breach. Here they find that community sanctioning used in those transactions where risk of breach greatest. Although business or family ties can help get relationship started, experience in dealing with other party and pre-contractual monitoring ready substitutes. No evidence ethnic networks important.

Study shows that repeated game incentives supplemented by governance structures and pre-trade investigation can support business activity even in the absence of workable legal system. But findings may also show that high cost of finding new trading partner binds firms to one another and that as transaction costs of finding alternative partner falls, willingness to cooperate will decline. Findings also suggest that relational contracting may not support transactions with large enough sunk costs that the temptation to renege outweighs reputational considerations. “Investments that are large and have a long-delayed return require legal protection to prevent governments or other firms from appropriating quasi-rents.” (653-654) Legal reform should support existing market transactions and legitimize current business transactions. It should aim at covering areas, like large investments with long-delayed returns, that relational contracting cannot.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Property rights; judicial reform; legal reform; nonlegal sanctions; culture/social norms/informal institutions; rule of law; import of foreign law/legal transplants

**Law Keywords:** Contract law

**Country/Region:** Vietnam


In Vietnam, firms must rely on their customers’ goodwill to ensure contracts are honored as the legal system remains underdeveloped. Data on trade credit extended from 242 customer relationships and 254 supplier relationships drawn taken from a sample of 259 privately owned firms in Hanoi and Ho Chi Minh City are examined to determine how firms develop and maintain goodwill. One hypothesis is that when a customer can select from many alternative suppliers, he will be more likely to breach a contract then when the supplier is unique and, accordingly, unique or monopoly suppliers will be more likely to grant trade credit. The data confirm this hypothesis. When a supplier’s main competitor is located near it, the supplier offers 15% less trade credit. A second hypothesis, that the longer a supplier has dealt with a customers, the less willing the customer will be to breach the contract and thus the more willing the supplier will be to extend trade credit is also born out. After two years of dealing, the supplier is willing to offer 14% more trade credit.
The data also support a third hypothesis involving the development and maintenance of goodwill between firms. Firms that locate customers through business networks or that regularly communicate with the customer’s other suppliers offer the customer more trade credit than those that do not. These findings are consistent both the view that networks provide more information about a customer before trading begins and that membership in a network allows the supplier to sanction more effectively a defaulting customer.

The absence of a legal system that can enforce contracts and the difficulty of locating trading partners create frictions in the market that impel firms to cooperate. The downside to impelled cooperation is that ongoing relationships may be maintained even when switching to a new partner might be more efficient. Data from the survey tends to support this fear. Fifty-three percent of respondents said that if a new supplier offered an equivalent product at a lower price, they would buy only a part of their requirements from the new firm while 19% said they would reject the offer outright.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; judicial reform; nonlegal sanctions; alternative dispute resolution; Contract law
Country/Region: Vietnam


After a brief description of the structure of the South African legal profession and procedure, the wide variety of different mechanisms for delivery are analyzed: uncompensated private counsel (pro bono), state-compensated private counsel (judicare), state-funded candidate attorneys in rural law firms, state-funded law clinics, state-funded justice centers (one stop legal aid shops), private, specialist law firms, independent university law clinics, paralegal advice offices, and legal insurance schemes. More recent developments have been the proposed recognition of contingency fees and the possibility of introducing compulsory community service for all law graduates to enable them to assist in the delivery of legal aid services. The lessons learned from all these mechanisms are examined.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, civil litigation, legal aid, legal profession, regulation of legal services
Country/Region: South Africa


This collection focuses on the state of national justice systems in Latin America and the ways they adversely affect the poor. The various chapters overview the situation and describe the changes different countries have made to their judicial systems following the opening to democracy. Notable are the chapters dealing with changes in court organization and procedures and with access to justice and discrimination.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice; judicial reform; political reform/regime change; democracy; court administration; civil procedure
Country/Region: Latin America


This review essay surveys some of the recent literature on the role of law in colonialism. Merry observes that law was central to the colonizing process, but that its role in colonialism was complex and varied. She discusses several themes that emerge in the recent literature. One important topic is the use of “customary law” or “native courts” in colonized societies. Many studies have observed that the so-called “customary law” was actually a product of the colonial period rather than an extension of the pre-colonial past, and moreover that the process of codifying the customary law often changed it from a flexible, adaptable system
to a body of fixed, formal rules. Another related topic is the degree to which local judicial institutions were controlled by the central government, and the impact of changes in the degree of local versus central control. Merry also discusses the important role of law in the expansion of capitalist economics and bureaucratic government in the colonized world, as well as law’s contribution to cultural transformation and domination in these societies. She concludes her survey of the literature with the observation that law’s role in colonialism, while central to the enterprise, was ambiguous. On the one hand, law played an important role in establishing control and domination over colonized societies. On the other hand, law also constrained these systems of domination and provided avenues for resistance.

**Methodology:** Literature review; qualitative description and analysis

**Subject Keywords:** Colonialism/imperialism; import of foreign law/legal transplants; customary law/indigenous law; legal pluralism; politics of resistance; culture/social norms/informal institutions; popular justice; law enforcement; land disputes; economic development; judicial reform; ideological role of law

**Law Keywords:** Family law; property law; commercial law

**Country/Region:** Africa; Tanzania; Egypt; Yemen; India; developing world (general)


This article reviews the literature on the concept of “legal pluralism” – defined as a situation in which two or more legal systems coexist in the same social field. The study of “classic legal pluralism” focused on colonized societies, and examined the intersection between European and indigenous law. More recently, “new legal pluralism” scholarship has explored legal pluralism in modern industrialized societies, especially the United States. In these latter cases, the plural legal systems comprise various non-state forms of social ordering. Merry discusses the difficulties in defining and delimiting the major concepts in legal pluralism, especially “legal system”, concluding that the literature has not yet clearly demarcated the boundary between normative orders that can and cannot be called law. She also discusses hypotheses within the literature about the interactions between the coexisting normative orders, and concludes with directions for future research suggested by existing work on legal pluralism.

**Methodology:** Literature review

**Subject Keywords:** Legal pluralism; customary law/indigenous law; colonialism/imperialism; import of foreign law/legal transplants; legal culture; nonlegal sanctions; culture/social norms/informal institutions; symbolic use of law; politics of resistance; ideological role of law; informal dispute resolution

**Country/Region:** Southeast Asia; Africa; Latin America; United States; United Kingdom; Turkey; India


Merry discusses the concept of “popular justice” and its relationship to formal state law. According to her, popular justice is characterized by decision-making procedures, enforcement mechanisms, and substantive rules that are relatively less formal and more closely tied to local community norms than the formal legal system. She notes four major traditions of popular justice: reformist, socialist, communitarian, and anarchist. The former two are more closely tied to the formal state institutions, while the latter two are relatively closer to indigenous, customary forms of social ordering. She argues that popular justice exists in the contested space between indigenous ordering and formal law, and the form of popular justice is a result of struggles between these two spheres. This struggle also explains why popular justice tends to change shape and meaning over time. Frequently, popular justice becomes integrated into, or begins to resemble, the formal legal system, but this often provokes new demands for more informal procedures. Overall, though, she notes that popular justice tends to reinforce rather than transform existing social relations.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Popular justice; mediation; informal dispute resolution; alternative dispute resolution; access to justice; socialism; revolution; colonialism/imperialism; customary law/indigenous law; culture/social norms/informal institutions; vigilantism

**Country/Region:** United States; Sri Lanka; China; Papua New Guinea
Merry, Sally Engle “Popular Justice and the Ideology of Social Transformation” Social and Legal Studies 1:161-176 (1992)

In this article, Merry assesses the relationship between “popular justice” movements and broader social change. She defines popular justice as a process for making decisions that is relatively informal and nonprofessional as compared to state law, and that seeks to apply local community norms and standards of fairness. She claims that popular justice is similar to “indigenous” law and opposed to state law in cultural terms, but in practice its procedures and sources of authority are similar to state law. Merry argues further that, although advocates often see popular justice institutions as a way to transform society, this has generally not happened. Merry cites examples from the United States, Papua New Guinea, Sri Lanka, and elsewhere to show how popular justice often serves to reinforce the authority of state law and ruling elites, rather than undermine them. However, she stresses that the ideology of social transformation and opposition to state law often do make a difference, as new forms of popular justice based on non-state forms of social ordering constantly challenge state law. She concludes by discussing similarities and differences in popular justice in the “core” and “periphery” of the international system.

Methodology: Qualitative description and analysis

Subject Keywords: Popular justice; informal dispute resolution; customary law/indigenous law; politics of resistance; alternative dispute resolution; colonialism/imperialism; dependency theory

Country/Region: United States; Sri Lanka; Papua New Guinea; China


This is the first of two brief memoirs of “law and development” projects of the 1960s and ’70s in which the author was centrally involved. The first of them, the Chile Law Program, had modest ambitions and, until it fell victim to larger political events in Chile, promised to be modestly effective. It was an action program in support of efforts by Chilean law faculties to transform (‘modernize’) Chilean legal education and legal research in order to build a corps of legal professionals and a tradition of legal scholarship that would help provide the legal infrastructure thought by Chileans to be necessary for the nation to achieve its social and economic ambitions. Interest in modernizing legal education and research was in the air in Latin America in the late 1960s. The Chile Law Program was an effort to support that interest.

Methodology: Qualitative description and analysis

Subject Keywords: Colonialism/imperialism, import of foreign law/legal transplants, institutional capacity, law and development movement, legal culture, legal education/training, outside assistance

Country/Region: United States, Chile


This is the second of two brief memoirs of “law and development” projects of the 1960s and ’70s in which the author was centrally involved. The first described the Chile Law Program (CLP), in which the Stanford Law School supported Chilean law deans and professors in their efforts to reform Chilean legal education and research. In this memoir, the author revisits SLADE (for Studies in Law and Development), which was initiated and based at the Stanford Law School. Unlike the CLP, which was an action program, SLADE was an inquiry, in which the people involved set out to acquire systematic, comparable information about law and social change from the documented experiences of six nations in Spanish America and Mediterranean Europe in the decades following the end of World War II.

Methodology: Qualitative description and analysis

Subject Keywords: Culture/social norms/informal institutions, law and development movement, legal culture

Country/Region: United States, Chile/Latin America

This article seeks to explain the crisis in law and development studies that emerged in the United States in the mid-1970s. After discussing the intellectual origins of the Law and Development movement, Merryman identifies what he sees as the movement’s intellectual style, which in his view contributed to its failure. First, law and development scholarship tended to ignore large bodies of research in analogous fields: colonial administration, the reconstruction of Germany, Italy, and Japan after World War II, internal colonies (e.g. Native American Tribes), intra-national regional development, and US legal history. Furthermore, the bulk of law and development scholarship is concerned with action rather than inquiry, tends to be non-theoretical, and does not employ any quantitative methodology. Merryman argues that these tendencies are rooted in a particular American legal style. This intellectual style contributed to the failure of law and development action, since advisors to foreign governments both lacked a feel for the culture and had no reliable theory. Merryman concludes that, at this stage, law and development action is premature, and the focus ought to be on inquiry and theory-building. He also argues that the field ought to be called “comparative law and social change” rather than “law and development” in order to better reflect the nature of the enterprise.

**Methodology:** Literature review; qualitative description and analysis  
**Subject Keywords:** Law and Development Movement; legal reform; USAID; economic development; outside assistance; legal instrumentalism; equality/social justice; legal culture; colonialism/imperialism; legal education/training  
**Country/Region:** Developing world (general)


In this article, Messick surveys the current state of research on the relationship between judicial reform and economic development. Judicial reform projects – a subset of legal reform – generally include efforts to make the judicial branch more independent, speed the processing of cases, increase access to dispute resolution mechanisms, and professionalize the bench and bar. Although it is widely believed that judicial reform is important for economic development, Messick argues that very little is actually known about the actual effect, or about what constitutes a sound reform project. Messick discusses the findings of existing research on law and the judiciary in developing countries, and the implications for designing reform projects. He stresses in particular the importance of informal enforcement mechanisms in developing countries, and argues that efforts to reform or expand the formal legal system ought to build on or enhance these informal mechanisms; otherwise judicial reform projects might end up being counterproductive. Messick concludes that any reform effort must be preceded by an in-depth analysis of country needs, continually reviewed as implementation proceeds.

**Methodology:** Literature review; qualitative description and analysis  
**Subject Keywords:** Judicial reform; economic development; World Bank; USAID; outside assistance; nonlegal sanctions; noncontractual agreements/relational contract; judicial independence; judicial efficiency/court delay; access to justice; legal education/training; alternative dispute resolution; informal dispute resolution; property rights; rule of law; judicial review; public support for reform; Law and Development Movement; import of foreign law/legal transplants; credit market; legal reform; credit associations; private adjudication  
**Law Keywords:** Contract law; administrative law  
**Country/Region:** Developing world (general)


This chapter discusses the challenges facing judicial reform projects in Latin America. The authors note several obstacles facing these attempts at reform, including vested interests in the status quo, inadequate information, and unrealistic objectives. They point out that the most reform projects have two goals –
increasing judicial independence and judicial efficiency – but accomplishing both of these goals at once is extremely difficult. The authors then explore different ways the reform efforts might be improved. They emphasize in particular the need for greater attention to the incentives of judges, and suggest that effective reforms ought to design career incentives that will attract high-quality individuals to judicial careers and encourage them to be productive and effective once they are judges. However, they note that while performance-based compensation makes sense in theory, in practice it may be difficult to develop good measures of judicial performance. Despite these difficulties, they argue that more attention should be paid to improving judicial sector through altering the judges’ incentives.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial reform; judicial efficiency/court delay; judicial independence; outside assistance; public opinion of legal system; public support for reform; politics of reform; judicial decision-making; incentives of judges; judicial selection/promotion

**Country/Region:** Latin America


This chapter discusses legal education in France, Germany, and Italy. The authors discuss current reforms in legal education and training in France and Germany, and contrast Italy unfavorably with these two countries. The authors discuss university law training, the professional selection process, and continuing professional education for lawyers and magistrates. The authors conclude by noting that, in civil law countries, there is an academic legal culture that stresses the theoretical over the practical and rejects the relevance of non-legal disciplines, and that these cultural biases can often exert a negative influence on legal education.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Legal education/training; legal profession; civil law; legal culture

**Country/Region:** France; Germany; Italy


(“Proximity Justice – A Historic Approach”, in French) Modern approaches to judicial reform aim at bringing the justice system closer to the people it is supposed to serve. In this book, this aspect of access to justice is analyzed in the French context from a historic perspective. It covers the period from the 11th through the 19th century, but also gives valuable insight for contemporary approaches to proximity justice.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Access to justice, civil procedure reform, civil litigation, due process, judicial reform, legal proceduralism, legal profession, monarchy, nonlawyer advocates

**Country/Region:** France/Europe


This article develops a rational-choice model of judicial decision-making based on a judge’s concern for reputation. Specifically, the authors represent the preferences of judges by a utility function with two components: the judge’s private utility function (determined by his personal view of how a case should be decided) and a reputational utility function, which depends on the judge’s expectations of how his decision will be viewed by observers of the legal process. The authors assume that judges suffer negative utility from having their decisions overturned or ignored, but derive positive utility from creating new precedents used by other judges. In the model developed by the authors, the rate at which judges depart from precedent depends on the distribution of judicial preferences across the population of judges. The authors conclude by suggesting that future research ought to combine a model of rational litigants with a model of rational judicial behavior in order to determine the equilibrium rate of legal change in the whole legal system.

This article reports the results of surveys of households in Ghana, Rwanda, and Kenya in 1987-88 to determine impact of providing farmers with secure land title. In only one of the ten regions (Anloga in Ghana), did more than 13 percent of households receive formal credit, and in Ghana and Rwanda all formal credit received was for less than one year. The authors found no significant relationship between the receipt of formal credit and land held with complete transfer rights. One reason for this, they suggest, is that in some countries land collateral is of little value because transfers to outsiders not always recognized. They also suggest that in some places, particularly Kenya, loans are secured by crop liens.


This article develops a simplified formal model of the medieval Law Merchant (a system of private adjudication of commercial disputes) to show how, even in the absence of state enforcement or repeated dealings between the same trading partners, cooperation and honesty can be sustained. The authors first note that reputational mechanisms for contract enforcement can be effective even when any particular pair of traders meets infrequently, so long as traders can acquire information about their partners. However, information is costly. The authors’ formal model shows how the Law Merchant system created the appropriate incentives for traders to share information about their past trading partners. The authors stress that the Law Merchant does not replace reputational mechanisms; rather, it makes those mechanisms more effective. They also consider and model the case where the Law Merchant judge might be corrupt, and show that under the proper institutional constraints, the judges will not extort bribes for fear of losing the business of their merchant clients. The Law Merchant system, the authors contend, allowed the expansion of trade in Western Europe in the twelfth and thirteenth centuries, and similar types of institutions – which enhance reputational enforcement by sharing information – have been important in many other contexts as well.


This paper argues that the Japanese experience challenges prevailing notions of the relationship of the rule of law to economic development. Japan’s legal system and its role in economic activity (as measured, for instance, in the size of the legal profession, numbers of lawyers and judges, and number of civil suits filed) is much smaller than in other developed countries. Milhaupt presents an institutional explanation for the disparity: in the areas of corporate reorganization, debt collection, shareholders’ rights, investor protection, and rights enforcement agents and dispute intermediaries, barriers in the regulatory and legal framework reduce demand for legal intervention. Reconciling these facts with Japan’s exceptional economic growth,
Milhaupt argues that economic actors rely on private ordering to provide substitutes to the formal legal system. But private ordering has both a bright side and a dark side. On the bright side, private ordering provides alternatives to formal bankruptcy proceedings, the protection of minority shareholder rights, and other functions typically exercised by the formal legal system. On the dark side, organized crime and other extra-legal mechanisms substitute for the absence of state enforcement mechanisms, and while possibly efficient in individual cases, these substitutes erode the framework of legal rights. Turning to the broader implications of the Japanese experience, Milhaupt argues that concepts of the rule of law and legal reform cannot be restricted to the formal rules but must take into account actual legal and non-legal enforcement. Furthermore, he notes that the direction of causation assumed by most studies—law and legal systems to corporate and financial structures—might need to be reversed. Finally, Milhaupt notes that bypassing legal development may lead a country to miss out on positive network effects of law and legal institutions.

**Methodology**: Qualitative description and analysis; quantitative analysis

**Subject Keywords**: Culture/social norms/informal institutions; private enforcement organizations; economic development; rule of law; legal reform; debt collection; organized crime

**Law Keywords**: Commercial law; civil litigation

**Country/Region**: Japan


The authors argue that organized crime competes with the state to provide property rights enforcement, dispute resolution, and protection services, and that the size and scope of organized criminal activities are shaped by inefficiencies in the formal legal structure. Thus, they claim, organized crime is the “dark side” of private ordering— that is, order created by agents other than the state. They support their argument with data from Japan where, they contend, inefficient substantive laws and a state-induced shortage of legal professionals has fostered the growth of organized crime, especially in the areas of bankruptcy, debt-collection, landlord-tenant disputes, protection of shareholder rights, civil dispute resolution, and entrepreneurial finance. They show that the size of organized crime firms is negatively and significantly correlated with civil cases, bankruptcies, reported crimes, and loans outstanding. This evidence, the authors contend, supports the hypothesis that organized crime firms play an entrepreneurial role in substituting for state-supplied enforcement mechanisms and other public services. They also produce evidence that the arrests of gang members do not seem to reduce the size of organized crime firms. This evidence leads them conclude that treating organized crime as a traditional law-enforcement problem may be less effective than focusing on altering the incentive structures of formal institutions so that state institutions will be able to out-compete organized crime firms in the provision of the relevant services.

**Methodology**: Qualitative description and analysis; quantitative analysis

**Subject Keywords**: Organized crime; private enforcement organizations; property rights; debt collection; bankruptcy; crime control; corruption; informal sector/black markets; legal profession; credit market; capital market

**Law Keywords**: Commercial law; contract law; property law; criminal law

**Country/Region**: Japan


This article discusses the economic implications of organized crime in Russia. After briefly defining organized crime and overviewing the current activities of organized crime enterprises in Russia, Millar addresses two main issues. First, he assesses the claim that organized crime might actually have some beneficial effects—that organized criminal enterprises may transform into legitimate businesses, may use some of their capital to finance legitimate businesses, or may serve as schools for entrepreneurship. He finds little reason, however, to be optimistic about these possibilities, and no strong evidence that organized crime has had a beneficial economic effect in Russia. Second, he addresses the concern that organized crime may undermine the transition process and threaten political and economic reform. He suggests that organized
crime may pose a threat to maintaining democracy by undermining public faith in government institutions, or possibly by penetrating political parties and government directly. However, overall he concludes that organized crime is more the product than the cause of political and economic instability, and failure of reform.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Organized crime; post-socialist transition; economic reform; corruption; illegal drugs; informal sector/black markets  
**Country/Region:** Russia


(“The State Subject to the Rule of Law, A Contemporary Ideology of Democracy”, in French) Millard makes a critique of the commonly held opinion according to which the notion of ‘Etat de droit’ is a guarantee of democracy and human rights. In his analysis, he examines the relation between such notion and the concept of ‘Etat de droit’ and analyzes the different meanings of the concept of democracy, as well as its links with the concept of sovereignty. In the author’s opinion, the reference to the ‘Etat de droit’ has hidden the fact that the essential matter is in the political definition of democracy, which is the real power behind the State.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Constitutionalism, democracy, governance, legal doctrine, rule of law, separation of powers


This article argues that comparative civil procedure can benefit from economic analysis. For example, there is a trade-off between the costs of procedures and the costs of error, and countries’ legal systems lie at different points along the curve; reform efforts can consist of either moving along the curve to a more optimal point (where the sum of the two costs is minimized), or, in the case of a highly inefficient system, shifting the curve to achieve gains in both accuracy and cost. Miller also uses a downward-sloping litigation demand curve to demonstrate the relationship between the cost of litigation and quantity of litigation: lower costs may lead to greater litigation, offsetting the original gains achieved by streamlining procedure. He also applies economic analysis to the question of whether pre-judgment interest will have on court delay. Addressing pressures for harmonization of civil procedure, he argues that harmonization does not necessarily create greater efficiency.

**Methodology:** Formal analysis  
**Subject Keywords:** Civil procedure; costs of the legal system; litigation  
**Law Keywords:** Civil litigation


This article reviews law and economics literature to examine settlement in view of the economic model of litigation. The standard model presents litigation as the sale of an asset (the plaintiff’s legal claim) to the defendant. Litigation differs from other economic transactions in that the value of the legal claim is far more difficult to ascertain than other assets, and the exchange can only be made between the holder and the defendant (a bilateral monopoly). The article identifies four reasons why a settlement might not occur despite the interest of both parties in avoiding litigation costs: mutual optimism, agency costs, strategic effects, and non-monetary relief. Miller discusses arguments against settlement based on concerns with justice or with economic wealth-maximization, and concludes that objections to settlement can be encountered by other arguments that are as intuitively persuasive. As a result, he suggests that as a working hypothesis, mechanisms provided to allow parties to choose settlement voluntarily should be made available. The article then turns to devices that encourage settlement by combating optimism, overcoming agency costs,
and overcoming strategic effects. Devices to combat optimism address the information problem that supplies undue optimism about the outcome of a trial, and include procedural rules, alternative dispute resolution techniques, and rules for attorney compensation. Certain procedural rules can also combat agency costs in attorney-client relationships. A particularly important rule to overcome strategic effects is Rule 68, which requires a plaintiff who rejects a defendant’s offer of judgment to pay the defendant’s post-offer costs of litigation if the trial judgment does not ultimately improve on the offer. Miller tentatively concludes that settlement provides large benefits in avoiding trial costs, and that extra-judicial dispute resolution should be encouraged when voluntary and privately financed, but that compelling parties to participate is more problematic.

Methodology: Formal analysis; literature review

Subject Keywords: Out-of-court settlement; litigation; costs of the legal system; legal profession; alternative dispute resolution

Law Keywords: Civil litigation

Country/Region: United States


This article offers an attempt to understand the legal transplant process through the tool of a sociological typology. Legal transplants, the movement of laws and legal institutions between states, have become central to the study of comparative and international law. Economic development, democratization and globalization have today so sharply increased the number of legal transplants that at least in developing countries, most major legislation now has a foreign component. Numerous programs sponsored by governments, foundations, and international institutions have actively encouraged these processes.

According to the author, this proliferation of legal transplants has fostered two bodies of scholarship. First, the growth since the 1990’s of state and foundation-sponsored law and development projects that see legal reform as a tool for democratization and development has spawned a large literature on legal transplants that describes the many projects and the extent of their success. Second, the increased impact of international law on areas previously regulated exclusively as domestic law, and increased transnational links between government agencies, have led public international law scholars to analyze transplants. Instead of focusing on the direct export of legal regimes between states, this literature examines the use of public international law and emerging global consensus to create transnational law, rules for domestic application that cross state lines.

The author identifies and explains four different types of transplants based on the factors that motivate them: the cost-saving transplant, the externally dictated-transplant, the entrepreneurial transplant, and the legitimacy-generated transplant. He uses examples for Argentina for his typology and analyzes its implications as well as the role of the donors.

Methodology: Qualitative description and analysis

Subject Keywords: Colonialism/imperialism, democracy, donor politics, human rights, ideological role of laws, import of foreign law/legal transplants, international law, legal reform, outside assistance

Law Keywords: Argentina/Latin America; worldwide


This article identifies and describes a range of ADR techniques offered in various countries: arbitration; expert determination; mediation; negotiation, facilitation, and conciliation; mini-trial; fact-finding; med-arb; private judging; early neutral evaluation; partnering; and dispute review boards; and adjudication. The current interest in ADR dates to the US movement of the late 1970s, but court-annexed mediation is spreading, while arbitration (originally an alternative to litigation, now often associated with the same cost and delay problems as litigation) is common internationally.

Methodology: Qualitative description and analysis; summary/synopsis

This U.K. government report presents reforms to make justice more accessible and obtain better value for money spent on legal services and the court system. Defining access to justice as the availability of effective solutions proportionate to the issues at stake, it starts from the premise that many people—particularly those not rich enough to afford lawyers but not poor enough to qualify for aid—find the legal system closed off to them. It recommends measures to provide better access to information; make the law more clear and fair; provide affordable legal services and alternative dispute resolution; and improve court management. In one such change, current legal aid programs would be replaced by a Community Legal Service to provide advice and assistance; individual litigation would be provided for priority cases. The report also criticizes the current legal system as “top heavy” and recommends making ADR available to people, instituting conditional fee arrangements to make representation more affordable, and opening the higher courts to solicitors. These measures would break current “lawyer monopolies” that prevent efficient civil justice. The report also discusses changes already implemented by the Lord Chancellor’s department in response to Lord Woolf’s recommendations for civil justice reform.

Subject Keywords: Alternative dispute resolution; mediation; commercial arbitration; litigation; costs of the legal system
Law Keywords: Commercial law; contract law; international law

Methodology: Qualitative description and analysis

Subject Keywords: Legal services; court administration; legal reform; access to justice; judicial reform; civil procedure; costs of the legal system; legal professions; alternative dispute resolution; nonlawyer advocates
Law Keywords: Civil litigation
Country/Region: United Kingdom


This article explores the implications of presidential versus (Westminster) parliamentary government for bureaucracy and public administration. The authors argue that American-style presidential separation-of-powers systems and British-style parliamentary systems create different institutional incentives that affect how government agencies are organized and how well they perform. The main implication they derive is that, in a separation of powers system, formalization of rules and regulations protects the political interests of powerful agents. Thus, government agencies are buried under complex and restrictive rules, denied the discretion they need to function effectively, and insulated from meaningful democratic control. By contrast, in a parliamentary system, the centralization of power makes formalization an unattractive strategy. Instead, structural choice is driven by the government’s concern with effective government. Commitment problems – solved in presidential systems by formalization that makes policy change difficult – are ameliorated in parliamentary systems by more informal mechanisms. The result, according to the authors, is that agencies in parliamentary systems have more discretion, are more effective, and are coordinated within a coherent system of democratic control. The authors support their theoretical argument with illustrations from the paradigmatic American and British cases, as well as some additional evidence from other systems. Their main conclusion is that every institutional form of democracy generates its own political dynamic which in turn generates the basic structures which make up the rest of the government. It is the task of institutional theory to figure out how these institutional “genetic codes” translate into structural and political outcomes.

Methodology: Qualitative description and analysis; comparative analysis

Subject Keywords: Presidentialism v. parliamentism; democracy; separation of powers; bureaucracy; legislative process; political parties; culture/social norms/informal institutions; judicial review; environmental problems
Law Keywords: Constitutional law; administrative law
Country/Region: United States; United Kingdom; Sweden

The author of this chapter, Tun Mohammed Suffian, is a former Lord President of the Malaysian Federal Court who retired in 1982. The chapter recounts his experience as a judge and legal practitioner. He reminisces about the personalities of former Malaysian Lord Presidents and Attorneys-General and discusses some of the changes he has observed during his time in the legal profession. The most significant change he observes is the changing racial composition of the bench and bar, as expatriate judges and lawyers have been supplanted by locals.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Legal profession; public prosecutors; legal education/training  
**Country/Region:** Malaysia


The author, Tun Mohamed Suffian, was Lord President of the Malaysian Federal Court at the time he wrote this chapter. The chapter discusses the role of the judiciary during the first 20 years of Malaysian independence. The author claims that the judiciary in Malaysia is impartial and independent, and that the government respects this independence even when court decisions go against the government. He discusses briefly the constitutional safeguards for judicial independence, and then discusses a number of developments between 1957 and 1977 that have affected the judiciary. These developments include the power of justices to interpret the constitution and invalidate legislation, the limitation of appeals to the Privy Council in London, the changing composition of the judges on the bench, the increased workload of courts, and the increasing professionalism of the subordinate courts. The author concludes that the Malaysian courts have enjoyed public acceptance and confidence during their first 20 years, and they have successfully upheld the constitution and protected citizens from victimization and tyranny.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial independence; judicial review; separation of powers; judicial reform; judicial decision-making; constitutionalism; constitutional change; federalism, judicial selection/promotion; public opinion of the legal system  
**Law Keywords:** Constitutional law  
**Country/Region:** Malaysia


This brief paper discusses the performance indicators used to evaluate the success of a judicial training project in Mongolia. The paper divides performance indicators into two types – “process” indicators that measure the implementation of the technical assistance project and “impact” indicators that measure the success of the project in improving judicial performance and the confidence of civil society in the judicial system. The paper suggests a number of techniques for collecting the relevant data, including comparative surveys, interviews with key stakeholders, expert appraisal, and judicial management data from Mongolian government agencies.

**Methodology:** Qualitative description and analysis; project evaluation  
**Subject Keywords:** Judicial reform; judicial training; outside assistance; performance indicators; judicial efficiency/court delay; public opinion of the legal system  
**Country/Region:** Mongolia

Montenegro argues that some cultural traits favor economic growth more than others. Specifically, he claims that cultures in which people cannot trust others to conform to the spirit of the law will have to develop complex and elaborate legislation and high transaction cost institutions to control behavior. By contrast, societies characterized by a high level of trust can employ simpler, lower-cost legislation and institutions, and should therefore perform better economically. Montenegro tests this proposition using the number of articles in a country’s constitution as a proxy for the level of distrust (since distrust leads to complexity according to the theory) and GDP per capita as a measure of economic performance. He finds that no rich country has a long constitution and that long constitutions are generally associated with less developed countries.

Methodology: Qualitative description and analysis; quantitative analysis
Subject Keywords: Legal culture; culture/social norms/informal institutions; economic development; constitution drafting
Law Keywords: Constitutional law

Moog, Robert Whose Interests are Supreme? Organizational Politics in the Civil Courts in India (Ann Arbor: Association for Asian Studies, 1997).

Extended analysis of the operation of the courts in two districts of Uttar Pradesh, Varanasi and Deoria, using organizational theory as a point of departure and focusing on the presiding officers of the courts, advocates, staff attached to the courtroom, and process servers. Chapter three compares cases pending and filed to state courts in the U.S. and concludes that while Indian judges handle fewer cases the cases apparently drag on for much longer periods of time. It also notes that high rates of filings of applications for execution of judgement suggest widespread noncompliance with court decisions. Chapter four considers and rejects four traditional explanations for delay: too few judges, procedures that invite abuse, complex legislation leading to complex cases, and the supposed litigiousness of the Indian citizenry. Chapter five considers a variety of institutional reasons and is updated version of the author’s 1992 article in the Justice System Journal also included in this bibliography. Chapter six examines who uses the courts and for what, based mostly on anecdotal information. The author concludes that the poor are excluded from using the courts for a variety of reasons and that the wealthy and most businesses avoid them. He also suggests that a large percentage of cases are brought for harassment purposes.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; court administration; corruption; legal profession
Law Keywords: Civil litigation
Country/Region: India


Based on field research in Uttar Pradesh, the author argues that the lengthy delays in civil cases in India can be explained by institutional factors. Judges are not permitted to work in their home districts and are usually transferred at least every three years if not sooner. While instituted to prevent corruption, these provisions mean that lower court judges find it very difficult to assert control over their docket – the key to reducing delays. As strangers to the local court system, they are unfamiliar with local norms and unknown to the local bar. This makes it difficult for them to exert the leadership delay reduction programs require. Frequent transfers give judges little incentive to reduce backlogs. They transfer into a court with a large backlog and transfer out before any measures they might institute are likely to have any significant payoff. The rapid growth of lawyers, and the need many have to draw out cases to maximize their earnings is also cited as a contributing factor.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; court administration; corruption; legal profession
Law Keywords: Civil litigation
Country/Region: India


Moore critiques the view advanced by Platteau that generalized morality (a particular set of moral and social norms characterized by abstract moral rules independent of personalistic ties) is necessary for the development of a market economy. Moore accepts the idea that markets can only function in the appropriate social context, but he believes that the necessary social foundations can be created more quickly than Platteau implies; trust can be built up, at least in part, through the experience of market transactions. He further criticizes Platteau for too quickly dismissing the importance of reputational mechanisms in advanced market societies. According to Moore, Platteau fails to consider the importance of inter-business networks and institutional (as opposed to personal) reputation in advanced market societies. In both of these contexts, reputational mechanisms may generate cooperation without the need to invoke generalized morality. Finally, Moore notes that neither he nor Platteau have sufficient empirical evidence to support their respective positions. This evidentiary problem is in part unavoidable given the subject matter, but according to Moore it is also perpetuated by a flawed theoretical perspective that sees the realm of the “impersonal” market and the realm of social relations as distinct and often antagonistic.

Methodology: Critical review
Subject Keywords: Culture/social norms/informal institutions; nonlegal sanctions; economic development; noncontractual agreements/relational contract
Country/Region: Developing world (general)

Moore, Sally Falk Law and Anthropology – A Reader (Oxford: Blackwell, 2005), 371 pages

An anthropological approach to law inquires into the context of enforceable norms: social, political, economic, and intellectual. While the traditional project of anthropology has been the study of unfamiliar settings, today, that comparative perspective has informed new approaches to the familiar. Anthropologists now consider the socio-legal aspects of the modern state in two very different milieus: the unofficial but organized social sub-fields which exist within nation-states, and the transnational or global fields that criss-cross and transcend states, some of the official, some unofficial.

This reader on law and anthropology is organized around the writings of three kinds of anthropologists, philosophers, lawyers, and political theorists who have inquired into such questions. The first is a set of influential thinkers whose writing are part of the intellectual history of the West, philosophers and lawyers from Plato to Lewis Henry Morgan to Jürgen Habermas. The first part of this reader, their texts are interleaved with passages from the works of contemporary anthropologists that show that the same issues are still with us. The second part presents some instances of socio-legal practice observed by anthropologists in colonial settings. These observations were made in the classical period of ethnographic work. Part three is a sampling of recent and present inquiries of legal anthropologists. Comparative questions emerge from inspecting the whole lot of these papers together: Who is in control? Who is responsible for what? Could anyone take control? And to what end?

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics, gender/women’s rights, human rights, human rights law, ideological role of law, import of foreign law/legal transplants, informal dispute resolution, informal sector/black markets, legal culture, legal ideology, legal pluralism, popular justice


Moore discusses the problem of analyzing the impact of law and legislation on social change. She notes, first, that this subject is problematic because of the interdependent relationship between “law” and “society”. She also emphasizes the importance of studying how law operates in the context of ordinary social life.
Thus, Moore suggests that a productive research program would apply an anthropological approach to what she calls “semi-autonomous social fields.” A semi-autonomous social field is capable of generating rules and customs internally, but is also vulnerable to rules and decisions originating in the larger world surrounding the particular social field in question. Complex societies, she suggests, are made up of many such overlapping and interconnected semi-autonomous social fields. The illustrates how the concept of the semi-autonomous social field can be used in the study of law and society by briefly examining two cases: the New York garment industry and the Chagga of Tanzania. In both cases, she observes the importance and effectiveness of internally-generated, non-legal (sometimes illegal) social rules and sanctions. She also notes that outside legislation can have an effect – laws are often made operative because they give someone within the social field additional bargaining leverage. Yet it is also the case that semi-autonomous social fields often resist encroachment by “outside” law, and social arrangements are therefore very difficult to alter through legislation.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions; nonlegal sanctions; customary law/indigenous law; noncontractual arrangements/relational contract; socialism; manufacturing sector; agricultural sector; equality/social justice; labor unions; legal implementation; legal reform

**Law Keywords:** Labor law; property law; contract law

**Country/Region:** United States; Tanzania


While ethnic separatist claims have impelled some legal scholars to question the viability of self-determination, modern approaches to democratization seek to encourage inter-ethnic cooperation and participation rather than division. The fragile peace among the three formerly-warring ethnic groups of Bosnia and Herzegovina – Bosniaks, Croats, and Serbs – has provided a recent example of the potential for post-conflict democratic order based on the territorial integrity of the country as a whole, but maintained through an absolute devolution of power along ethnic lines. In a bold 2000 decision, the Constitutional Court of Bosnia and Herzegovina addressed a central post-conflict dilemma: how to maintain group rights while preserving the individual rights that form the core of liberal democracy. This note reviews that decision and concludes that the Court wisely chose a middle road between group-based consociational democracy and the protection of individual rights against majoritarian will. Such an approach, this note argues, provides a promising model for building post-conflict democratic order in other devided societies.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutional law, democracy, ethnic politics, federalism, group rights, human rights, individual rights, judicial decision-making, post-socialist transition, post-transition justice

**Country/Region:** Bosnia and Herzegovina/Central Europe, Eastern Europe

**Moréteau, Olivier & Vanderlinden, Jacques (eds.)** *La structure des systèmes juridiques* (Brussels : Bruylant 2003) 431 pages

(“The Structure of Legal Systems”, five articles in French, 13 in English) The genuine structures of legal systems are not well known although they are rather stable elements. Institutions and mentalities evolve. The structures by which they express themselves, however, are more permanent, at least as far as the external structures are concerned. As a matter of fact, several contemporary phenomena, among which the constitutionalisation of private law through the increasing role of national and international human rights instruments, lead to the accelerated development of fundamental internal structures. Although their formulation seems to be similar, every system has its own features. This is clearly indicated by the 17 national contributions and the synthesis of this book.

**Methodology:** Qualitative description and analysis, comparative analysis

**Subject Keywords:** Civil law, common law, culture/social norms/informal institutions, democracy, human rights, human rights law, international law, legal culture
Country/Region: South Africa, Australia, Belgium, Canada, China, Denmark, United States, France, Hungary, Italy, Japan, Netherlands, Poland, Switzerland, Serbia and Montenegro


This article survey three general concepts of access to justice. First, access to justice can be viewed in terms of increasing the efficiency of courts to serve existing litigants. Second, the term can apply to making access effective for new litigants in new settings. Third, newer concepts include substantive justice rather than procedural access alone. In Canadian legal academic scholarship, the authors argue, access to justice concerns are disproportionately presented in procedural rather than substantive terms.

Methodology: Literature review; conceptual/philosophical inquiry
Subject Keywords: Access to justice; judicial efficiency/court delay; civil procedure
Country/Region: Canada/North America


Independence of the judiciary is a central principle under separation of powers and a vital bulwark in the achievement of constitutionalism. However, independence of the judiciary does not mean that the judiciary is not accountable to itself. According to the author, the judiciary should take it upon itself to account for its performance. The introduction of performance standards in South Africa is an attempt to provide guiding principles to assess and improve the performance of courts, particularly trial courts, so that they are responsive, effective and accountable for their performance. An important aspect of accountability is management of the pace of litigation to prevent undue delay. The judiciary has the power to create and implement time standards, and monitor its performance against these standards, thus providing better access to justice.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, case management, civil litigation, constitutional law, court administration, court delay, court performance, judicial accountability, judicial efficiency/court delay, judicial independence, judicial reform, litigation, separation of powers
Country/Region: South Africa/Africa

Murphy, W. Tim The Oldest Social Science? (Oxford: University Press, 1997), 269 pages

Murphy challenges the assumption that the post-war period is hallmarked by the triumph of the rule of law. He presents a sophisticated interpretation of the true role played by law in modern society, sidestepping the usual emphasis in legal theory on normative questions. Murphy approaches his subject by focusing on adjudication as a social practice and as a set of governmental techniques. From this viewpoint, he explores how the relationship between law, government and society has changed in the course of history in significant ways. In so doing, he addresses the central concerns of scholars, students, and the public in relation to the future of law.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, common law, legal culture, rule of law


The authors argue that the relative benefits of productive and rent-seeking activities determine the allocation of talent between these sectors, and this allocation affects the society’s growth rate. When the returns from rent-seeking are higher than those from entrepreneurship, the country’s most talented people will go into rent-seeking, while the less talented become entrepreneurs. Rent-seeking thus hurts the economy in three
ways. First, it absorbs labor. Second, it distorts the choice of the least-capable potential entrepreneurs, who instead become workers. Third, and most importantly, the most talented people become rent-seekers instead of entrepreneurs, thus lowering the overall rate of technological progress. The authors develop this idea using a simple economic model, and they then attempt a statistical test of the model’s prediction that countries with higher proportions of the talent pool pursuing rent-seeking correlates negatively with growth. They use the proportion of college students majoring in law as their proxy for rent-seeking, and the proportion majored in engineering as their proxy for productive activity. They find evidence that countries with a higher proportion of engineering students do tend to grow faster, while those with a high proportion of law majors grow more slowly.

**Methodology:** Formal analysis; quantitative analysis; comparative analysis  
**Subject Keywords:** Legal profession; rent-seeking; economic development; corruption; property rights  
**Country/Region:** Developing world (general); United States

---


This article addresses the necessary conditions for the transition from the personalized exchange regimes that characterize most developing countries to a modern market economy. Murshid argues that this transition can plausibly be explained by three factors. The first is the emergence of law and contract enforcement institutions. The second is the operation of institutional (as opposed to personal) reputational mechanisms and personal ties in the inter-business trade. The third, which Murshid stresses, is increased formalization of the economy, which creates a superior information base that allows the development of advanced credit markets and trading institution. Murshid contends that “generalized morality”, put forward by Platteau as another prerequisite for an advanced market system, is not necessary. He supports his argument with some empirical evidence from Bangladeshi rice-paddy markets.

**Methodology:** Qualitative description and analysis; critical review  
**Subject Keywords:** Noncontractual agreements/relational contract; culture/social norms/informal institutions; institutionalization; institutional capacity; credit market; commodity market; agricultural sector; informal sector/black markets; law enforcement; economic reform; economic development  
**Law Keywords:** Contract law  
**Country/Region:** Bangladesh

---


This article discusses the rise of “sungusungu” – traditional defense groups – in Tanzania. Though these groups are technically illegal, their rise is widely seen as responsible for large decreases in the crime rate, and they therefore often have government support. After briefly discussing the historical and traditional roots of the sungusungu organizations, Mwaikusa discusses the relationship of the groups to the state and to the formal law. He notes that sungusungu groups developed in part out of frustration with the ineffectiveness of state institutions in controlling crime, and that the groups have resisted government efforts to co-opt or otherwise control them. He also points out that sungusungu members’ ignorance of state law leads to abuses, and may lead to more severe clashes between the state and the groups. He also argues that the sungusungu cannot ultimately be a substitute for the police. He concludes that, if the sungusungu is to survive as an important people’s organization, the sungusungu units must learn the basics of the formal state law, and also must remain part-time and closely tied to their communities rather than becoming professionalized.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Popular justice; crime control; law enforcement; vigilantism; customary law/indigenous law  
**Law Keywords:** Criminal law  
**Country/Region:** Tanzania

This article presents the practical problems facing a district magistrate in southern Tanzania in an undeveloped, not easily accessible area. Drawing on a long experience in other courts in the country, the author illustrates how the public view of the court staff is essential to achieving justice and how political influence on the judicial staff can sometimes be corrected. It draws parallels between the popular participation in pre-colonial non-state dispute settlement with contemporary popular participation in state judicial settlement of disputes, but raises doubts as to whether this is an efficient means of inculcating the rule of law in the public’s mind.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, corruption, court administration, culture/social norms/informal institutions, institutional capacity, judicial decision-making, legal personnel
Country/Region: Tanzania, Africa


This article discusses the problems inherent in the dual condition of the South African legal system in terms of which the dominant Western oriented common law applies to everyone, while the servient African law applies to Africans only. Consequently, a dichotomy between ‘official’ African law which seeks to rid itself of those cultural notions that are repugnant to Western civilization and ‘living’ African law which retains its indigenous moral values has developed within the servient African system. The latter version applies in actual social practice and is part of the lives of its adherents. The author rejects the ‘official’ version because he considers that the removal of African moral values by the application of the repugnancy clause has left African law distorted beyond recognition. According to the author, this version is part of the colonial project which sought to deshumanize Africans and should not be one of the sources of post-apartheid African law. On the contrary, ‘living’ African law is the version that the adherents of the system continued to apply as part of their resistance to colonial deshumanization and should be judicially and legislatively affirmed. The author regrets that courts continue to regard the distorted version as a legitimate precedent and rely on the instruments, policies and judgments that were used in the past in pursuit of the infamous colonial ‘native’ administration project. The author submits that legal practice is required to embark on the daunting task of developing the ‘living’ version that affirms the aspirations of its adherents as required by the constitution.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, gender/women’s rights, ideological role of law, import of foreign law/legal transplants, judicial decision-making, legal culture, legal pluralism, popular justice, post-transition justice, public opinion of the legal system
Country/Region: South Africa/Africa


Since the 1940s community courts have developed as alternative justice mechanisms in the black townships. They filled a gap, because the official legal system was considered to be ‘white man’s law’ and courts were generally not accessible. This article analyzes the extent to which they should be officially recognized and given jurisdiction in criminal matters. The balance between community recognition and integration into the official court system is delicate. The comparative analysis shows that similar problems of legal pluralism exist outside South Africa.

The author recommends limited criminal jurisdiction (minor offences, fines defined by statute or community service, definition of personal and geographic jurisdiction, enforcement mainly by social pressure etc.).
Methodology: Qualitative description and analysis

Subject Keywords: Colonialism/imperialism, criminal law, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, legal pluralism, lok adalat, popular justice

Country/Region: South Africa, Africa


This study evaluates four criminal case delay-reduction programs undertaken in the late 1970s in Providence, Rhode Island; Dayton, Ohio; Las Vegas, Nevada; and Detroit, Michigan. In each case, delays were reduced substantially, through the adoption of different programs including case monitoring and a master calendar. Across the four jurisdictions and within courts, the treatment of cases also became more homogenized. The report argues that a range of actors, not just lawyers or judges, create delay. Crash programs achieved some success in the short run, breaking a defeatist attitude, but also raise other concerns. The report also discusses the role of socio-legal culture, noting that in each court system, local conditions—informal practices and norms—were taken into account in design of the programs. Reforms addressed two aspects of informal organization: communication networks (in creating committees to improve inter-agency communication) and the role of the judge (making judges more docket-conscious). The study concludes that reducing delay produced other benefits, such as making the judicial process more predictable and providing less opportunities for favoritism in case selection or judge-shopping. In addition, the report cites three factors suggesting that the quality and equity of justice did not decline: delay-reduction programs did not change the pattern of disposition or sentencing, the programs made case treatment more homogenous, and there was no evidence of underpreparation by lawyers or judges. In conclusion, the study argues that court delay is only a symptom of other primary problems that ought to be addressed.

Methodology: Project evaluation; quantitative analysis; qualitative description and analysis

Subject Keywords: Judicial efficiency/court delay; pilot programs; legal culture; incentives of judges; court administration

Law Keywords: Criminal law

Country/Region: United States


This book discusses the role of the superior courts in Pakistan, particularly their relationship to the constitution and the executive during periods of political crisis. The courts in Pakistan have judged key questions of state sovereignty and rule, but with a mixed record. Newberg describes the dilemmas faced by the superior courts: when the courts challenged the actions of the strong state executive, their powers were restricted as a result. For the most part, the courts do not threaten the executive, but exercise restraint in criticizing power: as a result, the state is granted a measure of legitimacy and allows the courts to function within the boundaries established. Although judicial independence is compromised, the courts serve an important function in providing space for relatively open political debate and for the grievances of civil society.

Methodology: Qualitative description and analysis

Subject Keywords: Judicial independence; judicial review; separation of powers; constitutionalism; judicial deference/political questions doctrine; democracy; political reform/regime change; military coups

Law Keywords: Constitutional law

Country/Region: Pakistan


Jurisprudential debate in the Pacific Islands region is often focused on what the relationship between introduced/adopted law and customary law and practice was, is and should be. This article narrows the
debate to the field of sentencing in the criminal courts. Examination is made of the constitutional and legislative framework within which the courts operate in this sphere and sentencing decisions of the courts are reviewed. From this material a number of fundamental issues are identified. Reference to the laws and approaches of other jurisdictions indicates that such issues are not particular to the jurisdictions of the Pacific Island region.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Criminal law, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, legal pluralism  
**Country/Region:** East Asia, Australia, Papua New Guinea


This chapter concerns reforms in Singapore to reduce backlogs at the Supreme Court and subordinate courts. In the Supreme Court, significant reductions in caseload were achieved in the early 1990s through reducing the number of judges required in capital cases, restricting cases for which judges were required, improving case management (pretrial conferences), increasing the number of judges and courtrooms, and several other measures. Waiting periods also declined in subordinate courts after a special exercise to clear backlog in 1992, a new system of mentions and fixing for criminal cases, and case management for civil cases. Other useful reforms included restricting adjournments, providing greater administrative support to the courts, imposing hearing fees, and introducing night courts.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial efficiency/court delay; civil procedure; case management; judicial reform; court administration; costs of the legal system  
**Law Keywords:** Civil litigation; criminal law  
**Country/Region:** Singapore


(“Administrative Courts and the Phenomenon of Corruption in Cameroon”, in French) Corruption in Cameroon is the result of both bad governance and the criminalisation of the State. The government launched a campaign to fight against this phenomenon but it remains fruitless because administrative justice used to implement it, is ill adapted. Reforms allowing the revitalization of the whole of the public service, the restoration of the State and the consolidation of State Law are therefore necessary. To be more effective, these reforms should be rooted in Cameroon values and take into account the concerns of those administered.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Corruption, governance, institutional capacity, judicial reform, rule of law  
**Law Keywords:** Administrative law; administrative courts  
**Country/Region:** Africa


This article describes the theoretical and historical origins of the concept of judicial independence and considers the balance between independence and accountability. Nicholson argues that at its essence, judicial independence is the attainment of impartiality. With or without a constitutional arrangement for the separation of powers, the independence of the judiciary is a pillar of democratic government. Judiciaries are, in practice, also one of the most accountable institutions of government. Nicholson addresses the balance between independence and accountability with reference to four different features of judicial independence. First, institutional structural components of independence can be protected through constitutional entrenchment, jurisdictional guarantees, rulemaking powers, immunity from suit, and judicial organization.
Second, individual structural independence comprises the appointment, tenure, remuneration, and removal/discipline of judges. Third, institutional operational factors consist of financing, court administration, efficiency, accessibility, public confidence, and professional support. Fourth, individual operational factors include judicial education and judicial ethics.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; judicial accountability; separation of powers; impeachment of judges; judicial elections; court administration; democracy; judicial selection/promotion
Country/Region: Australia

Nishikawa, Rieko “Judges and ADR in Japan” Journal of International Arbitration 18(3) 2001 pp. 361-69

ADR in Japan comprises three different procedures: conciliation, mediation and arbitration. Conciliation can take place outside the court or within the court. The latter has the advantage that its terms are enforced in the same way as a judgment. Mediation in Japan is integrated into the official judicial process. The processes held at court are under the supervision of the judges. Mediators are appointed by the courts. They are part-time civil servants employed by the local courts. Mediation committees are composed of two mediators and one judge. The mediation agreement is enforced in the same way as a judgment. Mediation plays an important role in matrimonial cases.

Methodology: Qualitative description and analysis
Subject Keywords: Alternative dispute resolution, informal dispute resolution, mediation, small claims courts
Country/Region: Japan


(Parallel Justice in Cameroon: The Response of the Cameroon People to the Crisis in State Justice) The crisis in Cameroon State Justice is not an isolated phenomenon and should be considered in the wider context of the crisis in State Law. This law is a transposition of judicial solutions elaborated in the West and unknown to the people of Cameroon. The latter’s turn towards parallel justice to resolve litigation disputes represents a real challenge to State Law. Considering that this justice contributes to maintaining the peace and social order, would it not be wiser for the Cameroon State to integrate and customize them rather than fight against them?

Methodology: Qualitative description and analysis
Subject Keywords: Alternative dispute resolution, civil law, colonialism/imperialism, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, due process, import of foreign law/legal transplants, informal dispute resolution, institutionalization, judicial reform, legal culture, legal information, legal pluralism, legal reform, popular justice, rule of law
Country/Region: Africa, Cameroon


This article outlines a range of changes that have occurred within the Australian legal aid system since 1995: in the organizational structures of legal aid organizations, the management of the provision of legal aid services, the form and number of legal services, and the relationships between the stakeholders in the system. There is a greater availability of advice and accessible legal information, but the Australian legal aid system is becoming increasingly limited in the individual legal assistance and representation it offers people due to declining levels of funding.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, legal aid
Country/Region: Australia

In this article, Norrie claims that conceptual confusion and vagueness surrounding the notion of “popular justice” is due to a failure to challenge certain key concepts of liberal legality. He stresses in particular the false dichotomizing tendency, or antinomialism, between formalism and informalism, rooted in Weber’s sociology of law. Norrie argues that because the notion of autonomous, rational, formal law is itself flawed, defining popular justice in opposition to this notion is inherently problematic. He argues instead for a dialectical sociological methodology. The bulk of the article is concerned with a theoretical critique of Weberian antinomialism, and there is also a concluding section which applies some of these ideas to popular justice in Mozambique.

Methodology: Conceptual/philosophical inquiry; critical review
Subject Keywords: Popular justice; informal dispute resolution; legal formalism; liberal legalism; legal rationality; legal pluralism
Country/Region: Mozambique


North extends on his previous work dealing with theories of the evolution of the state and economic development. He builds on his earlier work by explicitly incorporating time into the model, by focusing on perceptions and belief systems, and by relating these belief systems to actors’ external environments and past experiences. He stresses the importance of belief systems, historical path dependence, and the process of learning in determining which polities are successful in achieving economic growth, and illustrates the argument with the examples of England, the Netherlands, and Spain. He also emphasizes the importance of competition between the fragmented polities of Western Europe – which nonetheless took place within an integrated cultural framework – in stimulating European development.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Economic development; taxation; property rights; culture/social norms/informal institutions; religion; rule of law; colonialism/imperialism
Country/Region: England; Netherlands; Spain


North briefly summarizes some of the recent changes and developments in institutional theory over the preceding decade, and suggests important directions for future research. The most important question to be addressed, he claims, is the issue of credible commitments, and how institutions that facilitate credible commitment evolve (or fail to evolve). He also stresses the path-dependent nature of institutional change, and the need to move beyond the simple instrumental rationality postulate of neoclassical economics if we hope to understand institutional evolution. He concludes by suggesting directions for future research and outlining some of the policy implications of his analysis.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; economic development; rule of law; economic reform; political reform/regime change; post-socialist transition; culture/social norms; informal institutions
Country/Region: Western Europe; developing world (general)


This article examines the emergence of new constitutional and institutional arrangements in England following the Glorious Revolution of 1688, focusing especially on how those factors affected subsequent
economic performance. The authors argue that sustained economic growth requires a government that can credibly commit to a set of rules to protect property and contract rights. The credibility of the commitment has importance independent of the rules themselves. The authors trace the history of constitutional arrangements both before and after the Glorious Revolution, showing how in the former period the Crown’s did not and could not make credible commitments to respect property rights. The government was constantly in fiscal trouble, and raised money by forced loans, sale of monopolies, and similar means. The institutions established after the Revolution created a balance of power between the Crown, Parliament, and the common law courts, making it harder for the Crown to reverse decisions or extract resources arbitrarily, therefore strengthening the credibility of government commitments. Furthermore, the balance of power prevented Parliament from becoming as arbitrary as the Crown was before. These changes led to huge expansion of the public and private capital markets and an enormous increase in both government resources and overall wealth. Also, the authors argue, these changes were linked with growth of political and civil liberties, which are inextricably linked to economic freedom.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; separation of powers; judicial independence; capital market; credit market; property rights; revolution; taxation; investment; common law; individual rights
Law Keywords: Constitutional law
Country/Region: England


In the plural legal setting that characterizes most Third World societies, gender hierarchy can neither be understood nor explained by attributing women’s disadvantages to a vague notion of culture. This article calls for a critical pragmatic engagement with the politics of culture. Critical pragmatism involves understanding the flexibility and variation of custom in order to challenge the arguments that deploy culture as a justification for gender inequalities. In contrast, conventional approaches employed by proponents of gender equality implicitly endorse dominant articulations of culture as an accurate description of social custom. In a plural legal setting, normative orders, including human rights regimes and local customary institutions, present both opportunities and setbacks in the struggle for gender equality.

This article is divided into three parts: Part one presents an overview of the development and human rights approaches to issues of gender and culture in the Third World. Its first section examines gender inequality through three historical phases: Women in Development (WID), Women and Development (WAD), and Gender and Development (GAD). Its second section deals with trends in the field of human rights. Part two focuses on gender inequality in property relations in order to explore the concrete application of human rights and development approaches in a specific area. Part three builds on the dilemmas discussed in part two and proposes innovations to conventional human rights and WID approaches.

Methodology: Qualitative description and analysis
Subject Keywords: Agricultural sector, colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, equality/social justice, gender/women’s rights, human rights, human rights law, land disputes, property rights
Country/Region: Developing world, Africa


Legal pluralism is deeply rooted in Nigeria’s history. The study analyses the role of Islamic law in Nigeria and its evolution in pre-colonial times, under colonial rule and since independence. A clear distinction is made between customary law and Islamic law and the reactions to the classification of Islamic law as customary law are explained. Finally, the article focuses on the status of Islamic law in Nigeria today.

Methodology: Qualitative description and analysis
Subject Keywords: Colonialism/imperialism, customary law/indigenous law, ethnic politics, Islamic law, legal pluralism
**Country/Region:** Nigeria/Africa

**Oberhammer, Paul** *Richterbild und Rechtsreform in Mitteleuropa* (Vienna: Manz Verlags- und Universitätsbuchhandlung, 2001) 143 pages

(“The view of judges and judicial reform in Central Europe”, in German) The transformation process in Central and Eastern Europe has profoundly changed the role of lawyers and judges in these countries. This book contains articles about the evolution of the status and the role of judges in the Central European judiciaries of Croatia, Hungary, Poland and Slovenia.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Civil procedure reform, civil litigation, civil procedure, constitutional change, judicial decision-making, judicial independence, judicial reform, legal culture, litigation, post-socialist transition, post-transition justice, separation of powers

**Country/Region:** Eastern Europe, Central Europe, Croatia, Slovenia, Poland, Hungary, Austria


(“Recruitment and Education of Judges and Prosecutors in Europe”, in French). This analysis of a variety of recruitment and education approaches in Europe begins with a presentation of international and European standards before describing the Italian and the French system in detail. An overview of different systems in 21 other countries precedes an analysis of the questions raised by this comparison.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial selection/promotion, judicial training, legal education/training, legal personnel, legal profession, separation of powers

**Country/Region:** Europe, European Union, Italy, France, Germany, Austria, Netherlands, Belgium, Luxembourg, Spain, Portugal, Greece, England, Ireland, Scandinavia, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia


This article takes stock of the methods for selecting legal systems in comparative legal research. After having analyzed two approaches concerning the eligibility for selection, guidelines are developed for this selection. The role of legal families, the topic and objective of the research and the researcher’s abilities and working conditions are taken into consideration. An illustration is given by analyzing the selection of legal systems in Dutch and German practice.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Legal reform

**Country/Region:** Holland, Netherlands, Germany


This article addresses reforms undertaken in Uganda to reduce court delay in the criminal justice system. The author, a Supreme Court justice, reviews the court system in Uganda, including the network of “resistance councils and committees” established in 1986 after the National Resistance Movement came to power. He discusses the impact of three reforms recently undertaken. First, proceedings for committing the accused have been simplified, reducing delay in the committal process but undermining the right to a fair trial for the defendant and possibly increasing delay at other stages of the process. Second, 1990 reforms limit the amount of time a person spends on remand while awaiting trial; after the time limit expires, a person must be granted bail. Third, the Supreme Court in 1987 assisted with the preparation of records of appeal, reducing the backlog in the appeals process that had been caused by lower courts’ lack of stationery. The
author concludes that reforms have substantially reduced delay, but have sometimes caused human rights concerns or complicated other parts of the criminal process. He calls for more empirical research to underpin further reform and greater human rights training to sensitize the law enforcement profession.

Methodology: Qualitative description and analysis

Subject Keywords: Judicial efficiency/court delay; criminal sentencing; human rights; due process; military courts; individual rights; access to justice; judicial reform; legal pluralism

Law Keywords: Criminal law

Country/Region: Uganda; Africa


The author analyzes elements that he considers to be crucial for judicial independence in the Nigerian context: mode of appointment of judges, security of tenure, remuneration and working conditions of judicial officers, retirement benefits and pensions rights of judges, and control of funds and staff by the judiciary. Subsequently, he addresses the problem of corruption and the polarization and politicization of the Nigerian judiciary before having a closer look at delay in judicial proceedings and the judiciary’s lack of an independent machinery for the enforcement of its judgments.

Methodology: Qualitative description and analysis

Subject Keywords: Case management, civil litigation, constitutional law, corruption, court administration, court delay, court performance, due process, institutional capacity, judicial efficiency/court delay, judicial independence, judicial selection/promotion, rule of law, separation of powers

Country/Region: Nigeria/Africa


The author explores some of the ways in which economic analysis can contribute to an understanding of some key aspects of the relationships between national legal regimes and thus provide an important methodology for comparative law. The predictive part of the analysis suggests that competition between jurisdictions will generate a tendency for national legal principles to converge in those areas of law designed primarily to facilitate trade. In contrast there is, in general, no reason to expect this phenomenon to apply to interventionist areas of law because national preferences regarding the level of protection are likely to differ. In relation to both areas of law, the case for institutionally led harmonization is weaker than comparative lawyers tend to assume.

Methodology: Qualitative description and analysis

Subject Keywords: Civil law, common law, import of foreign law/legal transplants, law drafting, legal culture, legal reform


This paper examines the rule of law rhetoric in the literature on economic development in light of the historical experience of Northeast Asia – especially Taiwan, Korea, and Japan. Ohnesorge points out that the phrase “rule of law” as used in the development field has a different meaning than it usually has in jurisprudence. Whereas the latter generally takes the rule of law as a set of ideals for the administration of justice, the former tends to use the term in two ways: as shorthand for a statutory regime that protects property rights and the market, and as limitation on government discretion. Ohnesorge contends that the claims of economists and political scientists about the necessity of the rule of law (in these latter senses) for economic development is challenged by the development experience of the Northeast Asian states. These states achieved remarkable economic success, although their governments had substantial discretion, property and contract rights were often not specified clearly, and court enforcement of such rights was relatively infrequent. Ohnesorge finds that trying to use “rule of law” as a social science variable is
inherently problematic. He suggests further that the “rule of law” rhetoric in the economic development field may do more harm than good, in that it neglects the important role of discretion and equity in any system of law, it allows authoritarian governments that respect property rights to claim they adhere to the rule of law, and it is too vague.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Rule of law; individual rights; economic development; property rights; judicial decision-making; World Bank; outside assistance; legal reform; corruption; investment; judicial independence; culture/social norms/informal institutions; nonlegal sanctions; noncontractual agreements/relational contract; litigation; law enforcement; credit market; taxation; judicial review

**Law Keywords:** Contract law; property law; intellectual property law; administrative law; commercial law; antitrust law

**Country/Region:** East Asia


Olson considers competing lines of explanation for the persistent income gap between the income and growth rates of the rich and poor countries. He claims that only two types of explanation for the great differences in per capita income across countries are plausible. First, it could be that poor countries are poor because they lack resources – technology, capital, natural resources, human capital (skills or culture), etc. The second possible explanation is that the differences in wealth are explained primarily by differences in institutions and public policies. According to this type of explanation, poor countries are poor because their institutions have not structured incentives in a way that facilitates the coordinated action necessary to achieve big economic gains. Olson then assesses the first type of explanation, but claims that there is little evidence that lack of resources explains the differences in per capita income. Thus, he concludes that the most important element that distinguishes the rich from the poor countries concerns the quality of institutions. This conclusion suggests a major role for economists and policy advisors.

**Methodology:** Qualitative description and analysis; literature review; comparative analysis

**Subject Keywords:** Economic development; investment; migration; culture/social norms/informal institutions

**Country/Region:** Developing world (general)


In this article, Olson explores the economic implications of different regime types, using a simplified theory in which actors rationally maximize their individual revenue. Olson argues that no society can work without the provision of certain essential public goods such as law and order. While small groups may achieve voluntary cooperative provision of these public goods, collective action problems make this infeasible for large groups. Under anarchy, roving bandits will take whatever they can; no one has an incentive to invest or produce. Rational bandits therefore have an incentive to assume control over one territory and become stationary bandits, since they can extract more through regular taxation than they can through occasional plunder. Autocrats, Olson claims, are essentially stationary bandits. Stationary bandits are much better for society, since they have an incentive to provide public goods and promote productivity. However, they will set a tax rate that maximizes their revenue, not the total social welfare. Also, the shorter an autocrat’s time horizon, the less his incentive to promote long-term productivity. His promises to protect individual property and contract rights are never fully credible. In a democracy, though the majority will redistribute to itself, it does not have the same incentives as an autocrat to extract the maximum social surplus. Both lasting democracy and long-term economic growth require secure individual rights – especially property and contract rights – enforced by an independent judiciary, and orderly legal succession of rulers. In the final part of the article, Olson discusses the transition from autocracy to democracy, concluding that the transition generally occurred only when no one group was able to dominate a territory, and compromise and power-sharing became necessary.
Methodology: Qualitative description and analysis; formal analysis
Subject Keywords: Economic development; democracy; authoritarianism; monarchy; judicial independence; property rights; individual rights; law enforcement; taxation; political reform/regime change; rent seeking
Law Keywords: Contract law; property law; constitutional law
Country/Region: England; developing world (general)


The small claims courts were first introduced to the United States in 1919 and were designed to provide an inexpensive, simple and speedy procedure to determine minor civil disputes. Aimed at easy access to justice, which would otherwise be denied to the ordinary citizens because of high legal costs, the small claims tribunal concept was adopted in many other jurisdictions. Hong Kong introduced a Small claims Tribunal in 1975. The authors carried out a survey in 1999 of the views of the Adjudicators and litigants in order to gauge the performance of the Tribunal. This article explains the findings of the study, highlights the Tribunal’s weaknesses and makes suggestions for improvement.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, civil litigation, court administration, court delay, court performance, debt collection, judicial efficiency/court delay, judicial reform, public opinion of the legal system, small claims courts
Country/Region: Hong Kong, China/Asia


The report follows up on EUMAP's 2001 Judicial Independence report. The 2002 report concentrates on judicial capacity in the ten Central and Eastern European accession countries, examining the degree to which the preparedness of judges and the effectiveness of supporting institutional infrastructure guarantees competent and efficient adjudication.
Judicial capacity is understood as incorporating four mutually reinforcing notions: independence and impartiality, professional competence, accountability, and efficiency. For each of the ten countries, the current developments affecting the judiciary are described. Moreover, the professional competence of judges and the institutional capacity of the judicial branch are analyzed by addressing issues such as selection and promotion, evaluation and regulation of performance, training, governance and administration of the Judicial Branch and court administrative capacity.
Each report concludes with recommendations to the country concerned as well as to the EU on how to continue the judicial approximation efforts.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Case management, civil litigation, court administration, court performance, democracy, donor politics, European Community/European Union, institutional capacity, judicial efficiency/court delay, judicial independence, judicial reform, judicial selection/promotion, judicial reform, law enforcement, legal culture, legal education/training, politics of reform, post-transition justice, rule of law, separation of powers
Country/Region: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia/Europe


This report by the OECD's program of Support for Improvement in Governance and Management in Central and Eastern European Countries (SIGMA) deals with methods for assessing the impact of proposed legislation and regulations prior to their enactment or promulgation. There are chapters on the methods used in France and the United States and tips for how to undertake assessments when resources are limited.
Extensive references to other OECD publications and the academic and practical literature on the subject (mostly U.S.-based) are included.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Law drafting; legal reform; post-socialist transition  
**Country/Region:** United States; France; Eastern Europe; Central Europe


This report by the OECD's program of Support for Improvement in Governance and Management in Central and Eastern European Countries (SIGMA) consists of an overview chapter describing the issues that arise in drafting laws and regulations and chapters describing the process in Albania, Bulgaria, Estonia, Lithuania, Slovakia, and Slovenia. The general chapter summarizes the different approaches in OECD countries. References to other OECD publications and academic studies are included.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Law drafting; post-socialist transition  
**Country/Region:** Albania; Bulgaria; Estonia; Lithuania; Slovakia; Slovenia


Some of the trends among contemporary comparative law scholars share belief in the reality of mobility of law, seeing law reform to be partly related to choice from pools of models supplied from a number of legal systems. There is, however, disquiet as to the appropriateness of the phenomenon of legal transplants as the predominant explanation of law reform. Örücü suggests that all is a process of transposition, tuning and fitting and that the movement of legal institutions and ideas is trans-border and that such transmigration is a natural phase in legal development. Competing visions of modernity today are on offer for systems, ranging from emulation of the West in the construction of a modern, market-oriented society to altogether different visions, including parochial legal nationalism. According to the author, the future development of law however, is closely tied to the transmigration of ideas and institutions.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Colonialism/imperialism, donor politics, ideological role of law, import of foreign law/legal transplants, legal culture, legal reform, outside assistance, post-socialist transition  
**Country/Region:** Eastern Europe, Central Europe, United Kingdom


In both the Ottoman Empire and the Turkish Republic, legal reform efforts have invariably relied on Western models and in administrative law this model has been the French. The Conseil d’Etat was not the only institutional model taken from France. The French layer of Turkish administrative law includes other institutions such as the cour des comptes, the Tribunal des Conflits, some financial organizations, the system of autonomous provincial and local administration and administrative tutelage. After retracing the history of the Danistay or Turkish Council of State, the author gives some recent examples to illustrate the work of this institution today. Eventually, he assesses the judicial review of administrative acts and actions under Turkish administrative law.

**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Administrative law, administrative courts, democracy, ideological role of law, import of foreign law/legal transplants, judicial decision-making, judicial reform, judicial review, legal culture, litigation, separation of powers  
**Country/Region:** Turkey, France/Europe

The following objectives of comparative law are noted by the author: academic study, law reform and policy development, the provision of a tool for research to reach a universal theory of law, of perspective to students and an aid to international practice of the law, international unification on harmonization (common core research), a gap-filling device in law courts and even an aid to world peace. He identifies and analyzes four distinct trends in comparative law discourse today: comparative law and legal philosophy (comparative jurisprudence), comparative law and legal history (historical comparative law or historico-comparative perspective), comparative law and culture (comparative legal cultures and law and culture studies, inclusive of legal pluralism), and comparative law and economics. Between the last three trends, he sees an underlying belief that systems reciprocally influence and cross-fertilize each other. He puts a special emphasis on transmigration of law and legal institutions as well as on the convergent versus non-convergent debate.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Culture/social norms/informal institutions, ideological role of law, import of foreign law/legal transplants, law drafting, legal culture, legal pluralism, legal reform, outside assistance


Osborne assesses empirically the oft-heard claim that the US civil litigation system is deficient because of the random and unpredictable ways in which courts assess liability and damages. Using data on civil litigation in a number of different areas of law, he finds that awards are in fact highly predictable – the stakes as perceived by the attorneys are a statistically significant and powerful predictor of actual damage awards. Moreover, although the evidence suggests that judge and jury trials operate according to different rules, it is not the case (as is also frequently asserted) that jury trials are more unpredictable than judge trials. Furthermore, not only are awards highly predictable, but they correspond very closely to actual, measurable damages. Again, these results are highly statistically significant. On the basis of this data, Osborne claims that we can conclusively reject the hypothesis that awards in the US civil litigation system are unpredictable and unrelated to actual damages.

Methodology: Quantitative analysis
Subject Keywords: Litigation; out-of-court settlement; judicial decision-making
Law Keywords: Civil litigation; family law; tort law; contract law
Country/Region: United States


This report summarizes some of the main findings of the Court Statistics Project, which aims to collect and analyze quantitative data on the work of US state courts. Some of the most important findings of this report include an upward trend in number of cases filed and increasing case backlogs, no evidence of an increase in the number of tort cases, and increases in the number of juvenile filings, felony filings, appeals, and drug-related cases. The report also contains quantitative data on the number of cases, courts, and judges in different states and different years. The report concludes with a brief essay putting the rise in US civil filings in historical perspective, which points out that civil litigation rates are increasing all over the world, but that the US does not have a clearly higher civil litigation rate than European countries.

Methodology: Quantitative analysis; comparative analysis
Subject Keywords: Litigation; judicial efficiency/court delay; illegal drugs
Law Keywords: Tort law; criminal law; civil litigation
Country/Region: United States
This study of criminal trial courts in nine American cities asks whether the quality of justice is sacrificed in those courts which process cases faster. If quality is defined as the extent to which cases are given individual attention and whether the system fosters effective advocacy, the answer is no. In both those courts that process cases quickly and those that do not, the more serious, the more complicated, and the more difficult cases are given more attention. The difference is that in the more expeditious courts, the work is done within tighter time frames. The authors find a correlation between those courts that process cases faster and the attitudes of prosecutors and defense lawyers. In those courts that move cases more quickly, attorneys perceive that they have adequate resources, that the judge sets clear and firm deadlines, and that opposing counsel is competent.

**Methodology:** Quantitative analysis; attitude surveys
**Subject Keywords:** Court administration; judicial efficiency/court delay
**Law Keywords:** Criminal law
**Country/Region:** United States

The Code of Civil Procedure of Japan was revised in 1996, and the New Code became effective on January 1, 1998. By comparing the case statistics [number of cases disposed of per year (efficacy), the period from filing to disposition (speed), and the number of evidence taking procedures (quality) at the district courts] under the New code to those under the old Code, the authors can find little improvement in the overall performance of civil procedure. This paper first provides an overview of Japan’s civil justice system and the New Code of Civil Procedure. It then analyzes the reasons for the revision, the process by which these revisions were accomplished, and the substance of the revisions. Finally, the author examines the Japanese features of law reform and evaluates the New Code’s success.”

**Methodology:** Quantitative analysis
**Subject Keywords:** Civil procedure reform, civil litigation, civil procedure, codification, court delay, court performance, judicial efficiency/court delay, legal culture, legal reform, litigation, performance indicators
**Country/Region:** Japan/East Asia


(“Election, Traditional Governance and Fundamental Rights of Canada’s Indigenous Peoples”, in French) Otis seeks to determine to what extent the governance of Aboriginal communities should be combined with the state model of democratic election, which federal authorities have ensured is distributed widely through those aboriginal communities subject to the Indian Act. He also gauges the impact of the Canadian Charter of Rights and Freedoms on electoral reform initiatives that seek to integrate the customs and traditional practices of Aboriginal governance. The author gives an account of the gradual process by which the Canadian state constrained the ancestral institutions of command over Aboriginal communities, only to have them replaced, in conformity with the power granted by the Indian Act, by electoral mechanisms derived from the Westminster model. Even those processes to designate directors that are called ‘customary’, and which are validated by the Indian Act, almost universally obey the logic of the state electoral mode. The author demonstrates that the current legal framework, as well as the legislative reforms that have been proposed, would allow a large number of communities to adopt customary institutions better adapted to a democratic culture that is both uniquely Aboriginal and modern. Nevertheless, the author also reminds that any Aboriginal custom adopted must be in conformity with the Charter.

**Methodology:** Qualitative description and analysis
This chapter examines the political history of nineteenth and early twentieth century Russia, with special emphasis on the concepts of autocracy and the rule of law. Owen argues that autocracy has deep roots in Russian history, and much of this tendency is related to the desire to mobilize resources for the state to expand control of the Eurasian plain. As a result of the strength of the autocratic principle, the rule of law was weak in Russian history, and lacked a supporting institutional structure of checks and balances. Owen examines these tendencies in two crucial episodes in nineteenth century Russian history – the period of the Great Reforms (1861-1874) and the period of attempted rapid industrial development (1892-1903). Even in these periods of reform, the principle of autocracy remained strong while the principle of the rule of law remained weak. Owen suggests three important areas for future research into why the foundation for corporate capitalism (a crucial institutional support for the rule of law) remained weak. These are the underdevelopment of the banking system; the weakness of organizations to represent local commercial interests; and the weakness of “Slavophile capitalism” – an attempt to mobilize the economy to oppose the economic threat from the West, without undermining traditional Russian values, including communalism and autocracy. He concludes by noting that contemporary Russia appears to be demonstrating some of this historical hostility to capitalism and tendency toward autocracy.

Methodology: Qualitative description and analysis
Subject Keywords: Rule of law; authoritarianism; socialism; state sector/public ownership; economic reform; economic development; constitutionalism; property rights; individual rights; corruption; credit market; Collusive trade arrangements/cartels; bureaucracy
Law Keywords: Commercial law; contract law; administrative law; constitutional law
Country/Region: Russia

In 2000, the United Kingdom launched a new system to fund and deliver legal aid in civil cases and to plan a new funding structure for criminal legal aid. New elements are (1.) a Legal Services Commission providing public funds through contracts to quality-assured suppliers, (2.) the removal of certain cases, including almost all personal injury claims, from the scope of legal aid, (3.) the development of local Community Legal Service Partnerships to plan and consult on the delivery of civil legal services on the local level, (4.) a Community Legal Service website, and (5.) plans for a salaried Public Defender Service for criminal defense work. After a description of the history of legal aid and assistance, these new elements are analyzed.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, legal aid
Region: United Kingdom

Land tenure security is essential to stimulate the development of land. If land tenure is not secure, both local and foreign investors will be hesitant to invest in land development. Economist and international development specialists posit further that land title security not only stimulates a market for land and its development, but that it is the very foundation of a market economy and sustainable development. According to the author, China has much to gain from increasing the security of title to interests in its land. Secure land titles create access to credit and capital. Legislation to clarify ownership rights and improvements to China’s
land title registration system can make investors more secure in their ownership interests. Enhancing that basic land title security with the risk reduction services and indemnity contracts that private land use rights insurance could provide, may yield increased foreign investment and a demand for China’s mortgage-backed debt in the international securities market.

Private land title agencies that research title risks before transactions are closed, together with an indemnification product, may be the most realistic and rapid means of reducing the many risks that currently concern investors in China. A joint effort between the Chinese government, private title agencies, and insurance underwriters ultimately may be the best means of bringing security, efficiency, reliability, and economy to China’s land title system and stimulating real estate investment in China.

Methodology: Qualitative description and analysis
Subject Keywords: Credit market, economic development, insurance, investment, land disputes, property rights
Region: China/East Asia


This paper argues that China should become a “consultative rule of law” regime rather than a democracy. China is facing strong internal pressure for political change, based on public resentment at corruption, which has exploded since privatization has been undertaken by a one-party state. While Western observers prescribe rule of law and democracy as solutions, Wei Pan argues that the two concepts are different, and that rule of law means “ruling in accordance with established legal requirements” while democracy mandates periodic free elections. Democracy, historically or today, is not the panacea that Western theorists believe it to be. Notably, it can exacerbate social cleavages and stimulate corruption. Moreover, the important freedoms of speech, press, assembly, and association, and checks and balances among government branches, are associated more with the rule of law than with democracy. Wei Pan notes many other failures of democracy, and argues that democracy enhances liberty while weakening the government’s ability to maintain social order. Different social conditions in the West and China also explain why China has not chosen to embrace democracy. For example, Chinese society does not have the large interest groups whose contention for power underpinned Western democracy; rather, China is characterized by family loyalties and pressure for certain ends, e.g. an end to corruption, rather than liberty. These differences, the author argues, make a rule of law regime a better choice for China—drawing from the experience of the polities of Hong Kong and Singapore. The new state structure would have five pillars: a neutral civil service to propose legislation and enforce the law; an autonomous judicial system; social consultative institutions; an independent anti-corruption system; and the “four freedoms” referred to above. The author discusses a three-stage, twenty-year plan by which to create this system, concluding that it is a feasible, indeed the optimal, option for China today.

Methodology: Comparative analysis; conceptual/philosophical inquiry
Subject Keywords: Rule of law; democracy; political reform/regime change; economic development; corruption; civil society; culture/social norms/informal institutions; individual rights; authoritarianism
Country/Region: China


This article argues that alternative dispute resolution in Japan protects social rather than individual rights. Social hierarchy still permeates Japanese society, and an emphasis on duties and the preservation of harmonious relationships continues to shape dispute resolution. Two-thirds of civil suits filed are settled by compromise or conciliation, and both procedures use normative authority apart from that of objective legal standards. One form of ADR used in the courts, known as compromise, involves one of three methods: judicial recognition of a compromise between the parties, oral presentation of cases before a judge in an attempt to reach a compromise, and compromise proposals floated by a judge after meetings with each party. The author notes that these procedures benefit litigants who would otherwise face up to a ten-year delay in traditional adjudication, but that they do not rely exclusively on objective law. A second form of ADR,
conciliation is used in family matters and civic affairs, and involves the court appointment of a three-member panel to facilitate dispute resolution through mutual concessions. Although the outcome is legally binding, standards of reason, common sense, equity and morality apart from the law are used in conciliation. The article argues that a third form of ADR, arbitration, is not favored in domestic disputes because it is viewed as a third-party imposition of a settlement, but it is accepted for resolving disputes between a Japanese and a foreign party. Separate provisions apply for arbitration of construction, public pollution, labor, and commercial disputes. Public and private commissions also resolve disputes outside the judicial system. The article concludes that ADR saves time and money and preserves relationships, but that it can also undermine individual rights in its use of non-objective standards.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Alternative dispute resolution; mediation; culture/social norms/informal institutions; judicial efficiency/court delay; civil procedure; individual rights; commercial arbitration  
**Law Keywords:** Family law; civil litigation; commercial law  
**Country/Region:** Japan


(“Review of Administrative Power in the United States”, in French) The administrative procedure act voted in 1947 defines the basis for the legislative, executive, procedural and judicial control of discretionary power of the administration in the United States. The author presents these different mechanisms and analyzes recent developments in the relationship between the Federation and the States.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative law, bureaucracy, environmental protection, federalism, judicial review, litigation, separation of powers  
**Country/Region:** United States/North America

**Peerenboom, Randall** *China’s Long March toward Rule of Law* (Cambridge: University Press, 2002), 673 pages

China has enjoyed considerable economic growth in recent years in spite of an immature, albeit rapidly developing legal system; a system whose nature, evolution, and path of development have been little explored and poorly understood by scholars. Drawing on his legal and business experience in China as well as his academic background in the field, Randall Peerenboom provides a detailed analysis of China’s legal reforms, adopting an institutional approach that considers the possibilities for, and obstacles to, reform resulting from the current state of development of Chinese institutions. Questioning the applicability of Western theoretical conceptions of rule of law, Peerenboom develops a new theoretical framework. He argues that China is in transition from rule by law to a version of rule of law, though most likely not a liberal democratic version as found in certain economically advanced countries in the West. Maintaining that law plays a key role in China’s economic growth and is likely to play an even greater role the future, Peerenboom assesses reform proposals and makes his own recommendations.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative law, authoritarianism, bureaucracy, culture/social norms/informal institutions, democracy, economic development, human rights, ideological role of law, individual rights, judicial independence, judicial reform, legal culture, legal ideology, legal reform, liberalism, political parties, political reform/regime change, politics of reform, regulation of legal services, rule of law  
**Country/Region:** China/East Asia


After describing the thin and thick versions of the rule of law, the author presents the Chinese approach of a “socialist rule of law”. Subsequently, four competing thick conceptions of rule of law are analyzed in detail
and put into a Chinese perspective: statist socialism, neo-authoritarian, communitarian, and liberal democratic. Finally, the article addresses a number of thorny theoretical issues that apply to rule of law theories generally and more specifically to the applicability of rule of law to China. For instance, can the minimal conditions for rule of law be sufficiently specified to be useful? Should China’s legal system at this point be described as rule by law, as in transition to rule of law, or as an imperfect rule of law? How do we know that the goal of legal reforms in China is rule of law as opposed to a more efficient rule by law or some third alternative? Given the many different interpretations of rule of law, should we just stop referring to rule of law altogether, or at least reserve rule of law for liberal democratic rule of law States? Finally, turning from theory to practice, are non-liberal democratic rule of law systems sustainable?

**Methodology**: Qualitative description and analysis  
**Subject Keywords**: Authoritarianism, culture/social norms/informal institutions, democracy, human rights, ideological role of law, individual rights, legal culture, legal ideology, legal reform, liberalism, political reform/regime change, rule of law  
**Country/Region**: China/East Asia


China has been rebuilding its legal system since the 1980s, creating a modern administrative law regime as part of its efforts to adapt to the needs of a market economy and a political system that is moving away from its totalitarian past toward a new form of polity. To what extent has the process been a response to or shaped by the forces of globalization, including China’s increasing integration into the global economy? Is China’s administrative law system converging on the best practices of administrative systems elsewhere, or will the path-dependent nature of reforms push China in a new direction? China is a single party socialist state saddled with a transition economy, an immature legal system, and a historical legacy of more than two millennia in which the subordinate role of law as a means of achieving social order stunted the growth of a culture of legality. Can institutions, rules and practices that play a central role in modern western liberal democracies with mature market economies be transplanted to China? Will they take root? The author explores these questions in depth.

**Methodology**: Qualitative description and analysis  
**Subject Keywords**: Administrative law, authoritarianism, culture/social norms/informal institutions, democracy, human rights, ideological role of law, individual rights, legal culture, legal ideology, legal reform, liberalism, political reform/regime change, rule of law  
**Country/Region**: China/East Asia


The study reported by the author has analyzed the connection between crime and support for democracy in El Salvador and Guatemala. It found that while people seem to have favorable opinions of the National Civil Police, support is affected significantly by the fear of crime resulting from a generalized feeling that neighborhoods are not secure. Moreover, those same feelings of insecurity have a significant and negative effect on support for democratic regimes. In the case of El Salvador, those who have been victims of crime are significantly more likely to support a military coup. Thus, public perception of democratic legitimacy can be severely constrained by an inability of public security forces to combat crime.

**Methodology**: Qualitative description and analysis; comparative analysis  
**Subject Keywords**: Crime control, criminal law, criminal sentencing, democracy, law enforcement, military coups, political instability, public opinion of the legal system  
**Country/Region**: Guatemala, El Salvador/Latin America

The author presents the well developed theoretical arguments why the effectiveness of legal systems should be a determinant of foreign direct investment (FDI). She states, however, that there is little empirical evidence to suggest that such a relationship actually exists and that there are existing theoretical arguments, including the concept of bounded rationality and the importance of informal business relationships, why any such relationship will be limited. In addition, she believes that there is good reason to expect that investors with different characteristics, such as size or nationality, will have varying degrees of sensitivity to the effectiveness of legal systems – a possibility which has generally been ignored by commentators. This article concludes that if legal reform aimed at attracting FDI is to be efficient and effective, then further research must be conducted into the existence and nature of any relationship between the effectiveness of legal systems and FDI flows.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Capital market, credit market, economic development, investment, legal culture, financial sector

**Country/Region:** Sri Lanka


This paper discusses theoretical and empirical research on how two constitutional features, electoral rules and forms of government, affect economic policy-making. The authors begin by outlining some key objectives of democratic political constitutions and by pointing out the inertia and systematic selection that characterize real-world constitutions. They then introduce the main concepts used to categorize work on constitutions: different kinds of electoral rules and forms of government. They then discuss how these elements of constitutions affect the accountability of government and the size of political rents and corruption, as well as the representativeness of government and a variety of fiscal policy choices. Their overall message is that constitutional rules systematically shape economic policy. When it comes to the extent of political corruption, the devil is in the details, especially the details of electoral systems. When it comes to fiscal policy, in particular the size of government, the effects are associated with broad constitutional categories. The constitutional effects are often large enough to be of genuine economic interest.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitution drafting, constitutional change, constitutional law, corruption, democracy, electoral process, political reform/regime change, presidentialism vs. parliamtarism


The legal version of post-modernism has not failed to challenge comparative law, according to the authors. It points out that, traditionally, comparatists have participated in a project of objectivity, universalism and neutrality of law, of which the ‘new’ approach to comparative law is altogether skeptical. In the era of globalization, both the discipline and its critique have gained relevance. What the transition of post-socialist countries and the unification of Europe have effected regionally, globalization now accomplishes on a global scale: it creates desires for harmonization and, as a pre-requisite, legal comparison. However, not only the technical function of comparative law is needed, but also its critical potential. In the process of globalization, different legal systems and different cultures are confronted with each other and must interact.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Codification, culture/social norms/informal institutions, ideological role of law, import of foreign law/legal transplants, law drafting, legal culture, legal reform

This paper compares the institutions and law of government accountability in England, France and Romania. It also examines the manner in which each country handles certain representative instances of litigation: applications for judicial review; litigation of government contract disputes, non-commercial government torts; and taking claims. Finally, it explores the way in which two supra-national institutions, the European court of Justice and the European Court of Human Rights, have influenced government accountability in each of the three countries. The choice of England, France and Romania gives an idea about developments in three distinct legal orders representing civil law and common law traditions, monist and dualist approaches; and Western and transition countries.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, due process, European Community/European Union, European Court of Justice, human rights, judicial review, rule of law
Country/Region: Europe, England, France, Romania, European Union


The authors report the results of surveys conducted from December 1991 through August 1992 of 115 households in Murang’a district in Kenya, Kikuyus, that showed only two households used land title as collateral. The authors suggest several reasons for this low use. First, it is difficult for lenders to foreclose for a buyer outside lineage group would find it difficult to take possession. Second, a Presidential directive issued in 1991 requires all family members plus the title holder to agree before land pledged. Third, the African Finance Corporation, the parastatal institution responsible for loaning to small farmers, has not been successful. Fourth, farmers expressed reluctance to pledge due to the risk of losing land. In another section, authors note that because of high transaction costs, changes in ownership are often not registered, meaning that many holders of record not true owners and many true owners not holders of record. The authors then try to explain the difference between these findings and those of similar research in Thailand by arguing that the Thai titling system was not imposed on an existing system of indigenous tenure system and did not possess value over and above its use for farming.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; credit market; agricultural sector; investment; customary law/indigenous law
Law Keywords: Property law
Country/Region: Kenya; Thailand


The author first presents the comparative legal framework for land use planning, land invasion, settlement and housing-related issues in Peru, Chile and Mexico. He provides the basis for comparison before describing the various jurisdictions in Latin America. This is followed by a discussion of the same issues in the context of Zimbabwe. He outlines key issues before focusing again to South African land use planning and housing-related issues. Recommendations based on the comparative work and the specific needs of the South African situation follow.

Methodology: Qualitative description and analysis
Subject Keywords: Ethnic politics, land disputes, law drafting, political reform/regime change, property law, property rights
Country/Region: South Africa, Peru, Zimbabwe, Chile, Mexico, Africa, Latin America

In this article, Pildes discusses the potential negative impact of formal state law on informal social norms. He argues, first, that the success of political and economic institutions rests largely on informal norms, especially norms of reciprocity. Without these norms, the level of cooperation necessary for democracy and a market economy would be difficult to sustain. Second, he points out that formal state law and informal norms are interdependent; changes in state law can affect or change social norms. Furthermore, social capital – strong norms of cooperation and trust, as well as nongovernmental institutions that facilitate civic engagement – are important for the successful enforcement of state policy. The interdependence of law and norms has led some to advocate using state law to influence social norms. Though Pildes is not opposed to this general idea, he points out a more negative aspect of the relationship between law and norms – the potential for state law to destroy valuable social norms and undermine social capital. He suggests three ways this might occur. First, state law might undermine norms indirectly by destroying the structural conditions that facilitate the emergence of norms of cooperation. Second, law might attack norms directly by adopting rules inconsistent with social understandings of reciprocity. Third, laws that attempt to incorporate the substance of social norms might nonetheless fail to incorporate the related norms of enforcement, especially those having to do with flexibility and sensitivity to context.

Methodology: Qualitative description and analysis
Subject Keywords: Culture/social norms/informal institutions; nonlegal sanctions; symbolic use of law; social capital; law enforcement; post-socialist transition; civil society
Law Keywords: Property law
Country/Region: United States

Pinchon, François & Millo, François  

("Judicial Experts in Europe", in French) This comparative study of the use of experts by the judiciarices in Germany, England and Wales, Spain, France, and Italy gives useful insights into the specifics of each system but is also allows cross-country comparisons. For each of the five countries, the following questions or aspects are treated: (1) The basics: judicial organization, procedure, use of expertise, (2) How does one become an expert for the courts?, (3) The execution of the expert's mission, (4) The expert's report, (5) The expert's remuneration, and (6) The expert's liability.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Case management, civil procedure reform, civil litigation, civil procedure, court delay, court performance, judicial decision-making, judicial efficiency/court delay, judicial reform, litigation
Country/Region: Germany, United Kingdom, Spain, France, Italy/Europe

Pinheiro, Armando Castelar and Celia Cabral  

In this paper, the authors examine the credit market in Brazil, focusing especially on the role of judicial and other institutions intended to enforce credit contracts and prevent defaults. After briefly describing the size and structure of the Brazilian credit market, the authors assess the importance of judicial enforcement by comparing credit market size and judicial performance in Brazil’s 27 states. The authors run a series of regressions using judicial inefficiency (as measured by surveys of businessmen) as the primary explanatory variable, and various measures of credit market size as the dependent variable. They find that judicial inefficiency has a substantial negative and statistically significant effect on the size of the credit market in each state. The second main focus of the paper is the examination of the governance structures that allow credit activities to take place in the absence of strong legal protection. The three institutions they identify as most important are a well-developed informational infrastructure (which allow sharing information on credit histories), public banks, and the use of mechanisms based on peer pressure such as credit cooperatives. The authors identify two primary policy implications of their findings. First, improving judicial enforcement is necessary to expand and develop credit markets, and is therefore important for economic growth. Second, since judicial reform is likely to proceed slowly, the government should support institutions, such as those they identify in the paper, that act as substitutes for effective judicial enforcement.
**Methodology:** Quantitative analysis; qualitative description and analysis; formal analysis; attitude surveys

**Subject Keywords:** Credit market; capital market; economic development; economic reform; judicial efficiency/court delay; costs of the legal system; debt collection; bankruptcy; credit associations; nonlegal sanctions; noncontractual agreements/relational contract; law enforcement; public utilities/infrastructure

**Law Keywords:** Contract law; administrative law

**Country/Region:** Brazil


In this paper Pistor discusses formal law reform in countries undergoing political and economic transformation. She stresses that the transplantation of foreign law often does not achieve the expected results because of the persistence of informal institutions. While formal and informal rules can complement each other if they evolve over time, in a transition context they tend to compete. She stresses that formal law alone is not sufficient for changing behavior; rather, formal law operates in the context of a particular policy regime and a set of existing informal institutions. Pistor notes that the introduction of new formal law may lead to a healthy competition between different sets of rules, but adds the caveat that this competition creates a period of uncertainty, which may degenerate into crisis. She stresses also that a successful regime change requires new constituencies to support it, and that policy makers can often control the pace at which their countries are exposed to a regime change, even if they can’t control the change itself.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Post-socialist transition; outside assistance; import of foreign law/legal transplants; economic development; legal reform; informal dispute resolution; informal sector/black markets; culture/social norms/informal institutions; public support for reform; colonialism/imperialism; economic reform; politics of reform; legal instrumentalism; property rights; political reform/ regime change

**Law Keywords:** Contract law; civil litigation; commercial law

**Country/Region:** East Asia; Eastern Europe; Russia


In this article, Pistor discusses the supply and demand for contract enforcement by the state, taking the commercial courts in Russia as her case study. She first notes that state and private mechanisms for contract enforcement are not simple substitutes; rather, they coexist and are, to a large extent, interdependent. Therefore, the creation of state courts and appropriate substantive laws is not sufficient for effective dispute resolution and contract enforcement. Pistor argues that the relatively low level of commercial arbitration in the state courts in Russia cannot be attributed to lack of capacity or inefficiency of these institutions. In other words, the problem is not primarily a supply-side one. Rather, the low levels of use are due to low demand for state contract enforcement. This low demand for services is due to several factors, including the association of the courts with the old regime, the fact that many market transactions include illegal or semi-legal elements that the parties want to hide from state authorities, and the availability of alternative enforcement mechanisms – both legal and illegal.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Arbitration; private adjudication; law enforcement; organized crime; private enforcement organizations; post-socialist transition; nonlegal sanctions; noncontractual agreements/relational contract; economic reform; judicial reform; judicial efficiency/court delay; out-of-court settlement; litigation

**Law Keywords:** Contract law

**Country/Region:** Russia

This study discusses the relationship between law and economic development in six Asian countries (China, India, Japan, Malaysia, Korea, Taiwan) over 35 years. Although Western legal systems were transplanted in all of these countries, many laws were un-enforced in practice, and apparently played little role in the early economic take-off of Asian economies. After 1980, foreign and domestic pressure led to greater revision and enforcement of law. The study argues that theories of law and development drawn from the Western experience do not seem to explain the development process in Asia. The authors argue that the allocative and procedural dimensions of a legal system are critical to economic development, and that between 1960 and 1995, shifts in legal systems corresponded to shifts in government economic policy. The report then examines three areas of law in relation to economic policy: business governance, security interests for credit, and dispute settlement. Law is not irrelevant to economic development in Asia. Legal systems in Asia have not yet converged across economies in Asia or the West, although differences among them have decreased.

**Methodology**: Comparative analysis; qualitative description and analysis; quantitative analysis

**Subject Keywords**: Legal transplants/import of foreign laws; rule of law; economic development; state sector/public ownership; credit market; legal reform; alternative dispute resolution; law enforcement

**Law Keywords**: Commercial law; contract law; civil litigation

**Country/Region**: East Asia; Southeast Asia; China; India; Japan; Korea; Malaysia; Taiwan


Previous cross-country research on corporate law has examined only differences in the protection of minority shareholders. This paper analyzes the development of corporate (or company) law using a broader set of indicators: 1) allocation of control rights, the power to decide questions such as the formation, liquidation, or merger of the corporation allocated between the board(s) and shareholders; 2) governance structure, the division of power between the board(s) and management; and 3) corporate finance, the locus of, and constraints on, decisions about changes in capital stock, share repurchase, and preemptive rights. These indicators reflect a more robust view of corporate law. An exclusive focus on minority shareholder rights implies that corporate law’s only function is to provide a means for shareholders to control management. But the law must also give managers flexibility to rapidly address changes in the market. There is thus a trade-off between shareholder control and management flexibility. What makes for a useful corporate law is one that allows for innovative responses to resolving this trade-off, responses that can change over time as economic and financial conditions change.

Among the findings: 1) Innovations in corporate law have been spurred by competition among jurisdictions. France lessened restrictions on incorporation after many investors turned to England where incorporation was easier. 2) Despite suggestions in earlier research, the evolution of corporate law does not follow similar paths in countries of the same legal family. Thus, while Colombia and Chile, for example, are considered part of the French civil law legal family, the evolution of corporate law in these “transplant” nations does not mirror changes in French corporate law. 3) Countries that have successfully adopted their corporate laws to changing economic circumstances have devised institutions such as courts and stock market regulation commissions to supplement shareholder control of management while preserving management flexibility. 4) Where state regulation of management or other rigidities in corporate law have been introduced to make up for weaknesses in complementary control institutions, countries have lost the flexibility to amend their corporate law to address changing circumstances. 5) The finding in earlier research that common law countries provide greater protection of property rights than civil law nations does not hold up upon closer analysis.

**Methodology**: Comparative analysis

**Subject keywords**: Capital market; civil law, common law; import of foreign law/legal transplants; legal development; legal evolution theory; outside assistance; property rights

**Law keywords**: Commercial law; property law

**Country/Region**: Colombia; Spain, Chile; Malaysia; United Kingdom; France; Germany; Israel; Japan; United States

This article is the first part of a two-part series on the social preconditions of a successful market economy. This first part focuses on the importance of public and private institutions to sustain the market order. Platteau criticizes the view that the market can be sustained by long-run personal ties enforced through reputational mechanisms. While this may be true for small or traditional societies, the complex impersonal interactions required by a true modern market economy cannot be sustained solely through these mechanisms. Agency relations, imperfect information, and the need for collective action to discipline foreign political authorities all require formal private and public order institutions for large-scale market economies to function effectively. Platteau supports his argument with the theoretical insights of game theory and modern economics, as well as evidence from European history.

**Methodology:** Qualitative description and analysis; critical review  
**Subject Keywords:** Economic development; economic reform; culture/social norms/informal institutions; nonlegal sanctions; noncontractual agreements/relational contract; private adjudication; Law Merchant; property rights; import of foreign law/legal transplants; credit market; labor market; law enforcement  
**Law Keywords:** Contract law; commercial law  
**Country/Region:** Europe; Africa


This article is the second part of a two-part series on the social preconditions of a successful market economy. This part focuses on the importance of norms of “generalized morality” to sustain honest or trusting behavior in a market environment characterized by extensive division of labor and largely anonymous interactions. Platteau draws on game theory to argue that these moral norms – abstract principles of moral conduct applicable to a wide range of social relations not characterized by personalistic ties – are necessary for a market economy to function. However, such norms cannot be expected to arise through a natural or evolutionary process. Whether norms of generalized morality arise depends on the culture and history of specific societies. Platteau argues further that the introduction of market systems into social contexts without the appropriate background norms can have perverse effects. He concludes that in the absence of appropriate moral norms, a strong state is needed to support the rapid development of division of labor and economic exchange. State intervention to alter social norms and correct the “trust failure” may also be required. However, he notes that such a strategy cannot work if the state is weak, corrupt, or otherwise insufficiently impartial, and also that even ideal changes to formal institutions may take decades to improve the efficiency of economic exchanges.

**Methodology:** Qualitative description and analysis; formal analysis; comparative analysis  
**Subject Keywords:** Culture/social norms/informal institutions; economic development; authoritarianism; religion; social capital; civil society; outside assistance; import of foreign law/legal transplants; corruption; property rights; land disputes; privatization  
**Law Keywords:** Contract law; property law; commercial law  
**Country/Region:** Developing world (general); Africa; South Asia; Russia


This article discusses the Russian Constitutional Court’s 1995 decision in a case involving a legislative legal challenge to the constitutionality of President Yeltsin’s use of military force to restore Russian control over Chechnya. The case was important for the status of the court, which had just been reestablished after a suspension of more than a year. The court ruled, in an 11-8 decision, that the executive’s actions in Chechnya were legal, and that alleged human rights violations, while subject to legal jurisdiction, would have to be handled by criminal courts, not the Constitutional Court. The dissenters and many observers charged that this decision granted excessive power to the executive at the expense of the already weak legislature. However, Pomeranz points out that the court may have had no real choice, given its institutional weakness.
He argues that, although the court did confer excessive power on the executive, it also reasserted the exclusive right of the judiciary to review executive and legislative decisions. It also demonstrated that the court could examine controversial cases without becoming directly involved in politics, as the previous Russian Constitutional Court had done.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; judicial independence; separation of powers; judicial decision-making; individual rights; military operations; state of emergency; political question doctrine; rule of law; secession
Law Keywords: Constitutional law
Country/Region: Russia


This book analyzes efforts to strengthen judicial independence and reform the criminal justice system in El Salvador from 1980 through 1999, a period marked by a civil war that ended with a 1992 UN-brokered peace agreement. Also covered is the decision of Salvadorian policymakers to forego any effort after the war to account for wartime violations of human rights, in contrast to the truth commissions in Argentina, Chile, Guatemala, and South Africa. The author asserts that US policymakers, in sponsoring judicial reform projects, mistakenly believed that judicial reform could reduce the level of political violence when its cause lay in deep-seated economic and political problems. Wishful thinking led USAID to focus on easily manageable technical assistance such as training and computerization rather than the institutional changes required for fundamental, sustained reform. After the war a UN mission also become involved in judicial reform. The author chronicles the efforts of the UN and USAID, whose work was not always well-coordinated, to overcome resistance within various segments of the judiciary and society to reform. The difficulties in increasing judicial independence while ensuring judicial accountability and in transferring some of the responsibility for governing the judiciary from the Supreme Court to a newly reformed Judicial Council are described as well as those encountered in replacing an inquisitorial criminal justice system with a more adversarial one. The author underlines the challenges inherent in increasing human rights guarantees for suspects at a time when the incidence of violent crime is rising rapidly. She concludes by drawing a series of lessons from the Salvadorian experience: 1) when the requisite will for reform is lacking, exchanges and other activities should be undertaken to plant the seeds for reform when conditions are more propitious; 2) civil society must be involved for reform to succeed; 3) reform must not become identified with any single faction or party; and 4) for international donors, care must be taken never to underestimate the domestic opposition to building the rule of law.

Methodology: Qualitative description and analysis
Subject keywords: Donor coordination; human rights; judicial reform; judicial training; politics of reform; public prosecutors; public support for reform; USAID; United Nations, judicial independence; rule of law; outside assistance
Law keywords: Criminal law
Country/region: El Salvador


This article examines and criticizes the view that informal social norms, especially those of close-knit communities, tend to be efficient, and that the state should therefore generally refrain from intervening to change these norms. Posner argues that under a variety of plausible conditions, groups will generate inefficient norms, and that in many situations the state can produce rules that are more efficient than group norms. Posner claims that inefficient norms can arise for a number of reasons: information costs and lags, strategic behavior on the part of norm-enforcers and other sub-optimal enforcement behavior such as herding and coordination failure, envy, and negative externalities suffered by those outside the group generating the norm. He then argues that the state can often identify and attempt to replace inefficient norms with more efficient rules, by encouraging norm-violation, by trying to transform norms, or by enhancing actors’ ability
to bargain around inefficient norms. He illustrates the problem of inefficient norms with two examples: dueling and the management of common-pool resources.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions; nonlegal sanctions; common law; public choice; legislative process; property rights; legal reform; environmental protection

**Law Keywords:** Property law; tort law


In this article, Posner argues that a basic legal infrastructure centered on the protection of contract and property rights is necessary for economic development. However, he stresses that poor nations cannot afford costly judicial and institutional reforms. He argues that legal reform in the developing world ought to stress the adoption of relatively simple and precise legal rules that can be interpreted and enforced by an imperfect judiciary. These rules can be borrowed from other countries, but must be adapted to local conditions by local lawyers. This modest legal reform should lead to economic growth, which can generate the resources for more extensive reforms in the future. He also proposes the establishment of a special, independent court, with jurisdiction confined to purely economic issues, with the power to police the government. He suggests further that a strict criminal law and de-emphasis on civil liberties may also be an important element of legal reform in these countries.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Property rights; judicial reform; legal reform; costs of the legal system; economic development; economic reform; judicial independence; nonlegal sanctions; alternative dispute resolution; culture/social norms/informal institutions; rule of law; import of foreign law/legal transplants; law enforcement; crime control; individual rights

**Law Keywords:** Contract law; criminal law; administrative law

**Country/Region:** Developing world (general)


One of the leading figures of the U.S. law and economics movement, Posner attacks academic moral philosophy as unable to guide human behavior or provide answers for actual legal controversies. Posner seeks to free the law from moral theory and advocates a pragmatic approach to decisions, including legal judgments. He argues that pragmatic analysis of the costs and consequences of rulings is a better way to arrive at legal judgments than philosophical, procedural, or rule-based reasoning. Legal academics, no less than adjudicators, should apply economic analysis to their work, and Posner cites legal scholarship in anti-trust and administrative law as promising examples of this approach. Posner argues that social science methods can improve understanding of legal phenomena. He particularly emphasizes empirical research, illustrating with an example that shows how differences in litigation rates sometimes attributed to national culture can be explained largely in terms of different material incentives. The book also distinguishes the rationalization of the legal profession from the negative aspects of professionalization.

**Methodology:** Conceptual/philosophical inquiry

**Subject Keywords:** Legal ideology; legal profession; legal doctrine; rational choice; legal education/training; judicial decision-making; legal culture

**Law Keywords:** Administrative law; antitrust law; constitutional law

**Country/Region:** United States


This article uses economic theory to develop a stylized model to explain some of the main features of law (or law-like forms of social control) in primitive (that is, preliterate) societies. Posner claims that such societies are characterized by the absence of a central government, high information costs, and only a limited variety
of consumption goods. One of the major implications of the economic model is the prevalence of insurance schemes: gift-giving, reciprocity, extensive kinship groups and systems of collective responsibility fulfill this purpose. Many of the features of real-world primitive societies studied by anthropologists can be understood, according to Posner, as insurance mechanisms to protect individuals against risk. Posner then examines the implications of his model for legal aspects of primitive society, including rules of procedure and adjudication, property and contract, and family law. He devotes special attention to the system of strict liability for injury, which encompasses cases that would be dealt with in criminal and tort law in modern society. This system of strict liability, where the injurer is liable and must pay compensation without the demonstration that the harm was caused deliberately or negligently, may have been appropriate for most types of injury in primitive society. Posner concludes by noting that if his hypothesis that primitive institutions are economically efficient is correct, researchers must then explore the mechanism that generates this outcome.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Customary law/indigenous law; insurance; culture/social norms/informal institutions; nonlegal sanctions; noncontractual agreements/relational contract; informal dispute resolution; property rights; law enforcement; crime control

**Law Keywords:** Contract law; criminal law; property law; family law; tort law


The main thesis of this article is that judges are rational actors, and can be modeled with economic analysis in the same way that other actors can. Posner focuses on United States federal appellate judges, and argues that although these judges have been insulated from many economic incentives through institutions such as life tenure and fixed salaries, the behavior of these judges can still be modelled economically when other sorts of incentives are taken into account. Specifically, he claims that the behavior of judges can be better understood by drawing on analogies to rational behavior in four other contexts: managers of nonprofit enterprises, voters in political elections, theatrical spectators, and game-players. Posner claims that the most important incentives facing judges are the desire for leisure and the utility inherent in the act of making judicial decisions, within the self-limiting rules that comprise the judicial “game”. Posner then argues that modeling judges’ utility functions in this way can yield both falsifiable research hypotheses and practical policy predictions.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Incentives of judges; judicial decision-making; common law; adjudicative competition; judicial selection/promotion

**Country/Region:** United States


In this brief, Posner argues that court delay exists because the price mechanism is not used to ration court services, leading to excessive demand over supply. Simply increasing the number of judges, he argues, will not work, because more litigants will come to use the system—just as a new freeway will not ease traffic congestion because it encourages new drivers. The supply of court services is not infinitely elastic. Therefore, a better response would be either to impose higher minimum-amount-in-controversy requirements or higher filing fees. Posner argues that higher filing fees is the better option, and addresses criticisms that higher filing fees favor the wealthy, eliminates the litigation subsidy, and are unusable for indigent litigants.

**Methodology:** Formal analysis

**Subject Keywords:** Judicial efficiency/court delay; costs of the legal system; litigation

Over the last ten years there has been a considerable amount of reform in the law relating to real property and closely related areas such as trusts and succession in England and Wales. This paper analyses the most important of these developments and what they mean for the development of systems of real property law derived from English Law. Some of these developments include: speeding up of the process of compulsory registration of title, abolition of the rule in Bain v. Fothergill, the extension of the requirements of writing in relation to dispositions of interests in land, reform of the law relating to implied and other covenants, abolition of the doctrine of conversion, provision for delegation by trustees, reform of certain aspects of the law relating to charities, provision for access to neighboring land, and further provision for enfranchisement or extension of long leases.

Methodology: Qualitative description and analysis
Subject Keywords: property rights; legal reform
Law Keywords: Property law
Country/Region: United Kingdom


This occasional paper argues that since 1992, Ghana’s process of democratization has led to constitutional protections of judicial independence, but that this in itself does not guarantee that the judiciary will maintain independence and protect democratic values. In addition, Prempeh argues, the judicial review power comes with a new risk: a judiciary that sanctions executive abuses of power would end up legitimizing them. Therefore, as any servants entrusted with a public function, judges must be accountable to the people. Prempeh reviews the turbulent history of the courts under Ghana’s post-independence military and civilian governments, noting that successive regimes established military tribunals as a parallel system to the regular courts. The 1992 constitution vested judicial power and financial administration in the judiciary, gave it jurisdiction for all constitutional issues, and protected judicial salaries, immunity from lawsuits, and lifetime tenure. These provisions give judges security against executive and legislative interference, but the constitution also left open several possibilities for abuse. First, by not setting a limit on the number of Supreme Court justices, it did not preclude future use of “court-packing” to interfere with the Court’s independence. Second, the constitution gave the Chief Justice broad power to hand-pick a smaller panel of judges to hear cases. Third, procedures for the approval of judges in parliament gave little room for minority parties to have a role in the process. Turning further to the need for accountability, Prempeh argues that the parties to a case, the legal profession, and the mass media and public at large have the right to demand judicial independence and a role in ensuring it.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; judicial accountability; political reform/regime change; judicial review; constitutional change; military courts; military coups; democracy
Law Keywords: Constitutional law
Country/Region: Ghana


In this article, Priest develops a simple economic model to analyze court delay in civil litigation. Priest argues that previous discussions of court delay are inadequate because they neglect the interactive effect of delay on litigants’ incentives to settle out of court. Specifically, he argues that delay reduces the present value of an expected judgement, hence longer delays result in more out of court settlements, and vice versa. This dynamic process creates an equilibrium level of delay resistant to change; reform efforts are not likely to affect average delay, since they increase they incentive to litigate, thus restoring the equilibrium. Priest examines empirical evidence from Cook County and finds some support for this model, though the evidence is not conclusive. He concludes by arguing that, although reforms are unlikely to have a significant effect on average delay, they will affect the settlement negotiations of the parties. Normative debates ought to focus
not on whether delay should be reduced (as this may be impractical) but on how many and what kinds of cases ought to go to trial.

**Methodology:** Formal analysis; quantitative analysis

**Subject Keywords:** Judicial efficiency/court delay; litigation; out-of-court settlement; judicial reform; legal reform

**Law Keywords:** Civil litigation; tort law

**Country/Region:** United States


This article surveys the current literature on the relationship between democracy and economic growth. The article begins with a review of the economic arguments both in favor of and against democracy, and then summarizes the statistical studies which include regime type as one potential determinant of economic growth. The authors conclude that the existing arguments both for and against democracy are based on untenable assumptions, and that the statistical research is seriously flawed – specifically in the failure to take into account simultaneity, attrition, and selection effects. Their conclusion is that social scientists actually know very little about the relationship between growth and democracy. The authors believe that there is strong evidence that politics and political institutions are important, but argue that “regime type” does not capture the relevant factors. They point out that the central dilemma is that the state must be both effective enough to intervene in ways that are needed to promote growth, but constrained from intervening in ways that harm the economy.

**Methodology:** Literature review; quantitative analysis; qualitative description and analysis

**Subject Keywords:** Economic development; democracy; authoritarianism; property rights; investment


The text, spirit, myth, and legacy of Marbury v. Madison have been invoked to inspire, explain, praise, legitimize, criticize and deconstruct the concept and exercise of judicial review in the United States and in jurisdictions all over the world. Although the reference to this case may initially trigger important associations, few focused side-by-side comparisons have been conducted to bolster or refute a particular theme connected to Marbury. It is in this light that this article celebrates the Marbury bicentennial by undertaking a comparative dissection of one of the seminal cases handed down by the Europe Court of Justice (ECJ) – Flaminio Costa v. Ente Nazionale per l’Energia Elettrica. In a nutshell, Costa v. ENEL presents the locus classicus for the doctrine of supremacy of the law of the European Community over the national law of the Member States, a prerequisite for triggering vertical judicial review in what is now the European Union’s system of governance.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Democracy, European Community/European Union, European Court of Justice, judicial decision-making, judicial review, rule of law, separation of powers

**Country/Region:** United States, Europe

**Qiang, Li** “Juristenausbildung und Richtertätigkeit im modernen China” *Betriffe Justiz* 74/2003 (June) pp. 86-88

(“Legal training and judicial activity in modern China”, in German). After a general description of legal studies at Chinese universities, the authors describes the Uniform Judicial Qualification Exam and the Certificate of Legal Profession Qualification Exam. The latter is the prerequisite to the exercise of any legal profession in China. The author analyzes the improvements of the professional level among legal practitioners and describes the role of judges and law clerks. According to the author, the level of remuneration is even more important than the independence of the judiciary.
Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence, judicial reform, judicial selection/promotion, judicial training, legal education/training, legal profession, rule of law
Country/Region: China, Asia


This article is based on a lecture, and briefly summarizes the political and judicial role of the French Conseil d’Etat. The Conseil has a dual role: on the one hand it acts as an advisor to the government, and on the other it has the power to rule administrative acts illegal. This fosters in the Conseil a culture of prevention, manifested in continuous supervision to check the legality of government action. Questiaux also discusses the relationship of the Conseil to European Community law, the protection of individual rights, and the concept of the rule of law more generally. She stresses in her conclusion that the system in France – especially the close link between the administration and the institution entitled to review administrative action – only works because the Conseil has established total independence from the government.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts; judicial review; judicial independence; rule of law; individual rights; European Community/European Union
Law Keywords: Administrative law; international law
Country/Region: France


Vietnam has been undergoing economic reform since 1986. An important part of that reform has been a re-examination of the role of the courts and the bureaucracy in the resolution of disputes. The movement from the rule of bureaucracy to the rule of law creates tensions between the system that is hoped for and the system as it currently exists, which often creates perverse or simply unexpected outcomes. Since the beginning of the reforms, the legal system has been in constant flux. The direction of legislative efforts and changes in the system appears constant: increasing transparency, reduction of arbitrariness and increased predictability in the legal system. While legislative changes are necessary, they are not sufficient. Improvements in the implementation of the law, in the courts and the administrative system remain critical challenges particularly as Vietnam seeks to pursue a policy of openness to the rest of the world. The vertical and horizontal management structure that served central planning will likely continue to feel the tensions associated with market opening.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative law, authoritarianism, bureaucracy, court administration, court delay, court performance, democracy, economic reform, ideological role of law, judicial efficiency/court delay, judicial independence, judicial reform, legal culture, legal reform, political reform/regime change, post-socialist transition, post-transition justice, property rights, public prosecutors, rule of law, separation of powers
Country/Region: Vietnam/East Asia


Community participation has become, according the author, a universal orthodoxy in contemporary development theory and practice, and police governance is not immune from it. However, community participation in police matters (community oriented policing) has not served its purpose of making police accountable and democratic; ironically community policing has legitimized police actions instead. This is true, according to the author, for a fair extent, for the police of developed societies like Japan and England.
and Wales. This paper argues that in societies, such as Pakistan, that are under-developed and are grappling with the serious issues of elite capture and a divided society, the notion of controlling police through community becomes deeply contested and problematic. It is more likely that instead of making police accountable to community the envisaged role of community would institutionalize police hegemony through elite capture. The argument is discovered in several parts by discussing the nature of state, society and governance in Pakistan. The idea of community oriented policing is elaborated to gauge its success in Japan and England and Wales – templates for the policing system in Pakistan. In this context the possible success or failure of objectives of implementing a community oriented paradigm in Pakistan is assessed through a critical analysis of the suggested paradigm.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Authoritarianism, corruption, crime control, criminal law, divided societies, law enforcement, outside assistance  
**Country/Region:** Pakistan/South Asia


In January 2001, the World Bank adopted a policy regarding its conflict-related work, which the author describes and analyzes after summarizing the World Bank’s work in postconflict areas. The World Bank’s role, always within the limits of its mandate under the Articles of Agreement, is not restricted to postconflict situations but extends to previous phases. There are three main principles of World Bank involvement in conflict-afflicted areas. First, the World Bank operates according to the mandate of reconstruction and development specified in the Articles of Agreement. Second, neither the World Bank nor its officers and employees can interfere in the political affairs of any member state or be influenced in their decisions by the political character of a member. Third, the resources and facilities of the World Bank may only be used for the benefit of its member states. Eventually, the author presents the World Bank’s work in Kosovo.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Donor agency administration, donor politics, international law, military operations, outside assistance, political reform/ regime change, post-transition justice, state of emergency/martial law, World Bank  
**Country/Region:** Developing world, Kosovo


This book analyzes the conflict between the rule of law and executive power in Malaysia. The author’s primary conclusion is that the power of the executive in Malaysia has grown steadily since Malaysia became independent in 1957, and this “executive supremacy” has undermined individual freedoms and the rule of law. The book begins with a discussion of the meaning of the “rule of law” and an overview of twentieth-century Malaysian history before and after independence. After a discussion of the drafting of the Malaysian constitution, the book examines the escalation of executive power through constitutional amendments, legislative circumvention of constitutional rights, special emergency laws, and the subversion of judicial independence, most notably in the 1988 judicial crisis that culminated in the dismissal of the Lord President of the Malaysian Supreme Court. The author concludes that the executive’s supremacy in Malaysia is now complete, and that unless there are fundamental institutional changes, arbitrary rule and a lack of respect for individual rights and the rule of law are likely to continue.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Authoritarianism; constitution drafting; constitutional change; constitutionalism; criminal sentencing; democracy; executive decrees; human rights; impeachment of judges; individual rights; judicial independence; judicial review; political question doctrine/judicial deference; rule of law; separation of powers; state of emergency/martial law  
**Law Keywords:** Constitutional law; administrative law; criminal law  
**Country/Region:** Malaysia

(“Judicial Reform in Mauritania”, in French) The author assesses the judicial reform efforts in Mauritania since 1997. In the first part of the article, the author describes and analyzes the deficiencies of the judicial system in Mauritania. A huge problem is the length of court proceedings due to judicial inefficiency and the decay of the judiciary in general. In addition, the cultural remoteness of the official legal and judicial system from the majority of the population entails a serious lack of credibility. In the second part of the article, the author suggests remedies how to improve the judiciary in Mauritania. He recommends a more coherent legislative policy, including the legislative framework of recruitment and training for judges and court staff, as well as a reorganization of the entire judiciary.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, administrative courts, court administration, court performance, court delay, customary law/indigenous law, culture/social norms/informal institutions, institutional capacity, judicial efficiency/court delay, judicial reform, judicial training, law enforcement, legal education/training, legal profession, legal reform, separation of powers
Country/Region: Mauritania/Africa


Ramseyer reviews some of the extant law and economics literature on judicial independence, focusing on the question of why elected politicians sometimes insulate the judiciary from themselves. He considers three aspects of this question: when politicians will politicize the judicial appointment process; when politicians will ensure that appointed judges do not face politically-skewed career incentives; and when, independent of career incentives or deliberate manipulation, judges will tend to decide cases in accordance with the preferences of elected politicians. With regard to appointments, he notes that politicizing appointments and post-appointment monitoring are logical substitutes, so one would expect greatest politicization of appointments when post-appointment monitoring and control is difficult. With regard to the second question, Ramseyer notes that there are three main theories as to why politicians may not interfere with the judiciary. First, an independent judiciary may increase the value of legislative bargains by making commitment to such bargains credible. Second, an independent judiciary may enhance legislative oversight of bureaucratic agents. Third, the uncertainty of electoral markets may make an independent judiciary an attractive hedge against political risk. With regard to the final question, Ramseyer notes that the literature on positive political theory suggests courts modify their decisions to avoid legislative override, and therefore judges’ decisions will track elected politicians’ more closely when legislative override is relatively easy – in stable systems with few veto players. In conclusion, Ramseyer notes that, while all these theories have testable implications, practical problems with data availability and reliability have limited scholars’ ability to conduct conclusive tests of the various theories.

Methodology: Literature review
Subject Keywords: Judicial independence; judicial decision-making; incentives of judges; judicial selection/promotion; democracy; electoral process; legislative process; bureaucracy
Country/Region: United States; Japan; Western Europe


This article attempts to explain variation in judicial independence across countries. According to Ramseyer, current theories of judicial independence explain why rational politicians might want to maintain independent judiciaries, they do not explain why some do and some do not. He argues that variation in judicial independence is due not to the constitutional text but to the exigencies of electoral markets. Where one party expects to be in power indefinitely, as was the case in post-war Japan until 1993, the government has an incentive to manipulate the courts. When the outcome of elections is certain but all parties expect the
electoral process to end soon, as was the case in imperial Japan, a similar result obtains. When parties expect the electoral process to continue indefinitely, but no one party expects to remain in power indefinitely – which Ramseyer says characterizes the modern American situation – the situation resembles a repeated prisoner’s dilemma game, and judicial independence may emerge as a cooperative outcome. This allows current legislators to reduce the variance to political returns by placing enforcement of policy in the hands of an independent judiciary. This does not mean, however, that the process of appointment will not be politicized.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Judicial independence; incentives of judges; legislative process; electoral process; democracy; bureaucracy
Law Keywords: Constitutional law
Country/Region: United States; Japan


In this article, the authors use data on the careers of 276 Japanese judges (every judge hired between 1961 and 1965) to test hypotheses about the career incentives used to monitor and discipline judges, especially whether these incentives are manipulated by politicians. The authors find strong evidence that the Japanese system rewards judges that are productive (measured by volume of written opinions), but little evidence of school cliques and no evidence that the system favors judges who mediate rather than write opinions. The authors also find strong evidence that a judge’s political affiliation and decisions on cases involving the government have an effect on judicial careers. Judges who joined a leftist group in the 1960s, who decided cases against the government, or who declared unconstitutional a section of the electoral law that favored the ruling Liberal Democratic Party, were more likely to receive less attractive posts.

Methodology: Quantitative analysis
Subject Keywords: Judicial independence; judicial decision-making; incentives of judges; electoral process; out-of-court settlement; judicial selection/promotion
Law Keywords: Constitutional law
Country/Region: Japan


In this chapter, Rapaczynski argues that although the “rule of law” as a principle has considerable merits, its real function is often obscured by an abstract philosophical perspective that obscures both the concept’s real meaning and its limitations. According to Rapaczynski, the rule of law is not an external control of bureaucratic abuse, but rather an inherently bureaucratic device of administrative self-control. Although this mechanism – in which bureaucratic agents rely on general routines (law) to deal with recurring problems – may have advantages, it also has limitations and drawbacks. A system in which bureaucrats are granted wider discretion may be more advantageous in some circumstances. The selection of a bureaucratic control device is a matter of evaluating the costs and benefits of different mechanisms in a certain field. Rapaczynski supports this point with comparative examples from domestic and international criminal law, constitutional provisions on states of emergency, and administrative zoning decisions.

Methodology: Comparative analysis; conceptual/philosophical inquiry; qualitative description and analysis
Subject Keywords: Rule of law; individual rights; legal personnel; legal profession; judicial efficiency/court delay; costs of the legal system; state of emergency; separation of powers
Law Keywords: Criminal law; international law; administrative law; constitutional law
Country/Region: Germany; United States: Great Britain

This article applies game theory analysis to the problem of how to prevent an independent judiciary in a common law system from ignoring precedent. Rasmusen models the decision-making of judges as an infinitely repeated game – in each period, a new judge has to decide a series of cases, one of which is new, and the rest of which have precedents set by preceding judges. Each judge in the model wants to maximize his own influence (that is, have his precedent followed by future judges) and would also like to disregard as many past precedents as possible. Each judge chooses a strategy to maximize his utility given these conditions. In the repeated model, there are an infinite number of equilibria, which vary with respect to the number of precedents followed. The equilibrium that will actually be selected, Rasmusen argues, depends on the expectations of the judges. The source of these expectations are exogenous to the model. Rasmusen suggests a few possible sources of expectations, including tradition, announcements, and communication among judges. Rasmusen concludes that judicial responsibility can indeed be maintained in a system of judicial independence, so long as judges care about their future influence, but this is not inevitable. An equilibrium in which precedents are followed can only occur if judges believe that their failure to adhere to precedent will result in their own precedents being ignored by future judges.

Methodology: Formal analysis
Subject Keywords: Judicial independence; judicial decision-making; incentives of judges; common law


The conference participants examined five issues: (1) ethics and corruption; (2) obligatory and discretionary appeals; (3) specialized courts; (4) strengthening judicial selection procedures; and (5) training judges in new democracies. Philippine Chief Justice Hilario Davide also gave a special talk on the judiciary in the Philippines and Justice Olga Sanhez Cordero of the Mexican Supreme Court of Justice reviewed recent changes in the organization of the Mexican judiciary. Among the points highlighted in this summary are: The importance of supreme courts being able to decline to hear minor cases. That is, cases that can be easily resolved by reference to statutory law or precedent. There are advantages and disadvantages to specialized courts and in deciding whether to create a specialized court context is important. Continuing legal education for judges is crucial and should cover court procedures and settlement techniques as well as more traditional topics. Judicial training should not be the preserve of judges alone. Practitioners and academics should participate, and training programs should be opened up to foreign judges.

Methodology: Qualitative description and analysis
Subject: appeals/cassation; corruption; judicial independence; judicial selection/promotion; judicial training; Law keywords: civil litigation
Country/region: Philippines; Mexico; developing world


Although the idea of mixed legal systems can be traced back to the beginning of the twentieth century, it is only in recent years that it has acquired significant interest and support. Reid describes and evaluates the mixed legal systems movement. From its beginnings as an occasional term of comparative law, the idea of mixed systems became a means, within those systems, of resisting assimilation with Anglo-American common law. The leading figure in this neo-civilian campaign was T. B. Smith of Scotland. Much more recently, mixed systems have been seen both as a possible model for harmonization of civil law and common law in Europe and as a ready source of comparative material for the systems themselves. This article considers the nature of the “mix” in the law of mixed systems and the possibilities for future development and cooperation.

Methodology: Qualitative description and analysis

This article surveys the constitutional developments in Francophone African states in the decades since independence. The author notes that, while the constitutions of these states were very similar upon independence in the 1960s, there has been a great deal of diversification since then. Reyntjens notes that almost all of these countries are single-party states, and the executive tends to wield a great deal of power vis-à-vis parliament. He also discusses developments in the electoral system, the role of the military, the impact of socialist ideology, and the procedures used for drafting or amending the constitutions. He concludes with a brief comparison with Anglophone Africa, which has seen much less constitutional diversification. Reyntjens suggests this may be because the Anglophone states have experienced fewer constitutional breakdowns, but he also argues that formal constitutional variety is less important that the fact that the politics of most of these states, both Anglophone and Francophone, is determined by the single ruling party.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Constitutionalism; import of foreign law/legal transplants; colonialism/imperialism; separation of powers; political parties; military coups; electoral process; socialism; democracy; individual rights; constitution drafting; constitutional change
Law Keywords: Constitutional law
Country/Region: Africa

Rhode, Deborah L. In the Interests of Justice – Reforming the Legal Profession (Oxford: University Press, 2000), 268 pages

The author provides a systematic study of the structural problems confronting the legal profession in the United States of America. After presenting the problem from both angles, the public’s and the profession’s perspective, she reflects on the lawyers’ discontent with the present situation and selects some topics for an in depth analysis. Eventually, she addresses key issues such as the regulation of the profession and questions of legal education before making concrete suggestions for reform.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, alternative dispute resolution, civil litigation, informal dispute resolution, legal aid, legal culture, legal education/training, legal profession, legal services, litigation, nonlawyer advocates, regulation of legal services
Country/Region: United States of America


The paper tests whether the American Supreme Court’s decisions in cases involving free speech are affected by earlier case law. That is, whether the Court in fact follows precedent. On one level, their finding that the Court is indeed influenced by earlier cases might appear trivial. But the paper is notable in three respects. One, the authors have devised an innovative methodology to show how an earlier, key case affects later rulings. Two, the paper powerfully refutes the school of thought that argues that all law is politics and thus all Supreme Court decisions are based on the justices' attitudes. Three, and most interestingly, the authors offer a neo-institutional account of the role of case law in the decision making process.

Methodology: Formal analysis
Subject keywords: Judicial decision-making, rule of law, common law
Country/Region: United States

The authors argue that very little empirical information exists about how the UK courts influence public administration and the impact of judicial review. Judicial review is controversial, seen on one hand as a means to control the executive and protect fundamental rights, and on the other hand as an unwarranted exercise of power by unelected judges. Research is needed on the impact of the judicial review process and decisions on agencies, specifically in three areas: the intensity and duration of impact, the spread of the impact, and the formal and informal reactions of agencies.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Judicial review; administrative courts; judicial decision-making
Law Keywords: Administrative law
Country/Region: United Kingdom; United States


(“Judges as Economists?”, in French) Administrative law has important economic implications. Traditionally however, administrative judges are not considered to be experts in economics. The author analyzes the shift of attitude of judges towards economic issues due to the expectations of the legislator and the court users. Although there might be structural problems as to the qualification of judges as economists, he considers the French judiciary to be able to adapt to the changes imposed by modern economy and society.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative law, administrative courts, bureaucracy, economic development, judicial decision-making, judicial review, judicial training, legal culture, legal education/training
Country/Region: France/Europe

Ritleng, Dominique “Le juge communautaire de la légalité et le pouvoir discrétionnaire des institutions communautaires” L’Actualité Juridique – Droit Administratif 1999, pp. 645-657

(“The European Union judge and her review of discretionary power of the European institutions”, in French) According to the author, the judicial review of discretionary power is especially important in the legal system of the European Union with a predominantly economic focus. He considers the role of the European Court of Justice (ECJ) as crucial, because of conflicting legitimate interests that have to be balanced. He explores the way the ECJ has accepted discretionary power while imposing restrictions on its exercise.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Administrative law, democracy, judicial decision-making, European Community/European Union, European Court of Justice, judicial review
Country/Region: Europe


The article surveys options for civil procedure reform in Ontario, drawing on existing research in Canada and other common law jurisdictions. It describes findings on the types of problems reported by households and adjudicated in the courts, noting that legislative interventions have reduced the numbers of cases filed in certain categories of disputes. Roach identifies hourly billing of legal expenses as one of the most significant contributors to the cost of litigation. In analyzing the dominant cost rule by which a losing party is required to pay the winning party’s costs, Roach argues that courts should make greater use of other rules that allow them to penalize parties for unnecessary delay. He also recommends greater aggregation of disputes, not only to decrease the costs of litigating multiple individual claims but also for the social benefit achieved. This idea draws on the public law model of adjudication, by which the goal of adjudication is viewed not just to resolve disputes between private parties but to serve a social interest. Furthermore, in the fact-finding
process, moving away from the current expectation of a full oral trial after discovery (through introducing such procedures as applications, stated questions of law, summary judgments, and summary trials) would reduce time and expense. The article finds case management in Ontario to be promising, but cautions that more data is needed to determine whether the added layer of supervision actually increases costs, and to compare the effects of judge-led and party-led case management. Moreover, Roach argues, reforms must aim at changing the legal culture, not just the rules of procedure: incremental change and consensus-based reform are more likely to succeed. The article concludes with a list of 14 avenues for further research and 14 recommendations.

Methodology: Qualitative description and analysis; quantitative analysis
Subject Keywords: Civil procedure reform; judicial efficiency/court delay; court administration; costs of the legal system; case management; class actions/representative actions/public interest litigation; legal culture; litigation; access to justice; judicial decision-making; legal profession
Law Keywords: Civil litigation
Country/Region: Canada; United States


(Mutations of the Judiciary – European Comparisons) In recent years, the judiciary has changed more than any other branch of government in Western European countries. Coming from deeply rooted different judicial traditions, there is a tendency of convergence within the European Union. This study takes the standpoint of political sociology to compare recent changes and solutions of the judiciary in Germany, England, Belgium, Spain, France, and Italy. Despite some distinctive individual differences, there are trends within the judiciary of these countries that are part of a broader picture of European trends in general.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Administrative courts, civil litigation, court performance, criminal sentencing, democracy, European Community/European Union, ideological role of law, judicial accountability, judicial activism, judicial decision-making, judicial efficiency/court delay, judicial independence, judicial review, legal culture, legal personnel, legal profession, legal services, litigation, political parties, public prosecutors, rule of law, separation of powers
Country/Region: Germany, England, Belgium, France, Italy/Europe


Croatian membership in the EU is subject to the fulfilment of the legal and political obligations laid down in, among other places, the Stability and Association Agreement (SAA). The implementation of the SAA depends on the definition of its position in the constitutional system of the Republic of Croatia, including the ability for its provisions to be directly applied in EU and in Croatian courts, the legal status of the bodies provided for in the SAA, and the legal position and legal standing of the decisions taken by these bodies. The implementation of constitutional changes is necessary for full membership of the EU, and some changes are also necessary even for implementation of the SAA. These are provisions that provide the legal basis for membership in the EU, including the definition of the manner of making use of state sovereignty, provisions that define in detail the legal status of international law and European primary and secondary law in the internal legal system of the EU, and provisions that adapt the constitutional organization of the Republic of Croatia to the conditions of associate or full membership of the EU, optimize the functions of the institutions of state authority that will have to work in new conditions. In an evaluation of the fulfilment of the conditions for membership in the EU, the criterion for evaluation of the extent to which the legal system is adjusted will not be only the contents of the legal standards, but also the political, economic and social matters that are governed by these legal standards.

Methodology: Qualitative description and analysis
Since the beginning of the present era under Emperor Heisei, the world is witnessing a series of law reforms that may be characterized as epoch-making. They are not being planned according to a single, systematic program, but they are nonetheless interrelated and they are animated by the same basic spirit. Taken as a whole, these reforms purport to bring about fundamental structural changes in Japanese society. The author assesses the legal as well as the intended social changes.

**Methodology:** Quantitative analysis; attitude surveys  
**Subject Keywords:** Judicial reform, legal culture, legal reform  
**Country/Region:** Japan/East Asia

This article argues that access to justice has often been treated as synonymous with access to the courts, but law is often practiced outside the courts (as in administrative tribunals), and legal justice is only one component of justice. The article discusses several situations in which access to lawyers does not provide access to justice. First, where there is no cause of action, a potential complaint is not recognized by the substantive law. Second, mass remedies are difficult to obtain due to restrictive class action legislation. Third, prevailing limitations on standing prevent many legitimate complaints, especially those directed against government agencies, from being litigated. Fourth, many low-level bureaucratic decisions violate the law even when a test case has established a certain rule or type of conduct as illegal. Fifth, the Crown law office, less financially constrained than private actors, often fights cases it should concede. Finally, legal aid does not extend to the work of administrative tribunals. Roman argues that the lack of political will perpetuates the under-representation of the poor and other groups. A major overhaul of the Canadian civil justice system is required, including a number of possible reforms: costs awards in boards and tribunals; core funding for advocacy before boards; greater recognition in legal aid of advancing societal interests; reforming substantive law; reforming the rules of procedure; a change in attitude of government lawyers; encouraging private dispute resolution; and the creation of a federal government position responsible for civil justice reform.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice; legal aid; class actions/representative actions/public interest litigation; legal reform; costs of the legal system; litigation; civil procedure; environmental protection; gender/women’s rights  
**Law Keywords:** Administrative law; civil litigation; family law; environmental law; public interest litigation  
**Country/Region:** Canada

Foreign aid agencies and international assistance organisations are now heavily involved in nation building in post-conflict states. Their record of strengthening democratic governance in countries where civil war or military force replaced unpopular regimes is mixed. Experience suggests that a complex set of conditions must be created quickly in order to rebuild indigenous governance. Ensuring security, providing assistance through a transparent and coherent plan of action, coordinating donors’ activities, establishing strong and legitimate national authority, strengthening democratic political processes, transferring responsibility and resources for development to a new government, stabilising the economy and strengthening social capital and human assets must all be done in quick succession. Achieving these goals requires a cadre of civilian and, sometimes, military personnel with expertise in post-conflict nation building. The frequency with which
government aid programmes and international assistance organisations engage in post-conflict reconstruction also suggests the need for more explicit national and international policies and the creation of specialised nation-building agencies to undertake these difficult tasks.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Crime control, criminal law, culture/social norms/informal institutions, democracy, divided societies, donor coordination, donor politics, ethnic politics, governance, human rights, institutional capacity, international law, judicial reform, legal reform, military operations, outside assistance, political instability, political reform/ regime change, post-transition justice, property rights, rule of laws


This article explores the recent reemergence of the Law and Development Movement through an assessment of international legal assistance projects in Vietnam. After briefly overviewing Vietnam’s legal history and the current status of various multilateral, bilateral, and non-governmental legal assistance efforts, Rose compares these programs to the earlier Law and Development movement. She points out that in some ways the two movements are different – the new movement includes a more diverse array of donors, giving more power to the recipient countries, and may also have a less naïve view of law and society than the earlier movement. However, she contends that the bulk of the critique of law and development still holds true. The risks of ethnocentrism on the part of donors and resulting anti-foreign backlash, the essentialization of law and legal institutions in both donor and recipient nations, and the problems of reinforcing authoritarian power structures and neo-imperialism are all still present, as her Vietnam case study shows. She argues that scholars and practitioners of the new law and development movement, no less than the old, must acknowledge this critique and consider whether they ought to be involved in international legal assistance at all, and if so, how to avoid the mistakes of the past. In conclusion she suggests that, regardless of whether or not legal transfers or assistance are good ideas, scholars should continue legal exchange with Vietnam and other countries to develop better theories and general understanding of law and society.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Law and Development Movement; outside assistance; import of foreign law/legal transplants; economic development; economic reform; post-socialist transition; socialism; legal culture; colonialism/imperialism; legal education/training; rule of law; individual rights; foreign investment; law drafting; legal reform; UNDP; World Bank; Asian Development Bank; legal profession; legal instrumentalism; authoritarianism; dependency theory; modernization theory; corruption; equality/social justice; ideological role of law

**Law Keywords:** Commercial law; administrative law; criminal law; constitutional law

**Country/Region:** Vietnam


Rose-Ackerman argues that democratic accountability in the United States is harmed by the current appropriations process. She identifies two problems. First, Congress often introduces amendments to benefit special-interest groups into appropriations bills, even when those appropriations were not approved in the original substantive act. Although this is contrary to Congress’ own rules, those rules are routinely waved or violated, and courts have generally accepted this. Second, Congress often authorizes ambitious, grandiose-sounding legislation, but then – deliberately or otherwise – fails to provide adequate funding for the programs authorized in substantive legislation. Both of these phenomena, she argues, undermine the democratic process. She proposes that the judiciary intervene to address these problems. With regard to the former, she argues that the judiciary ought to invalidate spending provisions that are clearly not authorized by substantive statutes. With regard to the latter, she suggests that courts should be allowed to identify instances of obvious underfunding, and, after giving Congress a chance to respond, declare an underfunded statute repealed. The hope is that the negative publicity associated with such an action would deter inflated promises and ensure adequate funding of what programs are passed. She also considers the feasibility of her proposals and their consistency with existing precedent.
Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; political questions doctrine/judicial deference; legislative process; legislative intent; democracy; rent-seeking
Law Keywords: Constitutional law
Country/Region: United States


One out of five people in the world today lives subject to Islamic law, but stereotypes of rigid doctrine or harsh punishment obscure an understanding of the values and style of reasoning that characterizes everyday Islamic adjudication. By considering its larger social and cultural context Islamic law is shown to be a kind of common law system: justice is sought through a careful assessment of persons, more than facts, and justice resides not in equality but in a quest for equivalence.

Through ordinary court proceedings the style of reasoning is seen to be embedded in a set of cultural assumptions, thus rendering the study of Islamic legal proceedings a window on Muslim society generally. The data used ranges from the courts of North Africa to the treatment of Islam in American courts, from a reinterpretation of the Prophet’s sociological jurisprudence to the analysis of Islamic concepts of responsibility and trust.

Methodology: Qualitative description and analysis
Subject Keywords: Civil litigation, family law, gender/women’s rights, import of foreign law/legal transplants, Islamic law, judicial decision-making, legal culture, legal doctrine, legal education/training, litigation, religion
Country/Region: Morocco/Africa, Middle East


This article surveys the state of judicial independence in Latin America. Rosenn starts by offering a definition of judicial independence which emphasizes judges’ abilities to decide cases in accordance with their own determination of the evidence and law, without coercion or interference. He then gives reasons why attempting to quantify judicial independence is futile. The following sections of the article survey both the measures designed to protect judicial independence, and the forms of interference with judicial independence, that exist in Latin America. He concludes that, despite formal constitutional guarantees, most Latin American countries (with Costa Rica the most notable exception) have not established a high level of judicial independence. He suggests several reasons why this is the case. First, Latin American countries have grafted a system of judicial review onto a civil law system in which judges do not have much prestige and power. Second, Latin American constitutions have tended to be short-lived. Third, many Latin American constitutions contain state-of-emergency provisions, and these have been frequently abused. Fourth, Latin American political tradition and culture are heavily authoritarian. Fifth, corruption is endemic in the region. Finally, the social and political commitment to true equality under the law is lacking. Rosenn concludes that overcoming these obstacles to judicial independence is possible, but is not easy and will take time.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; constitutionalism; judicial accountability; corruption; judicial selection/promotion; military coups; political reform/regime change; constitutional change; judicial review; civil law; state of emergency; judicial deference/political questions doctrine; law enforcement; military courts
Law Keywords: Constitutional law; criminal law; administrative law
Country/Region: Latin America

This article surveys the problems with the judiciary in Brazil, discusses the current judicial reform proposals, and suggests a number of additional reforms that the country ought to adopt. Rosenn claims that the need for judicial reform is demonstrated by the overwhelming number of cases, many of which are trivial or the result of bad faith litigation, and numerous procedural deficiencies which add to delay. He notes that the current reform proposals, which include the creation of binding precedents by the Supreme Federal Tribunal and the establishment of a National Judicial Council to supervise the judiciary, may be beneficial but are inadequate. He argues further that Brazil needs to adopt a number of reforms, including: a system of binding precedent, granting the Supreme Federal Tribunal discretion in the cases it hears, promotion of alternative dispute resolution mechanisms, procedural and constitutional reform, increasing the number and improving the training of judges, and modernizing the court system.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial reform; judicial efficiency/court delay; judicial review; judicial decision-making; litigation; alternative dispute resolution; arbitration; judicial independence; legal education/training
Law Keywords: Constitutional law; civil litigation; administrative law
Country/Region: Brazil


This essay rejects the view that institutional reform is the product of the triumph of economic rationality over particular social and political interests. Rosser argues that institutional reform in Indonesia can be explained with a combination of three approaches, instrumentalist, structuralist, and state-centered. In particular, intellectual property reform in the New Order regime from the mid-1980s to the late 1990s was driven by structural pressures stemming from the collapse of oil prices in the early 1980s. That collapse made Indonesia more dependent on foreign investment, and consequently more willing to meet U.S. demands to adopt copyright and patent law reforms. Based on this case study, Rosser argues that legal reform should be viewed within the context of the global political economy, not just at the level of the state and civil society.

Methodology: Qualitative description and analysis
Subject Keywords: Investment; legal reform; politics of reform; civil society
Law Keywords: Copyright/trademark law; intellectual property law
Country/Region: Indonesia


The authors argue that land titles will only enhance collateral values if two conditions are met. First, the land market must be thick enough for lender to convert mortgaged land into cash at reasonable cost. Second, foreclosure must be politically feasible. The authors claim that titling sometimes may only have a queuing effect, giving priority to titled owners at expense of other similarly situated borrowers. They also suggest that title has no effect on the aggregate supply of credit.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; credit market; agricultural sector; investment
Law Keywords: Property law
Country/Region: Developing world (general)


(“Constitutional Courts in Europe”, in French) This comparative analysis starts with a description of the evolution of the role and function of constitutional courts in Europe as well as their legitimacy. Different models and ways of functioning are then analyzed. The author then presents different approaches to the
procedure of constitutional review and to jurisdiction of these courts. Eventually, the jurisprudential policy of constitutional courts is examined.

Methodology: Comparative analysis, qualitative description and analysis
Subject Keywords: Authoritarianism, constitution drafting, constitutional change, constitutional law, democracy, equality/social justice, human rights, human rights law, individual rights, judicial independence, judicial review, legal culture, legislative supremacy, liberalism, litigation, rule of law, separation of powers
Country/Region: Europe, European Union


(“The Role of Custom in the Moroccan Legal Order”, in French) The author retraces the evolution of custom in Morocco prior to independence before analyzing its scope of application after 1956. There are other fields where custom and state law coexist de facto. Finally, the possible future role of custom within the Moroccan legal order is analyzed and expected to be of little importance.

Methodology: Qualitative description and analysis
Subject Keywords: Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, ethnic politics, Islamic law, legal culture, legal pluralism
Country/Region: Morocco/Africa


(“Administrative Courts – Central Element of the Rule of Law in Morocco”, in French) The author presents current challenges of the administrative courts. Although he believes that the courts will be able to make a valuable contribution to the rule of law in Morocco, a certain number of conditions have to be fulfilled. First, the education and training of judges and their administrative staff has to be improved. Second, a minimum of infrastructure is required including staff and an adequate status. Third, their independence is crucial.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, bureaucracy, court administration, court performance, institutional capacity, judicial independence, judicial training, legal education/training, rule of law
Country/Region: Morocco/Africa


(“The Administrative Courts in Morocco and the Execution of Judgments against the Administration”, in French) Although the importance of the execution of judgments against the administration is recognized, the author explains the difficulties the Moroccan legal system has to overcome in this area. Historically, the administrative courts based on the French model do not have effective means to enforce judgments against the administration. Although this situation has changed in France, this is not the case for countries that have followed her model. The author describes recent developments in this field in Morocco.

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, bureaucracy, obligation to obey the law
Country/Region: Morocco/Africa


This article discusses the legal systems of four post-Communist countries – Russia, Hungary, Poland, and the Czech Republic – with special emphasis on contract law and enforcement. The article analyzes these legal
systems from the perspective of economic efficiency. Rubin makes three main arguments. First, private, informal mechanisms can be used to facilitate exchange. Second, the government can encourage use of these private mechanisms through a variety of policies, the most important of which is a commitment by the government to enforce private arbitration decisions if both parties voluntarily agreed to submit disputes to arbitration. Third, the government can incorporate the results of these private decisions into law when legal codes are revised. He further recommends that the government give private arbitrators incentives to write opinions and generate rules. Rubin also argues that governments should refrain from excessive enforcement of anti-trust laws and anti-deception laws, which Rubin claims inefficiently interfere with other kinds of private bilateral mechanisms intended to facilitate exchange.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Nonlegal sanctions; noncontractual agreements/relational contract; post-socialist transition; alternative dispute resolution; arbitration; legal reform; law drafting; civil law; common law; property rights; import of foreign law/legal transplants; litigation; law enforcement; judicial efficiency/court delay; advertising; private adjudication; adjudicative competition

**Law Keywords:** Contract law; commercial law; antitrust law; copyright/trademark law

**Country/Region:** Russia; Hungary; Poland; Czech Republic


In this address, Sachs declares that globalization and the spread of capitalism is producing a global market society, and this phenomenon raises two important challenges in the field of law. The first challenge is how to create a state that is both strong and self-limited. This problem has long been a central concern of philosophers, politicians, and social scientists, and it is of particular relevance today in developing and post-socialist economies. The second challenge is the development of an international legal regime that can support a stable global capitalist system, even in the absence of a single political authority. Sachs illustrates the basic problems at issue with examples drawn from his experience as an economic advisor in Poland and Russia, the East Asian financial crisis of 1997, and the history of the US and other Western countries. He concludes with suggestions on how the US legal community can help address these challenges. He suggests, first, greater attention to the sociology of law, especially as it relates to global capitalism; second, the internationalization of the legal curriculum and the student body at US law schools; and third, direct action to promote the ideals of rule of law market democracies.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Rule of law; constitutionalism; civil society; corruption; post-socialist transition; credit market; investment; property rights; economic development; economic reform; legal reform

**Law Keywords:** Contract law; commercial law; administrative law

**Country/Region:** Russia; Poland; East Asia; developing world (general)


In this introductory chapter, the authors discuss the role of law in Russia’s economic and political reforms following the collapse of the Soviet Union and the transition to democracy and a market economy. They first briefly discuss the historical, cultural, and political background to this issue, and then discuss Russia’s reform path between 1992 and 1997. They note that, though Russia has made progress in many areas, the economic and political reform process has been seriously distorted by the relative absence of the rule of law—that is, the constraint by law of governmental behavior and authority. The authors argue that, although some progress has been made in the area of legal reform, and it is unreasonable to expect dramatic changes in a very short time period, there are important reasons to be concerned about Russia’s commitment to establishing the rule of law. There has still not been an orderly transfer of political power, the executive still wields vast authority to rule by decree, and the constitutional protections of basic rights is still problematic. In conclusion, the authors assess the implications of the relative lack of rule of law in Russia, and discuss future scenarios. They note, first, that the absence of the rule of law has adversely affected income
distribution, and this growing inequality is likely to have negative social, political, and economic effects. Second, they argue that the weakness of the legal framework has made doing business in Russia much more expensive, and has inhibited the emergence of the private sector. Their predictions for the future are mixed – serious problems remain unsolved, but there are also some reasons for hope.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Rule of law; post-socialist transition; economic reform; economic development; privatization; democracy; politics of reform; property rights; individual rights; equality/social justice; constitutionalism; capital market; secession; corruption; separation of powers; executive decrees; legal reform

**Law Keywords:** Commercial law; constitutional law; administrative law; property law

**Country/Region:** Russia

*Sajo, Andras* *Judicial Integrity* (The Hague: Martinus Nijhoff Publishers, 2004), 313 pages

Traditional separation of powers theories assumed that governmental despotism will be prevented by dividing the branches of government which will check one another. Modern governments function with unexpected complicity among these branches. Sometimes on of the branches becomes overwhelming. Other governmental structures, however, tend to mitigate these tendencies to domination. Among other structures courts have achieved considerable autonomy vis-à-vis the traditional political branches of power. They tend to maintain considerable distance from political parties in the name of professionalism and expertise. The conditions and criteria of independence are not clear, and even less clear are the conditions of institutional integrity.

Independence (including depolitization) of public institutions is of particular practical relevance in the post-Communist countries where political partisanship penetrated institutions under the single party system. Institutional integrity, particularly in the context of administration of justice, became a precondition for accession to the European Union. Given this practical challenge this collection of articles is centered around three key areas of institutional integrity, primarily within the administration of justice: first, in a broader theoretical-interdisciplinary context the criteria of institutional independence are discussed. The second major issue is the relation of neutralized institutions to branches of government with reference to accountability. Thirdly, comparative experience regarding judicial independence is discussed to determine techniques to enhance integrity.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Authoritarianism, constitutional change, corruption, democracy, European Community/European Union, impeachment of judges, judicial accountability, judicial independence, judicial reform, judicial selection/promotion, political reform/ regime change, politics of resistance, post-socialist transition, rent seeking, rule of law, separation of powers

**Country/Region:** Europe, Central Europe, Eastern Europe


In this book, the former Lord President of the Malaysian Supreme Court Tun Salleh Abas recounts the events surrounding his removal for “misbehavior” by a special tribunal in 1988. Salleh Abas defends his record and his conduct, and he denounces the tribunal that removed him as a politically-motivated and manipulated “kangaroo court”. According to Salleh Abas, the executive in Malaysia was threatened by the prospect of a truly independent judiciary and therefore decided to undermine, intimidate, and manipulate the judiciary. Salleh Abas maintains that his removal was motivated by Prime Minister Mahatir’s fear that the Supreme Court under Salleh Abas might issue an adverse decision in a politically-charged case, and that this decision could cost Mahatir his position as Prime Minister.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial independence; impeachment of judges; constitutionalism; separation of powers; individual rights; judicial review

**Law Keywords:** Constitutional law

**Country/Region:** Malaysia

In this chapter, the author discusses those aspects of the Malaysian constitution that can be regarded as “traditional”, that is, having roots in practices that preceded the British colonial administration of Malaysia. He focuses specifically on four traditional elements of the constitution: the role of the Sultanate, the provisions relating to the Islamic religion, the establishment of Malay as the national language, and the special privileges accorded to Malays. He argues that all of these provisions are related to characteristics of the Malay population, and that they are necessary to preserve racial harmony in multiethnic Malaysia. (The Malays, though the majority of the population and politically dominant, are economically disadvantaged relative to the Chinese and Indian populations in Malaysia.) Any attempt to question the sovereignty of the Sultans or the special privileges of Malays – including the status of Malay as the national language, Islam as the official religion – would result, he believes, in chaos and racial strife. He concludes optimistically that a political equilibrium appears to have been achieved and that Malaysia will achieve stability and prosperity.

Methodology: Qualitative description and analysis
Subject Keywords: Constitution drafting; constitutional change; monarchy; religion; ethnic politics; language policy; federalism; riots
Law Keywords: Constitutional law
Country/Region: Malaysia


This book contains a reprint, in both English and Bahasa Malaysia, of a 1988 speech delivered by Tun Salleh Abas, former Lord President of the Malaysian Supreme Court. Salleh Abas was dismissed from his position as Lord President by a special tribunal for alleged “misbehavior” in 1988. According to Salleh Abas, his dismissal was a politically-motivated attack by the executive on the independence of the judiciary. Salleh Abas begins by discussing the importance of judicial independence and separation of powers generally, and then moves to a discussion of his own case. He condemns the tribunal that dismissed him as a biased body that did not act in accordance with the most basic notions of procedural fairness or natural justice, and he contends that the tribunal and other members of the judiciary during this affair were manipulated by the government. He laments that the institution of judicial independence in Malaysia may have been permanently damaged. He also notes that in Malaysia, as well as other developing countries, the constitutional provisions pertaining to the removal of judges are too vague. While such general constitutional language may be appropriate in more developed legal systems, in countries like Malaysia vague provisions can be easily manipulated and abused by the executive.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence; impeachment of judges; separation of powers; constitutionalism; judicial review; rule of law
Law Keywords: Constitutional law
Country/Region: Malaysia


This article describes changes to Australian civil justice since the introduction of case management. In the traditional model of the judiciary, judges were highly detached, with no commitment to organizational efficiency or responsiveness to the needs of users. The U.S.-inspired caseflow management model was introduced in Australia in the mid-1980s. Courts now play a much more assertive role in control of cases. Welcome new developments include the rise of a managerial culture; judicial commitment and leadership for reform; greater teamwork between judges and court administrators; a controversial debate over court performance standards; and new interest in expanding court governance (greater judicial role over administration). In addition, case management has created a more inquisitorial process and a stronger...
customer service orientation among courts and judges. Sallmann recommends evaluation efforts to design new reform initiatives.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Case management; legal culture; civil procedure; judicial reform; judicial efficiency/court delay; court administration; public opinion of the legal system  
**Law Keywords:** Civil litigation  
**Country/Region:** Australia


This article uses public choice and economic analysis of law and politics to examine the origins of separation of powers and judicial independence. Salzberger notes that in many systems, the substantive independence of the judiciary is greater than its formal, structural independence. In other words, the executive and legislature have legal and institutional means they could use to influence the judiciary, but they don’t appear to use them very frequently. This creates a puzzle, since an economic analysis would expect politicians, as rational actors, to pursue their interests. Salzberger argues that it is in fact in the government’s interest to grant the judiciary independence, because it allows the legislature to delegate certain decisions to the courts. This can serve two important functions, from the perspective of the legislators. First, it allows individual legislators to avoid blame for unpopular decisions and minimize risk. This is especially important when there is uncertainty about policy outcomes or the preferences of constituents. Second, it allows the legislature to escape common collective decision problems, such as cycling. Salzberger notes that, depending on the situation, delegation to a court, delegation to an administrative agency, or non-delegation might be most preferable. In general, preserving an independent judiciary serves the interest of legislators, which is why this separation of powers is preserved. Salzberger notes the surprising normative implications of this analysis: rather than serving as a barrier against legislative encroachment, separation of powers might actually be a mechanism through which the legislature reduces its accountability. However, he is careful to point out that this does not imply that such a system necessarily benefits interest groups at the expense of the general public.

**Methodology:** Qualitative description and analysis; formal analysis  
**Subject Keywords:** Separation of powers; judicial independence; democracy; judicial decision-making; incentives of judges; legislative process; public choice; constitutionalism; judicial review  
**Law Keywords:** Constitutional law; administrative law  
**Country/Region:** United Kingdom; United States; Israel


In this article, the authors attempt to shed light on the theoretical debate on judicial independence (defined in here as the lack of conscious political interference with the judicial decision-making process) with evidence from the English Court of Appeal. Decisions regarding promotion from the Court of Appeal to the House of Lords is made by the Lord Chancellor, a member of the cabinet, therefore making this case useful for seeing whether the government uses political criteria when deciding which judges to promote. Specifically, the authors use statistical techniques to analyze how Court of Appeals judges’ promotion chances are affected by two sets of variables. The first set concerns the judges’ “quality”, measured by their higher court reversal rate, the percentage of non-elaborated decisions (that is, concurrences without an explanation), and their age when appointed to the Court of Appeals. The second set concerns their “loyalty” to the government, measured by the percentage of decisions (in public law decisions in which the government was a defendant) decided against the government, and the percentage of decisions in which judges reversed a lower court decision favorable to the government. The authors find that the perceived quality of judges played an important part in their promotion, and therefore they conclude that one can reject the cynical view that promotion is determined entirely by political calculations. They also find that percentage of cases decided against the government has no significant affect on promotion chances, but that a tendency to reverse lower court decisions favorable to the government does negatively correlate with promotion. From this, the authors
tentatively conclude that politicians do not punish judges for independence per se, but do tend to punish judges who display an “anti-government bias”. This finding, they assert, is consistent with the theoretical proposition that an independent, impartial judiciary is perceived as an asset by politicians.

Methodology: Quantitative analysis
Subject Keywords: Judicial independence; judicial decision-making; incentives of judges; judicial selection/promotion
Law Keywords: Administrative law; constitutional law
Country/Region: England


This article describes legal aid programs in Chile, their historical development, and recent changes to legal aid programs in Chile. While Chile’s 1980 constitution guarantees legal representation and equal protection, recent surveys have found that a very high percentage of the population views the justice system negatively and finds legal assistance difficult to obtain. Samway describes existing legal aid programs and reforms proposed to the legislature in 1992. These reforms establish: regional legal assistance programs in place of the central Corporations for Judicial Assistance; neighborhood courts in poor areas, which can use expeditious procedures for small claims; crime victim centers; and a pilot program called Access to Justice in impoverished areas of Santiago. This pilot program, started in 1993, focuses on legal advice and ADR rather than individual legal representation, and most questions brought to the centers are resolved through extra-judicial means. Samway argues that the Access to Justice program is the most effective initiative to date and should be expanded.

Methodology: Attitude surveys; qualitative description and analysis
Subject Keywords: Access to justice; legal services; pilot programs; alternative dispute resolution; public opinion of the legal system; costs of the legal system; judicial efficiency/court delay; legal reform; social services; small claims courts
Law Keywords: Civil litigation
Country/Region: Chile


In this piece (a transcript of a conference speech), Sander discusses the potential for alternative dispute resolution techniques, such as arbitration, mediation, and screening panels, to improve dispute processing and lower caseloads and costs. He suggests that different dispute resolution techniques may be appropriate depending on the nature of the dispute, the relationship between the disputants, the magnitude and complexity of the case, and the relative costs of different procedures. He advocates moving toward a more diverse array of dispute resolution processes, but also notes that there is very little good data on any of these procedures, and there is a need for more comparative evaluation and research, as well as better dissemination of existing information and the encouragement of experimentation.

Methodology: Qualitative description and analysis
Subject Keywords: Alternative dispute resolution; litigation; judicial efficiency/court delay; mediation; arbitration; costs of the legal system
Law Keywords: Civil litigation; criminal law
Country/Region: United States


Possibly around 1,000,000 people died in Rwanda in the genocide of 1994. Often, the aims of achieving national reconciliation, building unity, reconstructing the institutions necessary for stable political and
economic systems, and obtaining the resources necessary to fund the transition are in conflict with dealing with human rights abuses of a former regime. Very few trials have taken place and Rwanda’s legal system does not seem to have the capacity to meet the need. One possibility being investigated is the involvement of local communities in the justice system, the so-called Gacaca Courts.

This article examines the situation in Rwanda since the genocide and has a look at the new Gacaca Courts to determine whether the benefits of using these traditional courts to deal with genocide cases outweigh the potential problems.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Court performance, criminal law, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, due process, ethnic politics, human rights, human rights law, individual rights, institutional capacity, legal culture, popular justice

**Country/Region:** Rwanda/Africa

Sarkin, Jeremy “Promoting Justice, Truth and Reconciliation in Transitional Societies: Evaluating Rwanda’s Approach in the New Millennium of Using Community Based Gacaca Tribunals to Deal with the Past” *International Law Forum du droit international*, vol. 2 no. 2 (May 2000), pp. 112-121

How a society decides to deal with its past has a major determining influence on whether that society will achieve long term peace and stability. The question is whether to prosecute and punish those responsible for gross human rights abuses. The objectives of preventing the recurrence of human rights abuses and repairing the damage which has been caused have to be taken into consideration. Often, it is a question of balancing the needs of the victims as well as society as a whole to heal from the wounds inflicted upon them, and the political reality which often finds the new government inheriting a fragile state without much political power. The author evaluates the role of the Gacaca courts in Rwanda in dealing with the consequences of the 1994 genocide.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Court performance, criminal law, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, due process, ethnic politics, human rights, human rights law, individual rights, institutional capacity, legal culture, popular justice, post-transition justice

**Country/Region:** Rwanda/Africa


This essay reviews administrative decisions taken in the course of co-operation between governments in a federation or in a constitutional system with some federal characteristics. It uses two groups of federations, or federal-type systems, for the purpose of comparison with Australia. The first comprises the Germanic federations: the Federal Republic of Germany, Austria and Switzerland. While there are many substantive differences between them, the approach of these federations to the organization of public power is sufficiently distinctive to justify their treatment as a group. Relevantly, the structure of the German federation is reflected in the model for European Union as well. The second federal-type arrangement examined for the purposes of comparison is the asymmetrical devolution of power in place in the United Kingdom in relation to Scotland, Wales and Northern Ireland.

The principal hypothesis that the paper seeks to establish is that there are conceptual and structural differences between these groups of federal-type systems that affect, or may affect, review of administrative decisions under inter-governmental schemes. To the extent that these differences are fundamental, a comparative exercise is unlikely to identify precise solutions to current problems that can readily be transferred from one to another. Comparison can assist individual jurisdictions to a better understanding of their own systems, however, by providing a new perspective on them. In that way it can contribute indirectly to the identification of issues and the resolution of problems.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Administrative law, constitutional law, European Community/European Union, judicial review, separation of powers
**Country/Region:** Australia, United Kingdom, Germany, Austria, Switzerland, Europe

**Schacter, Mark** “Means…Ends…Indicators: Performance Measurement in the Public Sector” (Ontario: Institute on Governance Policy Brief No. 3) (1999)

This brief paper discusses the difficulties in choosing appropriate performance measures for government programs. Schacter observes that there are four broad types of performance measures. **Input measures** indicate the resources allocated to a particular activity (e.g., funding), **output measures** indicate implementation of programs and activities (e.g., total amount of services provided), and **efficiency measures** indicate the efficiency with which inputs are converted into outputs. Finally, **outcome measures** indicate the actual change in society that results from the government program. Schacter argues that performance measures ought to focus on outcomes, but notes that several factors – including the desire of government agencies to have control over the indicator by which its performance will be measured and the pressures to produce immediate, visible results – often lead agencies to prefer output measures. Schacter suggests that the best course may be to develop indicators that focus on intermediate outcomes, which have the advantage of being more oriented to actual social impacts than output measures yet are more easily observed, and more attributable to government action, than final outcomes.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Social services; performance indicators; bureaucracy


The 1990s have seen an exponential increase in the volume of legal transplantation, the process by which laws and legal institutions developed in one country are then adopted by another. Although there is a small literature on the process of legal transplantation, most of that literature presumes that the expected efficacy of the law is the predominant factor in determining which laws are transplanted, from where, and to where. This exploratory paper ventures a series of quite different hypotheses, all premised on the view that donor countries, recipient countries, and third parties (such as NGOs) have political, economic, and reputational incentives that are likely to be important factors in determining the patterns of legal transplants. The paper offers a number of hypotheses about these possible efficacy-independent factors, gives examples to support the possibility that the hypotheses might be sound, and suggests ways in which the hypotheses might be tested in a more systematic way.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Colonialism/imperialism, constitution drafting, donor politics, ideological role of law, import of foreign law/legal transplants, legal reform, outside assistance, post-socialist transition, post-transition justice


In this paper, Schauer argues that political science and legal academia have paid insufficient attention to the self-interested motives that may affect judicial decision-making. While most scholarship on judicial behavior stresses judges’ attitudes and policy preferences, Schauer contends that there are a number of plausible, testable hypotheses based on the idea that judges are also influenced by self-interested motives. He stresses in particular the possible desire of judges to have a good reputation with their peers, legal and intellectual elites, or the public at large, and the ambition for promotion on the part of judges below the Supreme Court level. Schauer emphasizes that these are only hypotheses, which need to be subjected to rigorous (and difficult) empirical testing. He argues that there is a need for more research on this topic, especially since a finding that judges were influenced by external incentives would have important implications for institutional design.

**Methodology:** Qualitative description and analysis

In this paper, Schauer notes the great diversity in constitutional form in different countries – in terms of length, number of articles, specificity, etc. He argues that constitutional form, beyond the actual substance of the provisions, may be an important variable in its own right, and suggests a research agenda focusing on constitutional form both as a dependent variable and as an independent variable. With respect to the former, he hypothesizes that differences in constitutional form may result from differences in the drafting procedures, or from variation in the legal tradition in which the constitution is created. With respect to the latter, he points out that the legal realist tradition would hold that variation in form shouldn’t make much difference, but that textualist or formalist perspectives suggest that it might. He suggests further that a constitutional court might lead countries to depart more from their background legal tradition, since constitutional jurists see themselves as part of a broader international community. Schauer concludes by stressing that we still know very little about constitutional form, and that all existing hypotheses are largely speculative, but that the topic is important enough that it merits more research.

Methodology: Qualitative description and analysis


This article discusses the popular term “accountability” as it is used today. The concept expresses concern for oversight and constraints on the exercise of power, and Schedler argues that it has two components: answerability and enforcement. Answerability implies that power must be exercised transparently and with justification of its actions; enforcement implies that abuses of power can be punished. Schedler distinguishes between political, administrative, professional, financial, moral, legal, and constitutional accountability. He further differentiates vertical from horizontal accountability, identifying the latter as the accountability of one party to another of equal power.

Methodology: Conceptual/philosophical inquiry


In this chapter, Schmidhauser lays out what he sees as the two basic competing conceptual frameworks related to the study of legal and judicial systems. The first framework, which Schmidhauser calls “neo-Weberian”, sees law primarily as a neutral means of conflict resolution. The second framework, which according to Schmidhauser is closely related to dependency theory, sees law as an instrument of power wielded by the dominant classes in society. He lays out what he sees as the most important components of these frameworks and how they differ. Issues related to law imposed by colonial powers, the evolution of law in the West, and socialist legal systems are also discussed.

Methodology: Literature review; conceptual/philosophical inquiry; qualitative description and analysis
**Country/Region:** India; England; Western Europe


An study of the impact of a rule in civil litigation in the United States permitting judges to limit the amount of pretrial discovery the parties can engage in. A strategic bargaining model is employed. The analysis shows that in the presence of asymmetric information a litigant may forego settlement before discovery if his opponent interprets a serious offer of settlement as a sign that discovery is likely to uncover useful evidence. Under some conditions, a judge’s limitations on pretrial discovery simultaneously increases the probability of early settlement and reduces expected litigation costs without reducing potential injurers’ incentive to take care.

**Methodology:** Formal analysis  
**Subject Keywords:** Civil procedure; judicial reform; settlement  
**Law Key Words:** Civil litigation  
**Country/Region:** United States

**Schrameyer, Klaus** “Justiz in Bulgarien: Kampf der Gewalten oder der Aufstand der ‘Unberührbaren’” Jahrbuch für Ostrecht 44/2003 p. 147-60

(“Justice in Bulgaria: Battle of the Powers or Uprising of the Untouchables”, in German) Bulgaria is an illustration of the consequences of a lack of checks and balances between the judiciary, the executive and the legislative branch of government. The Bulgarian constitution grants judicial independence in an excessive way. As a consequence, destructive battles between vested political and economic interests using the judiciary as a weapon are fought and block the country. The articles relates the details of these battles and gives an idea about what is at stake when dealing with legal and judicial reform.

**Methodology:** Qualitative description and analysis  
**Subject Key Words:** Democracy, judicial accountability, judicial independence, judicial reform, legal profession, legal reform, political parties, politics of reform, politics of resistance, post-transition justice, separation of powers  
**Country/Region:** Bulgaria/Eastern Europe

**Schroeder, Friedrich-Christian (ed.)** Justizreform in Osteuropa (Frankfurt: Peter Lang Europäischer Verlag der Wissenschaften, 2004), 264 pages

(“Judicial Reform in Eastern Europe”, 21 contributions in German, 3 in English) Since the fall of the Berlin wall, countries in Central and Eastern Europe have reformed their judicial systems to adapt them to new needs and European standards defined by the European Union and especially the European Convention on Human Rights. This book comprises a series of articles on judicial reform in Central and Eastern European countries mainly in the early years of the 21st century. After defining the standards for a judiciary under a rule of law system, the implications of European Union and as well as the perspective of the European Court of Human Rights are presented. In addition to an article on legal assistance in Europe, a series of articles analyzes the changing role of judges in Germany, Hungary, the Czech Republic, Slovakia, and Slovenia. Moreover, judicial reform in transition countries in general, Romania, and Russia is analyzes by subsequent articles. The book concludes with short briefs on Bulgaria, Slovakia, Slovenia, and Hungary.

**Methodology:** Quantitative description and analysis; comparative analysis  
**Subject Keywords:** Authoritarianism, case management, civil procedure reform, civil law, civil litigation, constitutional change, court delay, court performance, criminal law, democracy, European Community/European Union, European Court of Justice, judicial efficiency/court delay, judicial independence, judicial reform, legal reform, political reform/regime change, post-socialist transition, public prosecutors, rule of law, separation of powers
Country/Region: Germany, Poland, Hungary, Slovenia, Czech Republic, Slovakia, Romania, Russia, Bulgaria/Central Europe, Eastern Europe


This article develops a formal model of judicial decision-making on the U.S. Supreme Court. Schwartz contends that traditional formal models have treated judicial decision-making as choosing an outcome in policy-space, similar to legislative decision-making. However, he argues that this conception misses the important element of precedent in judicial decisions. Justices, he claims, pick both a policy outcome and a level of precedent when deciding a case. These two components of the judicial utility function are not separable; the amount of precedent a justice would favor depends on the policy outcome. Schwartz then models formally a court in which justices choose both precedent and policy, and analyzes the implications for both the substantive outcome of decisions and the assignment of opinion drafting in conference. He illustrates the implications of his model with a numerical example and with the actual decisions of the US Supreme Court in the reapportionment cases.

Methodology: Formal analysis (economic modeling)
Subject Keywords: Judicial decision-making; incentives of judges; legal precedent/stare decisis
Country/Region: United States


This chapter discusses the new constitutional courts in the formerly socialist countries of Eastern Europe. Schwartz notes that, overall, these institutions have performed surprisingly well, frequently overturning government action and protecting individual rights, and they generally are highly respected by the public. Schwartz first notes differences between the US Supreme Court – which is the highest appellate court in a hierarchy, and decides individual cases – and the Eastern European constitutional tribunals, which are designed to deal strictly with constitutional questions, and are separate from the ordinary court system. He briefly outlines the histories of some of the major Eastern European constitutional courts over the last ten years. While some of these courts have either not challenged or have lost struggles with the executive branch, in several countries these courts have made a significant contribution, even in very hostile environments. The reasons for the variation, Schwartz argues, are not clear, but seem to depend on the larger political context. Also, the degree to which the court can appear to decide cases on legal rather than political principles helps its legitimacy. In conclusion, he notes that the ultimate success or failure of constitutionalism, and democracy more generally, is a public committed to these ideals.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Judicial review; judicial independence; federalism; individual rights; separation of powers; equality/social justice; constitutionalism; rule of law; post-socialist transition; democracy; economic reform
Law Keywords: Constitutional law; administrative law
Country/Region: Eastern Europe; Poland; Hungary; Russia; Bulgaria; Slovakia


(“The High Judicial Councils in Bosnia and Herzegovina”, in German). The author describes the structure and tasks of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council of Republika Srpska. The respective competences and role for the nomination of judges and prosecutors are analyzed. The disciplinary procedures, suspension, incompatibilities and immunities are also taken into consideration.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial accountability, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal education/training, post-transition justice, separation of powers  
Country/Region: Central Europe/Eastern Europe


The subject of this article is the current state of administrative law in the context of the European integration. The first part is a brief overview of the role which legal rules – both written and unwritten – have played in the field of administrative law at the beginning of European integration and its further development. The second part is a survey of the state of administrative law today, including the development of general principles and their progressive codification. The third part deals with the future prospects of the development of administrative law resulting from the proposed European Constitution and the EU’s enlargement in 2004.

Methodology: Qualitative description and analysis  
Subject Keywords: Administrative law, bureaucracy, constitution drafting, constitutional change, European Community/European Union, European Court of Justice, judicial review, rule of law  
Country/Region: European Union/Europe


Haiti faces many challenges in its attempt to build a stable democracy. Haitians have endured a legacy of chaotic and heavy-handed rule in recent decades, and the success of democracy in Haiti is both hoped for and doubted by Haitians and the international community. One reason for the doubts has been the failure of the Haitian government successfully to implement free and fair elections. In order for Haiti to implement elections in a manner that creates legitimate leaders and an engaged electorate, the rule of law and the order of the Haitian Constitution must be enforced.

This note argues that while far from perfect, the Haitian judiciary has the potential to play the most vital role in the institutional stabilization and democratization of Haiti. As judges are not subject to election, Haiti’s judicial system stands at an arm’s length from the government’s suspicious electoral practices. Haiti is in a truly desperate condition and requires steps toward authentic democratization to put its government and its people on the road to success. Judicial implementation and enforcement of a potent and reasonable body of electoral and constitutional law is a good first step, and the Haitian judicial system may be able to lead the way to electoral success in Haiti, according to the author.

Methodology: Qualitative description and analysis  
Subject Keywords: Authoritarianism, constitutional change, corruption, democracy, electoral process, institutional capacity, judicial decision-making, judicial independence, judicial reform, outside assistance, political instability, post-transition justice, rule of law  
Country/Region: Haiti/Caribbean


In this chapter Scott discusses and critiques Caseflow Management (CFM) reform proposals, with a particular emphasis on the CFM reforms proposed for England in the Interim Report of Lord Woolf. CFM is intended to reduce case backlogs and delay by giving judges more direct control over case management and distinguishing cases in terms of their magnitude and complexity, allowing the less substantial or less complex cases to be dealt with through different procedures than the more difficult cases. While Scott is generally sympathetic to CFM and Lord Woolf’s proposals, he also raises a number of concerns, including the effect of the proposed reforms on costs, civil procedure, and the judge’s adjudicatory role. He notes in conclusion that the effect of CFM on the way civil cases develop cannot be accurately predicted, and the wisdom of CFM reform depends in part on one’s view of the proper role of courts in society.
The sole focus of this article is \textit{Avocats} in Romania. They represent clients in transactions and litigation in all courts without restriction as US attorneys do. The article briefly describes collectivized law practice in Romania and then summarizes the statutes that privatized the \textit{avocats}’ bar in 1995. Based on information garnered in interviews of \textit{avocats} in four Romanian cities in 1999-2000 and a variety of studies concerning US lawyers, the author describes the reality of Romanian law practice after privatization and compares it to practice under communism and to solo and small-firm US practice. The discussion concludes by exploring Romanian practitioners’ outlook on their profession. The article specifically examines Romanian lawyers’ civic participation and its importance in the future of democracy in Romania. The appendix describes the research and the demographics of the interview subjects.

The authors reply to various criticisms of their article (appearing in the same journal volume) which presented empirical evidence that US Supreme Court justices almost never follow precedent, rather than their personal preferences, when they dissented from the case that established the relevant precedent. First, they respond to the criticism that they have attacked a straw-man, since nobody actually believes that precedent (or other aspects of the “legal model” of judicial decision-making) is predictive rather than normative. The authors counter that many legal scholars and political scientists continue to believe that precedent significantly influences justices’ decisions. Second, they respond to criticisms of their coding. Third, while they accept the argument that \textit{stare decisis} is a norm, they reject the claim that this norm has any significant behavioral effect; rather, they suggest, invocation of precedent is the result of a psychological need to justify decisions. Finally, they attack the work of some of their critics, who they claim select on the dependent variable and wrongly include summary dispositions in order to inflate artificially the impact of precedent on decision-making.

The authors conduct an empirical test of the claim, associated with the “legal model” of judicial decision-making, that US Supreme Court Justices are influenced by precedent, i.e. that they will follow established legal rules even when they disagree with these rules. They test this hypothesis by examining the subsequent voting patterns of justices who dissented in “landmark” cases. If justices are influenced by legal precedent, the authors claim, then dissenters should switch their position and vote to follow the majority ruling when the same legal issue arises again. However, the authors find that US Supreme Court justices almost never follow precedents with which they disagreed when they were decided. Over 90 percent of dissenting justices’
subsequent decisions were decided in favor of the justice’s original position rather than the established precedent, and only two justices — Stewart and Powell — followed precedent (rather than their initial view) less than 80 percent of the time. The authors provide an extensive description of their sample and coding techniques, as well as an appendix including all the cases in the sample and how judges voted in each.

**Methodology:** Quantitative analysis

**Subject Keywords:** Legal precedent/stare decisis; judicial decision-making

**Law Keywords:** Constitutional law

**Country/Region:** United States


This article claims that the failure of most states in the developing world to implement development policies to help the poor and powerless has to do with a “fatal race” between the new leadership and existing institutions. In general, the institutions, which favored the wealthy and privileged, changed the leadership before the leadership was able to change the institutions. Instead of implementing transformative development policies, the leadership itself became a bureaucratic bourgeoisie. Seidman argues that only for a brief period after independence, at the start of the fatal race, is there a window of opportunity for new leaders to change the institutions of law-making to allow for mass participation. If the new leadership does not act quickly and decisively, institutions are unlikely to change and the masses of poor people will continue to be marginalized politically and economically.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Economic development; economic reform; legal reform; law drafting; legislative process; politics of reform; democracy; equality/social justice; colonialism/imperialism; legal implementation

**Country/Region:** Africa


In this article, Seidman discusses and critiques Trubek and Galanter’s article “Scholars in Self-Estrangement.” Seidman’s main argument is that Trubek and Galanter’s disillusionment with law and development activity stems from their flawed methodology. This methodology, according to Seidman, rests on a false distinction between facts and values, and a false separation of theory-construction from instrumental problem solving. A more productive methodology, according to Seidman, would be practical problem-solving, or “learning from experience” in which both facts and values would be subject to critical scrutiny, and theory would be generated in the course of trying to solve real-world problems. Seidman’s article is followed by a rebuttal from Trubek and Galanter, which is in turn followed by a rejoinder from Seidman.

**Methodology:** Critical review

**Subject Keywords:** Law and Development Movement; legal reform; liberal legalism; legal instrumentalism; legal realism; legal pluralism; economic development; equality/social justice; outside assistance

**Country/Region:** Africa; developing world (general)


In this chapter, the authors discuss attempts to reform the law-making process in developing countries, focusing especially on five projects — for which the authors were consultants — in China, Laos, Sri Lanka, Mozambique, and the South African province of Gauteng. They argue that in these five countries, as in most of the developing world, few laws are drafted, fewer are enacted, still fewer are implemented, and almost none induce their prescribed behaviors. Part of the problem, they claim, is that law drafters in these
countries, lacking a theory or structured way of developing legislation, tend to fall back on one of three counterproductive strategies: letting laws be the compromise of interest group bargaining, invoking the criminal law to ban the problem, or copying foreign law. A more productive approach, which the authors employed in all five projects, is the use of “reason informed by experience” – a type of problem-solving methodology informed by grand theory and experiential learning. They outline a methodology that legislative drafters ought to follow, and a set of questions they ought to ask, and recommend further that every bill drafted come with a research report explicitly structured around the theory. They also note that this methodology requires foreign consultants not to act as bill drafters, but to assist local drafters in the process in order to build up indigenous drafting capacity.

Methodology: Qualitative description and analysis; conceptual/philosophical inquiry
Subject Keywords: Law drafting; legal implementation; economic development; outside assistance; import of foreign law/legal transplants; World Bank; UNDP; legislative process; rule of law; politics of reform; agricultural sector
Law Keywords: Contract law; commercial law; administrative law; criminal law
Country/Region: China; Laos; South Africa; Sri Lanka; Mozambique


Development of the economy in transitional post-communist societies like Lithuania casts a considerable part of the population aside without providing them with an adequate amount of jobs. Despite the initial aspirations of the government, resources were far too limited to compensate people for the plunge of their income. Legal education is cost intensive. The requirements for legal professionals are high. The author describes the current status of affairs of Access to Justice: the legal framework (constitutional provisions, code of criminal procedure), institutional capacities, the funding and quality of legal aid. Finally, he analyzes the strategies to improve access to justice: legislative and institutional reform.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, constitutional change, equality/social justice, legal aid, legal reform, post-socialist transition, post-transition justice
Country/Region: Lithuania, Central Europe, Eastern Europe

Shapiro, Martin “Toward a Theory of Stare Decisis” Journal of Legal Studies 1:125-134 (1972)

This article analyzes the practice of stare decisis from the perspective of communications theory. Shapiro claims that legal discourse organized by the rules of stare decisis emphasizes high levels of redundancy at the expense of high levels of information content. He suggests that the legal system requires such high levels of redundancy because of the “noise” (i.e. communication error) inherent in large, complex organizations like the legal system. He illustrates this principle with an example drawn from his own research on the development of tort law in the United States and the United Kingdom. He concludes that judicial opinions ought to be analyzed as a type of communication between judges, and that social scientists ought to treat the phenomenon of stare decisis as a communications problem rather than a matter of logic or obfuscation.

Methodology: Qualitative description and analysis
Subject Keywords: Legal precedent/stare decisis; judicial decision-making; litigation; common law; communications theory
Law Keywords: Tort law
Country/Region: United States; United Kingdom


In this book, Shapiro traces the evolution of U.S. administrative law since the New Deal. Shapiro argues that changes in administrative law doctrines were shaped by competing legal and political theories, as well as broader social and political changes in America. He stresses in particular the tension between “pluralist” theories of administrative action, which stress the tallying up and balancing of group interests, and alternative
theories which hold that agencies must make the right rules, and “right” is not defined merely by group preferences. The general trend in administrative law, Shapiro claims, has been from the former perspective to the latter. Courts now demand that agencies make decisions “synoptically” – that is, by considering all possible alternatives and selecting the best rule out of all possibilities. Also important in his account is the growing requirement imposed by courts that agency rule-making procedures take on more and more characteristics of an adjudicatory process. In conclusion, he argues that theories of administrative law have neglected the role of “prudent deliberation” in agency decision-making. This sort of prudence, he argues, is both necessary, and is affected by politics. Rather than obscure the prudential aspects of agency decision-making, Shapiro holds that courts ought to recognize and accept a zone in which agencies are able to exercise prudential discretion. Shapiro also stresses the fact that courts’ control over agency politics is problematic because judges are generally not subject to democratic control – hence the question of how judicial behavior can be policed.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; public choice; legislative process; rent seeking; commercial licensing; discourse/deliberation; democracy; legal proceduralism; common law; rule of law; bureaucracy; individual rights; technocrats; legal ideology; separation of powers; legal doctrine; environmental protection; litigation; public utilities/infrastructure
Law Keywords: Administrative law
Country/Region: United States


The authors, two political scientists, present a selection of their research, focusing on how to build and test a social science of law and courts. The opening chapter features Shapiro’s classic ‘political jurisprudence’, and Stone Sweet’s ‘judicialization and the construction of governance’, pieces that critically redefined research agendas on the politics of law and judging. Subsequent chapters take up diverse themes: the strategic contexts of litigation and judging; the discursive foundations of judicial power; the social logic of precedent and appeal; the networking of legal elites; the lawmaking dynamics of rights adjudication; the success and diffusion of constitutional review; the reciprocal impact of courts and legislatures; the globalization of private law; methods, hypothesis-testing, and prediction in comparative law; and the sources and consequences of the creeping ‘judicialization of politics’ around the world.

Methodology: Qualitative description and analysis
Subject Keywords: Democracy, European Court of Justice, governance, judicial decision-making, judicial independence, judicial review, legal culture, rule of law, separation of powers
Country/Region: Europe, United States


This article examines alternative dispute resolution (ADR) from an economic perspective, in order to determine why parties might make use of ADR, what effect different ADR systems might have on incentives, costs, and welfare, and the implications for government policy. Shavell argues that ex ante ADR agreements are beneficial to the parties because ADR lowers the costs or risk of resolving disputes, may improve parties’ incentives for making agreements more beneficial to all, and can reduce the number of disputes. Therefore, Shavell concludes, ex ante ADR agreements ought to be legally enforceable, though other state policy to encourage ADR (e.g. subsidies) is probably not justified. As for ex post ADR, Shavell argues that it does lower costs, but doesn’t have the incentive effects of ex ante ADR. Shavell’s economic analysis of ex post ADR leads him to conclude that it is not clear that even voluntary ex post ADR agreements enhance individuals’ welfare, and may even have perverse effects on incentives to bring suit or go to trial. Thus he maintains that there is no clear basis for government policies encouraging or requiring the use of ex post ADR.

Methodology: Formal analysis

This article argues that there is a divergence between the private and the social motive to use the legal system, and therefore the amount of litigation-related activity generated by private actors cannot be assumed to be socially optimal. The divergence, according to Shavell, stems from two sources. First, parties’ private legal costs do not reflect the total costs of their decision to use the legal system. This factor, a negative externality, would tend to create a socially excessive amount of litigation. Second, private parties do not generally consider the social benefits (especially the deterrent or other behavior-modifying effects) of suit. Failure to take this positive externality into account would lead to too little litigation. Shavell contends that this divergence justifies corrective state intervention. However, because determining the precise effects of different types of litigation is very difficult, policies to discourage or encourage suit should apply only to fairly broad categories of cases. Furthermore, Shavell points out that many proposed policies – such as “loser pays” fee shifting and making plaintiffs pay the public costs of litigation – would not have their intended effects. The social costs and benefits of settlement, and policies affecting the likelihood of settlement, are also discussed.

Methodology: Qualitative description and analysis; formal analysis


This article discusses the new constitutional courts established in Central and Eastern Europe from 1989 onward. These countries adopted the European, rather than the US, model of judicial review: the constitutional review function is concentrated in a specialized court, and the court practices “abstract review” of the constitutional issue in question rather than focusing on the facts of a particular dispute. Sheive discusses three explanations for the selection of the Western European model: the desire to integrate with Western Europe, a similar civil law tradition, and the low opinion of the regular courts in the communist era. The article then describes the jurisdictional structures of the constitutional courts, most of which practice a posteriori review, restrict direct access of individuals to the court, and issue declarations of unconstitutionality that have automatic legal effect. Sheive then presents the argument that constitutional courts are anti-majoritarian in substituting the decisions of unelected judges for elected parliaments. In response to this anti-majoritarian objection, it is argued that restraints on constitutional courts prevent them from engaging in undue judicial activism, and second, that the courts enhance democracy by protecting fundamental rights. Sheive concludes with five strategies for increasing the representativeness of these courts and thus the democratic legitimacy of judicial review.

Methodology: Comparative analysis; qualitative description and analysis

This author examines the manner in which indigenous people can function in modern states, preserving their traditional customs, while simultaneously adapting aspects of their culture to the challenges posed by modern life. Whereas it was formerly assumed that these tribal frameworks were doomed to extinction, and some states even encouraged such a process, there has been a revival in their vitality, linked to a recognition of their rights.

This comprehensive survey of various aspects of tribal life focuses on political issues such as the meaning of sovereignty, legal issues dealing with the role of custom and social issues concerned with sustaining communal life. Judicial decisions are analyzed as a reflection of the far-reaching changes that have taken place, in a process that has seen the former disregard of basic rights of indigenous people being replaced by an awareness of the injustices perpetrated in the past and a willingness to seek to redress them. The comparison of different English-speaking countries provides an account of intertwined developments.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Access to justice, alternative dispute resolution, civil society, codification, colonialism/imperialism, common law, constitutional law, culture/social norms/informal institutions, customary law/indigenous law, divided societies, equality/social justice, ethnic politics, family law, gender/women’s rights, group rights, human rights, human rights law, ideological role of law, import of foreign law/legal transplants, individual rights, informal dispute resolution, land disputes, law and development movement, legal culture, legal pluralism, popular justice, public opinion of the legal system, rule of law

**Country/Region:** Kenya, United States, New Zealand, Australia, Canada, South Africa, Nigeria, Tanzania, India


This article discusses reforms in the UK Legal Aid Bureau, focusing especially on the issue of measuring the “quality” of the services provided by legal aid lawyers. The authors focus in particular on what they term a “process” measure of legal quality – an assessment of the lawyer’s file and the number of relevant items omitted from the file. The authors suggest that this “omissions rate” is a useful proxy for service quality. They conduct a pilot assessment and check the results against an expert survey and a client satisfaction survey, and find important and statistically significant correlations between the omissions rate and these other measures of quality. Thus, the authors conclude that the omissions rates do appear to be indicative of genuine levels of quality and can be used, along with other sorts of measures, to assess overall performance.

**Methodology:** Qualitative description and analysis; quantitative analysis

**Subject Keywords:** Legal aid; performance indicators; legal services; access to justice; costs of the legal system; legal reform

**Law Keywords:** Civil litigation; family law

**Country/Region:** United Kingdom


Judicial independence comprises a range of possible elements that the author describes and analyzes in this article. He distinguishes between internal and collective independence. After dealing with the independence of the judiciary, he examines the significant impact that increased constitutionalization has had on judicial independence. Eventually, he examines judicial independence in the context of balancing of competing values in the justice system. He offers an analysis of the challenge of maintaining judicial independence while at the same time meeting the requirement in a multicultural society of a reflective judiciary.

**Methodology:** Qualitative description and analysis, comparative analysis

**Subject Keywords:** Constitutional law, constitutionalism, democracy, judicial accountability, judicial independence, rule of law, separation of powers

**Country/Region:** United States, Germany, United Kingdom, Canada

This overview describes the concept of judicial independence from a comparative perspective. Shetreet argues that judicial independence comprises not only substantive and personal independence of judges, but also the collective independence of the judiciary and internal independence of judges from his judicial superiors and colleagues. Contemporary challenges to independence include executive assumption of judicial powers, interference with the judicial purse, transfer of judges, court abolition, retroactive legislation to undo judicial decisions, and executive attempts to influence judges. Shetreet advocates express constitutional provisions to protect judicial independence through particular means such as the prohibition of ad hoc tribunals, the “natural judge” principle, and guarantees for post-decisional independence. Elements of substantive, internal, and collective independence are discussed at length. Shetreet argues that administrative supervision, or hierarchical models of administration, can threaten the internal independence of judges by subjecting them to influence of their superiors. He also recommends that judicial administration remain a joint responsibility of the judicial branch and the executive, for reasons of efficiency and accountability. Turning to accountability, he argues that public scrutiny of judges fosters responsibility, although excessive pressure threatens to chill judicial independence.

Methodology: Comparative analysis; qualitative description and analysis
Subject Keywords: Judicial independence; judicial accountability; court administration; separation of powers; judicial elections; impeachment of judges; constitutional change; judicial selection/promotion
Country/Region: Germany; United Kingdom; United States; developing world (general)


The author derides much of the current writing about the Rule of Law as either ideologically motivated or reflecting the self-congratulatory rhetoric of Anglo-American politicians. The works of Dicey, Hayek, Unger, and Dworkin on the Rule of Law are subjected to a searching critique. For Aristotle, the term Rule of Law meant nothing less than the rule of reason. For Montesquieu, it referred to a limited set of institutions designed to put a fence around innocent citizens so that they would feel secure when practicing their religion, speaking on public affairs, and engaging in other lawful activities. The author shows how the failure of many modern writers on the Rule of Law to engage with either of these concepts leaves their accounts incomplete. She closes by arguing that it makes sense to talk of the Rule of Law only if it is recognized as an essential element of constitutional government and of representative democracy particularly.

Methodology: Critical review; conceptual/philosophical inquiry
Subject Keywords: Rule of law; democracy; ideological role of law; individual rights; constitutionalism


This article examines questions related to the behavior of state firms, privatization, and commercialization, using a model of bargaining between politicians and managers. They find that, when corruption is unrestricted (that is, managers can bribe politicians and vice versa) the distribution of ownership and control rights is irrelevant. Managers and politicians will always bargain to a jointly-efficient outcome – though this outcome is not socially efficient. When there is no corruption, the model shows that managerial control leads to more efficient resource allocation than politician control. In situations of political control, allowing corruption increases social efficiency – which the authors interpret not so much as an argument for corruption as much as an additional argument against political control. Moreover, when politicians retain control, privatization may reduce efficiency and increase corruption, thus suggesting that privatization without commercialization/deregulation may be counterproductive. However, the authors note that the model still cannot demonstrate an effect of privatization, even when corruption is eliminated. They show,
however, that the introduction of a new constraint – that subsidies to profitable firms are politically impossible – causes privatization of profitable firms to increase social efficiency. However, privatization of inefficient firms continues to have no effect. The policy implication of this finding, they suggest, is that potentially profitable firms are the best candidates for privatization. Finally, the authors consider the incentives of politicians to allow privatization or commercialization. They find that politicians never have such an incentive in their model, and therefore these policies can only be explained by the introduction of new actors, such as an active treasury or politically organized taxpayers.

**Methodology:** Formal analysis  
**Subject Keywords:** Public ownership/state sector; corruption; privatization; post-socialist transition; property rights; economic reform  
**Country/Region:** Russia; Eastern Europe; Western Europe


The author explains why assisting African countries in improving the efficiency of their judicial systems is a must. Efficiency improvements reduces case backlog and bolsters citizen confidence in the judicial system. This can lead to a reduction in violence as citizens are less inclined to take the law into their own hands. It can also lead to increased foreign direct investment. Efforts have been made since 1993 to reduce the backlog in the courts in Tanzania. The push has mainly been centered around the use of various forms of alternative dispute resolution. The procedures followed, and the effects they have had, are outlined in detail.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Alternative Dispute Resolution; mediation; arbitration; court delay  
**Law Keywords:** civil litigation  
**Country/Region:** Africa, Tanzania


This article argues that as Vietnam strives to reform its laws to promote economic development and a degree of pluralism while maintaining political stability, the performance of legal research and training facilities will have a significant impact on future legal reform. Vietnam has a number of legal education and research institutions, established beginning in the late 1970s. They face problems including a shortage of trained scholars and teachers (particularly since earlier generations were taught colonial or socialist models of law with less current applicability), language capacity, and a scarcity of legal materials. The author then describes in detail various university and governmental legal research and training institutions in Vietnam. Among the priorities for legal education and research, Vietnamese institutions cite the need for short-term training courses for faculty and officials; advanced training abroad for faculty; foreign language training; legal materials and information; and infrastructure development. The UN Development Programme, bilateral development agencies, and U.S. foundations have supported legal development in Vietnam. One problem reform attempts face is the conflict between immediate need to create a legal infrastructure suitable for market reform and the need to address longer-term structural problems.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Legal education/training; legal reform; post-socialist transition; economic development; political reform/regime change; UNDP; outside assistance  
**Country/Region:** Vietnam

**Siedentopf, Heinrich; Hauschild, Christoph & Sommermann, Karl-Peter** *Implementation of Administrative Law and Judicial Control by Administrative Courts* (Speyer: Forschungsinstitut für öffentliche Verwaltung bei der Deutschen Hochschule für Verwaltungswissenschaften Speyer, 1998) 222 pages
This publication is the result of the authors’ work on administrative law and administrative procedure in Thailand. The first part deals with the implementation of administrative law. The authors explore the way administrative procedure law is implemented in the civil administration, new trends in the implementation of deregulation policies and the execution of administrative acts. The second part of the publication examines the judicial control of public administration by administrative courts by taking the German example. Aspects of administration of administrative courts are also addressed. Eventually, the publication provides an English translation of the German Administrative Procedure Act (Verwaltungsverfahrensgesetz) and Administrative Courts Code (Verwaltungsgerichtsordnung).

Methodology: Qualitative description and analysis
Subject Keywords: Administrative courts, administrative law, bureaucracy, codification, court administration, democracy, human rights, import of foreign law/legal transplants, individual rights, judicial independence, judicial reform, law enforcement, legal reform, rule of law, separation of powers
Country/Region: Germany/Europe, Thailand


(“The Unfinished Reform of Judicial Review of Accounts in Cameroon”, in French) In 1996, a constitutional amendment created modern institutions aiming at establishing the rule of law. An additional step was made by the 2003 law on the tasks, organization and functioning of the Chamber of Accounts of the Supreme Court. The Chamber is supposed to sanction personal and monetary liability of public accountants. According to the author, this reform is not satisfying. As to the organization of the Chamber, it is not in compliance with constitutional rules and does not really fit in the structure of the Supreme Court. As to its functions, the constitutional missions are limited by the legislator of 2003. Generally speaking, the 2003 organic law shows the reluctance of the state to accept the control of the Chamber of Accounts. It indicates a parody of the rule of law in Cameroon.

Methodology: Qualitative description and analysis
Subject Keywords: Bureaucracy, constitutional law, corruption, judicial reform, legal reform, legislative intent, politics of reform, rule of law
Country/Region: Cameroon/Africa


In this article, Silver analyzes the separation of powers from a public choice perspective. He conceptualizes states as firms that produce public goods – primarily public order. A unitary state resembles a monopoly firm, and this implies efficiency costs associated with monopoly exploitation. The separation of powers is a way to change the characteristics of the “order production” industry from a monopoly to an oligopoly. Thus the separation of powers reduces monopoly exploitation costs. However, the separation of powers, according to Silver, reduces the production-efficiency advantages associated with a hierarchically-integrated firm. Thus, he claims that there is some optimal level of separation of powers, in which the marginal efficiency gains associated with reducing monopoly exploitation costs exactly equal the marginal efficiency losses associated with increasing production costs.

Methodology: Qualitative description and analysis; formal analysis
Subject Keywords: Separation of powers; constitutionalism; public choice; democracy
Law Keywords: Constitutional law


(“Justice in France – A National Lottery”, in French) The author adopts the view of court users and describes how individuals face the judicial machinery and its daily routine. Having attended judicial hearings over a
couple of years, the author makes short accounts of hearings in criminal matters to illustrate the discrepancy of the principle of equality under the law and the shortcomings of daily judicial practice.

Methodology: Qualitative description and analysis
Subject Keywords: Criminal law, criminal sentencing, due process, judicial decision-making
Country/Region: France/Europe


In this article, the authors focus on ways in which “indigenous law” and customs can affect the practical impact. They argue that, even in cases where behavior is in outward compliance with state law, actual results are determined by indigenous law and custom, and may not be consistent with the intentions of the government legislators. They base this observation on the process of electing village headmen among the Karo Batak of northern Sumatra, Indonesia. After describing the Karo Batak social structure and indigenous constitutional system, the authors discuss the results of the attempts by the Indonesian government to institute a system of election of village heads. In elections following the passage of this law, though, there was usually only one candidate, who was selected according to traditional indigenous procedures. Thus, they conclude that the state law didn’t change the process of leadership selection, even though the formal rules and procedures of the election law were observed. The authors note, however, that more recently village elections have become more competitive, and the traditional means of leadership selection no longer appear operative. However, they argue that this change cannot be ascribed to the impact of the election legislation, but rather that it is due to independent religious and socioeconomic changes that have undermined social cohesion.

Methodology: Qualitative description and analysis
Subject Keywords: Culture/social norms/informal institutions; customary law/indigenous law; electoral process
Country/Region: Indonesia


This article describes a program initiated by the non-governmental organization Bangladesh Rural Advancement Committee to empower women through training representatives of the rural poor in law. Individuals were given short courses in the basics of family law, land and citizen’s rights, constitutional law and safeguards against unlawful detention, police harassment, and related issues. Those trained were expected to play the role of teachers, counselors, and advocates. An evaluation of the program showed the trainees retained much of what they were taught. It also describes a number of incidents where knowledge of divorce and inheritance laws, which provide women with more protection than traditional norms, was employed to improve the lot of women.

Methodology: Project evaluation; qualitative description and analysis
Subject Keywords: Legal literacy; access to justice; gender/women’s rights; legal education/training; individual rights
Law Keywords: Criminal law; family law; property law
Country/Region: Bangladesh


In this article, Sorabjee overviews the development of some of the basic principles in Indian administrative law, including the right to a hearing, the requirement of the giving of reasons, and non-arbitrariness. He also discusses recent developments in public interest litigation, which allow parties not directly affected by a
given action to bring suit, either on behalf of the general public (as in, for example, the case of environmental pollution) or on behalf of a class of people who are directly injured by an act but who are unable to approach the courts themselves due to indigence, mental incapacity, or other social or economic disabilities. Sorabjee argues that the Indian experience shows that judicial review is the most effective safeguard against administrative excesses, and claims that recent developments in Indian administrative law effectively protect fundamental rights and grant even the most deprived and oppressed greater access to justice.

Methodology: Qualitative description and analysis

Subject Keywords: Judicial review; judicial independence; individual rights; access to justice; litigation; rule of law

Law Keywords: Administrative law; public interest litigation

Country/Region: India


This chapter describes a program initiated by the non-governmental organization Bangladesh Rural Advancement Committee to empower women through training representatives of the rural poor in law. Individuals were given short courses in the basics of family law, land and citizen’s rights, constitutional law and safeguards against unlawful detention, police harassment, and related issues. Those trained were expected to play the role of teachers, counselors, and advocates. An evaluation of the program showed the trainees retained much of what they were taught. It also describes a number of incidents where knowledge of divorce and inheritance laws, which provide women with more protection than traditional norms, was employed to improve the lot of women.

Methodology: Qualitative description and analysis

Subject Keywords: Access to justice; equality/social justice; legal education/training; legal information; legal services; nonlawyer advocates

Law Keywords: Family law; property law; criminal law; constitutional law

Country/Region: Bangladesh/South Asia


(“Games without Borders. Comparative Law and Judicial Tradition”, in Italian) Somma develops a critical analysis of the concept of ‘legal tradition’, which is one of the fundamental categories of comparative law. In this way, the author first examines the use of such concept in comparative law literature; later on, he studies the relationship between the ‘legal tradition’ discourse and the trends towards the unification of law at an international level. In addition, he proposes a reclassification of legal systems within the framework of the theory of legal change. In sum, the essay represents a postmodern critique of the ethnocentric character of the dominant comparative law discourse, centered around the concept of ‘legal tradition’.

Methodology: Qualitative description and analysis

Subject Keywords: Civil law, common law, ideological role of laws, import of foreign law/legal transplants, legal culture, legal doctrine


The South African Law Commission has completed a report on traditional courts and the judicial function of traditional leaders. It contains draft legislation which is aimed at establishing customary courts by consolidating the different provisions governing chiefs and courts. The administration of justice in rural South Africa is predominantly carried out by chiefs, who administer justice largely on the basis of customary law. There is a need to modernize the different provisions governing these activities so that they are in
conformity with the principle of democracy and other values underlying the Constitution. The Commission
appointed a specialist to develop a position paper along certain guidelines suggested by the Minister of
Justice. These guidelines included the need for the paper to propose practical solutions, to avoid being overly
academic, and to draw on legislation in other African countries and domestic experience.
In 1999, a discussion paper was published and circulated for general information. Comments were received
from traditional leaders, academics, magistrates, women’s groups and other interested persons. The bill
recommends that customary courts should be established and that they should have full powers of hearing
and determining cases in both criminal and civil matters subject to limitations. The project committee noted
that customary courts are inexpensive, simple, informal, accessible and conversant with the community and
its laws. Safeguards are recommended to minimize gender bias. However, there is open divergence of views
between women’s groups and traditional leader.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, colonialism/imperialism, culture/social norms/informal institutions,
customary law, indigenous law, democracy, due process, ethnic politics, gender/women’s rights, informal
dispute resolution, judicial reform, legal culture, legal pluralism, popular justice, rule of law
Country/Region: South Africa/Africa

Spanish Judicial Council Measuring the Workload of Courts: The Spanish Approach [translation of Section
3.15.3(F) of the Spanish Judicial Council’s 1999 Annual Report, prepared by the World Bank Legal
Institutions Thematic Group, available at www.worldbank.org/publicsector/legal/SpanJudgesPerfIndicators.doc; publication information for the

This section of the Spanish Judicial Council’s report discusses new ways to measure the workload of Spanish
courts. The report notes that in previous years the workload of courts was evaluated solely by the number of
decisions rendered. However, the Council concludes that this measure is inadequate because judges must
perform many tasks which are not captured by such a simple measure. Therefore, the Council develops new
“modules” to measure court workload; these modules break down the different tasks judges and magistrates
in different courts must perform and assigns point values to each task based on the number of hours that task
is expected to take. The report outlines the modules for courts of general jurisdiction, as well as civil,
criminal, family, and labor courts. The report concludes with suggestions for a new salary plan for
professional judges.

Methodology: Qualitative description and analysis
Subject Keywords: Court administration; judicial reform; performance indicators
Law Keywords: Civil litigation; family law; criminal law; labor law
Country/Region: Spain

Spiller, Pablo T. “A Positive Political Theory of Regulatory Instruments: Contracts, Administrative Law, or

This article examines how a country’s political and judicial institutions affect the type of utilities regulation
system that is most appropriate. The basic problem, according to Spiller, is that the regulatory regime must
be credible – that is, it must be able to restrain government from changing the rules to expropriate resources
from the utility companies. Spiller focuses on political institutions: the independence of the judiciary, the
unification or division of government, and the strength of the different branches of government in the
legislative process. He argues that in countries with a strong separation of powers, credible commitment can
be provided through administrative procedures. In countries without unified governments or aggressive
judiciaries, specific legislation can provide regulatory credibility, since legislation is very hard to change. In
countries with unified governments, administrative procedures and specific legislation are problematic,
because both can be easily manipulated by the executive. In such countries, the best way to establish
regulatory commitment may be to embed the frameworks in contracts – that is, the licenses granted to utility
companies. Spiller notes that both contracts and specific legislation are relatively inflexible, but suggests that
the trade-off between flexibility and commitment may be inexorable. He defends his hypothesis using both formal modeling and the history of utilities regulation in several countries.

**Methodology:** Comparative analysis; qualitative description and analysis; formal analysis

**Subject Keywords:** Public utilities/infrastructure; institutional capacity; electoral process; legislative process; judicial review; separation of powers; judicial independence; commercial licensing; executive decrees

**Law Keywords:** Administrative law; contract law

**Country/Region:** United States; United Kingdom; Chile; Argentina; Jamaica; Bolivia; Thailand


This article uses formal, rational-choice analysis to examine the ways in which Congress can influence regulatory policy by structuring the institutional costs of agency and judicial decision making. The authors first model separately the interactions between a regulatory agency and a court of appeals, and between a court of appeals and the supreme court. They then combine the models into a single three-player game. Their model shows that changing the costs (broadly defined) to changing or reversing a policy can change the policy selected in equilibrium. In general, higher decision costs mean that an agency or court is less likely to intervene to change policy, and thus in effect it has less discretion. (In the three-player game, the effect of increasing or decreasing the discretion of the courts has different effects on the agency’s choice of policy, depending on the preferences of the players.) The authors then show how the legislature can influence regulatory policy indirectly by changing decision costs. They illustrate this point with two examples drawn from the United States. The first is the 1995 Republican effort to impose cost-benefit analysis requirements on agencies, which would have increased agency decision costs and lowered court of appeals review costs, thus reducing the discretion of more liberal agencies. The second example is the series of Democratic-sponsored amendments in the early 1980s (the “Bumpers amendments), which would have given courts the power to review agency decisions de novo, thus reducing review costs and reducing the discretion of Republican-controlled agencies.

**Methodology:** Formal analysis

**Subject Keywords:** Judicial review; judicial decision-making; judicial deference

**Law Keywords:** Administrative law

**Country/Region:** United States

**Starck, Christian** “Rechtsvergleichung im öffentlichen Recht” *Juristenzeitung* 21/1997 pp. 1021-30

(“Comparative public law”, in German). In the 19th century, comparative law had an important impact on public law in Germany. The focus of comparative law has then shifted to private law. Nowadays, the relevance of comparative public law is manifold, especially because of increasing globalization. The lessons learned by comparing private law have to be slightly adapted to the comparison of public law. In any case, a value judgment is necessary according to the author.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Comparative public law, administrative law, constitutional law

**Country/Region:** Germany/Europe

**Starilow, Jurij** *Gerichtliche Verwaltungskontrolle im System des Russischen Staats- und Verwaltungsrechts* (Speyer: Forschungsinstitut für öffentliche Verwaltung bei der Deutschen Hochschule für Verwaltungswissenschaften Speyer, 1999), 222 pages

(“Judicial Review of the Administration in the System of Russian Constitutional and Administrative Law”, in German) This analysis of the way the Russian bureaucracy is controled by its administrative courts begins with a presentation of Russian constitutional and administrative law. The judicial structure is then examined. After that, the author proceeds with a thorough analysis of the Russian system of administrative justice. He
also has a brief look at the role of the procuratura and concludes with the need for codification of administrative procedure.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative courts, administrative law, authoritarianism, bureaucracy, constitutional change, constitutional law, democracy, human rights, human rights law, ideological role of law, individual rights, institutionalization, judicial independence, judicial reform, legal culture, legal doctrine, legal ideology, political instability, post-socialist transition, post-transition justice, public prosecutors, rule of law, separation of powers  
**Country/Region:** Russia/Eastern Europe

**Steele, Jane and John Seargeant.** *Access to Legal Services: the Contribution of Alternative Approaches.* (London: Policy Studies Institute, 1999)

This report, commissioned by the U.K. Legal Aid Board and a product of research carried out between 1996 and 1997, evaluates “alternative” types of legal services provision beyond the standard face-to-face office-based approach. These alternative approaches include services for rural areas; services directed at particular client groups; second-tier services; telephone-based advice; and outreach services. Among its conclusions are the following: even among particular areas, needs vary greatly; alternative services are more effective when administered by agencies with diverse approaches to service delivery; and alternative approaches may be more expensive than traditional service.

**Methodology:** Attitude surveys; qualitative description and analysis  
**Subject Keywords:** Legal services; access to justice; costs of the legal system  
**Country/Region:** United Kingdom


An independent judiciary with the power to constrain the executive and legislative branches is commonly thought to be the foundation of government under the rule of law. However, it is not obvious why those with political power would ever tolerate the constraints imposed by an independent court. The author offers an explanation for independent judicial review that is based on ongoing political competition between risk-averse parties. An independent judiciary is a mechanism through which these political competitors can enforce mutual restraint. But, support for independent judicial review is sustainable only when (1) the political system is sufficiently competitive; (2) judicial doctrine is sufficiently moderate; and (3) parties are both sufficiently risk-averse and forward-looking. The paper employs a simple formal model to show how these variables influence the political sustainability of independent judicial review and also presents the results of a preliminary empirical test which confirms the central hypotheses.

**Methodology:** Formal analysis  
**Subject Keywords:** Judicial reform; judicial independence, judicial review, politics of reform, political parties, public choice  
**Law Keywords:** Constitutional law  
**Country/Region:** all


A major area of American concern with the reconstruction of Iraq and its new constitution was the role of Islam. The United States warned that it would not tolerate an Iranian-style theocracy in Iraq, preferring instead a Turkish-style “Islamic democracy” as a model for Iraq.

Among countries with predominantly Muslim populations, Iran and Turkey represent the two opposite ends of the spectrum of possible state structures: Islamic law is the supreme law of the land in Iran, where a council of clerics controls the compatibility of legislation with their interpretation of Islamic law. The Turkish state, however, is so ideologically secular that some expressions of religion protected in other
countries are illegal in Turkey. The article addresses two issues in depth: the role of Islamic law in the Iraqi legal system, and how the new constitution may deal with this questions – and analyzes, based on Iraq’s history, current situation, and the experience of other similarly situated countries, how Islamic law may be retained or incorporated into the new Iraqi legal system.

Methodology: Qualitative description and analysis, comparative analysis
Subject Keywords: Authoritarianism, constitution drafting, constitutional change, constitutional law, democracy, import of foreign law/legal transplants, Islamic law, legal culture, legal reform, political reform/regime change, post-transition justice
Country/Region: Iraq, Iran, Egypt, Turkey/Middle East


Drawing on the new institutional economics, the authors examine the impact on businesses of Brazil’s relatively complex, nontransparent legal and regulatory institutions and compare their costs with those of Chile’s institutions, which are relatively simple. They examine four basic areas where legal and regulatory institutions could create critical obstacles to efficiency in the garment industries of Sao Paulo and Santiago: (a) the start-up of a new business (entry); (b) the regulation of business; (c) orders by customers of garment firms; and (d) sales with credit. They find that Chilean business transactions benefit from legal simplicity and more consistent enforcement than in Brazil, but that these perceived advantages are offset because of the differences between formal law and practice in Brazil. In two of these areas, Brazil has evolved some effective institutional substitutes to reduce the costs that would otherwise have been imposed by inefficient formal institutions. In the entry of new businesses, professions have evolved to transform the process of registering a new business from a potentially tortuous obstacle path into a fairly affordable one-stop process. In debt collection, information systems limit the need to resort to the formal legal system. Nevertheless, regulation raises the cost of transactions for Brazilian businesses. Costs are further raised by greater uncertainty and frequent re-negotiation of orders.

Methodology: Comparative analysis
Subject Keywords: Commercial licensing; costs of the legal system; debt collection; informal sector/black markets; legal reform; non-contractual agreements/relational contract; judicial reform
Law Keywords: contract law
Country/Region: Chile, Brazil, developing world (general)


Within the span of only a few months in 1999, the UN was faced with one of the greatest challenges in its recent history: to serve as an interim government in Kosovo and East Timor and to take responsibility for the administration of justice, which essentially required the complete re-creation of the judiciary. These nation building missions implied a minimum of judicial and prosecutorial function, including arrests, detention, investigations, and fair trials. Moreover, the effective reconstruction of the justice sector requires a coherent approach that places equal emphasis on all its elements: police, prosecution, judiciary, and the correctional system. The author analyzes the situations upon arrival and the immediate measures taken by the UN. He recommends the establishment of judicial ad hoc arrangements, the formation of a standby network of international lawyers, immediate reconstruction of the correctional system, the creation of an immediately applicable legal framework, and the prioritization of legal training.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, court administration, crime control, donor politics, governance, human rights, institutional capacity, judicial reform, judicial training, legal drafting, legal enforcement, legal education/training, legal reform, legal services, military courts, rule of law, secession, state of emergency/martial law, United Nations
Country/Region: Kosovo, East Timor/Timor Leste
In order to present the principles of continental European and German law regarding claims against the government and public authorities, the author first describes the set-up and origin of the French model of separation of Administration and administrative courts. After a presentation of the German judicial and procedural system, the distinction between private and public law as well as the interplay of different claims against the Sovereign are analyzed. This is followed by an description of the organization and jurisdiction of the European Union courts (European Court of Justice, Court of First Instance of the European Communities) and the European Court of Human Rights (Council of Europe).

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Administrative courts, administrative law, European Community/European Union, European Court of Justice, judicial independence, judicial review, legal culture, rule of law, separation of powers  
**Country/Region:** United States, Western Europe, France, Germany, European Union, Europe  


This article describes the importance of Technical Assistance (TA) in both economic and judicial reform. The author focuses on TA for institutional development and feels that it is the area where TA can register its most potent, sustainable impact. He then goes on to summarize two core clusters of TA problems – design defects, and project parties’ institutional constraints. One such problem addressed is the excessive specificity of tasks and personnel described in consultants’ Terms of Reference. This problem can lead project implementers’ to foreclose prematurely, and would have the effect of denying further opportunities to explore and develop alternative design options. The author then proposes solutions for both clusters on the micro- and macro-level. It is suggested that one possible solution to the problem of excessive specificity would be not to prescribe tasks at all, and instead use the Terms of Reference only to articulate a project’s objective and available budget resources. This would leave the task to the professional creativity of the competing consultant firms who would respond with their best proposals and designs conforming to the indicated targets and constraints. It is the author’s belief that there are many micro- and macro-solutions to overcome the significantly harmful defects that he has identified. Further, these techniques of avoidance and correction have been known and tested, and thus should be implemented.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Capital market, donor agency administration, donor coordination, economic reform, institutionalization, judicial reform, World Bank.  
**Law Keywords:** International law  
**Country/Region:** Developing world (general)


This article explores the “expressive function” of law – that is, the effect that law has by making statements, as opposed to controlling behavior directly. Sunstein contends that this expressive function is an important aspect of the law, and debates over many controversial legal issues have more to do with the law’s expressive statement than with predictions of its direct effect on behavior. Sunstein argues that this expressive function of law can be used to modify social norms, and this is often justified when norms are unjust or not socially optimal. For example, legal changes can be used to help solve the collective action problem inherent in changing social norms. (Even if a new social norm would be better for everyone than the prevailing norm, it is hard for any individual to change behavior; a legal change can make that behavior less costly and encourage norm transformation.) Also, law can enhance social norms thought to be good, such as those involving the use of money. Sunstein notes further that the statement a law makes independent of its consequences is not a sufficient reason for adopting or changing a law. Also, there must be some rights-
based constraints on government efforts to affect social norms. Overall, Sunstein concludes that the
government should proceed pragmatically, assessing which norms are detrimental to social welfare and using
expressive law to change these norms where such action would be appropriate and effective.

Methodology: Qualitative description and analysis

Subject Keywords: Culture/social norms/informal institutions; symbolic use of law; nonlegal sanctions;
environmental protection; equality/social justice; individual rights

Law Keywords: Criminal law; administrative law; contract law

Country/Region: United States

Sutter, Daniel “Enforcing Constitutional Constraints” Constitutional Political Economy 8:139-150 (1997)

This article examines the enforcement of constitutional constraints on the government. Sutter points out that,
even if citizens initially agree on a constitution, enforcing constitutional rules might still be problematic for a
number of reasons. Effective enforcement of constitutional constraints requires that violations can be
detected, ensuring the sincerity of the agents responsible for monitoring compliance with the constitution (in
other words, making sure the judiciary is both independent and faithful to the constitution), and that detected
violations are prevented or corrected. The latter problem involves solving free-rider and coordination
problems among citizens. Sutter argues that judicial review is a relatively efficient enforcement mechanism.
It reliably detects constitutional violations and provides a focal point that mitigates collective action and
coordination problems. Other institutional mechanisms, such as pre-screening judicial candidates and
academic scrutiny of judicial decisions, can address the problem of potential abuse of judicial independence.
Sutter also contends that judicial review can be made more efficient by adopting simpler rules like procedural
constraints and implementing one-sided loser pays rules. Finally, Sutter notes that organizational culture also
plays a role in constraining the government, and that fostering a culture of constraint would enhance the
effectiveness of constitutional limits.

Methodology: Qualitative description and analysis

Subject Keywords: Constitutionalism; public choice; democracy; judicial independence; judicial review;
judicial decision-making; separation of powers; culture/social norms/informal institutions; incentives of
judges

Law Keywords: Constitutional law

Country/Region: United States

Swanson, Timothy and Robin Mason “Nonbargaining in the Shadow of the Law” International Review of

This article attempts to explain two puzzles in the data on civil litigation. The first puzzle is that, despite the
large costs to all parties of failing to bargain, only a fraction of claims receive more than one offer before
settlement or litigation. Second, the size of this fraction seems to depend on the type of parties involved in
the claim. The authors develop a model of civil litigation between a risk-averse, one time plaintiff and a risk-
neutral, repeat play defendant. They show that, under these circumstances, the defendant’s optimal strategy
is to probabilistically withhold offers in the last period of the game. This partial withholding of offers
reduces the plaintiff’s incentive to refuse early (but acceptable) offers in the hopes of receiving a more
generous offer later in the game. Thus, the defendant’s strategy creates a partial “deadline effect” at every
stage of the game. This simplified model also generates a number of empirical comparative statics
predictions. First, the more risk-averse the plaintiff, the fewer offers the plaintiff will receive. Thus
plaintiffs who are self-financed should receive the fewest offers, while those who are backed by unions, legal
aid, or other insurance mechanisms should receive more offers. Second, because the ability of the defendant
to credibly withhold offers in the last period depends on its ability and incentive to establish a credible
reputation, plaintiffs involved in general types of claims should receive the most offers, while those involved
in specialized claims (where defendants are more likely to establish a reputation) should receive the fewest
offers. Finally, because the English system prohibits contingency fees for legal services and includes “loser
pays” rules, the English system ought to have fewer settlement offers than the US system, where plaintiffs
are more able to insure against risk. The authors show that the first two hypotheses are supported by
quantitative data on English civil cases. The third hypothesis cannot be tested rigorously due to lack of data, but seems supported by existing research.

Methodology: Formal analysis; quantitative analysis; comparative analysis
Subject Keywords: Out-of-court settlement; litigation; costs of the legal system
Law Keywords: Tort law; civil litigation
Country/Region: United Kingdom; United States


This article evaluates a program adopted in Colorado in 1966 to reduce federal court congestion rapidly through a six-week “crash program”, which added two judges trying five cases a week. The authors suggest that the crash program may have helped reduce the case backlog, but that judicial time needs to be used more efficiently, and that the courts need to experiment with small, tentative changes and systematically evaluate their effect. The authors make three specific suggestions. First, there should be an attempt to make the prediction of trial length more accurate. Second, there should be an effort to determine more precisely which cases are most likely to go to trial and which are likely to settle. Third, the current system of leaving one day a week for the judges to attend to non-trial duties may be less efficient than other ways of managing judicial time.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial efficiency/court delay; litigation; out of court settlement
Law Keywords: Civil litigation
Country/Region: United States

Tak, Peter J. P. & Fiselier, Jan P. S. “Denemarken – Nederland, de rechtspleging vergeleken” (Nijmegen: Wolf Legal Publishers, 2004), 353 pages

(“Denmark – Netherlands, the justice sector in comparison”, in Dutch) This report analyzes the way civil, administrative and criminal cases are processed in both countries. This entails a comparison of the core sectors of the justice systems in Denmark and in the Netherlands. Since the report is written from a Dutch perspective, the focus is on differences of the Danish system compared with the Dutch one. After a description of the Danish state in general and the judicial system in particular, the first part the report analyzes the different judicial infrastructure in Denmark and in the Netherlands. Subsequently, the jurisdiction of the courts, the staffing and the perception of justice among the population is compared and analyzed. In the second part, the role of judges, lay judges and the justice sector in general is presented. Each sector (criminal, civil, administrative justice) is then presented separately.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Access to justice, administrative courts, administrative law, alternative dispute resolution, appeals/cassation, case management, civil law, civil litigation, costs of the legal system, court administration, court delay, court performance, criminal law, criminal sentencing, culture/social norms/informal institutions, judicial decision-making, judicial efficiency/court delay, judicial reform, legal culture, legal personnel, legal reform, litigation, state budget
Country/Region: Netherlands, Denmark

Tak, Peter J. P. & Fiselier, Jan P. S. “Duitsland – Nederland en de afdoening van strafzaken” (Nijmegen: Wolf Legal Publishers, 2002), 169 pages

(“Germany – Netherlands and the processing of criminal cases”, in Dutch) The authors analyze the size of criminal justice institutions in the Netherlands and the German State North Rhine-Westphalia and compare the processing of criminal cases in both countries. Given the similar number of inhabitants and the Dutch perspective of the comparison, the report goes into details whenever the criminal justice system of North Rhine-Westphalia turns out to be different from the Dutch system.
Methodology: Qualitative description and analysis; comparative analysis

Subject Keywords: Appeals/cassation, case management, court administration, court delay, court performance, criminal law, criminal sentencing, information dispute resolution, judicial efficiency/court delay; law enforcement, legal culture, litigation, organized crime, public prosecutors, state budget

Country/Region: Netherlands, Germany


In this article, Tamanaha critiques the concept of “legal pluralism”, arguing that its analytical foundation is fundamentally flawed, and that the concept obscures more than it illuminates. He begins by discussing the history of the concept and the main objectives of its proponents. He argues that the legal pluralism movement had three main goals: combating the ideology of “legal centralism”, fighting ethnocentrism, and creating a more scientific approach to the study of law. All three goals, according to Tamanaha, are problematic. A pernicious ideology of “legal centralism”, he claims, is a straw man. Fighting ethnocentrism is an important goal, but the concept of legal pluralism is not necessary, nor particularly effective, in achieving it. And the claim of legal pluralists to be more “scientific” is based on a flawed understanding of science. Tamanaha goes on to argue that the most fundamental concept with legal pluralism is that it creates an inherent ambiguity in the meaning of “law”. Legal pluralists try to define law both as “concrete patterns of social ordering” and “institutional identification and enforcement of norms.” However, according to Tamanaha the two concepts are fundamentally distinct, and trying to combine them only creates confusion and leads to flawed analysis. Tamanaha insists that only the latter concept – institutional norm identification and enforcement – should be called “law”. The words “law” and “legal” should apply only to state law, or perhaps certain norms and dispute resolution institutions in pre-state or post-colonial societies. The concrete patterns of social ordering that legal pluralists currently call “law” ought to be called by another name.

Methodology: Critical review; conceptual/philosophical inquiry

Subject Keywords: Legal pluralism; customary law/indigenous law; import of foreign law/legal transplants; colonialism/imperialism


This review article surveys the law and development field. The first section of the article discusses the influence of modernization theory on the Law and Development movement, and the relationship between the disillusionment with modernization theory and the crisis in law and development studies. Tamanaha focuses especially on Trubek and Galanter’s 1974 article “Scholars in Self Estrangement.” He argues that the crisis described by Trubek and Galanter was ultimately rooted in disillusionment with the liberal legal model in the United States, rather than the situation in the developing world. He stresses that it was not possible to declare the movement a failure after only a decade. Furthermore, Tamanaha argues that the exclusive emphasis on critique rather than positive construction is unhelpful for developing countries. What developing countries most need, according to him, is a functioning rule of law system to effectively restrain authoritarian rulers. The next part of the article focuses on modernization theory’s main rival, dependency theory, which rose to prominence in the late 70s and 80s. Like modernization theory, Tamanaha claims, dependency theory was not borne out by empirical evidence. The main impact of dependency theory on law and development scholarship was the rise of academic debates about the “right to development”, which Tamanaha claims is both flawed and unrealistic. The final part of the article enumerates eight lessons of law and development studies. He stresses in particular that some version of the rule of law in developing countries is valuable and achievable, but that law itself is not of primary importance in solving the problems of developing nations.

Methodology: Qualitative description and analysis; literature review; critical review

Subject Keywords: Law and Development Movement; modernization theory; dependency theory; economic development; democracy; authoritarianism; rule of law; liberal legalism; legal instrumentalism; import of foreign law/legal transplants; outside assistance; legal reform; Critical Legal Studies; right to development; institutionalization

Law Keywords: International law; commercial law; constitutional law
Country/Region: Developing world (general); United States

Tamanaha, Brian Z. *Realistic Socio-Legal Theory – Pragmatism and a Social Theory of Law* (Oxford: University Press, 1997), 280 pages

The author attempts to identify and develop foundations for the social scientific study of law. Drawing upon philosophical pragmatism, he establishes an epistemological foundation which specifies the nature of social science and its knowledge claims, and a methodological foundation which partakes of both behaviourism and interpretivism. This foundation building results in a realistic approach to socio-legal theory, which is set out by way of contrast to the critical schools of socio-legal theory. The strengths of this realistic approach are then demonstrated through application to many of the core issues in both socio-legal theory and legal theory, including the problematic state of socio-legal studies, the relationship between behaviour and meaning, the notion of legal ideology, the application of pragmatism to normative legal theory, the concept of law, the social basis for legal positivism, the nature and variety of legal practices, the problem of indeterminacy in rule following and application, and the structure of judicial decision making. An underlying objective of this exploration is the articulation of what is called a social theory of law, a particular way of viewing law which draws equally from, and provides a bridge between legal theory and socio-legal theory, to help in the gathering and organization of knowledge about law and legal phenomena.

Methodology: Qualitative description and analysis
Subject Keywords: Critical legal studies, culture/social norms/informal institutions, ideological role of law, judicial decision-making, legal culture, legal ideology, legal positivism, legal realism


Tamanaha states that the rule of law is the most important political ideal today, but complains about the fact there is much confusion about what it means and how it works. He explores the history, politics, and theory surrounding the rule of law ideal, beginning with classical Greek and Roman ideas, elaborating on medieval contributions to the rule of law, and articulating the role played by the rule of law in liberal theory and liberal political systems. The author outlines the concerns of Western conservatives about the decline of the rule of law and suggests reasons why the radical Left have promoted this decline. Two basic theoretical streams of the rule of law are then presented, with an examination of the strengths and weaknesses of each. The book examines the rule of law on a global level, and concludes by attempting to answer the question of whether the rule of law is a universal human good.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Rule of law


After describing the general structure of the legal and judicial system of the United Arab Emirates, the author turns his attention to the shari’a, explaining the different schools of Sunni Islam law (Maliki, Hanbali, Hanafi, Shafe‘i) and the hierarchy established among them according to the law of the United Arab Emirates. Subsequently, he presents the constitutional and legal provisions as to the appointment and removal of judges.

Methodology: Qualitative description and analysis
Subject Keywords: Civil law, colonialism/imperialism, constitutional law, customary law/indigenous law, federalism, import of foreign law/legal transplants, Islamic law, judicial independence, judicial selection/promotion, legal culture, public prosecutors, religion, separation of powers
Country/Region: United Arab Emirates

Tassou places the concept of the common good in the center of his analysis of the impact of the democratization process in Africa. State structure is often considered as something imported from abroad. In addition, he points at the fact that government officials and the population in divided societies tend to consider the use of public money for personal and group purposes to be legitimate. He expresses doubts about the role of elites in neo-patrimonial societies.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Corruption, democracy, governance  
**Country/Region:** Africa, Togo, Benin


This article investigates the impact of the establishment, consolidation, and subsequent breakdown of Ferdinand Marcos’ authoritarian regime on the functional performance of the Philippine Supreme Court. The authors, drawing on existing theory, lay out three main functions that courts perform: conflict resolution, social control, and administration. They take number of criminal cases as a measure of the performance of the social control function, number of civil cases as a measure of the conflict-resolution function, and administrative cases as a measure of the administration function. They then perform a time-series analysis, using the dates for the onset, consolidation, breakdown, and collapse of Marcos’ authoritarian regime as their independent variables. The authors find that authoritarianism had no statistically significant impact on the conflict-resolution function; authoritarianism’s onset increases and its breakdown decreased the court’s performance of the administrative function; authoritarianism’s onset decreased but its consolidation increased the performance of the social control function. Though the results are generally consistent with the authors’ hypotheses, they find that the breakdown of authoritarianism did not generate the results they expected. They speculate that this may be due in part to the small number of data points in the sample that occur after the breakdown (thus making it difficult to get statistically significant results), and it also may result from the fact that, by that point, Marcos had been able to pack the court with his supporters.

**Methodology:** Quantitative analysis  
**Subject Keywords:** Authoritarianism; judicial decision-making; political reform/ regime change; judicial independence; judicial review; state of emergency/martial law; incentives of judges; judicial selection/promotion  
**Law Keywords:** Administrative law; criminal law; civil litigation  
**Country/Region:** Philippines


In this article, the authors defend the research design they employed in their study “Authoritarianism and the Function of Courts” from the critique put forward by Howard Gillman. Gillman attacked the aforementioned study for its allegedly “scientific” character, and argued for the superiority of “interpretivist” historical and ethnographic inquiry over the search for general, scientific laws of political behavior. The authors respond that Gillman attacks an inaccurate stereotype of behaviorist social science. “Laws” in the social sciences are probabilistic and multicausal, rather than mechanistic and deterministic. Furthermore, they argue that the scientific method is applicable for qualitative as well as quantitative research, and that the use of the scientific method leads to valuable insights. The authors also respond to a number of Gillman’s specific objections, and conclude by contending that his own research would have been improved by the use of the scientific method.

**Methodology:** Critical review  
**Subject Keywords:** Judicial decision-making  
**Country/Region:** Philippines

Political scientists and legal scholars present a multifarious analysis of the phenomenon of the judicialization of politics. They first define the concept, trace back its roots and explore the institutional and behavioral conditions that promote it. Judicialization is then analyzed in the major English-speaking democracies that share the common law tradition. After that, the expansion of judicial power in the context of European democracies sharing, to a greater or lesser degree, Romano-Germanic legal tradition. Eventually, the authors focus on the prospects of judicialization in some of the world’s most volatile politics, the post-communist nations and a pair of “troubled” and “rebuilding” democracies in Asia and Africa.

**Methodology:** Comparative analysis, qualitative description and analysis

**Subject Keywords:** Corruption, democracy, governance, ideological role of law, judicial accountability, judicial activism, judicial decision-making, judicial independence, judicial review, judicial selection/promotion, judicial training, legal culture, legislative process, litigation, politics of resistance, rule of law, separation of powers

**Country/Region:** United States, United Kingdom, Australia, Canada, Italy, France, Germany, Sweden, Netherlands, Malta, Israel, Russia, Philippines, Namibia


Transition from authoritarian rule to democracy characterizes many countries at the end of the 20th and the beginning of the 21st centuries. At any such time of radical change, the question arises whether the members of the ancien régime should be punished or not. The author explores the ways in which a society should respond to dictatorial and authoritarian rule. Although she argues in favor of punishment, Teitel contends that the law nevertheless plays a profound role in periods of radical change. Taking a comparative and historical approach, she presents an analysis of constitutional, legislative, and administrative responses to injustice following political upheaval. She proposes a normative conception of justice offering glimmerings of the rule of law that, in her view, have become symbols of liberal transition. The different chapters of her book deal with the rule of law in transition in general, criminal justice, historical justice, reparatory justice, administrative justice, constitutional justice, and eventually with a theory of transitional justice.

**Methodology:** Comparative analysis, qualitative description and analysis

**Subject Keywords:** Authoritarianism, constitutional change, democracy, divided societies, ideological role of law, legal ideology, political crimes, political instability, political reform/regime change, post-socialist transition, post-transition justice, revolution, rule of law, symbolic use of law

**Country/Region:** Central Europe, Eastern Europe


After exemplifying the Palestinian way of conflict resolution, the authors explain the evolution of Palestinian customary law through five hundred years of foreign rule. Subsequently, they define the concept of neopatrimonialism and analyze it within the context of the Palestinian National Authority. Eventually, they present the contemporary Palestinian legal culture by focusing especially on the role of the police and the intermingling of customary and civil law.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Authoritarianism, case management, civil law, colonialism/imperialism, common law, corruption, court administration, court performance, crime control, criminal law, culture/social norms/informal institutions, customary law/indigenous law, democracy, human rights, import of foreign law/legal transplants, individual rights, international law, Islamic law, judicial decision-making, judicial reform, law enforcement, legal education/training, legal pluralism, nonlegal sanctions, political instability, popular justice
The 1996 South African Constitution recognizes indigenous customary law as a source of South African law. This entails conflicts between this system, the bill of rights and statutory and/or common law. In addition, recording customary law is difficult and distorts reality. In former times, the Western legal and the indigenous systems have existed side by side the former maintaining a central position and pushing the latter to the periphery. A major challenge today are gender issues.

Methodology: Qualitative description and analysis

Subject Keywords: Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, equality/social justice, gender/women’s rights, import of foreign law/legal transplants, legal culture, legal pluralism, popular justice


This paper surveys current efforts to promote law reform in Latin America, stressing the role of and links between global and national pressures on these processes of reform. Thome begins with a basic model of law and society, then goes on to describe the Latin American legal framework and legal culture. He argues that these systems are plagued by a dependent and politicized judiciary, limited access to justice for the poor, a legal culture that stresses formalism, and a general public distrust of law. He then discusses the reform efforts intended to deal with these problems, looking especially at those promoted by the World Bank. He notes that the Bank policy has adopted a more sophisticated and sensible attitude toward legal reform that that which characterized the earlier Law and Development movement, but points out that in practice the Bank often ignores its own principles and falls back on simplistic and flawed assumptions about law, legal reform, and development. Thome then provides more detailed accounts of reform efforts in Uruguay, Chile, and Argentina. He concludes with some general recommendations for law reform projects drawn from Patrick McAuslan: law reform includes political as well as technical aspects; a national constituency for law reform must be in place before outside assistance can be helpful; the ultimate output of reform programs must be national, tailored to local institutions and conditions; law reform is a long term project, and quick fixes should not be expected.

Methodology: Qualitative description and analysis; comparative analysis; attitude surveys

Subject Keywords: Legal reform; judicial reform; rule of law; outside assistance; World Bank; USAID; individual rights; judicial independence; judicial review; democracy; access to justice; legal culture; civil law; colonialism/imperialism; legal implementation; corruption; alternative dispute resolution; informal dispute resolution; judicial efficiency/court delay; court administration; public opinion of legal system; public support for reform; legal pluralism; legal education/training; economic development; equality/social justice; legal profession; Law and Development Movement; law drafting

Law Keywords: Constitutional law; criminal law; administrative law; civil litigation

Country/Region: Latin America; Uruguay; Argentina; Chile

Tobin, Robert W. Creating the Judicial Branch: The Unfinished Reform (Williamsburg, Virginia: The National Center for State Courts, 1999)

A longtime consultant with the National Center for State Courts and a former trial lawyer, the author describes the movement to reform U.S. state court systems from the 1950's on. This section is useful for the parallels with what other nations are now doing. The book also includes a last section on the new agenda. An interesting argument that the first reforms were necessary as only “mature” courts can face the challenge
of reforming the reigning model to make it more appropriate for contemporary societies. The author is critical of the adversarial system and of the role of lawyers in shaping supply and demand.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial reform; judicial efficiency/court delay; civil procedure

**Country/Region:** United States


This article examines the phenomenon of judicial independence in authoritarian Spain. Toharia surveyed Spanish judges’ attitudes on controversial legal-political issues – the rights of criminal defendants, the death penalty, divorce, use of regional languages in courts – and found that there was great diversity of opinion, and some clear liberal patterns of thought. Furthermore, Spanish judges are fairly independent of the executive branch in terms of their selection, training, promotion, and assignment. The existence of judicial independence in an authoritarian regime seems paradoxical; Toharia argues that the judiciary is so independent because it is relatively powerless. The ordinary courts handle only cases without political significance. Potentially political cases are handled by special tribunals – labor courts, commercial tribunals, military courts, and the State Security Tribunal – that are much more closely controlled by the executive. The regime has only attempted to control the administration of justice in those areas it believes are essential, rather than attempting mass political indoctrination and control of ordinary judges. Toharia concludes by pointing out that the Spanish case demonstrates that looking only at whether the judiciary is independent, without looking at how powerful it is, may be inadequate for determining whether a political system is subject to the rule of law.

**Methodology:** Qualitative description and analysis; attitude surveys

**Subject Keywords:** Judicial independence; incentives of judges; individual rights; military courts; political crimes; authoritarianism; rule of law; judicial selection/promotion

**Law Keywords:** Criminal law; administrative law; commercial law; labor law

**Country/Region:** Spain


This report discusses the role the Canadian International Development Agency (CIDA) can play in legal and judicial reform projects in the developing world. Toope first notes the values and principles CIDA seeks to promote, including protection of rights, equality, sustainable development, and environmental protection. He then discusses how one can evaluate a legal system. He advises against the use of the term “rule of law” since it is so vague and confusing, arguing instead that program planners should enumerate the factors that collectively define a sound and effective legal system. Toope then outlines the different types of initiatives that might be undertaken, and also discusses issues of sequencing reforms and the need for political support. He stresses that legal reform is a long-term process, and programmers need to resist the urge to over-sell their initiatives, since that could undermine sustainability in the long term. He also discusses the need for continual monitoring of programs (as opposed to evaluation) and proposes guidelines for how that monitoring should be conducted. In addition, Toope notes the need for more coordination among donors.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Legal reform; judicial reform; outside assistance; CIDA; World Bank; OECD; USAID; democracy; individual rights; economic development; environmental protection; access to justice; civil society; rule of law; institutional capacity; legal education/training; politics of reform; public support for reform; donor coordination; judicial independence; corruption; legal pluralism

**Country/Region:** Developing world (general); Canada

Trebilcock analyzes the problematic issues concerning property rights in land that arise in Papua New Guinea, a country where 97 percent of the land is "customary land" – land owned under traditional or customary titles. Trebilcock focuses especially on the difficulty of accommodating traditional concepts of communal property rights with the country’s economic development goals. He rejects both of the polar positions which, he says, have dominated the debate in Papua New Guinea thus far: the preservation of the traditional, “pristine” status quo, on the one hand, and the complete individualization of land rights, on the other. He advocates more specific reforms, of three basic types. First, he suggests that, while outright alienability of customary land would be inappropriate in most cases, there should be a system which allows transactions in rights of use and the ability to use land as security for loans. Second, he argues that, while communal ownership should be preserved, the law should recognize decision rules other than unanimity of the group, to reduce transaction costs. Third, there is a need for an effective land registration system, but this system should not attempt to be comprehensive; instead, the government should implement a “sporadic” land registration system, funded by registration taxes, applicable only to customary land owners who specifically request it. In order for any of these reforms to be effective, Trebilcock stresses, the government must be prepared to enforce land rights effectively. In sum, Trebilcock suggests that reformers should avoid overly ambitious reform agendas, and instead focus on these types of more limited – but nonetheless critical – reforms.

Methodology: Qualitative description and analysis

Subject Keywords: Property rights; land disputes; economic development; agricultural sector; customary law/indigenous law; legal reform; credit market; insurance; equality/social justice

Law Keywords: Property law

Country/Region: Papua New Guinea


The author examines the benefits the sovereign member states of the European Union (EU) expect to derive by granting the European Court of Justice (ECJ) the power to review the collective policy making decisions of the EU legislative bodies. Using the methodology of constitutional political economy the paper investigates the one-country one-judge rule of judicial appointments in the ECJ, the restrictions imposed on litigants to access the ECJ and the limits on the jurisdiction of the ECJ to review EU legislation. It also analyzes how the presence of judicial review affects the size of the policy measures taken by the policy makers.

Methodology: Qualitative description and analysis

Subject Keywords: Access to Justice, democracy, European Community/European Union, European Court of Justice, judicial review, judicial selection/promotion, litigation, rule of law

Country/Region: Europe


In this article, Trubek summarizes and explains Max Weber’s key ideas about the relationship between law and economic development, in order to make these ideas more accessible to legal scholars and social scientists concerned with law and development issues. Trubek discusses Weber’s typologies of law, the concepts of substantive and formal rationality, and the role of coercion. He also discusses relationship between different types of law and his ideal types of political domination (traditional, charismatic, and legal) and the relationship between law and the rise of capitalism, emphasizing the importance of calculability and predictability. Trubek summarizes Weber’s historical account of the development of modern law and capitalism in Europe, and his attempts to account for England, an apparently deviant case. He concludes by noting that scholars must be careful when attempting to apply Weber’s concepts to the modern problems of the developing world, but that his general approach still has much value.

Methodology: Summary/synopsis; conceptual/philosophical inquiry
This article begins with an examination and critique of the underlying theoretical assumptions – which Trubek calls the “core conception” – that have guided Western law and development assistance programs. According to Trubek, the core conception (usually implicit rather than articulated) is ethnocentric in interpreting all societies in terms of Western history, and evolutionist in viewing history as a series of identical stages repeated in all societies. Both of these perspectives, he contends, make it impossible to understand the dynamics of legal life in the developing world. He focuses especially on attempts to export instrumental legal thought. Such a legal ideology, while appropriate in systems characterized by democratic political pluralism, may actually strengthen authoritarian regimes, which are able to co-opt the legal system and strengthen their own position. The next part of the article attempts to construct a more useful framework for analyzing law in developing countries. He explores the law’s role in ideal-type economic systems (market, command, and mixed) and the role law plays in authoritarian political systems, which he says are distinct from both democracy and totalitarianism. The article concludes with a case study of Brazil. Trubek shows how the core conception’s underlying assumptions distorted the conclusions of law and development studies (including one of his own) and how a more sophisticated analysis of the operation of both politics and markets in Brazil would have led to better research.

Methodology: Critical review; qualitative description and analysis; conceptual/philosophical inquiry

Subject Keywords: Law and Development Movement; modernization theory; legal rationality; legal instrumentalism; economic development; legal implementation; democracy; authoritarianism; individual rights; judicial independence; constitutionalism; import of foreign law/legal transplants; legal education/training; legal reform; rule of law; legal evolution theory; outside assistance; socialism; capital market; military coups; capital market; property rights

Law Keywords: Contract law; administrative law; commercial law

Country/Region: Developing world (general); Brazil


In this article, the authors attempt to explain the “crisis” of scholars working in the field of law and development. This crisis, they argue, stems from a loss of faith among scholars in many of the basic assumptions underlying their work. These assumptions, which the authors label together label the model of liberal legalism, included the belief that legal rules are effective instruments of social change, that the state and the formal legal system are the primary source of social rules, that the legal profession was or could represent the public interest, and the belief in a natural tendency for legal systems in the developing world to evolve in the direction of the legal system of the United States, supposedly an exemplar of liberal legalism. This paradigm guided both research and action in law and development, but the authors argue it was both ethnocentric and naïve, not only failing to represent legal reality in the developing world, but in the United States as well. The realization that law might be ineffective, irrelevant, or harmful caused many scholars to doubt the value of the enterprise. The authors identify and discuss several possible responses to this crisis, including “pragmatic problem solving”, “positive pure science”, and “eclectic critique”, which they endorse. The authors conclude that it is likely that this crisis will result in the dissolution of the law and development field, but argue that this would be a great loss, since the study of law and development has increased our understanding of law and society and could make further contributions.

Methodology: Qualitative description and analysis

Subject Keywords: Law and Development Movement; economic development; outside assistance; individual rights; equality/social justice; legal education/training; USAID; legal instrumentalism; liberal
legalism; legal profession; legal development; democracy; import of foreign law/legal transplants; civil society; symbolic use of law; donor politics

Country/Region: Developing world (general)


This article uses formal spatial analysis to develop a theory that explains the capacity of political systems to produce policy change. The basic concept Tsebelis employs is the “veto player”. Veto players are individual or collective actors whose agreement is necessary for any policy change to take place. Tsebelis further distinguishes two types of veto players: institutional veto players (separate bodies specified by the constitution) and partisan veto players (political parties in coalitions). He argues that policy stability – that is, the difficulty of policy change – increases as the number of veto players increases, decreases with the congruence of veto players’ policy positions, and increases with the internal coherence of the veto players. Furthermore, he argues that increasing policy stability tends to lead to government or regime instability, since it becomes more difficult for the existing government or regime to adjust its policy to new circumstances. Tsebelis applies the veto player framework to various issues in comparative politics, and argues that his theory is more useful than the traditional dichotomies between presidentialism and parliamentarism, unicameralism and bicameralism, two-party and multiparty systems, etc. He concludes by noting that preliminary empirical evidence supports his arguments, but that more research is needed, and that the number and nature of veto players will vary not only by country, but over time and policy area.

Methodology: Formal analysis; comparative analysis

Subject Keywords: Separation of powers; bicameralism; political instability; political parties; electoral process; legislative process; judicial independence; bureaucracy; federalism; presidentialism v. parliamentarism

Country/Region: Western Europe; Latin America; United States; Japan


This book approaches the problem of land and land distribution in Zimbabwe from the perspective of critical social theory. Tshuma focuses especially on the role of law and the state, both as a means by which “social relations of production” are constructed and maintained, and as a potential means by which entrenched institutions might be reformed. The book discusses, among other things, the construction of property rights, the post-independence Zimbabwean state’s use of colonial institutions to promote peasant productivity and accumulation, and the impact of the structural adjustment programs pushed by the international lending community. Tshuma claims that his book has exposed the shortcomings both of liberal legality and constitutionalism, on the one hand, and administrative authoritarianism, on the other. In conclusion, he advocates reforms that would “separate property from the sovereign authority of the state” and “democratize social relations”. The state, he argues, should promote the establishment of local, community-level institutions that could foster democratic regulation and prevent discrimination against the weak.

Methodology: Qualitative description and analysis

Subject Keywords: Land disputes; agricultural sector; property rights; liberal legalism; constitutionalism; individual rights; authoritarianism; colonialism/imperialism; democracy; ideological role of law; equality/social justice

Law Keywords: Constitutional law; property law

Country/Region: Zimbabwe


This study was an attempt to address the dire need for empirical information on Ontario’s civil justice system. It examines Toronto court statistics for five fiscal years, at five-year intervals, between 1973 and
1994, looking separately at cases commenced and cases that went to trial. It offers a wealth of conclusions on six key areas. First, it presents a historical profile of Toronto’s civil court caseloads. The paper shows, for instance, that civil causes of action are proportionately less of the court’s filings in 1994 than 1974, and that civil filings reached a 20-year low in 1994 while peaking two years earlier. Second, surveying the civil court environment, the study shows that the number of lawyers, judges, and courtroom facilities, and other indicators of court activity, increased over the 20 years. Placing these changes in the context of a growing population and economic fluctuation, the authors advise caution in drawing conclusions. Third, the paper seeks to identify the “typical civil case,” noting differences in the profile of cases commenced and brought to trial, including average monetary claims for each group. Fourth, the study constructs a profile of litigants in terms of multiplicity of plaintiffs and defendants, type of litigant, and relationship between litigants. Fifth, the study tracks the paths of civil cases once commenced, noting that 21.6 percent of cases commenced settled over the 20-year period while 3.5 percent went to trial, and that the pace of litigation continually slowed in both the commencement and trial surveys. Sixth, a sample of landlord and tenant applications shows that applications have substantially risen in the last two decades, a likely result of legislative and economic changes. Finally, litigation rates in Ontario are compared with other jurisdictions, revealing Ontario to be less “litigious” than most U.S. states or England and Wales.

Methodology: Quantitative analysis

Subject Keywords: Litigation; judicial efficiency/court delay; court administration

Law Keywords: Civil litigation; family law; tort law

Country/Region: Canada


This article reviews social science research on U.S. public dissatisfaction with the court system, asking the question: “What do people want from the courts?” The author argues that low public satisfaction matters because it discourages voluntary compliance, leads to greater acceptance of vigilantism, encourages legislatures to grant less discretion to the judiciary, and causes disputants to feel little “ownership” of case outcomes. Turning to research of alternative dispute resolution, Tyler argues that informal procedures are generally very satisfactory for disputants, particularly mediation, although they do not save money for the courts. Tyler contends that for most people, the process by which a case is handled is more important to overall satisfaction than either the fairness of outcomes or whether they win; in fact, the sense of procedural fairness is even more significant than the cost or time involved in dispute resolution. Perceptions of procedural fairness stem from the degree of voice/participation that disputants have in the process; the trustworthiness of lawyers and judges (even more so than professional distance); interpersonal respect; and perceived neutrality. These findings imply that ordinary people have a different perspective into the legal system than professionals, and that the long-term social bond with the legal system matters more to people than particular outcomes of cases. On a final note, Tyler argues that people who identify with the society represented by the legal system are more likely to accept decisions on the grounds of procedural fairness, regardless of whether they have won.

Methodology: Literature review; attitude surveys; qualitative description and analysis; quantitative analysis

Subject Keywords: Public opinion of the legal system; civil procedural; legal reform; alternative dispute resolution; access to justice; legal personnel; legal profession; mediation

Law Keywords: Civil litigation

Country/Region: United State


Mapping by the United Nations Development Programme (UNDP) Oslo Governance Resource Centre in 2003 identified a wide range of governance indicators that have been developed and used by organizations. This guide brings some of them together to offer readers a user-friendly overview of indicators that are accessible on the internet.
The document is aimed at governance practitioners in UNDP country offices and other organizations and individuals working on governance and development. It is a snapshot of the indicator sources surveyed in the mapping. As such, it is not an exhaustive list, but is still one of the most extensive guides published. The main section contains 52 one-page international indicator sources. The following section provides seven additional sources that contain useful information on sample and forthcoming indicators, including the United Nations Economic Commission for Africa (UN Economic Commission for Africa) Governance Report. The main criteria for selecting sources were accessibility through the internet and relevance to one or more UNDP focus areas (‘service lines’) in democratic governance. An index provides an overview of the indicators according to different categories: organization name, UNDP governance service lines, methodology, geographical coverage and type of indicators.

Methodology: Summary/synopsis, comparative analysis
Subject Keywords: Governance, performance indicators, UNDP, United Nations


This guide provides direction on how to use and where to find sources of governance indicators. It has been compiled by the European Commission and the UNDP with assistance from Eurostat and the UNDP Oslo Governance Centre. It is written in two parts. The first part proffers generic guidance for users of indicators, illustrated with specific examples from the governance arena, and takes the reader through the following questions: What is the problem? How can we get data? What data can we get? How can we use the data? The second part is a source guide, which takes the reader through some specifics about the currently available data sources, including a snapshot of their methodology, some example data, their contact information and the important assumptions underlying the particular source.

Methodology: Summary/synopsis, comparative analysis
Subject Keywords: Governance, performance indicators, UNDP, United Nations


This working paper draws on a one month study in Sri Lanka in late 1993 to assess USAID and Asia Foundation legal programming. The Asia Foundation has supported human rights, rule of law activities, and other programs to strengthen democracy in Sri Lanka since 1953. In 1990, USAID initiated the Democratic Pluralism Initiative in Sri Lanka, largely implemented by the Asia Foundation. The report presents three main insights: first, that in some societies civic consciousness can be drawn on to make dispute resolution more accessible; second, legal aid is relatively inexpensive and should be made more available to the poor; and third, promoting judicial reform is difficult when potential constituencies are indifferent to, or unable to, promote reform. The report argues that existing interest groups, including the bar, the media, and the commercial sector, have disincentives to press for judicial reform. It also describes the recent experience of Sri Lankan mediation boards, which have dealt mostly with debt and land claims and reportedly reached settlement in about 62 percent of sample cases. A question now debated is whether to give the boards statutory power to subpoena testimony and whether to pay the mediators who now are volunteers. Turning to legal aid, the report states that legal aid is rarely available outside Colombo, national legal aid organizations are under-funded, and demand for legal aid is high. Several possible causes of severe court backlog are noted: minimal judicial time on the bench, the lack of continuous trials, and inadequate storage and retrieval systems for court records. Moreover, some of the actors involved—notably, the lawyers and their clients who benefit from delay, and court staff who indulge in corruption—have incentives to perpetuate delay. The report concludes that without broad constituencies to support reform, a better strategy may be to focus on elite groups who may be better positioned to lead change.

Methodology: Project evaluation; attitude surveys; qualitative description and analysis; quantitative analysis
This working paper evaluates USAID Rule of Law (ROL) programs in Uruguay and Argentina. Both countries had adopted court reform, including a switch from written to oral procedure, shortly before USAID programs began. The review reached several conclusions: that judicial reforms would benefit from assistance to strengthen and sustain them; an elite consensus in the judiciary in support of reform is critical to improving its administrative capacity; and last, strengthening legal systems is a promising venue for expanded USAID involvement. Four analytical areas are discussed: constituency/coalition building; structural reform of the judicial system; access creation strategies; and legal system strengthening. Regarding constituency building, the authors argue that rather than relying entirely on the initiative of elites, donor projects can support outside groups that can increase pressure for change in the legal system. In both Uruguay and Argentina, the introduction of oral procedures has thus far increased court delay and decreased efficiency; however, the added delay may partly reflect the temporary costs of transition, and oral procedures may serve other objectives, such as an increase in transparency. Recent access creation strategies include USAID training programs in ADR and support for public defenders, but ADR has encountered resistance from the judiciary and is being implemented outside the courts. Finally, in surveying the cases of Uruguay’s legal system, the Argentine Federal Supreme Court, and the Supreme Court of Buenos Aires, the report argues that political will to reform is crucial to the success of efforts to strengthen the legal system.

**Methodology:** Project evaluation; attitude surveys; qualitative description and analysis; quantitative analysis

**Subject Keywords:** Access to justice; civil procedure; judicial efficiency/court delay; judicial reform; pilot programs; judicial independence; rule of law; USAID; outside assistance; legal education/training; politics of reform

**Country/Region:** Uruguay; Argentina; Latin America

---

New laws in the United States are requiring courts to access on a real time basis information from a variety of different sources. This report examines how courts can tap into the databases maintained by law enforcement agencies, child welfare agencies, and other sources outside the courthouse. It discusses the security and organizational issues the courts must deal with and includes recommendations for dealing with these and the other challenges data system integration poses.

**Methodology:** Qualitative description and analysis

**Subject:** Court administration

**Law keywords:** Civil litigation

**Country/region:** United States

---

Differentiated case management is a technique courts can use to tailor case management to the requirements of individual cases. With differentiated case management, the traditional “first-in-first out” rule for case scheduling is replaced by a system that accommodates the different kinds of cases filed – some complex and requiring a great deal of attention, others that are routine and can be disposed of quickly. This brief overview of the technique describes how courts can implement it and includes references where additional information can be obtained.
Methodology: Qualitative description and analysis
Subject: Case management
Law keywords: Civil litigation
Country/region: United States

U.S. Department of Justice, Bureau of Justice Assistance “Trial Court Performance Standards and Measurement System” (U.S. Department of Justice, Office of Justice Programs, Program Brief, July 1997)

This report discusses the Trial Court Performance Standards developed by the Bureau of Justice Assistance and the National Center for State Courts. These standards are intended to help state trial courts improve their performance by developing a set of standards and a measurement system that would define and measure effective trial court performance. The report first discusses the five performance areas in which courts are to be evaluated – access to justice, expedition and timeliness, fairness and integrity, independence and accountability, and public trust and confidence. Then, the report summarizes the specific performance measures associated with each of these areas and outlines a seven-step system for implementing the performance standards and measurement system. Appendices list various court performance measures and provide a sample user survey.

Methodology: Qualitative description and analysis
Subject Keywords: Court administration; performance indicators; access to justice; judicial efficiency/court delay; judicial independence; judicial accountability; public opinion of the legal system
Country/Region: United States


This 1999 evaluation of the U.S. government's bilateral programs to support criminal justice reform in Colombia, El Salvador, Guatemala, Honduras, and Panama was conducted by the General Accounting Office, the U.S. government's audit office. These programs have concentrated on improving the capabilities of judges, prosecutors, and public defenders through training and institutional strengthening measures and enhancing the investigative capacity of the police and other law enforcement institutions. The GAO gives the US government credit for being a positive force, noting that host country officials and civil society representatives in each country stated that, “the presence of the international community – particularly the United States – was needed to help encourage government officials to devote necessary resources to enact, implement, and sustain needed reforms.” Lengthy descriptions of the programs in each country are included. Interviews with U.S. and host government officials and non-governmental organizations was the principal method used to evaluate the programs.

Methodology: Qualitative description and analysis
Subject Keywords: Rule of law; legal reform; judicial reform; outside assistance; institutional capacity; legal education/training; public prosecutors; legal services; law enforcement; politics of reform
Country/Region: Colombia; El Salvador; Guatemala; Honduras; Panama


The excessive length of court proceedings is one of the fundamental symptoms of the crisis of the judicial system in Croatia. Although it may suffer from other disfunctionalities like lack of experience and knowledge of trial judges, decisions of poor quality, difficulty in securing impartial and fair trials for particular categories of parties and cases, ensuring a fair trial within a reasonable period of time has emerged as the most pressing and most obvious problem.

The author points to several of the factors that have stimulated the discussion of the need to accelerate proceedings and then defines the basic notions of the question. Eventually, he presents current projects aimed at accelerating court proceedings and identifies six different acceleration strategies.
Methodology: Qualitative description and analysis
Subject Keywords: Case management, civil procedure reform, civil litigation, civil procedure, court performance, institutional capacity, judicial efficiency/court delay, post-socialist transition, post-transition justice
Country/Region: Croatia/Europe


An efficient system for the protection of civil and human rights is a precondition for joining the European Union. This paper analyzes the origins of the crisis of the Croatian judicial system and the factors that have brought the length of court proceedings into the center of professional and political debates. Strategies for accelerating civil proceedings featured in current attempts at reform are presented, with an emphasis on the procedural reforms in litigation, enforcement and bankruptcy proceedings. Eventually, the author expresses doubts about whether it is possible to make any important advances with the operations planned. Without an efficient judiciary, however, it is impossible to have a complete transition to the model of the democratic liberal state, and a dysfunctional judicial system can bring the implementation of economic reforms into question as well. To this extent, then, a thoroughgoing reform is of first-rate importance for the creation of the preconditions necessary for EU membership.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice, civil litigation, civil procedure, court delay, court performance, European Community/European Union, institutional capacity, judicial efficiency/court delay, judicial reform, law enforcement, legal reform, post-socialist transition, post-transition justice
Country/Region: Croatia/Europe


The author traces the reasons for the crisis of the Croatian judiciary (war, instability and authoritarian government). Although the reform of the system of justice now enjoys top political priorities, its implementation meets difficulties from the very outset. The beginning of the comprehensive reform was marked by the decision of the Constitutional Court in March 2000, when several provisions of the laws regulating the role and status of judges were struck down. The practice of the State Judicial Council in the appointment of judges was criticized as unconstitutional. Among other annulled provisions, the Court ruled that the Judicial Council does not have constitutional powers to appoint the court presidents. At the end of 2000, the constitutional amendments and changes to the Courts Act and the Act on State Judicial Council introduced a new system of appointment and removal of judges and state attorneys. However, the new system encountered a strong opposition among those who were personally affected by the reform. According to the author, the lack of determination for fundamental reforms mixed with systemic difficulties inherent to any judicial reform, as well as with post-socialist misunderstanding of the principles of separation of powers and independence of the judiciary may lead to poor chances for the success of the reformist endeavors.

Methodology: Qualitative description and analysis
Subject Keywords: Authoritarianism, court administration, democracy, judicial accountability, judicial independence, judicial reform, judicial selection/promotion, politics of reform, politics of resistance, post-socialist transition, post-transition justice, public support for reform, separation of powers
Country/Region: Croatia/Europe

In 2003, the Council of Europe adopted a recommendation, Rec(2003)17, on enforcement. The author presents the link between enforcement and the right to a fair trial according to article 6 of the European Human Rights Convention. He explains the relevant case law of the European Court of Human Rights in matters of fair trial and enforcement. Subsequently, he presents a typology of enforcement systems and discusses their respective advantages and disadvantages. Finally, he elaborates on the role, the organization, the status and the training of enforcement agents.

Methodology: Qualitative description and analysis
Subject Keywords: Civil procedure, court performance, human rights, judicial efficiency/court delay, litigation, post-socialist transition, post-transition justice, private enforcement organizations
Country/Region: Croatia/Europe


In 2001, two amendments to the Law on Courts and the Law on the State Judicial Council became effective. The author traces the history of events that gave rise to the changes and presents the problems the reforms aimed to mitigate: separation of judicial and administrative functions, improving the judicial council, transparent evaluation of judicial candidates, and competencies, appointments and removal of the Presidents of Courts. Subsequently, he elaborates on the difference between court administration and judicial administration. Finally, the author presents in detail the reform and the functioning of the Croatian Judicial Council as well as the appointment procedures for Court presidents.

Methodology: Qualitative description and analysis
Subject Keywords: Court administration, judicial accountability, judicial independence, judicial selection/promotion, legal education/training, politics of reform, post-socialist transition, post-transition justice, separation of powers
Country/Region: Croatia/Europe


This article addresses the role of legal professionals and lawyers’ claim for the independence of their profession. Historically, they are representatives of the parties as well as “officers of the court”. During the nazi regime in Germany or in Stalin’s Soviet Union, the profession was instrumentalized. As a consequence, there was a growing claim for independence of the profession. The author shows the difference between judicial independence and the independence of the legal profession. He reveals that independence of the bar is not the same thing as independence of lawyers and explores differences between the private and public law model of bar associations. Finally, the author identifies fields where cooperation between the bar and public authorities could make sense: admission to the bar, disciplinary proceedings, defining professional standards, establishment of tariffs and schedules of fees, education and training, and arbitration in professional disputes.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial independence, legal personnel, legal profession, legal services, post-socialist transition, post-transition justice, regulation of legal services
Country/Region: Croatia/Europe

After defining the notion of bailiff, the author presents a typology of enforcement systems: a court based system of enforcement, a system of enforcement by the executive branch, and a system of enforcement by private bailiffs. He weighs the pros and the cons of each system thus defined. Moreover, he addresses other questions that are related to the profession of bailiffs: their role, organization, status and training. Finally, the author analyzes specific problems with bailiffs in transition countries.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Court administration, court performance, institutional capacity, law enforcement, legal personnel, legal profession, post-socialist transition, post-transition justice, private enforcement organizations

**Country/Region:** Central Europe, Eastern Europe


This synopsis questions the independence of the judiciary as well as foreign assistance in the field of law and justice in countries of transition. Although the author does not deny the importance of judicial independence, he stresses that an Anglo-American approach, when faced with judicial issues in European continental countries, regularly starts with wrong assumptions and wrong answers. As a consequence, he states that the results of American influenced foreign assistance for legal and judicial reform has produced few results, because it does not take into account country specificities. He deplores the lack of empirical research on the functioning of the judicial sector in Europe and the difficulty of transnational comparisons due to very different national situations.

**Methodology:** Synopsis

**Subject Keywords:** Colonialism/imperialism, common law, donor politics, ideological role of law, import of foreign law/legal transplants, judicial independence, judicial reform, legal culture, outside assistance, post-socialist transition, post-transition justice, separation of powers, USAID, World Bank

**Country/Region:** Croatia/Central Europe, Eastern Europe

**Van Aaken, Anne; Salzberger, Eli & Voigt, Stefan** “The Prosecution of Public Figures and the Separation of Powers: Confusion within the Executive Branch” German Working Papers in Law and Economics, volume 2003, paper 11 (19 pages)

Criminal investigation and prosecution of politicians, top civil servants and other public figures are topics frequently discussed in the media. The nature of the investigating or prosecuting authority varies between countries; from the general public prosecutor, through magistrates to independent counsels or parliamentary investigation commissions. This paper analyzes the role and status of public prosecutors within separation of powers-concept. Prosecutors are usually part of the executive and not the judicial branch, which implies that they do not enjoy the same degree of independence as judges, and are ultimately subordinated to the directives of the minister of justice or the government. Conflicts of interest may hence arise if members of government can use the criminal process for their own or partisan interests. The incentives of public prosecutors in different jurisdictions are compared.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Corruption, crime control, criminal law, criminal sentencing, governance, public prosecutors


These two chapters survey the history of developments in constitutional law and political organization of major Western countries between the beginning of the seventeenth century and the middle of the twentieth century. Major themes include the doctrine of the rule of law, individual rights, the relative power of the
legislative and the executive, the relationship between church and state, and the interaction between political and constitutional change. The influence of constitutional and political developments in one country on other countries is also emphasized. Although constitutions are outlined and legal issues are discussed, the emphasis is on political history, rather than intellectual history or jurisprudence.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Constitutionalism; rule of law; absolutism; monarchy; republicanism; democracy; federalism; legislative supremacy; individual rights; judicial independence; judicial review; separation of powers; legislative process; electoral process; revolution; religion; military coups; constitution drafting; constitutional change; political reform/regime change

**Law Keywords:** Constitutional law; criminal law

**Country/Region:** United Kingdom; France; Germany; Austria; Netherlands; Belgium; Switzerland; United States


Increasing pressure from the public, press and the political body forces the judiciary to concern themselves on a more systematic basis with the issue of quality. This article reflects the Dutch experience. According to the author, the quality of the administration of Justice can be properly measured. In September 1998, a project entitled Reinforcement of the Judicial Organization Project (Versterking Rechterlijke Organisatie, PVRO) suggested a number of initiatives that are now implemented. Experiences abroad show that the development and implementation of such initiatives take some years.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Court administration, court performance, judicial accountability, judicial independence, judicial reform, performance indicators

**Country/Region:** Netherlands/Europe

Van der Kam, Elske *Kwaliteit gewogen* (The Hague: Boom Juridische Uitgevers, 2001), 246 pages

(“Weighted Quality”, in Dutch) The quality of justice has been an object of intense public debate in the Netherlands since the 1990s. The author addresses the central question of what quality exactly is. She then analyzes the quality of civil justice from the perspectives of the different stakeholders (Ministry of Justice, judicial organizations, judges, lawyers, citizens).

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Court administration, court performance, judicial accountability, judicial independence, judicial reform, performance indicators

**Country/Region:** Netherlands/Europe


(“Legal Infrastructure of the Netherlands in an International Perspective. Crime Control.” In English & Dutch) This report puts the performance of the Dutch criminal justice system in an international perspective by comparing it to those of comparable countries. Among the findings of the report, the comparison with nine countries of reference shows that the Netherlands face widespread criminal behavior. The main focus, however, are minor offenses. An explanation for the difference of the Dutch criminal profile with those of other countries seems to be the possibilities for criminal behavior (urbanization, international flow of goods, services and finances transactions). The reason is not the demographic profile. There seems to be room for improvement as far as preventive measures are concerned. As to public expenses for crime control, the Dutch ones turn out to be average.
**Methodology:** Qualitative description and analysis; comparative analysis  
**Subject Keywords:** Costs of the legal system, court delay, court performance, crime control, criminal law, criminal sentencing, equality/social justice, institutional capacity, judicial efficiency/court delay, legal culture, litigation, obligation to obey the law, organized crime, public opinion of the legal system, public support for reform, state budget  
**Country/Region:** Netherlands, Denmark, Germany, France, Austria, UK, Sweden, Europe, United States


Tracing the history of incorporation of non-state law into the official legal order, this article favors a wider definition of legal pluralism. Accordingly, the term “law” includes the living laws of religious communities as well as unofficial indigenous law and people’s law. Due to the inability of lawyers to see legal rules in their social context, the legal order is largely incongruent with the needs of the heterogeneous South African society. Despite the state’s commitment to legal pluralism today, there is still a conflict between the retention of legal pluralism and the unification of laws achieved by national law prevailing over indigenous law.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Colonialism/imperialism, culture/social norms/ informal institutions, customary law/indigenous law, informal dispute resolution, legal pluralism, popular justice  
**Country/Region:** Africa, South Africa


According to the authors, civil procedure and delay were born together. This is, of course, due to the fact that no lawsuit can be decided fairly without at least some minimum period of time in between first presenting the case to a court and obtaining a final judgement. Manifestly this type of delay is not problematic. Delay becomes a problem, however, if it can be classified as ‘undue’ delay, i.e., when it is felt that too much time has elapsed between the filing of an action and its ultimate decision by the court. Even though there have been many reform attempts and measures have been taken in both civil law and common law jurisdictions to accelerate civil litigation, complaints are still being voiced today. The legislature and rule-making authorities as well as numerous reform commissions continue to be occupied in curbing the evil of undue delay, often without much success. This may be due to various reasons, on of them being the fact that too often a comparative and historical approach to the subject of reform of civil procedure is missing.

This book aims at changing this situation by providing a comparative and historical analysis of undue delay in civil litigation with examples across the centuries from the United Kingdom, the United States, Quebec, Hungary, Germany, the Netherlands, Finland, Sweden, Austria, Denmark, Croatia, and Spain.

**Methodology:** Qualitative description and analysis, comparative analysis  
**Subject Keywords:** Access to justice, civil procedure reform, civil litigation, civil procedure, court delay, court performance, due process, institutional capacity, judicial efficiency/court delay, judicial reform  
**Country/Region:** United Kingdom, United States, Quebec, Canada, Hungary, Germany, the Netherlands, Finland, Sweden, Austria, Denmark, Croatia, Spain/Europe


This article surveys conceptual and methodological issues to consider in evaluating legal aid services. The authors suggest that evaluations should consider 1) who will be conducting the evaluation; 2) the goals of the program; 3) the specific program theory by which the program is supposed to achieve its goals; 4) the purpose of the evaluation – whether a needs assessment, process review, outcomes evaluation, or cost analysis; 5) the “counterfactual question” – a comparison with the situation had the program not been in place. On methodological selection, the authors recommend and discuss four options for evaluating a
program: using existing data, conducting a focus group, issuing a survey to service recipients, and arranging a controlled experiment.

Methodology: Qualitative description and analysis
Subject Keywords: Access to justice; legal services
Country/Region: United States


(“The Delta of Dispute Resolution 2003 – On the evolution and resolution of (potential) judicial problems of citizens”, in Dutch) In recent years, the administration of justice is characterized by an increase of out-of-court settlement of conflicts and a more diverse access to justice. The parties themselves determine which way to choose. This report aims at providing a comprehensive picture of dispute resolution mechanism available to citizens, one of them being the judge. The authors analyze how often parties go to court, how often they solve the problems themselves, and to what extent they are satisfied with the solution. The report describes the Dutch landscape of dispute resolution.

Methodology: Qualitative description and analysis
Subject Keywords: Access to Justice, alternative dispute resolution, arbitration, civil litigation, costs of the legal system, court delay, credit associations, criminal sentencing, culture/social norms/informal institutions, customary law/indigenous law, informal dispute resolution, insurance, legal aid, legal information, litigation, mediation, public opinion of the legal system, settlement
Country/Region: Netherlands, Europe


(“The Re-motivated Judiciary – The Process of Institutionalizing a ‘New Judiciary’ in Italy (1960 – 2000)”, in French) The author describes and analyzes in depth the evolution of the Italian judiciary from an institution that was completely integrated into the State and under the control of politicians to a countervailing power within the State and thus guaranteeing the respect of rules among politicians. The reasons for this evolution are shown as well as the social mechanisms by which the institutions transform and reinvent their reason of being under the cover of apparent institutional continuity. Today, the Italian judiciary is taken seriously by the population at large and politicians in particular. It is a relevant factor in the social and political life of the country. The complex interlinkages between politics and justice are an important topic dealt with by this study.

Methodology: Qualitative description and analysis
Subject Keywords: Civil society, corruption, court delay, court performance, democracy, incentives of judges, institutionalization, judicial accountability, judicial activism, judicial independence, judicial reform, legal culture, litigation, obligation to obey the law, organized crime, political instability, political parties, politics of reform, politics of resistance, public support for reform, rule of law, separation of powers
Country/Region: Italy/Europe


This article surveys the literature on the independence of supreme courts in Latin America. Verner states that this topic is relatively neglected, and what little evidence there is tends to be based on subjective impressions of country experts. Those studies that do exist tend to assert that Latin American supreme courts are generally not independent, despite formal constitutional guarantees of independence. Verner identifies seven main reasons offered in the literature as to why this is so. These are: the tradition of executive dominance, political instability, the civil law system, the structure of the judicial process, the limited use of judicial review, the lack of a popular power base for the courts, and the appointment and tenure provisions of the constitutions. However, Verner also notes that there is substantial variation between countries and over time.
Thus, the second half of the article classifies courts according to a six-fold typology, derived from the limited existing data, and describes the experience of the supreme courts in each of twenty Latin American countries. Verner concludes by stressing that this topic needs more comparative, systematic, empirical research.

**Methodology:** Literature review; comparative analysis; qualitative description and analysis

**Subject Keywords:** Judicial independence; judicial review; separation of powers; political instability; civil law; legal formalism; civil procedure; public opinion of the legal system; judicial selection/promotion; military coups; military courts; human rights; authoritarianism; democracy

**Law Keywords:** Constitutional law; criminal law; administrative law

**Country/Region:** Latin America; Costa Rica; Uruguay; Chile; Mexico; Argentina; Brazil; Columbia; Venezuela; Bolivia; Peru; Ecuador; El Salvador; Honduras; Guatemala; Haiti; Dominican Republic; Nicaragua; Cuba


This epilogue reflects on issues related to the separation of powers and constitutionalism since the publication of the book’s first edition in 1967. The chapter focuses on the rise of the administrative state and attempts to control administrative agencies in the United States and Britain. Vile argues that neither country has dealt adequately with the rise of the administrative bureaucracy, and insists that addressing the issue requires acknowledging that there are now four, rather than three, branches of government in a democratic state: the legislature, the government or “policy branch”, the administrative machine, and the judiciary. Once the administrative bureaucracy has been recognized as an independent fourth branch, it can and should be separated more clearly from the other branches, and at the same time subjected to checks and balances in order to control it. Vile acknowledges two dangers of this approach. First, that pressure groups would exert even greater pressure on the administrative machine, and second that the directors of the administrative departments could coordinate their actions and become an un-elected government. But he believes that these dangers could be offset by oversight from the legislative and policy branches.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Separation of powers; political parties; judicial review; ombudsman; bureaucracy; individual rights; constitutionalism; rule of law

**Law Keywords:** Constitutional law; administrative law

**Country/Region:** United States; United Kingdom


The author gives an account of the role of cultural forces (such as language, education, perceptions of identity, political orientation, values, and intellectual inspiration) in the making of mixed legal systems. Examples are drawn from the South African Experience, but they are intended also to be representative of the experience in other mixed jurisdictions. The article pays particular attention to the role of “legal opinion makers” in directing which cultural factors most affect a legal system at a particular point in time. In addition to demonstrating the formative role of culture in mixed legal systems, the study compares the common law and the civil law on the basis of Geert Hofstede’s “dimensions of culture” and comes to the conclusion that these two traditions are, culturally speaking, more compatible than is often realized. Finally, the author takes sides in the debate whether Alan Watson and Pierre Legrand, arguing that, because culture is always learnt, it can also be unlearnt; and that therefore no existing cultural realities need ever be permanent obstacles to change.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Civil law, common law, colonialism/imperialism, constitutional change, culture/social norms/informal institutions, ethnic politics, import of foreign law/legal transplants, legal culture

**Country/Region:** South Africa/Africa

This report is based on the data collected for a previous Dutch report (“Rechtspraak in de 21e eeuw”, 1999) and contains some additional information on the Judicial Councils of Croatia and the Czech Republic. It analyses different institutional approaches to the balance between judicial independence and accountability.

**Methodology:** Comparative analysis  
**Subject Keywords:** Judicial accountability, judicial independence, separation of powers  
**Law Keywords:** Judicial council  
**Country/Region:** Croatia, Czech Republic, Netherlands, Sweden, Ireland, Denmark, France, Italy, European Union


(“The Judiciary in the 21st century”, in Dutch) This study compares the role and position of judicial councils in five EU countries in order to reflect on the creation of a judicial council in the Netherlands and its possible competences. Two different models are identified (Southern and Northern European) and discussed. A link is made between the way in which ministerial responsibility is organized and the functioning and composition of judicial councils.

**Methodology:** Comparative analysis  
**Subject Keywords:** Judicial accountability, judicial independence, separation of powers  
**Law Keywords:** Judicial council  
**Country/Region:** Netherlands, Sweden, Ireland, Denmark, France, Italy


This article surveys the literature on “positive constitutional economics” – the use of economic tools to study how constitutional rules are chosen, and how they in turn affect economic and political outcomes. Voigt begins with a general survey of the background literature and methodology, and then focuses on four topics in positive constitutional economic theory: the impact of procedures on the selection of rules; the relationship between rules and preferences of the actors; the process of constitutional change; and the economic effects of constitutional rules. Within these four topics, a variety of related topics – including the separation of powers, federalism, and democratic politics – are discussed.

**Methodology:** Literature review  
**Subject Keywords:** Constitutionalism; public choice; constitution drafting; property rights; economic development; individual rights; separation of powers; judicial independence; democracy; federalism; secession; culture/social norms/informal institutions; constitutional change; legislative process  
**Law Keywords:** Constitutional law

Von Hoyningen-Huene, Dagmar “Aussergerichtliche Konfliktbehandlung in den Niederlanden und Deutschland” (Cologne: Verlag Dr. Otto Schmidt, 2000) 300 pages

(“Alternative Dispute Resolution in the Netherlands and Germany”, in German) This contribution to the debate in Germany about alternative dispute resolution (ADR) is based on the assumption that the legal and social systems of the Netherlands and Germany are close enough to learn interesting lessons from the Dutch experience in this field. As opposed to Germany, the Netherlands have a significant ADR culture. After defining the object of the study, the author gives a range of quantitative and qualitative arguments for the establishment of comprehensive ADR mechanisms. She then analyzes and compares the Dutch and German ADR institutions.

**Methodology:** Comparative analysis, qualitative description and analysis
In this article, the authors apply a Weberian model of law and development to the case of land law in Thailand. They argue that the development of a modern “formally rational” system of legal title in land had an important effect on the commercialization of agriculture in Thailand, and hence on Thai economic development. The title system, they contend, clarified ownership, enabled the creation of security interests in land, lowered interest rates and fostered capital investment. After outlining the theory, the authors proceed by tracing the history of land law in Thailand and discussing the economic and political factors that led the country to adopt a Western system of title in the early twentieth century. They then assess the impact of the new system, and argue that it tended to displace more traditional practices in areas where commercialization of agriculture was taking place. The authors conclude by noting that while it would be incorrect to treat law as a completely independent variable that “caused” agricultural commercialization, law probably spurred or reinforced the process. They argue that their approach and findings can help revitalize the defunct Law and Development movement.

Methodology: Qualitative description and analysis

Subject Keywords: Law and Development Movement; property rights; economic development; agricultural sector; legal rationality; legal reform; legal transplants/import of foreign law; credit market; customary law/indigenous law

Law Keywords: Property law; contract law

Country/Region: Thailand

In this article, Von Muhlenbrock discusses the problem of judicial corruption in Chile, which became rampant under the military regime of General Pinochet. This systematic corruption is sustained by aspects of judicial institutional form in Chile. First, the Supreme Court was closely allied to the military regime, and used its disciplinary powers over other judges to enforce a uniform interpretation of the law that was agreeable to the regime. Second, both the Supreme Court and lower courts exercised a high level of unchecked discretion, which allowed corruption to thrive. Von Muhlenbrock argues that rampant corruption not only impeded the efficiency and quality of adjudication, it also created impediments to effective judicial reform. The article concludes that the best antidote to judicial corruption is the separation of powers, democracy, and related institutions such as a free press, pressure groups, opposition parties, and informed public opinion.

Methodology: Qualitative description and analysis

Subject Keywords: Corruption; judicial efficiency/court delay; court administration; incentives of judges; democracy; judicial reform; military coups; authoritarianism; individual rights; judicial independence; separation of powers; judicial review

Law Keywords: Constitutional law; criminal law

Country/Region: Chile

This paper assesses judicial independence and decision-making in developing countries, focussing on former British colonies. Vyas notes that in most of these countries, constitutional safeguards are provided for the independence of the judiciary, though these safeguards are not always enforced in practice. He stresses that real judicial independence encompasses not only independence from other branches of government, but also from political and private pressures and influences. Vyas then surveys the case law in various countries to
assess broad trends in judicial behavior. He finds that while courts have often been very assertive in protecting property rights, they have tended to be much more willing to tolerate violations of other individual rights when the executive claims reasons of public order or stability. The courts also seem reluctant to protect individuals against encroachment of fundamental rights by private parties. Vyas also discusses the dilemmas of judiciaries in times of constitutional crisis – such as a revolution or a coup – and when the executive declares a state of emergency. He also notes the need for courts to be sensitive to the socio-political context in which they make their decisions, and to be wary of undermining respect for the independent judiciary as an institution by seeming to ignore national goals and aspirations.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Judicial independence; separation of powers; colonialism/imperialism; individual rights; property rights; judicial decision-making; judicial review; state of emergency; equality/social justice; public opinion of the legal system; revolution; state of emergency; military coups; political parties

**Law Keywords:** Constitutional law; criminal law

**Country/Region:** India; Kenya; Nigeria; Malaysia; Uganda; Pakistan; Sri Lanka; Lesotho


This article discusses the prospects for transplanting Western laws and legal models to the transition countries of the former Soviet bloc. After discussing the history of law under Soviet communist and then reviewing the history of legal transplants and the development of market economy law in the West, the authors focus on the issue of legal transplants during the post-socialist transition. They draw a distinction, first, between the basic legal infrastructure of a market economy – property, contract, and company law – and the more complex types of legal regulation (social, environmental, antitrust) that characterize a more developed social market economy. They argue that, as an economy develops, it becomes more able to bear the latter type of law, but in the early stages legal reformers should be careful not to overburden the system with these more complex types of regulation. Also, they argue that the legal principles in the former category are relatively universal and can be more easily transferred, while the latter types of law reflect more politically contested policy choices. The authors consider other factors that may make legal transplants more or less successful. They stress that legislation only works when supported by social forces; thus law seen as alien or incompatible with indigenous norms is likely to be ineffective. In conclusion, they advocate a legal reform strategy that emphasizes developing interim laws around new, major transactions as they arise, and have this transaction-driven legislation ultimately contribute to the formation of new legislation, rather than trying to import complete, mature Western models. They also stress the need for foreign advisors to have more humility, moderation, and patience with the process.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Legal transplants/import of foreign law; socialism; post-socialist transition; economic reform; privatization; legal reform; law drafting; outside assistance; informal sector/black markets; state sector/public ownership; economic development; legal culture; culture/social norms/informal institutions

**Law Keywords:** Commercial law; contract law; property law; antitrust law

**Country/Region:** Russia; Eastern Europe; Central Europe


Wagner argues that the constitutional “contract” – which sets the rules of the political game and allows members of society to escape a Prisoners’ Dilemma-type situation – is not self-enforcing, and may be subject to erosion as the government substitutes “predation” – transfers of wealth to itself or supportive interest groups – for “exchange.” Moreover, he claims that in the United States the Supreme Court cannot be thought of as the guardian of the constitutional contract, as the court has amended the constitution through “interpretation” to allow the legislature’s anti-constitutional predator programs, especially with regard to the protection of private property rights. In fact, he argues, the judiciary will generally be the agent of the
legislature – if not the current legislature, then some weighted average of past legislatures. Therefore, he proposes that the only way to preserve the constitutional contract and to prevent “exchange” from giving way to “predation” is to restructure the legislative process and/or the incentives of legislators so that supporting exchange becomes more profitable than pushing predatory, redistributive policies.

Methodology: Qualitative description and analysis
Subject Keywords: Public choice; constitutionalism; judicial review; judicial independence; separation of powers; bicameralism; legislative process; republicanism; democracy; rent-seeking; property rights; judicial decision-making; judicial deference/political questions doctrine; legislative supremacy; social services/welfare state; constitutional change
Law Keywords: Constitutional law
Country/Region: United States


This paper discusses existing studies on public perceptions of Ontario’s civil justice system, defined as the legal profession and the civil courts. Surveys have found that civil justice concerns are not high priority issues with the public, and knowledge of the civil justice system is minimal. Wain reviews a range of survey results in such areas as public knowledge, confidence, use, and user satisfaction with the civil justice system. These surveys show, inter alia, that only a small fraction of “legal problems” are resolved through the legal system, and that the decision to press a claim is based on such factors as type of problem and alternatives available. Perceptions and use of the legal system also exhibit some variance across socioeconomic groups and racial/ethnic communities. The paper turns next to “insider” perspectives, examining the perceptions of lawyers, judges, and public interest groups as displayed in the recent Civil Justice Review. The bar and bench identify cost, delay, and inefficiency as the most pressing problems in the civil justice system. Other interest groups consulted in the Civil Justice Review found these problems to be important but also showed concern for access to justice issues, and saw the legal system as only one means for resolving disputes.

Methodology: Attitude surveys; quantitative analysis; qualitative description and analysis
Subject Keywords: Public opinion of the legal system; costs of the legal system; judicial efficiency/court delay; access to justice; legal literacy
Law Keywords: Civil litigation
Country/Region: Canada; United States


As civil litigation becomes more prevalent and more complex, the need for effective case management becomes paramount. A court’s pretrial procedures can have a dramatic impact on its ability to manage cases and on the course of litigation. Effective pretrial procedures prevent unnecessary delay, encourage settlement, decrease litigants’ cost, and facilitate the effective use of judicial resources. Ineffective pretrial management can lead to delays and court congestion. According to the author, although pretrial management is critical, there is no single pretrial model that would be effective in every jurisdiction. Nevertheless, when a country scrutinizes its own pretrial rules, comparing them with the systems used by courts in other countries, the analysis can lead to the adoption of more effective pretrial procedures that fit that country’s judicial system.

Methodology: Qualitative description and analysis; comparative analysis
Subject Keywords: Case management, civil procedure reform, civil litigation, court delay, court performance, judicial efficiency/court delay, judicial reform, litigation
Country/Region: Australia, Bangladesh, Brunei, Fiji Islands, Hong Kong, India, Japan, Kiribati, Korea Marshall Islands, Micronesia, New Zealand, Nigeria, Pakistan, Philippines, Singapore, Thailand

In this short piece, Wallace explores mechanisms to combat judicial corruption. He notes that judicial accountability and judicial independence, while both essential to the rule of law, may sometimes be in tension with each other. He argues that the best way to ensure accountability while preserving independence is to leave the responsibility for investigating judicial corruption to the judicial branch itself. He also compares the United States system of handling judicial corruption with the experience of several Asian nations. He concludes that an effective system should have a process for disciplining judges managed by a permanent organization of judicial peers, and that such an organization should focus only on behavior which might prejudice the court system.

**Methodology:** Qualitative description and analysis; comparative analysis

**Subject Keywords:** Corruption; judicial independence; rule of law

**Country/Region:** United States; Asia


Despite the inexistence of an independent judiciary, the Chinese constitution gives individuals the right to compensation for governmental and official infringements that have caused loss of individuals’ lawful interest. This constitutional right was not enforced until 1986, when the General Principles of Civil Law were enacted allowing citizens to sue government organs through civil procedures. The Administrative Litigation Law, passed in 1989, established a system of judicial review over agency actions. The State Compensation Law of 1994 further developed the state compensation system by defining the scope of state compensation, the criteria for liability and immunity and precise procedures for claiming compensation against state organs. The implementation of these laws has created a forum of individuals and legal entities to challenge the state and to claim compensation, but practice is still developing.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Administrative courts, administrative law, authoritarianism, democracy, individual rights, judicial independence, judicial review, obligation to obey the law, rule of law, separation of powers, tort law

**Country/Region:** East Asia, China


In this article, Watson synthesizes his earlier work on law and society, and addresses some the major criticisms leveled at his work. His main theme is that most law and society theory posits a much closer connection between the needs of society, or ruling groups in society, and law than is justified by the historical record. Numerous examples illustrate the point that frequently dysfunctional legal rules will persist for decades or centuries, even when those with the power to change the law recognize the problems, and alternative rules have been explicitly proposed. After answering his critics, Watson suggests an explanation for this persistent phenomenon. He argues that much of the explanation relates to culture – of lawyers, of lawmakers, and of the general public. He claims that variations in legal culture – an autonomous sphere connected to but separate from other economic, social, and political conditions – have enormous power in explaining the type and timing of legal change.

**Methodology:** Critical review; qualitative description and analysis

**Subject Keywords:** Legal culture; import of foreign law/legal transplants; legal reform; legal development; civil law; common law; legal education/training

**Law Keywords:** Property law; contract law; family law

**Country/Region:** Western Europe; England

Watson claims that comparative law, as an academic discipline, is primarily the study of the historical relationship between different legal systems. He focuses specifically on “legal transplants” – the borrowing by one legal system of legal rules developed in another system. Watson claims that such transplants historically are extremely common, and are in fact the main source of legal development. This is true even when the foreign law being received is completely misunderstood. In fact, he says, no area of private law is terribly resistant to foreign influence, even those areas, such as family law, generally thought to be particular to a specific group of people. The transplanted law, however, will not necessarily be unchanged in its new environment. Often law is received by a less sophisticated and advanced society, and in the process the law may be greatly simplified or distorted. Also, though, the of reception is an opportunity to examine legal rules more closely, and is often a period when law can be reformed and made more sophisticated. Watson supports his claims with historical evidence from the ancient Near East, ancient Rome, medieval and modern Europe (especially Scotland), and European colonies in Massachusetts and New Zealand.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Import of foreign law/legal transplants; legal reform; civil law; common law; legal education/training; colonialism/imperialism

**Law Keywords:** Contract law; tort law; family law; property law; criminal law

**Country/Region:** Western Europe; Scotland; England; Netherlands; South Africa; New Zealand

**Weede, Erich** “Political Regime Type and Variation in Economic Growth Rates” *Constitutional Political Economy* 7:167-176 (1996)

According Weede, research about the effects of political regime type on economic growth rates have not found any robust, significant difference between the average growth rates of autocracies and democracies. However, he suggests that this may be the wrong question. Because autocrats are relatively unconstrained, variation in the goals and behavior of an autocratic leader is likely to have a more important impact on growth. In democracies, political leaders are relatively more constrained. Thus, while there is not likely to be much difference in average growth rates between autocracies and democracies, the variance in growth rates is likely to be much greater in autocracies. In other words, some autocracies will perform worse than even the worst-performing democracies, while some autocracies will perform better than the best-performing democracies. Weede tests this hypothesis using cross-national data, and his results support the hypothesis that the variance in growth rates is greater for autocracies than for democracies.

**Methodology:** Quantitative analysis; comparative analysis

**Subject Keywords:** Authoritarianism; democracy; economic development; rent-seeking; investment

**Country/Region:** Developing world (general)


Weingast argues that economic success depends on political institutions that can adequately address what he calls the “fundamental political dilemma of an economic system”: a government strong enough to protect property rights is also strong enough to confiscate its citizens’ wealth. Thus, economic success requires not only correct economic policies, but a credible commitment by the government to adhere to those policies even when it will face short term incentives to confiscate and/or redistribute wealth. This article examines how limited government arose in the West, focusing especially on the institution of federalism. Weingast first describes how a subset of federalist arrangements – which he calls “market-preserving” federalism – enhances economic productivity, illustrating his argument with examples from England and the United States. He then seeks to explain how the central government’s commitment to preserve federalism, as well as other institutions, is sustained. He suggests that the explanation lies in the ability of citizens to coordinate their resistance to violations of rights by the sovereign. He develops this idea with a simple formal model, and then illustrates the principle with the case of the English Glorious Revolution.

**Methodology:** Formal analysis; qualitative description and analysis

**Subject Keywords:** Economic development; economic reform; property rights; constitutionalism; rule of law; civil society; federalism; democracy; individual rights; rent-seeking

Weingast argues that successful economic development requires not only an appropriately designed economic system, but also political institutions that protect private property rights and prevent government authorities from expropriating wealth. He claims that some form of limited government is a prerequisite for market development, and focuses especially on the role of federalism in fostering such limited government. According to Weingast, while federalism per se does not necessarily facilitate limited government and secure markets, a particular kind of federalism – which he calls “market-preserving federalism” – does. Market preserving federalism is characterized by: a hierarchy of governments in the same territory, each with a delineated scope of authority; the autonomy of each government is institutionalized and self-enforcing; subnational governments have primary responsibility over the economy; a common market is ensured by the national government; the subnational governments face a hard budget constraint. Weingast outlines the benefits of market-preserving federalism (due mostly to competition between subnational governments), develops a formal model to show how such a system can be made self-enforcing, and illustrates the benefits of market-preserving with case studies of England, the United States, and China.

Methodology: Qualitative description and analysis; formal analysis

Subject Keywords: Federalism; economic development; investment; property rights; rent-seeking; rule of law; constitutionalism; culture/social norms/informal institutions

Law Keywords: Constitutional law

Country/Region: United States; England; China


This article develops a game-theoretic approach to the problem of political officials’ respect for the rights of citizens. Weingast models the situation as an asymmetric coordination problem among citizens. In order to police state violations of individual rights, citizens need to act in concert. However, this is difficult in practice, both because a diverse citizenry may not agree on the appropriate limits to government, and because some groups might actually benefit from the state violating the rights of other groups. In order for citizens to achieve the Pareto-optimal solution – in which the state respects citizen rights and citizens are prepared to challenge any transgressions – citizens must establish a focal point for coordination, and value the future highly enough that they will not acquiescing to a violation even if they could gain in the short term. This can be achieved through agreements between the parties, but these agreements must be self-enforcing. Weingast argues that this perspective provides insights into some of the most important problems in the literature on democracy, including the role of democratic and civic “values”, the difficulties of democracy in deeply divided societies, and the significance of elite pacts. Weingast illustrates the applications of his model to the Glorious Revolution in England, problems of democratic consolidation in Latin America, and the constitutional history of the United States.

Methodology: Formal analysis; qualitative description and analysis

Subject Keywords: Rule of law; democracy; constitutionalism; individual rights; divided societies; ethnic politics; culture/social norms/informal institutions; revolution; political reform/ regime change

Law Keywords: Constitutional law

Country/Region: England; United States; Netherlands; Latin America

Weingast, Barry R. and Yingyi Qian “Institutions, State Activism, and Economic Development: A Comparison of State-Owned vs. Township-Village Enterprises in China” Chapter 9 in [NEED CITE!!]

In this chapter, the authors attempt to explain the superior economic performance of Chinese township-village enterprises (TVEs) as compared to the state-owned enterprises (SOEs). They argue that the difference in performance is explained by the difference in incentives of the firms, and the governments that
create the environment in which the firms operate. While SOEs are saddled with burdensome social mandates and restrictions, and supported by huge subsidies, the TVEs are oriented primarily toward productivity and profitability, and face relatively hard budget constraints. The authors then explore the incentives that lead local governments to establish and maintain competitive TVEs. They conclude that China’s special form of decentralization, which they call “market-preserving federalism, Chinese style”, induces competition between local governments and creates positive economic incentives.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Economic development; property rights; federalism; state sector/public ownership; credit market

**Country/Region:** China/East Asia

Wesel, Uwe *Frühformen des Rechts in vorstaatlichen Gesellschaften* (Frankfurt/Main: Suhrkamp, 1985), 388 pages

(“Early forms of law in pre-state societies”, in German) This description and analysis of order and conflicts in pre-state societies understands ethnological findings also as potential historical findings. The author thus aims at renewing Henry Morgan’s approach to legal anthropology. The first part of the book describes societies of hunters and the main principles their social order is based on, namely kinship, equality, reciprocity and property. The second part deals with segmented societies, whereas the third part contains a description of law in segmentary societies including analyses of self-help, revenge, mediation, agreement, witchcraft, religion and magic. The book concludes with a comparison of this pre-state law with contemporary law.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Culture/social norms/informal institutions, customary law/indigenous law, informal dispute resolution, legal culture


This article examines the practice and performance of the new Korean Constitutional Court, established in 1988 following the democratic and constitutional reforms of 1987, which established the Sixth Republic. The authors first discuss the political background, as well as the relevant text of the constitution and the implementing statute. They also discuss the potential clash between the jurisdiction of the Constitutional Court and the jurisdiction of the Supreme Court. The next part of the article examines the various kinds of cases the Constitutional Court is supposed to hear and its approach to constitutional adjudication. Then, the authors examine the Court’s actual practice of judicial review from 1988 to 1991, focusing on economic rights cases, civil and political rights cases, and cases involving the institutional role of the court itself. They conclude that, although the Court has not been in existence long enough to fully assess its emerging role, the Constitutional Court has already acquired more significance than many observers expected, and it appears to have successfully introduced a new element of constitutional review into the Korean political system. However, the authors also note that the court is attacked by both the political left and the political right, and that it must maneuver carefully given the number of hotly contested political issues it will be called on to adjudicate.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutional change; judicial review; judicial decision-making; judicial reform; legal transplants/import of foreign law; civil law; political reform/regime change; public prosecutors; labor unions

**Law Keywords:** Constitutional law; criminal law; administrative law; family law; labor law

**Country/Region:** South Korea

This article assesses the 1987 constitutional reforms in South Korea, focusing especially on whether these reforms will effectively foster a democratic system with separation of powers and an independent judiciary. The first part of the article provides an overview of the political changes leading up to the 1987 presidential election and the growing pressure for democratization. The second part of the article discusses whether and how the 1987 constitutional changes, many of which codified important opposition demands, will affect the operation of the legal system. The authors focus in particular on the effects on judicial independence and on the neutrality of the police and public prosecutor’s office. The authors are cautiously optimistic about democratization in South Korea, but they stress that constitutional changes on paper do not guarantee actual changes in practice. They contend that the National Assembly elections scheduled for April 1988 are extremely important for whether a true system of checks and balances emerges.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Constitutional change; legal reform; judicial reform; electoral process; political reform/regime change; democracy; human rights; individual rights; judicial independence; separation of powers; rule of law; judicial selection/promotion; public prosecutors; law enforcement; legal profession; political crimes; judicial review

**Law Keywords:** Constitutional law; criminal law

**Country/Region:** South Korea


Westermark discusses what happens when a “popular justice” program fails – that is, when it ceases to perform effectively. He considers the village courts instituted in Papua New Guinea upon independence in 1975. He claims that these courts performed effectively for a decade, but then ceased to perform effectively, due in part to a lack of government support and grassroots protests by court officers. He then discusses the alternatives people turned to when the village courts stopped functioning effectively, and also notes other factors – among them religion and changing land use patterns – that reduced demand for the village courts’ services.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Popular justice; alternative dispute resolution; judicial reform; judicial efficiency/court delay; religion

**Country/Region:** Papua New Guinea


This article argues that *lok adalat* (people’s courts) in India have failed to indigenize dispute resolution or increase access to justice for the poor. *Lok adalat*, adopted in the 1980s, arose out of India’s long concern with developing and implementing legal aid schemes. The perceived gap between the values and traditions of the local population and the British-derived formal procedures, the desire to upgrade traditional dispute resolution mechanisms to make them less hierarchical, and a legal system in crisis served as the impetus for state-sponsored alternative dispute resolution. *Lok adalats* began in the state of Gujarat in the early 1980s and spread to other states; by the late 1980s, hundreds of thousands of cases had reportedly been resolved in *lok adalats* throughout India. In 1987, at the height of their popularity, laws were passed to grant them statutory authority to summon witnesses and to issue binding and final decisions. Whitson argues that this formalization coincided with a decline in their use. She describes problems faced with these institutions in Rajasthan and Maharashtra, and explains how the state of Himachal Pradesh more successfully adopted conciliation courts within the formal court structure rather than introducing *lok adalats*. Whitson contends that the *lok adalats* revived the features of the failed *nyaya panchayats*: in each case, the state monopolized control of informal dispute resolution mechanisms, extending its own control while theoretically granting autonomy to local people. Whitson further argues that in India, as in the United States, women’s groups opposed mediation because it promoted marital conciliation at the expense of women’s rights. She concludes that rather than providing “second class justice” through *lok adalats*, Indian efforts should be geared toward making the formal court system more accessible to the poor.
**Methodology:** Qualitative description and analysis

**Subject Keywords:** Lok adalat; alternative dispute resolution; informal dispute resolution; panchayat; access to justice; culture/social norms/informal institutions; legal aid; equality/social justice; gender/women’s rights; individual rights

**Country/Region:** India


This chapter discusses reasons why some judiciaries are able to acquire and maintain independence from other branches of government, while others, similarly situated, are not. Widner focuses on judicial independence in common law African countries. She notes first that patterns of judicial independence do not seem to correlate with formal provisions in the constitution. She then examines the strategies used by judges to establish independence from the executive branch, which include striking deals with the executive, improving effectiveness, building constituencies among elites and the general public, and forming alliances with international organizations. With regard to the latter, she notes that the strategy has drawbacks, in that excessive ties with foreigners could undermine the courts’ legitimacy. Widner then notes some features that distinguish efforts to build judicial independence in Africa distinct from other regions: the prominence of judges in the struggle for independence; the exceptional importance accorded by judges to public opinion; and the importance of changes in jurisprudence. She concludes that judicial independence in Africa remains volatile, and that it’s too early to assess which strategies are more successful in generating institutional autonomy for the judiciary.

**Methodology:** Qualitative description and analysis; comparative analysis; attitude surveys

**Subject Keywords:** Judicial independence; separation of powers; corruption; rule of law; political parties; judicial efficiency/court delay; public opinion of the legal system; public support for reform; religion; judicial review; outside assistance; legal culture

**Law Keywords:** Constitutional law

**Country/Region:** Africa; Tanzania; Uganda; Botswana; Kenya


Widner addresses the issues of separation of powers, judicial independence, and the rule of law in the context of Tanzania. She also tells the story of chief justice Francis Nyalali, his court in Tanzania, and his counterparts in neighboring countries of Africa. It’s a biography about the struggle to build independent courts – a cornerstone of the democratic process. The author takes us into the minds of decision makers in Africa as they seek allies at home and abroad, empower professional reputations, and promote popular acceptance. Nyalali’s tireless negotiations testify to the perpetual attempts by leaders and other powerful parties to subvert justice for their private interests.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Access to Justice, corruption, court administration, culture/social norms/informal institutions, customary law/indigenous law, democracy, institutional capacity, judicial efficiency/court delay, judicial independence, legal culture, legal development, legal personnel, legal profession, legal reform, public support for reform, rule of law, separation of powers

**Country/Region:** Africa; Tanzania


This collection of articles brings to light different ways in which law can be central to the causes and structure of poverty, and explores new legal arenas and theories that could form the basis of a transformative use of law in order to reduce poverty. The contributions range over a wide terrain, including international human rights conventions, domestic constitutional and statutory provisions, and the law relating to social
insurance and social assistance. Poverty is examined as being in certain respects legally constructed, which means that there are ways in which specific laws create and exacerbate poverty. Also explored is the role of law in establishing specific rights or entitlements that contribute to reducing poverty, in particular social security provision and litigation as a tool for combating poverty. Finally, the volume examines divergent approaches to legal initiatives addressing specific aspects of poverty such as tackling child labour, reducing economic discrimination against women, and protecting the freedom of employees to organize collectively.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Economic development, equality/social justice, governance, human rights, human rights law, ideological role of law, individual rights, legal reform, rule of law, social movements

**Country/Region:** United States, Mexico, Greece, Chile, Bangladesh, Norway, Sri Lanka, India

**Williams, Peter Alderidge** *Judicial Misconduct* (Malaysia: Pelanduk Publications, Ltd.) (1990)

This book defends the 1988 dismissal of the Lord President Salleh Abas of the Malaysian Supreme Court against the charge, made by Salleh Abas and his supporters in Malaysia and abroad, that the dismissal constituted unjustified executive interference with the independence of the judiciary. Williams claims that Salleh Abas’s public statements criticizing the government’s policies toward and statements about the judiciary constituted inappropriate judicial interference in political matters. He also defends the Tribunal which dismissed Salleh Abas against charges of bias and procedural impropriety, and argues instead that the Tribunal acted appropriately and it was Salleh Abas’s refusal to present himself before the Tribunal that led to his dismissal. The book also includes the author’s interviews with Prime Minister Mahatir and with Lord President Hamid, who chaired the Tribunal that dismissed Salleh Abas and who took his place as Lord President afterwards.

**Methodology:** Qualitative description and analysis; critical review

**Subject Keywords:** Judicial independence; judicial accountability; separation of powers; impeachment of judges; political question doctrine/judicial deference

**Law Keywords:** Constitutional law

**Country/Region:** Malaysia


This paper discusses the political impact of judicial reforms in Costa Rica. The authors begin by noting that Costa Rica has experienced both 50 years of uninterrupted democratic governance and has followed a state-led development strategy that has had remarkable success. However, a severe economic crisis in the 1980s and 1990s caused that model to be gradually replaced with neoliberal market reforms. Previously, the Costa Rican judiciary had not been active in reviewing the constitutionality of government actions, in part due to legal culture. However, in response to declining public opinion of the Supreme Court and the perception that the court was corrupt, the Costa Rican legislature in 1989 created a new, fourth chamber of the Supreme Court, called Sala IV, with a mandate to guarantee the supremacy of the constitution. Since then, Sala IV has become a popular avenue for change, with interest groups and opposition parties frequently challenging government action. These challenges have often been successful, and the activist court has seriously affected economic policymaking. The authors conclude that Sala IV’s decisions demonstrate a desire to protect individual rights against state power. Furthermore, they claim that the government did not originally intend to give the court so much power, but now that the institution has been created, it is difficult for the government to undo or effectively control it.

**Methodology:** Qualitative description and analysis

**Subject Keywords:** Judicial reform; economic reform; legal culture; legislative supremacy; judicial review; judicial independence; civil law; state sector/public ownership; privatization; corruption; labor unions; judicial decision-making; social services; individual rights

**Law Keywords:** Constitutional law; administrative law; labor law

**Country/Region:** Costa Rica

Wilson considers the question of how police departments can develop appropriate performance measures. He notes first that police, like other government agencies, have nonoperational goals, i.e. goals like public order and safety, which cannot be accurately assessed by “process” measures like response time and arrest rates. Wilson argues that, in order to develop better measures of police performance, we must stop focusing on city-wide or precinct-wide statistics, and instead consider the effectiveness of police at the neighborhood level. He suggests a neighborhood-specific approach that would diagnose, as concretely as possible, the problems faced by a specific neighborhood and then put in place a micro-level measure of success.

Methodology: Qualitative description and analysis
Subject Keywords: Performance indicators; law enforcement; crime control
Country/Region: United States


This book studies the behavior of police – especially how patrolmen interact with the communities they police – through studies of police in eight US cities. Wilson notes that police officers generally have a great deal of discretion in how they do their jobs, and police forces are not only interesting and important in and of themselves, but are an important case study for the more general problem of management and control of public bureaucracies. Wilson notes three broad “styles” of policing found in the communities he examines. The “watchman style” is characterized by a police force that emphasizes order maintenance rather than law enforcement. In departments characterized by the “legalistic style”, by contrast, the police administrator tries to induce officers to handle relatively common situations as if they were matters of law enforcement, rather than order maintenance. Finally there is the “service style” in which the police intervene frequently in both law enforcement and order maintenance situations, but their intervention tends to be informal. Wilson discusses the factors that influence the style of policing in a given community. He stresses local politics, community size, and the degree of homogeneity or heterogeneity (especially along racial lines) in the community.

Methodology: Qualitative description and analysis
Subject Keywords: Crime control; law enforcement; bureaucracy; ethnic politics
Law Keywords: Criminal law
Country/Region: United States


This article examines the informal financing techniques used by small businesses in Taiwan, and attempts to draw lessons about the interaction between the formal legal system and the network structure of Taiwanese society. Winn argues that both the models of “legal centralism” and “legal pluralism” fail to capture this relationship, and that a more accurate characterization would be “legal marginalization.” She argues that the relational, network structure of traditional, rural Chinese society has survived in a modified form in modern Taiwan, and this modern form blends elements of the modern legal system with traditional networks of relationships and the nonlegal enforcement services of organized crime. She argues that the formal legal system tends to foster relational business practices rather than displace them, and that this observation suggests two conclusions. First, if relational practices play a greater role in development than generally thought, then social and economic resources can be more effectively mobilized by acknowledging or promoting these practices. Second, the marginalization of law in rapidly developing societies suggests that scholars must reassess concepts such as legitimacy and modernity.

Methodology: Qualitative description and analysis

Wise explores the topic of legal transplants – that is, the borrowing of legal rules from one system and their adoption in another system. He begins with an overview of Alan Watson’s work on the subject, and then discusses the role played by borrowing in US legal history, looking especially at the writings of Roscoe Pound. He then makes several observations about the phenomenon of legal borrowing. First, he notes that legal borrowing, like other forms of cultural borrowing, is extremely common. However, he suggests that legal borrowing is in fact similar to these other forms of cultural borrowing, and therefore the frequency of legal transplants may not need a special explanation specific to the field of law. He also points out that merely trying to explain laws by tracing their original (foreign) source is a dead end, similar to “diffusionism” in anthropology. He argues, in conclusion, that good legal history requires understanding the complex interrelationship between law and society: law cannot be seen as simply a reflection of societal values, but neither is it a wholly autonomous sphere governed entirely by its own logic. Wise suggests treating law as “a system of meaning” by which human experience is both shaped and represented. He implies that such a view conceptualization would be more effective in understanding the role of law in society, and by extension the role of legal borrowing, than a sharp and artificial distinction between “law” and “society”.

Methodology: Critical review; summary/synopsis; qualitative description and analysis


Securing justice for the poor not only demands legal representation in court but organized effort for enacting legislation on their behalf. Legal aid organizations, created to represent the poor in civil and criminal matters, are best positioned to advocate for the poor. Their constant exposure to the legal problems of the poor gives them not only an insight into what the most pressing issues are but permits them to develop information useful to policymakers. The Cleveland Legal Aid Society, for example, has been instrumental in prompting passage of laws pertaining to small loans, wage garnishments, small claims courts, and other subjects. Records drawn from their files, showing a recurring problem with a certain law or procedure, have been used to publicize an issue and have provided the basis for legislative change.

Methodology: Qualitative description and analysis


Using data from surveys of manufacturing firms in Poland, Slovakia, Romania, Russia and Ukraine, this paper examines how the ability to turn to the courts to enforce contracts, membership in trade associations, and the presence of informal information networks interact to support complex agreements between firms. The literature on the relationship between courts and these latter two “informal” institutions suggests two hypotheses: Informal institutions are substitutes for court enforcement, or alternatively, that the two complement one another. While the analysis finds no evidence to support the substitution effect, for certain types of transactions, such as those involving a delay in payment after receipt of the goods and production of
goods to order, it shows that courts and informal mechanisms are complementary. This complementarity is stronger when the relationships between the firms are less than a year old. “Where both legal systems and information on the reliability of trading partners are imperfect, both may be necessary to support more complex relationships between firms. . . . From a policy perspective, the findings support a focus not only on legal reform, but also on the development of private sector institutions which promote the flow of information.”

**Methodology:** Quantitative analysis  
**Subject Keywords:** Non-contractual agreements/relational contract; manufacturing sector; legal reform; economic development; culture/social norms/informal institutions  
**Law Keywords:** Contract law  
**Country/Region:** Poland; Slovakia; Romania; Russia; Ukraine/Central Europe, Eastern Europe


In this interview, Woodson, an attorney and the chair of the Judicial Evaluation Committee of the D.C. Bar, discusses the Committee’s annual survey, which asks attorneys to evaluate the performance of judges on the D.C. Superior Court and D.C. Court of Appeal. Woodson discusses the methodology of the survey, some of the criticisms made by both judges and lawyers, and proposals for reforming the survey. He believes the annual, anonymous surveys serve a useful purpose in encouraging judicial self-improvement, and suggests that they could be a model for similar programs in other parts of the world.

**Methodology:** Interview  
**Subject Keywords:** Judicial accountability  
**Country/Region:** United States


Lord Woolf’s final report to the Lord Chancellor, submitted in July 1996, proposed far-reaching reforms to the U.K. civil justice system. These reforms aim to divert disputes from litigation, and make the litigation process less adversarial, less complex, shorter, less costly, and more certain. The reformed system would provide built-in incentives for alternative dispute resolution and settlement. Case management would consist of three tiers: expanded small claims jurisdiction; a new “fast track” procedure for cases of relatively low amounts; and new multi-track procedures for other disputes. The report also outlines proposals for medical negligence, housing, multi-party actions, and judicial review. These recommendations build on those contained in Lord Woolf’s Interim Report, published in June 1995.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice; legal reform; judicial reform; judicial efficiency/court delay; civil procedure; case management; small claims courts; costs of the legal system; judicial review; out of court settlement  
**Law Keywords:** Civil litigation  
**Country/Region:** United Kingdom


This is the first in a series of annual reports investigating the scope and manner of regulations that enhance business activity and those that constrain it. New quantitative indicators on business regulations and their enforcement can be compared across more than 130 countries, and over time. The indicators are used to analyze economic outcomes and identify what reforms have worked, where, and why. After a brief introduction to the publication’s methodology and comparable approaches, the role of regulations, laws, courts and institutions in general is analyzed from a business angle according to the
following chapters: starting a business, hiring and firing workers, enforcing contracts, getting credit, closing a business, and the practice of regulation.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Administrative law, bankruptcy, bureaucracy, capital market, case management, civil procedure reform, civil litigation, civil procedure, commercial law, contract law, costs of the legal system, court delay, court performance, credit market, debt collection, economic development, economic reform, employment law, investment, judicial efficiency/court delay, judicial reform, labor law, law enforcement, legal culture, legal reform, World Bank

**Country/Region:** Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo Democratic Republic of, Congo Republic of, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyz Republic, Laos, Latvia, Lebanon, Lesotho, Lithuania, Macedonia, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Russia, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Taiwan, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe


This is the second in a series of annual reports investigating the scope and manner of regulations that enhance business activity and those that constrain it. New quantitative indicators on business regulations and their enforcement can be compared across 145 countries and over time. “Doing Business in 2004” presented indicators in 5 topics: starting a business, hiring and firing workers, enforcing contracts, getting credit and closing a business. “Doing Business in 2005” updates these measures and adds another two sets: registering property and protecting investors. The indicators are used to analyze economic and social outcomes, such as productivity, investment, informality, corruption, unemployment, and poverty, and identify what reforms have worked, where and why.

**Methodology:** Comparative analysis; qualitative description and analysis

**Subject Keywords:** Administrative law, bankruptcy, bureaucracy, capital market, case management, civil procedure reform, civil litigation, civil procedure, commercial law, contract law, costs of the legal system, court delay, court performance, credit market, debt collection, economic development, economic reform, employment law, investment, judicial efficiency/court delay, judicial reform, labor law, law enforcement, legal culture, legal reform, property law, property rights, World Bank

**Country/Region:** Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo Democratic Republic of, Congo Republic of, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyz Republic, Laos, Latvia, Lebanon, Lesotho, Lithuania, Macedonia, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mexico, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Russia, Rwanda, Saudi Arabia, Senegal, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Taiwan, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe
The Peace Accords of 1996 brought an end to 36 years of armed conflict in Guatemala and signaled the beginning of a complex and challenging process of reconstruction and social reconciliation. A central plank of the consensus expressed in the Peace Accords was the overhauling of Guatemala’s public institutions, which were seen to exacerbate the social and economic injustices that had contributed to the conflict. The Judicial Branch was identified as one of the key state institutions in a position to create the necessary conditions to help a divided and diverse population emerge from decades of conflict, social and economic exclusion, and mistrust in public governance. A World Bank-supported Judicial Modernization Project is in its third year of implementation and helping in this process along with other donors.

Methodology: Qualitative description and analysis

Subject Keywords: Access to justice, alternative dispute resolution, civil litigation, court delay, court performance, crime control, democracy, divided societies, judicial efficiency/court delay, judicial independence, judicial reform, judicial selection/promotion, judicial training, legal aid, legal pluralism, litigation

Country/Region: Guatemala/Latin America


This book contains information about 193 countries’ legal and judicial systems, their practicing lawyers, the organization of the bar, legal education, hierarchy of courts, and origins of their legal system. Each summary comprises between 2 and 5 pages.

Methodology: Summary/synopsis

Subject Keywords: Comparative law

Country/Region: Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bonia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, European Union, Fiji Islands, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kribati, Korea, Kuwait, Kyrgyz Republic, Lao, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Pery, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadies, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Yugoslavia, Zambia, Zimbabwe

Yahya claims that changes in property laws are necessary to meet the needs of group members who have an interest in either a piece of land or a part of a building. Solutions to urban land problems in Kenya as well as other African nations are needed that will not only guarantee security but expand the mortgage market. This market is not so much constrained by a shortage of funds as it is by a paucity of interests that can be mortgaged. Thus, credit schemes to finance low-value land transactions between poor people are scarce. Market information in most African counties is scarce because only a fraction of land transactions are documented and registered. Urban land inventories therefore do not exist. Reform will be difficult, Yahya argues, because of the role of various intermediaries such as land agents, lawyers, valuers, mortgage brokers, surveyors, and the plethora of consultants who thrive on the large amounts of money changing hands in property transactions.

Methodology: Qualitative description and analysis
Subject Keywords: Property rights; credit market; legal reform
Law Keywords: Property law
Country/Region: Kenya

Yang, Chang Soo “The Judiciary in Contemporary Society: Korea” Case Western Reserve Journal of International Law 25:303-313

This article presents a brief overview of the South Korean judiciary. Yang discusses the recruitment of judges, judicial education and training, and the tasks faced by the judiciary, the most important of which are managing an increasingly heavy caseload and securing judicial independence. Yang also notes other problems facing the Korean court system, including the control of the Chief Justice over judicial assignments, the shortage of legal services, and the conservative bureaucratism of the judiciary.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial selection/promotion; judicial training; judicial independence; judicial efficiency/court delay
Country/Region: South Korea


Although Korea has had a judicial review system in place since 1948, the various institutions delegated with the power of judicial review over the years seldom challenged the constitutionality of legislation. The constitutional court established by the 1987 constitution, however, decided 37 cases by April 1991, ruling laws unconstitutional in 14 of those instances, including laws on social defense, conditions for candidacies for national office, and the requirement of a public apology. The court also granted 15 constitutional petitions. The author credits institutional (e.g. jurisdictional) as well as social changes for the reactivated constitutional court. He discusses changes in Korea in light of four conditions Lawrence Friedman identified for U.S. judicial activism: activist lawyers, activist judges, a genuine social movement with values shared by at least some judges, and power holders’ acceptance of adverse litigation. These conditions, he argues, are met in the Korean context. Despite the significant rise in activity of the court, it has exercised restraint on politically sensitive questions: it did not declare the notorious National Security Act unconstitutional, instead ruling only that it had “limited constitutionality.” The article concludes that the constitution still plays only a marginal role as a norm controlling state power.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; constitutionalism; political reform/regime change; democracy; authoritarianism; judicial activism; public support of reform
Law Keywords: Constitutional law
Country/Region: Korea

This article discusses judicial review in Korea from the end of World War II up to 1988. The first section of the article discusses the practice of judicial review in each of the five post-war Republics. Yoon states that overall the Korean courts have not taken full advantage of constitutional provisions allowing for judicial review, but that there have been some notable exceptions, especially in the later years of the Third Republic (1962-1972). However, this period was quickly followed by the 1972 constitutional revisions that drastically curtailed judicial review. The second section of the article examines several of the Korean judiciary’s most important post-war decisions in detail, stressing in particular the role of political context. In his conclusion, Yoon summarizes the main themes that emerge from his survey. First, the Korean courts have exercised extreme caution, hardly ever declaring statutes unconstitutional. Often during the Third Republic, however, the court achieved its purpose by reinterpreting statutory language, thus avoiding the need to declare a statute unconstitutional. Second, the Supreme Court in the Third Republic was somewhat more responsive to cases involving economic rights than those involving political or civil rights. Third, judges have tended to rule based on their interpretation of the language of the law, rather than looking to legislative intent or statutory history. Fourth, judicial review has tended to peak when political turmoil comes to a head – in the late 1960s/early 1970s and in the mid-1980s. Yoon concludes that, while the system of judicial review was successful only for about a decade, this experience left an enduring mark on Korean law and politics. Judicial independence, he argues, will most likely be achieved under the new constitution if there is a balance between the executive and the legislative branches. As long as there are no checks and balances between the legislative and executive, there will be no effective constitutional judicial review.

Methodology: Qualitative description and analysis
Subject Keywords: Judicial review; judicial independence; judicial decision-making; constitutionalism; constitutional change; separation of powers; political question doctrine/judicial deference; individual rights; property rights; state of emergency/martial law
Law Keywords: Constitutional law; criminal law; tort law; property law
Country/Region: South Korea


This article examines the development of constitutionalism in Korea, especially in the period following the democratic reforms of 1987. The first part of the article assesses the impact of Korea’s cultural heritage on the development of democracy and constitutionalism. Yoon argues that while culture and tradition are often invoked to explain Korea’s authoritarian past, culture could also be used to explain political liberalization. In general, culture is so complex that it can be used to explain anything, and is thus not very useful, by itself, as an explanation for political or economic developments. Yoon suggests that a broader approach is more appropriate than crude cultural determinism. The second section of the article provides a historical overview of constitutionalism in Korea since the end of World War II. He notes that the 1948-1987 period was characterized by frequent constitutional changes, executive dominance over the legislature, judicial passivity, and a neglect of civil rights. However, since the 1987 reforms, constitutionalism and democracy are becoming progressively more institutionalized, and Yoon is optimistic about the future. He attributes the growth of constitutionalism and the withering of authoritarianism to a number of factors, including economic progress that has generated a pro-liberalization entrepreneurial class, the collapse of the Cold War system, democratization in other parts of the world, and greater global integration through trade and communications. He also concludes that the Korean experience shows that political change precedes legal change, but that legal change can accelerate political change.

Methodology: Qualitative description and analysis
Subject Keywords: Constitutionalism; democracy; separation of powers; culture/social norms/informal institutions; legal culture; judicial review; judicial independence; individual rights; constitutional change; political reform/regime change; law enforcement; economic development
Law Keywords: Constitutional law; criminal law
Country/Region: South Korea

Youn, Kyu Ho “Judicial Interpretation of Press Freedom in South Korea” Boston College Third World Law Journal 7:133-159 (1987)
This article discusses judicial interpretation of South Korean laws that regulate the freedom of the press. The author first offers a brief overview of the Korean court system and the statutes and regulations governing press freedom. He then surveys a number of major court decisions over the past several decades in which the judiciary has interpreted these various regulations. He concludes that, though some district courts have issued rulings protective of press freedoms, overall the Korean judiciary has been overly timid, failing to protect the press even from overt repression by the government. However, he suggests that there are signs that this may change, following the dramatic democratic reforms which took place in Korea in 1987.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Individual rights; press freedom; judicial review; judicial decision-making  
**Law Keywords:** Constitutional law; administrative law; criminal law; tort law  
**Country/Region:** South Korea


This article examines how South Korean press laws have been interpreted by the Constitutional Court since it was established in 1988 following Korea’s democratic reforms. The first section of the article provides a brief overview of the history of judicial review in Korea, as well as the current constitutional and statutory framework. In the second part of the article, Youm analyzes the Constitutional Court’s decisions involving Korean press statutes. He discusses and analyzes major cases dealing with the National Security Act, regulations of military secrets, registration requirements for periodicals, and libel. The third section of the article assesses the impact of the Constitutional Court’s practice of judicial review on press freedom in Korea. Youm concludes that the Court, which has demonstrated increasing independence, has had an important and positive impact on freedom of the press, and that judicial review and press freedom have a synergistic relationship.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Judicial review; press freedom; constitutionalism; constitutional change; political reform/regime change; democracy; judicial independence; individual rights; freedom of information legislation  
**Law Keywords:** Constitutional law; administrative law; criminal law; tort law  
**Country/Region:** South Korea


This articles analyzes, from a US judgement creditor’s standpoint, factors that impede the effective enforcement of US money judgement in China. It also provides a brief overview of the legal frameworks governing the recognition and enforcement of foreign money judgments in the United States and China before navigating the Hypo’s NY Creditor through China’s enforcement system and discussing certain factors that tend to impede the effective enforcement of US money judgments in China. This discussion covers, among other things, the fundamental differences between the US and Hinese legal systems, various deficiencies in China’s legal framework, and suggested solutions.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Debt collection, institutional capacity, legal culture, legal reform, socialism  
**Country/Region:** China/East Asia


This collection of articles makes a link between the protection of human rights and the pursuit of economic development by interrogating the paradigms, politics, and practices of human rights in Africa. The essays emphasize that democratic and human rights regimes are products of concrete social struggles, not simply
textual or legal discourses. Insisting on the holistic view that human rights are as much about economic and social rights as they are about civil and political rights, the contributors offer analyses of African conceptions, experiences, and aspirations of human rights which manifest themselves in complex global, regional, and local idioms. Further, they explore the varied constructions of human rights in African and Western discourses and the roles played by states and NGOs in promoting or subverting human rights.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Access to justice, authoritarianism, civil society, corruption, democracy, culture/social norms/informal institutions, donor politics, economic development, equality/social justice, ethnic politics, gender/women’s rights, group rights, human rights, human rights law, ideological role of law, individual rights, international law, legal culture, rule of law  
**Country/Region:** Tanzania, Egypt, South Africa, Zambia/Africa


(“Review of regulatory power in Europe”, in French) Using a working definition of the concept of ‘pouvoir réglementaire’ as ‘the power given to an institution (with the exception of Parliament) to issue normative acts of general scope’, the author presents and analyzes different national administrative law approaches to this issue. Subsequently, he focuses on questions of judicial and extra-judicial review of regulations and rules by comparing the systems of various countries.

**Methodology:** Qualitative description and analysis, comparative analysis  
**Subject Keywords:** Administrative courts, administrative law, bureaucracy, executive decrees, judicial review, legal culture, separation of powers  
**Country/Region:** France, Germany, Italy, Portugal, Belgium, Spain/Europe


The article analyzes the role of indigenous custom in state courts in the South Pacific region. After describing the difference between law and custom, the authors show different approaches to proving custom. In most countries, there is no legislation. The courts either treat custom as law or as facts. As to finding custom as fact, they describe different methods (anthropologists’ testimony, books, treatises and other documents, elders, chiefs and other assessors, demeanor of the witnesses). If a court believes that custom is law, it might feel free to dispense with hearings, to find custom on its own, or to look for custom where other laws are found – in legislation and precedents. Finally, the authors present an ‘in between approach’.

**Methodology:** Qualitative description and analysis  
**Subject Keywords:** Colonialism/imperialism, culture/social norms/informal institutions, customary law/indigenous law, legal culture, legal pluralism  
**Country/Region:** South Pacific, Melanesia, Kiribati, Papua New Guinea, Vanuatu