

No.1. Introduction (2023/04/13)

Syllabus summary

Goals of the course:

As a basic subject, by taking this course, participants are expected to understand the outline of law and institutions in the context of development and how to implement legal regulations for development.

Through this course, students should understand what the relationship between the legal system and socio-economic-political development is; what legal system is desirable for socio-economic development; what is the mechanism of legal development; what is the difference between developing society and developed society in terms of the legal system and its implementation.

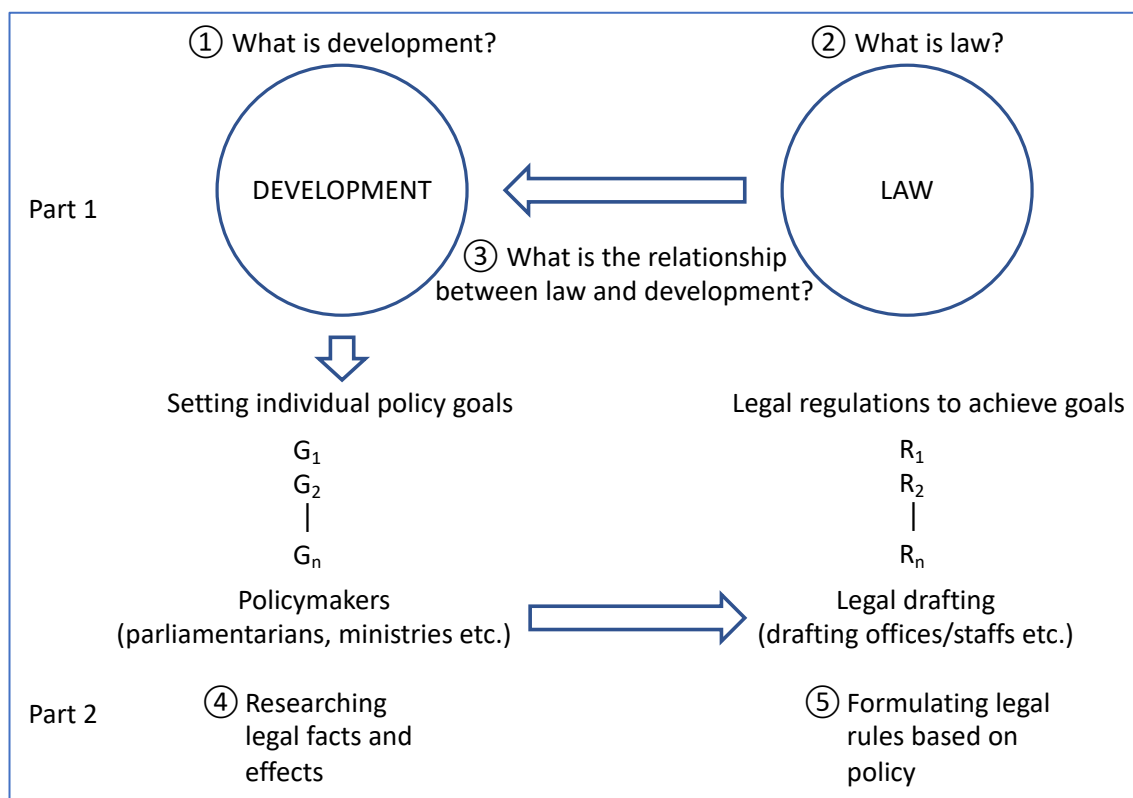
In the first part of the lecture, the lecture will discuss theoretical aspects of the law and development, including economic theory, legal theory, and cultural theory. The focus of this course is not limited to the law in narrow definitions such as legislation, regulation, or judgment. Therefore, the discussion also covers various forms of government mechanisms, public administration, and political regimes. Furthermore, informal law (such as religious or customary norms and institutions) significantly impacts development. Thus, the course also discusses the relationship between development and informal institutions.

In the second part, this lecture will try conducting practical lessons, namely, learning legislation.

In implementing a development project, legislation plays a significant role by changing people's behavior (imposing sanctions), legitimating resource allocation (e.g., allowing a government to allocate a budget to a particular area), giving guidelines (showing what is an expected goal), or maintaining social order (solving disputes peacefully).

In this lecture, we will make a draft bill to achieve a development goal (the issue will be discussed in class). Legal drafting includes goal setting, conducting legal research on facts, determining ways of the regulation (punishment or incentive), constructing a consistent structure of rules, and so on. Students are expected to participate actively in the class and preparation work.

Figure 1: Concept of the Course

**Course plan:**

Structure of the Course / Schedule

Part I:

1. Introduction
2. What does "development" mean and how to measure development? : definition and determinants of development (reading: *Advanced introduction, Chapters 1-2*)
3. What is law?: Sharing a working definition of law by comparing formal and informal norms.
4. Theories of law and development (1): Economic theory of law and development
5. Theories of law and development (2): Other theories of law and development
6. Legal technical assistance: Foreign aid for institutional reform
7. Challenges for the rule of law reform: Corruption as a case study

Part II:

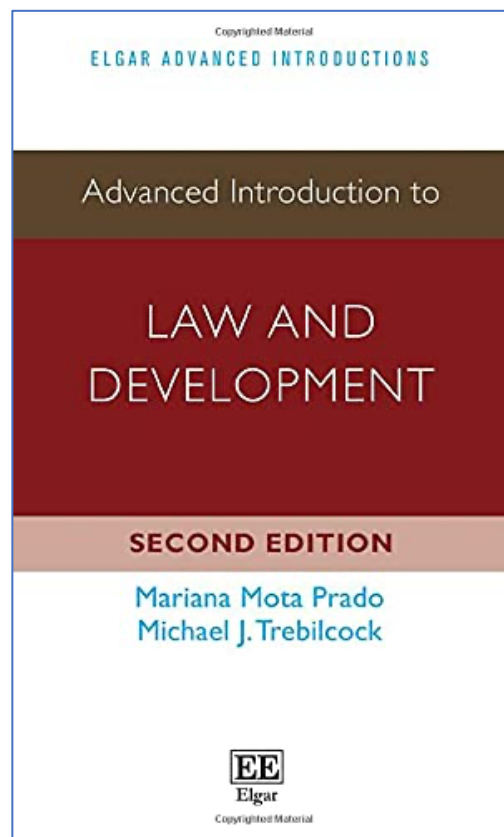
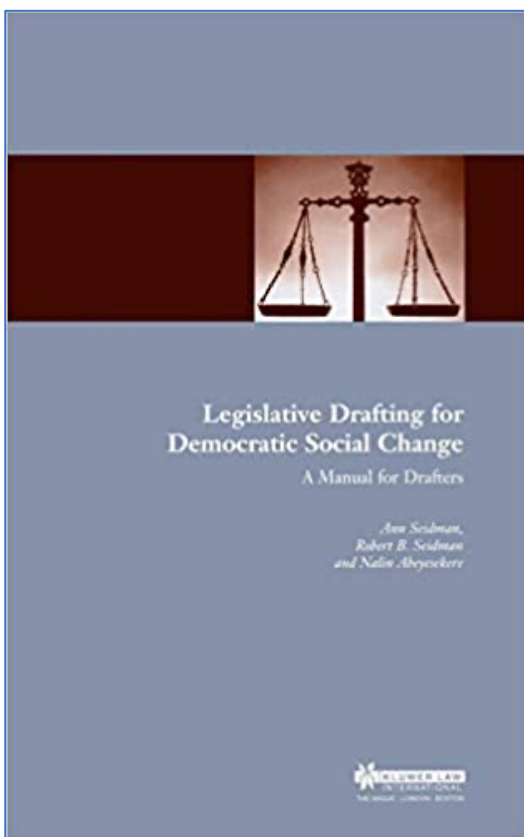
8. Discussion about development goals in each society.
9. Role of legislators in development
10. Researching legislative facts
11. Determining the contents of a legislation
12. Legislative writing: words, sentences, and references

13. Discussion and presentation (1)
14. Discussion and presentation (2)
15. Wrapping-up

Main textbooks:

Ann Seidman, Robert B. Seidman, and Nalin Abeysekere, Legislative Drafting for Democratic Social Change: A Manual for Drafters, Kluwer Law, 2001.¹

Michael J. Trebilcock and Mariana Mora Prado, Advanced introduction to law and development, 2nd edition, Edward Elgar, 2021.²



1. Opening

The second main textbook (Prado & Trebilcock) of this lecture asserted that:

"'Law and Development' is a term used to describe attempts to understand the relationship between legal systems and legal institutions and **a wide variety of development outcomes**. Hence, this book will mostly focus on the question of what kind of law and legal

¹ E-copy will be given via NUCT

² E-book is available on the Nagoya university library website

arrangements are perceived (**correctly or not**) to produce development. Before that, however, it is necessary to understand **what we mean by development**, a topic that has generated heated academic and policy debates. Different conceptions of development are discussed in the first chapter. The following chapters turn to a discussion about causal connections between legal and non-legal variables and development outcomes. The first chapter sets the context for a detailed analysis of the design of political, bureaucratic, private and international legal institutions, inquiring into when and how they may be relevant for development." (p.xi)

I fully agree with their position. Namely, at first, there is the perception that the law has a positive relationship with development, but, at the same time, this perception might not always be correct. Secondly, there are different, sometimes contradicting, ideas about development, and, thus, the relationship between law and development must be considered based on what development is targeted.

This course does not intend to explain the rigorous legal issues. The law schools offer law courses, for instance, on constitutional law, private law, criminal law, procedure law, administrative law, international law and so on as independent study subjects. In those law courses, law students must learn:

- What are the criteria for determining property rights if X's and Y's rights conflict?
- If X accesses and downloads electric data without payment, X's act is theft crime?
- Can a shareholder oppose the decision made by the company's board of directors?
- When can the government impose a tax on a private person?

Defereces of "LDS" from ordinary legal courses

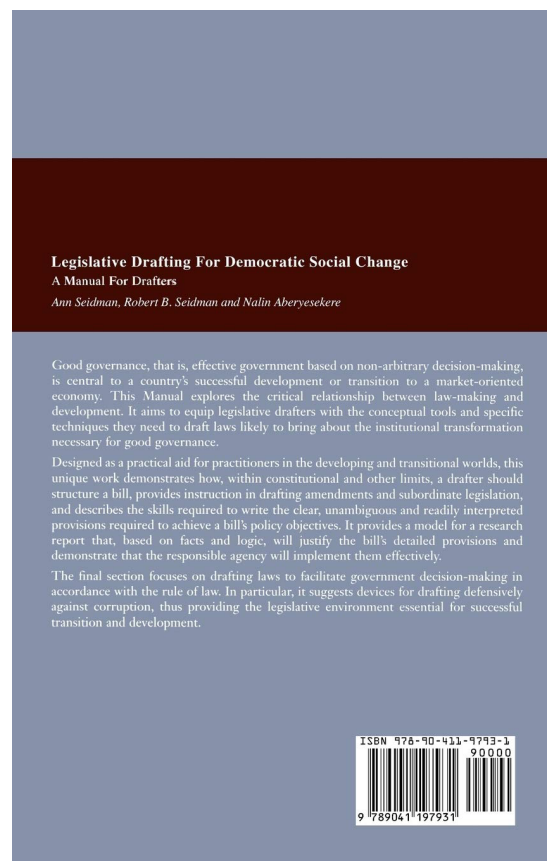
In other words, ordinary legal education is to develop law students' capacity to find an answer to a concrete legal case by applying a relevant law based on the general legal theory (*interpretation*).

However, development is multiple comprehensive project, and many different disciplines are intricately intertwined. Therefore, we must consider law as one means of policy achievement in combination with other policies. Based on this proposition, this course mainly discusses what combination of laws we should make to achieve what development policy goals. Creating or combining laws to achieve specific policy goals is the "legislative policy," which is the main point of the law and development study. In this regard, the first textbook (Seidman et al.) explains:

"Good governance, that is, effective government based on non-arbitrary decision-making, is central to a country's successful development or transition to a market-oriented economy. This Manual explores the critical relationship between law-making and development. It aims to equip legislative drafters with the conceptual tools and specific techniques they need to draft laws likely to bring about the institutional transformation necessary for good governance.

Designed as a practical aid for practitioners in the developing and transitional worlds, this unique work demonstrates how, within constitutional and other limits, a drafter should structure a bill, provides instruction in drafting amendments and subordinate legislation, and describes the skills required to write the clear, unambiguous and readily interpreted provisions required to achieve a bill's objectives. It provides a model for a research report that, based on facts and logic, will justify the bill's detailed provisions and demonstrates that the responsible agency will implement them effectively.

The final section focuses on drafting laws to facilitate government decision-making in accordance with the rule of law. In particular, it suggests devices for drafting defensively against corruption, thus providing the legislative environment essential for successful transition and development."



Thus, this course focuses on the "legislation" (law-making) among various law and development study aspects. In most countries, law-making is the task of policymakers and parliamentarians, who are usually not experts in the law. However, the law is a way to change people's repetitive behavior and give certain predictability in social relations through normative language ("if it is XXX, it should/must be YYYY"). Therefore, law-making requires an elementary understanding of legal theory. Because of this, the first part of this course discusses what law is and what normative methods are available.

Then, the course examines theories on law and development. The law and development is not a new topic. The idea that law is useful for some social benefit has existed since ancient times³. This course reviews theories on the relationship between law and development after the Second World War, from the 1950s until the 2000s. After the Second World War, the development of developing countries became an international problem, and various development theories have been presented. The law and development theory has evolved in response to changes in the dominant development strategy ("development paradigm"). This course especially discusses economic development and other development concepts (e.g., human development) separately.

After reviewing the theoretical aspects of the law and development study, I will explain some cases of legal technical assistance for developing countries. Then, before moving to the second part, we will discuss the corruption problem in developing countries, and how corruption distorts law that pursues development. We may discuss what solution can be perceived to address corruption.

Part II:

The second part is based on the discussion. We will follow the textbook authored by Ann Seidman, Robert B. Seidman, and Nalin Abeyesekere. Seidman et al. insist if the staff of a relevant line ministry submits a draft law, it must be accompanied by a research report that legitimizes legislation. **The research report is not the short concept of the law but the description of the fact that requires new law (legislative fact) and the assumed effect of the law, including causal relationship (logic).** Furthermore, after the policymaker agrees to make new law, according to the authors, the legislative drafting by a drafter is not a mere translation of policy to legal rules but political work. Thus, close communication about policy implications between policymakers and drafters is essential. In drafting, a drafter must choose what regulatory measures to take to achieve policy goals, for instance, by penalty, by incentive, by setting guidelines without coercive measures, etc.

For example, when the Japanese government decided to improve women's status after Japan ratified CEDAW, the government enacted the law without penalty because of social-economic conditions at that time. Then, the government incrementally increased legal obligations with

³ In ancient Greece, Aristotle's argument that a person can achieve superlative goodness by following the norm of the community (*polis*). In ancient China, philosophers argued the importance of the rule by law (法家). In 1748, Montesquieu published the book titled "the Spirit of Law" which examined the relationship between law and political development. In the early twenties century, Max Weber argued the importance of rational legality for the development of the capitalism.

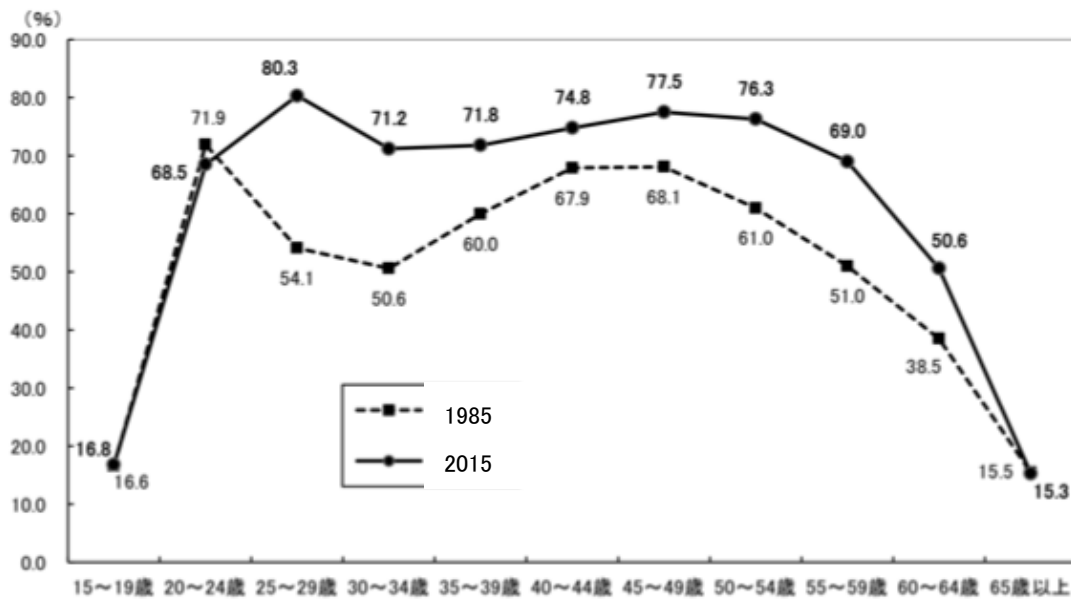
penalties. In another case, the government had to take a balance between the welfare of female single parents and the budget restriction. In that case, Japan introduced a combination of subsidies and job training that had already been implemented in the US. However, because the condition of female single parents in Japan is so different from that of the US (unlike the US, most Japanese female single parents have full-time jobs and do not depend on subsidies but still suffer poverty), the law does not have a good effect.

Making research report for legislation and mock legislation might be good practice for understanding the relationship between law and specific development goals. So, in the second part, I request participants to make a short research report. Participants should think about what development challenges exist, then discuss legal facts and legal approaches. After that, the participants shall make a legal draft.

Box 01: Elevating women's status

The Equal Employment Opportunity Act (enacted in 1985 upon the Japan's ratification of CEDAW)

(For outline, refer to: <https://roumu.com/pdf/nlb0709.pdf>)



資料出所：総務省「労働力調査」(昭和60年、平成27年)

Do you think that the equal employment opportunity act achieved its policy target?