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Chapter 1 : Rule of law - Wikipedia

The distinctive rule of law features required for a market economy impact the enactment of laws by the legislature, the resolution of disputes by the judiciary, and the regulation of the economy by the.

It is based on the simple premise that no one should be above the law. The international community acknowledges the rule of law as a precursor to the successful promotion of development and democracy, and respect and adherence to it is recognised by Commonwealth governments as a fundamental Commonwealth value. A well-functioning democracy is not possible without the rule of law. This is because the basic elements of democracy, such as free and fair electoral systems, respect for human rights, and a vibrant and participative civil society, are all underpinned by the rule of law. In post-conflict societies, rebuilding and reconciliation often begin with the restoration of the rule of law to enable the fragile political process to begin.

Development and the rule of law An environment premised on a strong respect for the rule of law will, in turn, promote and foster economic and human development. This is because the institutions of governance based on the rule of law will help to promote social stability and legal certainty. Legal certainty means that investors, particularly foreign investors, can feel safe and confident to enter the market and can assume risk that forms the basis of a market economy development. Lack of investment will slow economic growth and deny government the revenue to invest in education and social safety nets that are critical for sustainable development. In recent years, the international community has intensified its support for an all-inclusive interpretation of development. This is rightly so because it is clear that the objective of any society seeking political or social advancement and economic progress is human development. The interdependency of these elements of development is therefore not in doubt. This makes it imperative to develop a comprehensive process to achieving broad-based development. Developing sound legal frameworks will necessarily form part of this process as these are prerequisites for economic growth and social advancement. A comprehensive legal and judicial reform agenda can make an important contribution to the overall process of development. Consistent and effective laws and reliable legal tools must exist in order to address social injustice or economic imbalances. Also important is a stable and predictable legal system which promotes confidence in parties to enable protection of property rights and effective enforcement of contractual rights. The LCAD plays a supportive and facilitating role to Commonwealth member countries in upholding the rule of law. It primarily undertakes legal, judicial and constitutional reform to protect and promote the rule of law. Specific areas of focus and priority have been driven by specific concerns of Commonwealth ministers and Heads of Government. These include intellectual property law, which arose from the need to assist countries to fulfil their obligations under multilateral trade agreements such as the World Trade Organization WTO agreements. Examples of counterfeit goods include baby foods, toys, cooking oil and pharmaceuticals. Examples of pirate goods are illegally reproduced and often substandard CDs and DVDs and the free download of copyrighted music and movies; the growth of these pirate goods has seen a corresponding significant decline in the once-vibrant entertainment industry in some countries. Moreover, fake goods are produced with substandard and sometimes dangerous materials that represent a danger to public health and safety; and because they are sold cheaply, they kill the market for bona fide goods, whose production ultimately ceases. Fake and pirate goods are also smuggled into countries, depriving governments of much needed revenue. Further, the resulting profits are used to fund organised crime and this can impact on public order. These are some of the concerns influencing the Commonwealth initiative on IPR enforcement. The Rule of Law Programme has enabled the Secretariat to assist countries in developing stronger enforcement mechanisms, which among others has seen IP offences criminalised. Under these mechanisms, those manufacturing and distributing fake goods can be prosecuted. Also, profits made from these activities as well as other assets acquired from trading in fake goods can be traced, seized and confiscated. The mechanisms developed seek to protect creators so that they are able to reap the benefits of their work. The case studies provided cover a variety of areas and illustrate the impact

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of the abuse of IPR on society. Its involvement arose from the concern that the debts of developing countries, especially those already classified as poor countries, had reached unmanageable proportions. The concerns resulted in calls for the forgiving of those debts as there was no obvious means of repayment by the debtor countries. Also, at a time when countries were committing to poverty reduction as part of the fulfilment of the MDGs, such states of affairs were incompatible with the objective of the MDGs – forgiveness of these debts was seen as a fundamental part of the fulfilment of the MDGs. Meanwhile, some hedge funds had developed an unpalatable practice by purchasing sovereign debt at significantly reduced rates and attempting to enforce their contractual rights in court for the full value of the debt with interest. On occasions, the resulting judgments crippled the economies of debtor countries. The objective of the related LCAD programme is to assist countries facing litigation or threat of litigation from private investors. In this regard, a Legal Referral Clinic was established to assist countries in the renegotiation of the debt owed to the private investors. Countries have also been encouraged to adopt laws on fiscal responsibility in order to avoid the accumulation of overwhelming debt. This promotes legal harmonisation, and makes legal co-operation easier and perhaps more cost effective between its members. The framework for Commonwealth legal co-operation is found in the Commonwealth Schemes on the administration of justice. The schemes represent reciprocal arrangements between Commonwealth countries to co-operate within the parameters of their national laws. Assistance can be given in criminal matters, extradition, the return of material cultural heritage and in allowing those convicted in foreign countries to serve their sentences in their home country. Where two or more countries have common peculiarities, the Secretariat can help them to develop a legal framework to cater for their specific needs. It is important to note that the schemes are informal and therefore non-binding arrangements but Commonwealth member countries are to be commended for having the will to enact binding national legislation giving effect to the provisions of the schemes which allows a genuinely mutual assistance. The Rule of Law Programme helps member countries to engage with the rest of the world. The Secretariat plays a key role in the facilitation of such engagement through its representation at various international forums such as the United Nations. It helps to negotiate international conventions on behalf of Commonwealth countries. When those conventions are adopted, countries are expected to ratify and implement them so they become part of their national laws. Some of the important international instruments the Secretariat is working on include the International Criminal Court ICC Statute, which deals with the crimes of genocide, crimes against humanity and war crimes. Another is the UN Convention on Anti-Corruption UNCAC designed to address the challenges faced by many countries in implementing strategies for achieving transparent and accountable governance. The Secretariat assists in many other ways – for example, by developing legal toolkits, advice and training tailored to the systems of member countries. Because countries are at different development stages, individual needs analysis and assistance are provided under the Commonwealth Fund for Technical Co-operation CFTC, one of the voluntary funds operated by the Secretariat. Such assistance complements the general and collective work undertaken for member countries. Platform for developing common legal policy The commonalities in legal systems means that Commonwealth countries can adopt a common position on many legal matters. The Secretariat provides the platform for developing Commonwealth legal policy by organising biennial meetings of senior officials from ministries of justice. This is followed by the triennial meetings of Ministers of Justice, which issue directives on the work to be done under the Rule of Law Programme. The opportunity created by the unique access to high-level officials such as law ministers has contributed to the success of the Rule of Law Programme. This helps to strengthen the political will in member countries to continue to pursue the legal and justice reform work under the programme. Some of the work under this programme has fallen within the primary responsibility of other ministries. Such deviation has not diminished the energy and focus of the Rule of Law Programme but is a further indication of the interdependence of the development issues in member countries and the need to co-ordinate, avoid compartmentalisation of the issues, and develop a comprehensive solution to achieving development as embodied by the MDGs. Legal reform for small states The majority of Commonwealth countries are small

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states and as small economies the challenges they face are vast, ranging from environmental disasters and diversifying their economies to terrorism – all of which make their economies, and sometimes their very existence, vulnerable. The Rule of Law Programme gives special attention to the legal issues relating to small states. Legal reform tailored to the needs of small states is therefore an important part of the portfolio which takes into consideration their special needs. LCAD organises meetings every two years for ministers of justice from small Commonwealth countries. The meeting is immediately preceded by the meeting of Senior Officials of Law Ministries SOLM , thus making it convenient and cost effective for officials from small states to attend both meetings if they so desire. The meeting of law ministers of small states provides an important platform to determine matters of mutual interest and to develop a common legal policy based on their shared circumstances. The legal audience and work strategy In delivering its work under the Rule of Law Programme, the LCAD works with a variety of sectors, lawyers, judges, registrars, policymakers, investigators, prosecutors, the police and other law enforcement officials, academics, officials of international and regional organisations, and representatives of civil society. LCAD has adopted a creative and flexible approach to its work without compromising on quality and effectiveness. It has implemented some of its work online, notably the Commonwealth Law Bulletin, its flagship publication designed to bring awareness of emerging international legal developments. In collaboration with strategic partners, it has developed electronic legal resources available free to researchers and scholars. Other work has been delivered in the form of model laws, strategies, guidelines, action plans and other legal toolkits developed with the objective of supporting countries to fulfil their obligations and accede to international standards. LCAD has also facilitated mentoring, exchange of legal personnel, sponsorship, expert placement and internship, among others. Its work on legislative drafting has been delivered through curriculum development implemented by local educational institutions. It has helped to develop strong professional networks in various areas to strengthen co-operation in criminal justice matters and it encourages lawyers to contribute their time free for the benefit of their communities. Some focus areas It is impossible to cover all the work done under the Rule of Law Programme but some of the subject matters addressed in recent years and ongoing are:

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Chapter 2 : Friedrich Hayek - Wikipedia

BEIJING-- China's new blueprint to advance the rule of law is crucial to the development of a market economy and is set to have a far-reaching impact on China's economic growth, analysts and.

A timeline of Hayek [12] Hayek born in Vienna. Hayek joins the Austro-Hungarian Army. Hayek earns a doctorate in law from the University of Vienna. Ludwig von Mises hires Hayek in an office dealing with finance issues. Hayek earns another doctorate in political science. Hayek first meets John Maynard Keynes at a conference in London. Hayek becomes a critic of Keynes, writing critical reviews of his books and exchanging letters in The Times on the merits of government spending versus private investment. At the London Economic Club, Hayek gives a talk on the key role of information in economics. Hayek becomes a British citizen. Hayek founds the Mont Pelerin Society , aiming to keep liberty alive in a postwar world. Publication of The Constitution of Liberty. Hayek moves to the University of Freiburg, West Germany. His ideas on unplanned orders and other subjects are published in Studies in Philosophy, Politics and Economics He begins work on Law, Legislation and Liberty. As prices soar in Europe and the United States, Hayek publishes a passionate critique of inflation and the Keynesian policies that cause it in A Tiger by the Tail. Death of Mises Hayek is awarded the Nobel Memorial Prize. Through an introduction by the Institute of Economic Affairs, the British Conservative leader Margaret Thatcher meets Hayek for the first time and is greatly impressed. Publication of The Fatal Conceit: The Errors of Socialism. Hayek dies in Freiburg. His father, from whom he received his middle name, was born in also in Vienna. He was a medical doctor employed by the municipal ministry of health with a passion for botany , about which he wrote a number of monographs. August von Hayek was also a part-time botany lecturer at the University of Vienna. His mother was born in to a wealthy conservative and land-owning family. Hayek was the oldest of three brothers, Heinrich " and Erich " , who were one-and-a-half and five years younger than him. He wrote systematic works in biology, some of which are relatively well known. Since his youth, Hayek frequently socialized with Jewish intellectuals and he mentions that people often speculated whether he was also of Jewish ancestry. That made him curious, so he spent some time researching his ancestors and found out that he has no Jewish ancestors for five generations in all directions. Hayek displayed an intellectual and academic bent from a very young age. He read fluently and frequently before going to school. He preferred to associate with adults. Hayek suffered damage to his hearing in his left ear during the war [24] and was decorated for bravery. During this time, Hayek also survived the flu pandemic. Hayek said of his experience: He vowed to work for a better world. It located connective learning at the physical and neurological levels, rejecting the "sense data" associationism of the empiricists and logical positivists. Between and , Hayek worked as a research assistant to Professor Jeremiah Jenks of New York University , compiling macroeconomic data on the American economy and the operations of the Federal Reserve.

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Chapter 3 : "International Rule of Law and the Market Economy - An Outline" by Samuel Bufford

The undeniable link between economic freedom and prosperity is a striking demonstration of what people can do when they are left to pursue their own interests within the rule of law.

Share on Facebook Tweet this "Americans need to realize that our economy has thrived not in spite of government, but in many ways because of government. Even regulations and social programs help sustain a market economy by fixing many of its serious social and economic problems. Nothing could be further from the truth. In reality, a market economy does not exist separate from government – it is very much a product of government rules and regulations. The market is a set of behaviors that is structured by rules, and many of the most important rules have been developed and enforced by government. Without these rules, our prized free-market economy would be a stunted and feeble version of what we see today. Capitalism requires capital – lots of it. But without limited liability laws, investors are unlikely to risk investing their money in businesses. In the 19th century, before the passing of laws that limited the liability of investors, anyone who put money into a business that then went under could be held liable for the debts of the company. They could have their personal assets seized and could be financially ruined. Needless to say, this discouraged investment. Without limited liability laws, the economy would not have access to the capital it needs to grow and prosper. Without the right to own property and dispose of it as you wish, capitalism as we know it could not exist. These legal rights are created and protected by the government. Moreover, in the U. Corporate property rights – one of the main legal instruments that insulate business from government power – can be created and maintained only by government. A market system cannot work well without a functioning criminal justice system. Otherwise, organized crime would easily take over large sectors of the business community. Extortion, bribery, kidnapping, and murder would become the reigning corporate model. Business is inherently risky and one of the largest risks is business failure, particularly during recessions and depressions. Investors and creditors also often failed to get any of the money due to them. Bankruptcy laws protected otherwise healthy businesses that were temporarily short of funds. And these laws allowed entrepreneurs to be eventually freed from crushing debts. Along with limited liability, bankruptcy rules formed a crucial financial safety net for entrepreneurs. It is important to note, however, that bankruptcy laws were passed not simply out of concern or sympathy for failed entrepreneurs, but also as a way to lessen economic risk and therefore encourage more investment and economic growth. Without reliable money, markets would be based primarily on barter and thus be extremely limited. This was an unreliable and incredibly chaotic system. Sometimes merchants would not even accept certain currencies. It also meant there was no real control over the money supply – which has a crucial impact on inflation and economic growth. Widespread commerce and a stable economy both require a stable and dependable money system – one in which consumers and merchants have faith. This can only be provided and maintained by the federal government. Large portions of our economy would grind to a halt if the government did not grant patents and copyrights. Without this massive intervention into the free market, the drug, music, publishing, and software industries could not exist. Bill Gates likes to think of himself as a self-made man, but he would not be one of the richest men in the world if the government did not make it illegal for anyone but Microsoft to copy and sell Windows. Banking Regulation and Insurance. As we have seen recently, a capitalist economy depends heavily on stable banks to finance growing businesses. Banks cannot survive runs because they have loaned out most of the money deposited with them and therefore cannot pay it out to a large number of depositors at once. Before the passage of banking regulations and federal deposit insurance, banks regularly had runs and failed. The main reason that we had no disastrous runs on banks and money market funds during the financial panic of was that government was there to guarantee those deposits. Capitalism today is corporate capitalism. But the corporation itself is a creation of government. Corporations can come into being only through charters: These charters and state business laws define what a corporation is, how it is organized, how it is governed, how long it may exist, who has a say in

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decision making, the rights of stockholders, the extent of its liability, and so on. Most states also retain the right to revoke the charters of corporations that break the law or harm the public interest, though this power is seldom used these days. Businesses could not operate effectively without laws governing commercial transactions. Few would risk doing business on a wide scale unless there was some way of making and enforcing contracts. The Uniform Commercial Code is a set of legal rules that determines, among other things, what a valid contract is, how contracts can be enforced, and various remedies for fraud, default, etc. It is over pages long and covers every aspect of commerce in great detail, including laws governing the sales of goods, payment methods, receipts, warranties, titles, shipping of goods, storage of goods, how sales are financed, and the leasing of goods. It is the legal infrastructure that allows business to be conducted smoothly and reliably. Amy - All rights reserved. You may print, reproduce, and use the articles on governmentisgood. Copying, redistribution, or use of any material on this site for commercial purposes is prohibited without the express written permission of the author.

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Chapter 4 : Rule of law crucial to development of market economy - Business - calendrierdelascience.com

The rule of law is usually thought of as a political or legal matter. The world's newest country, Kosovo, says its priority is to improve the rule of law in order to reduce corruption and build up.

The rule of law has been considered as one of the key dimensions that determine the quality and good governance of a country. In France and Germany the concepts of rule of law *Etat de droit* and *Rechtsstaat* respectively are analogous to the principles of constitutional supremacy and protection of fundamental rights from public authorities see public law , particularly the legislature. In all public activity, the law shall be strictly observed. Rule of law in the United Kingdom In the United Kingdom the rule of law is a long-standing principle of the way the country is governed, dating from Magna Carta in and the Bill of Rights Dicey , a constitutional scholar and lawyer, wrote of the twin pillars of the British constitution in his classic work *Introduction to the Study of the Law of the Constitution* ; these two pillars are the rule of law and parliamentary sovereignty. These oaths affirm that the rule of law is superior to the rule of any human leader. Likewise, the judicial branch has a degree of judicial discretion , [50] and the executive branch also has various discretionary powers including prosecutorial discretion. Scholars continue to debate whether the U. Constitution adopted a particular interpretation of the "rule of law", and if so, which one. For example, John Harrison asserts that the word "law" in the Constitution is simply defined as that which is legally binding, rather than being "defined by formal or substantive criteria", and therefore judges do not have discretion to decide that laws fail to satisfy such unwritten and vague criteria. Constitution believed that an unjust law was not really a law at all. For example, Brian Tamanaha asserts: For much of American history, the dominant notion of the rule of law, in this setting, has been some version of A. Even Charles Evans Hughes, a Chief Justice of the United States, believed "you must have administration, and you must have administration by administrative officers. If administrators adopted procedures that more or less tracked "the ordinary legal manner" of the courts, further review of the facts by "the ordinary Courts of the land" was unnecessary. That is, if you had your "day in commission", the rule of law did not require a further "day in court". But with regard to every law, however unjust, oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as judges to give it a free course. The influence of one school of thought over the other has varied throughout the centuries. One study indicates that throughout East Asia, only South Korea, Singapore, Japan, Taiwan and Hong Kong have societies that are robustly committed to a law-bound state. Apart from a number of states and territories, across the continent there is a huge gulf between the rule of law rhetoric and reality. In Thailand, the police force is an organized crime gang. In Cambodia, judges are proxies for the ruling political party That a judge may harbor political prejudice or apply the law unevenly are the smallest worries for an ordinary criminal defendant in Asia. More likely ones are: Will the police fabricate the evidence? Will the prosecutor bother to show up? Will the judge fall asleep? Will I be poisoned in prison? Will my case be completed within a decade? It remains unclear whether the rule of law in countries like China and Vietnam will be limited to commercial matters or will spill into other areas as well, and if so whether that spillover will enhance prospects for related values such as democracy and human rights. In Thailand, a kingdom that has had a constitution since the initial attempt to overthrow the absolute monarchy system in , the rule of law has been more of a principle than actual practice. Although the Constitution of India may have been intended to provide details that would limit the opportunity for judicial discretion, the more text there is in a constitution the greater opportunity the judiciary may have to exercise judicial review. As the 21st century began, the percentage of people who were lawyers and judges in Japan remained very low relative to western Europe and the United States, and legislation in Japan tended to be terse and general, leaving much discretion in the hands of bureaucrats. The Council of Europe[edit] The Statute of the Council of Europe characterizes the rule of law as one of the core principles which the establishment of the organization based on. The paragraph 3 of the preamble of the Statute of the Council of Europe states: The

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event consisted of over judges, lawyers, and law professors from 53 countries. This later became known as the Declaration of Delhi. During the declaration they declared what the rule of law implied. They included certain rights and freedoms, an independent judiciary and social, economic and cultural conditions conducive to human dignity. The one aspect not included in The Declaration of Delhi, was for rule of law requiring legislative power to be subject to judicial review. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. The General Assembly has considered rule of law as an agenda item since , with renewed interest since and has adopted resolutions at its last three sessions. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process, are all unacceptable. The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities. World Justice Project[edit] As used by the World Justice Project , a non-profit organization committed to advancing the rule of law around the world, the rule of law refers to a rules-based system in which the following four universal principles are upheld: The World Justice Project has developed an Index to measure the extent to which countries adhere to the rule of law in practice. The WJP Rule of Law Index is composed of 9 factors and 52 sub-factors, and covers a variety of dimensions of the rule of law—such as whether government officials are accountable under the law, and whether legal institutions protect fundamental rights and allow ordinary people access to justice. It works to empower people and communities to claim their rights, and provides governments with the know-how to realize them. More than a matter of due process, the rule of law is an enabler of justice and development. The three notions are interdependent; when realized, they are mutually reinforcing. For IDLO, as much as a question of laws and procedure, the rule of law is a culture and daily practice. It is inseparable from equality, from access to justice and education, from access to health and the protection of the most vulnerable. It is crucial for the viability of communities and nations, and for the environment that sustains them. Members may post questions, and expect a response from their fellow rule of law practitioners worldwide on their experiences in addressing rule of law issues. The rule-of-law movement cannot be fully successful in transitional and developing countries without an answer to the question: It is useful to distinguish between the two methods of corruption of the judiciary: The standards of constitutional economics can be used during annual budget process , and if that budget planning is transparent then the rule of law may benefit. The availability of an effective court system, to be used by the civil society in situations of unfair government spending and executive impoundment of previously authorized appropriations, is a key element for the success of the rule-of-law endeavor. To date, the term "rule of law" has been used primarily in the English-speaking countries, and it is not yet fully clarified even with regard to such well-established democracies as, for instance, Sweden, Denmark, France, Germany, or Japan. A common language between lawyers of common law and civil law countries as well as between legal communities of developed and developing countries is critically important for research of links between the rule of law and real economy. Hayek analyzed how the rule of law might be beneficial to the free market. Hayek proposed that under the rule of law, individuals would be able to make wise investments and future plans with some confidence in a successful return on investment when he stated: Within the known rules of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts. Economists have found, for example, that a rise in discretionary regulatory enforcement caused US firms to abandon international investments. The most important idea of the Roerich Pact is the legal recognition that the defense of cultural objects is more important than the use or destruction of that culture for military purposes , and the protection of culture always has precedence over any military necessity. It was the first international treaty signed in the Oval Office. As of June , it has been ratified by states. An

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example is intellectual property. Under the auspices of the World Intellectual Property Organization , nominally strong copyright laws have been implemented throughout most of the world; but because the attitude of much of the population does not conform to these laws, a rebellion against ownership rights has manifested in rampant piracy , including an increase in peer-to-peer file sharing. He points out that nonviolent drug-related offences receive far more police and media attention than workplace injuries or pollution, which kill far more people each year. He argues that restorative justice is a far more effective and humane alternative to prisons, courts and the police.

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Chapter 5 : Rule of Law - Commonwealth of Nations

In a subsequent piece, published in the Fordham International Law Journal and also available on my SSRN author page, I continue the analysis by discussing what Rule of Law actually means. Keywords: Rule of Law, Democracy, Market Economy, Development Aid.

The Problem There are just over sovereign states in the world today. Furthermore, oDA looks only at governmental prof. Grimes Professor of Law and Director, center for Intema- ii"irf ,ii C"-p. Riind Bieber once told me that an academic should never.. Platz für einen wissen- con- ;;;ii;il zwischen d"n Sr,ihl"n. Since I July The Cause Thesinglemostfrequentlycitedreasonforprettymucheverythingthatgoeswlong that-there are no regular in devei-oping countries isiheir lack of democracy. Draft African ;r i;. While this is a system of trial and error, and therefore far from perfect,8 it generally seems to work better than other systems, as can be exemplified by the highly significant correlation between democratic forms of government and high standards of living. The Cure In particular in the s and s, Western donors introduced several kinds of aid conditionality. Donors with an economics focus, first and foremost the International Monetary Fund IMF , increasingly required market oriented economic reforms. In a parallel development, Western democratic governments increasingly tied their aid to progress on the road to democracy. Good governance and respect for human rights featured high on the lists of both kinds of donors, although they were some- times seen as natural consequences ofdemocracy and not as necessary separate con- ditions. The underlying assumptions were equally twofold. First, the IMF and others believed that the market would take care of itself and various other economic ail- ments in the developing countries. Second, the Western governmental donors believed that clemocracy would take care of inefficiency and comrption and deliver good governance and respect for human rights on the side. A competitive, multiparty political system; 2i;Universal adult suffrage for all citizens [. Significant public access ofmajor political parties to the electorate through the media and through generally open political campaigning. Market Economy, Democracy, or Rule of Law? One approach that has been applied by the United States, the EU and its Member States, and others, is the discontinuation of aid after undemocratic develop- ments such as a military coup or fraudulent elections. Lowering the income tax mtes on proportionally high tax brackets typically above median income and raising the tax rates on the proportionally low tax brackets typically below median income ; lowering the marginal tax mte; iv Interest rates that are market determined and positive but moderate in real terms; v Competi- tive exchange rates; vi Trade liberalization - replacement ofquantitative restrictions with low and uniform tariffs; vii Openness to foreign direct investment; viii Privatization ofstate enterprises; ix Deregulation - abolition ofregulations that impede market entry or restrict competition, except for- thoselustified on safety, environmental and consumer protection groulrd, and prudent oversight of financial institutions; and x Legal security for properfy rights. Because of its failure to recognize the election vic- tory of oppositionleader Aung San Suu Kyi,Bwma or Myanmar has been cut offfrom virtually any intemational aid for many years. In fact, if there is a correlation between democracy and development, it seems to be negative, i. TheAclnnowledgment In the late s and s, many Western donors have come to the conclusion that unconditional aid to developing countries, in particular when paid to their national and sub-national governments, is largely a waste of time and money. In this way, Africa went through one lost decade after another. Finally, many of the Central Asian countries also made little or no progress since their independence from the Soviet Union. New European Pressure for Democratisation? It is an open question whether there is evidence for a causal link between aid conditionality and democratization. At least in the year , a larger study by the World Bank using different mea- sures and indexes for democracy, could not find conclusive evidence that aid actually promotes democracy. Since the study looked at technical aid for electoral processes, as well as aid condition- ality, and aid for voter education and the like, the result was particularly disappointing. We can only hope that seven years later such a correlation could be demonstrated. Quibria, Does Governance Matter? Yes, No or Maybe: A Review , in Alex

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Inkeles ed. *Its Consequences and Concomitants*, New Brunswick To the extent that certain countries in South-East Asia did develop nicely, the aid given to them was clearly not a significant factor, let alone a *conditio sine qua non*, of their positive development. The conclusions made in various studies are actually much broader, namely that there is generally no significant correlation between aid and growth in a given country. Unfortunately, Western donors now have to come to the conclusion that conditional aid to developing countries, at least as implemented so far, also does not work. Stuffing of ballot boxes and other forms of electoral fraud will rarely be necessary in countries where this tiny elite basically agrees to continue business as usual. Representative democracy in its various forms requires additionally that the elected representatives are able to implement the will of the people. In a more differentiated analysis, Raz distinguishes between bilateral and multilateral aid and concludes that bilateral aid has mostly positive effects on growth while multilateral aid, provided in the context of different donor motives and under different conditions. Joseph Stiglitz, *Globalization and its Discontents*, London

The Interest of the People in Democracy On the one hand, democracy is not a status or situation but a process that is ongoing and needs to be filled with meaning and defended against enemies on a daily basis. On the other hand, democracy is a post-materialistic value. As long as people are pre-occupied with the satisfaction of primary needs such as food, clothing, and shelter,²⁷ i. Therefore, it is argued here that democracy cannot function in a society unless the primary needs are normally secured for very nearly every member of that society. Beyond primary needs, people have secondary needs that will take precedence over their desire to participate in democracy beyond the more or less uninformed casting of a vote every couple of years. Again, as long as people cannot take the satisfactions of these needs more or less for granted in their daily lives, they will not be seriously interested in political voice. Therefore, it is argued here that democracy cannot function in a society unless these secondary needs are normally secured for an overwhelming majority of members of that society. Finally, democracy is competing with other post-materialistic needs, such as the desire for higher education, the need for meaningful free-time, the desire for more comfortable housing, etc. If people have to choose between the satisfaction of these post-materialistic needs, many will opt for other goods and not necessarily for political voice. The seven primary physiological needs of every human being are the need for air, the satisfaction of hunger and thirst, the need for rest, the desire for sex, the avoidance of cold, heat and other pain, and the elimination of waste. The idea that people will get the kind of government that reflects the kind of virtues that prevail among them can be traced as far back as Aristotle. The authors provide theoretical and empirical evidence for a strong link between democratic values of the general population and democratic institutions. They demonstrate that the link works both ways, i. If, as can be seen quite easily, the satisfaction of primary needs for very nearly every member of a society plus the satisfaction of secondary needs for an overwhelming majority combined with the perspective of satisfaction of multiple tertiary needs for a large majority of that society require a certain standard of living or - in other words - require a certain level of development. **The Ability of the People to Participate Meaningfully in Democracy** To the extent that democracy is about the replacement of less successful leadership with new leadership that promises better solutions for the common good, democracy can only work if the accountability - responsibility - feedback-loop is working. This means that a large majority of the people need to have a fairly accurate idea who has been taking the good and the bad decisions that currently affect their lives, their economy, and their future. And the same large majority of the people need to be able to discern at least on some level between the programs and activities of different political players in government and in the opposition to determine who has the better plan for the future. Finally, people have to be able to make their contribution according to their ideas and beliefs, i. If the large majority of the population does not have regular and reasonably neutral information about what is going on in politics, in the economy, and in other matters of interest, or if that large majority does not have a reasonable understanding about who does what and why - in their country, in particular who is responsible for changes for better or for worse,³¹ true democracy will never work. The embargo provides these governments with a convenient excuse for their inability to improve the living conditions. The West provides the scapegoat aid

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the largely uneducated and poorly informed po. To give a practical example, it seems rather likely that in the absence of the U. Encouraging, let alone imposing, democracy in countries that do not meet these essential standards and pre-conditions may well be counterproductive. In more and more developing countries, more and more people are indeed coming to the conclusion that all politicians - government or opposition - are equally incapable and corrupt, that the public administration and the police are only looking after their own personal interests, and that there is no way of living well while being honest. Whether or not the latter have a chance to cast a vote every couple of years makes virtually no difference because either their votes are so uninformed that they are useless or different ethnic, religious, social. The Ability of the Elected Government to Implement Change for the Better The third set of preconditions for a functioning democracy concerns the ability of well-meaning leaders of integrity to make a difference. If people are frustrated with bad governance and express their frustration by voting for an opposition that promises to end mismanagement and corruption and to genuinely improve the situation of the average citizen, the people will be even more frustrated if the new government does not deliver. Initially, the people will take their frustrations out on the politicians, concluding that in spite of their rhetoric, all politicians are incapable and corrupt. After several such experiences, the people will take their frustrations out on democracy as such, losing not only faith but all interest in participating in politics via elections. There are many reasons why an elected government may lack the ability to improve the lives of a significant part of the population. First, formerly honest politicians may become corrupted by power and access to resources and lose their interest in bringing about change. Second, there may be material constraints. For example, the country inherited by well-intended politicians may be so heavily indebted that additional borrowing is nearly impossible and interest payments are strangulating. Often such heavy public debts go hand in hand with a bad reputation.³³ An excellent example of the consequences of a lack of civic virtue. His findings are summarized as follows: Third, the new leadership may be confronted with a highly inefficient and self-serving bureaucracy that reacts to efforts at imposing change by decree like a lethargic mass that absorbs whatever energy is directed at it without noticeable impact. Fourth, there may be strong opposition to change by the stakeholders of the old system. The old political leadership probably survived as long as it did because it formed alliances with a business elite that received monopoly rights in exchange for political donations, with corrupt elements in the public administration, with leaders in the military and the police who received jobs and influence in exchange for loyalty, etc. If only the tip of this iceberg is removed, the system has not really changed at all and will fight tooth and nail against reforms that can only lead to a redistribution of power and resources in favor of those that have so far not been part of the system. Unfortunately, numerous empirical studies have shown that all of these problems and more are widespread in Africa and other parts of the developing world. If not addressed, however, these structural weaknesses are likely to annihilate any actual or potential benefits from democratization efforts. The Quest in spite of substantial efforts, significant amounts of money, and fifty years for trial and error, the simplistic Western recipes for development have achieved precisely little. The persistent problem in many developing countries lies in the fact that the foundations for a functioning market economy and the foundations for a functioning democracy are missing. As long as these foundations are absent, any efforts at imposing market economy - via the Washington Consensus or in other ways - and any efforts at imposing Western style democracy - via conditional aid or in other ways - are bound to fail. What we finally have to acknowledge is that for fifty years, Western donors and advisors have tried to build houses on sand. What we should remember here is that democracy is not a goal in and of itself but serves a higher purpose, namely to provide the best possible government for the largest possible majority of the people. Good governance and responsible stewardship of national resources, protection of human rights and fundamental freedoms, individual justice, and sustainable economic development, are just a few of them. Therefore, the level of democracy that is achievable in a specific country or setting in the short to medium term is only worth implementing if it can deliver these goods better than the present alternative form of government. The yardstick has to be what realistically can be achieved in a given context and with the given limitations in a society, economy, and

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electorate. Putting pressure on an undemocratic government to permit opposition parties and to organize free and fair elections when the foundations for a functioning democracy are missing may well do more harm than good. The same is true for market economy. Again, market economy is not a goal in and of itself but serves a higher purpose, namely to provide the highest possible quality of goods and services for the broadest possible majority of the population at the lowest possible cost. Therefore, any step towards more market economy in a specific country or setting is only worth implementing if it is highly likely that it will lead to a better performance of the economy along this yardstick. If a country is not ready for a certain step toward private market economy, taking the step anyway may well do more harm than good. An example on point is the Russian privatization of many natural resources that created a tiny class of oligarches who have taken billions of dollars out of Russia into off-shore bank accounts and have done absolutely nothing to improve the situation of the average Russian worker or farmer. Neither of these arguments is suggesting that democracy and market economy are no longer goals to be pursued by and for developing countries. Rather, we have to acknowledge that democracy and market economy are not divided into black and white only but that there are many small steps to be taken along the path towards democracy and market economy and that these small steps have to be taken with careful sequencing and pacing.

Chapter 6 : Government is Good - Capitalism Requires Government

Ginsburg Theoretical Underpinnings of Law and Development The new wave of law and development activity corresponds with a shift toward market-oriented economic policies in the de-