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Teaching Law and Development in India: Reflections, Insights and Challenges

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Abstract: In 2016, Azim Premji University, Bangalore launched an LL.M. program with a specialisation in Law and Development. A course called 'Law and Development' is taught as a mandatory core course in the first semester of the program. Across a period of six years, the two of us have taught this core course either individually or in collaboration with each other. As the LL.M. enters its seventh year, we reflect on the experience of teaching the course, by taking stock of its strengths and weaknesses.

In this article, we present an account of the motivations of the program and the course, the challenges we faced, how we engaged with these challenges, and our reflections on the experience of teaching the course. In this recounting, we focus specifically on three aspects: (a) the interdisciplinary character of Law and Development and the consequent difficulty in ascertaining its boundaries, given the vast scope of the subject; (b) building an Indian context to the subject of Law and Development while preserving its comparative aspects; and (c) our reflections on teaching the subject from our individual vantage points of a private and a public lawyer respectively.

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A. Introduction: The Context and Contours of our Course

The Master of Laws (LL.M.) program at Azim Premji University ('APU') welcomed its first batch of students in July 2016. The program runs for a duration of one academic year, across two semesters. It admits about twenty-five students annually. The program is unique in India on account of its focus on Law and Development. As part of this focus, "Law and Development" is taught as one of the core courses.

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In this article, we present an account of the motivations of the program and the course, the challenges we faced in designing the course, how we engaged with those challenges, and our reflections on teaching the course. Our reflections here are based on our experience of teaching Law and Development at APU across six years in total. These include two years when we taught the course together, and four where it was led by one of us. While we do make generalisable claims, we are conscious that they arise from the specific institutional context where we are located. All academic programs at APU are interdisciplinary, and grounded in the social sciences. The faculty involved in the LL.M. program includes academics from social science disciplines outside of law who take an active part in teaching courses within the program. These features support a unique academic culture that emphasise perspectives beyond doctrinal law. Our LLM cohort is also relatively small. This allows us to interact with each of our students closely and follow their academic trajectory throughout and beyond the program.

In the remainder of this introduction, we introduce the LLM program and the considerations that shaped its design. We then provide a descriptive overview of our course on Law and Development, including its objectives. Part B highlights the ambiguity within - and the inherent elasticity of - the concept of development and the consequent diversity in approaches to learning and teaching the subject. We offer a brief account of the factors that enabled us to limit the scope of our course. In Part C, we describe our experience of delivering the course in the classroom. We introduce our general pedagogical approach for the course and then provide an account of three specific aspects that helped us with teaching the course. These include: (a) questioning the boundaries of the conventional public-private divide; (b) using the interdisciplinarity of Law and Development to our advantage; and (c) adding an Indian context to our course. In Part D, as we conclude, we articulate some thoughts for the future as we assess how successful our course has been in seeking its objectives, and also address some challenges posed by the ongoing pandemic, both to our specific course and to the broader field whose contours it seeks to map.

I. Brief background of the LL.M. program.

The field of Law and Development has become increasingly relevant in the contemporary Indian context. Over the last decade, elections in India have been contested over and around issues that can broadly be conceived of as relating to development.[1] This has popularized the usage of the term "development". Claims of using "law" as a tool to "develop" the country have also become frequent.[2] Interestingly, the current prime minister of India

1 BBC, How Narendra Modi has Re-invented Indian Politics, https://www.bbc.com/news/world-asia-india-48293048 (last accessed on 26 April 2022); EPW, Charting a Development Agenda for Modi's New India, https://www.epw.in/engage/article/charting-development-agenda-modi-new-india (last accessed on 26 April 2022).

2 *Arun Chawla*, Legal reform will help the country attain a higher level of growth and more wealth for citizens, https://economictimes.indiatimes.com/policy/legal-reform-will-help-the-country-attain

has often articulated his admiration for the *East Asian model of development*.[3] He has openly expressed his desire to emulate the policies of Lee Kuan Yew and the Singapore experience. Beyond the sphere of politics, in the *private sector*, advocates of corporate social responsibility, while emphasising a greater role for philanthropy, have often invoked the concept of development.[4] Together, these factors create a context that makes the study of Law and Development in India especially relevant.

In 2015, when the faculty of the newly founded School of Policy and Governance at Azim Premji University were debating the content of its new LL.M program, this background context was very much in the minds of some of its founding faculty members. The creation of the LLM program was a result of two factors. The first of these was to fit with the main purpose of the University: to contribute towards bringing positive social change. This purpose is reflected also in the engagement of the University in issues of climate change, labour rights, sustainable development, and legal reforms. All academic programs of the university and its research centres address similar issues of contemporary social relevance.

The second motivating factor was the desire of the founding members of the faculty to offer an academic program that highlights the significant role of legal institutions in influencing social change. In this pursuit, the faculty was also motivated by their dissatisfaction with the prevalent state of legal education in India. Thanks to the burgeoning of national law schools since the late 1980s, the overall quality of legal education in India has improved, at least at the level of the top ranked law schools. Nevertheless, the faculty felt that in order to make meaningful social interventions, lawyers need to be conversant with the social, political, and economic dimensions of law.[5] This required an academic program that introduced students to the broader social context within which legal institutions are located. Such an approach is in contrast with the curriculum and pedagogy of most law programs in India that emphasise doctrinal law and treat legal institutions as autonomous, often overlooking their rootedness in socio-political factors.

Further, undergraduate programmes in law had not made law students engage with the context, debates and imperatives of the processes of development in India. The University Grants Commmission ("UGC"), the regulatory body for post-graduate programs in

-a-higher-level-of-growth-and-more-wealth-for-citizens/articleshow/9669372.cms?from=mdr (last accessed on 26 April 2022).

3 Straits Times, Modi pays tribute to Singapore Leaders, hails close bilateral ties https://www.straitstimes.com/singapore/modi-pays-tribute-to-singapore-leaders-hails-close-bilateral-ties (last accessed on 26 April 2022).

4 See e.g. ITC Limited, CSR Policy, https://www.itcportal.com/about-itc/policies/corporate-social-responsibility-policy.aspx (last accessed on 26 April 2022). Recently, Indian corporations have been co-opted by the government in what is perceptively described as the development process. There are several schemes and political rhetoric that highlight this including Make in India, Aatma Nirbhar Bhaarat, etc.

5 LLM Program Document, Azim Premji University, 2021.

India, has alluded to this at least twice: first in 1988 and then again in 2001.[6] In 2001, the Curriculum Development Committee appointed by the UGC proposed a model legal curriculum for all undergraduate courses styled as LL.B. (Hons.).[7] Even though it was not mandatory, the proposed list of courses prompted law schools to update their legal curriculum. Many law schools in India have followed this for some time now. For instance, the National Law School of India University, Bangalore, has included a mandatory course on "Law, Development, and Poverty" for undergraduate students of law since its inception in 1988. This course addresses the role of law in India's development trajectory from an interdisciplinary point of view.[8] Some other law schools have also offered similar courses, including after the push for this in 2001, but these developments have not led to a general awareness about issues in the field of Law and Development among students and the Indian legal community more broadly.

Some of us in the APU faculty argued for an LL.M focusing on issues in Law and Development. We believed that this would especially be useful for law students interested in social change, for which a much deeper and sustained exposure to the fields of Law and Development as well as Law and Society is required. This exposure would include not only a study of the role of law in development generally, but also in other more specific social issues that are arguably constitutive of development. Additionally, in order to enable the students to appreciate the framework of the Law and Society approach, a gamut of supporting courses was required.[9] Only a full-fledged academic program with a designated focus on interdisciplinarity could achieve this. As a result, the LLM in Law and Development was designed as an inter-disciplinary program. It aims to "refocus law and legal education to the ethical resolution of critical public policy problems around development".[10]

In addition to suggesting general changes in the curriculum, the UGC prescribes mandatory parameters for universities that offer the LL.M. in India.[11] For one-year LL.M.

6 Report of the Curriculum Development Committee on Law, UGC, https://www.ugc.ac.in/oldpdf/modelcurriculum/law.pdf (last accessed on 14 May 2022).

7 Id.

8 Course Information, Law Poverty, Development (NLSIU), **Error! Hyperlink reference not valid.**https://www.nls.ac.in/course/law-poverty-development-2020-21/ (last accessed on 20 April 2021).

9 In this context, by "law and society", we generally refer to all approaches that assume the significance of the context in which law and legal institutions work. This allows the study of law in relation to those aspects of society that impact and are impacted by law. Some examples include sociology of law, law and anthropology, and political economy of law. For a general overview of the Law and Society approach, see *Lynn Mather*, Law and Society, in: Robert E. Goodin, The Oxford Handbook of Political Science, Oxford 2011. *See also, Lawrence M. Friedman*, The Law and Society Movement, Stanford Law Review 38 (1986), pp. 763-780.

10 LLM Program Document, Azim Premji University, October 2020.

11 Guidelines for Introduction of One Year LL.M. Degree Programme, University Grants Commission 2012, https://www.ugc.ac.in/pdfnews/4968873_LLM_one-year.pdf (last accessed on 21 April 2021) [hereinafter "UGC Guidelines"].

programs, the UGC mandates a dissertation component and three core courses in the curriculum.[12] These core courses are: Research Methods and Legal Writing, Comparative Public Law/Systems of Governance, and Law and Justice in a Globalising World. Additionally, the UGC prescribes that the remainder of credits be completed with optional subjects or modules. While the titles of the core and mandatory courses are mandated, the discretion to design the syllabus for these courses is with the university offering the LL.M. program. This gave us substantial scope to do justice to our approach for the program. To achieve this: (a) the faculty designed the program in a way that the mandatory courses prescribed by the UGC had a flavour of interdisciplinarity to add context to the relevant legal discourse, and (b) Law and Development was added as a core course. The addition of the new course is a unique feature of APU's LL.M.

Through these courses, the faculty attempted to secure a wide coverage, highlighting the multiple facets of the contexts within which law and legal institutions operate. The course on Law and Justice, for example, critically engages with "justice" as a variable, subjective, and fluid concept dependent also on the specifc culture where it operates. This invites students to appreciate debates and perceptions relating to 'justice' outside the field of doctrinal law that influence legal institutions. These perceptions have an important pedagogic role in the course on Law and Development. When the students are engaging with culturally dependent notions of justice and its consequent role in shaping legal institutions, they appreciate that the role of law in development cannot easily be described objectively. However, despite such symbiotic overlaps, each course in the program focusses on specific aspects of law.

The novelty of the program was also part of its challenge. Typically, the existing undergraduate courses on law and development focused more on the instrumental role of legal institutions in development. By contrast, our focus was on the field of Law and Development which includes institutions beyond those that are legal in orientation. We had to find ways to translate this interdisciplinary and vast field into a semester long course. We had to also consider that the students taking the course were generally oriented towards the doctrinal study of law partly due to their prior training. We had some guidance from the curricula of law schools outside India where Law and Development was taught. Still, it was a challenge to appropriately adapt such curricula to the Indian context and for Indian law graduates.

Therefore, in substance, conceiving a program on Law and Development for our context involved defining its contours afresh. Motivated by our shared interests in studying the role of legal institutions in the development process, we took certain conscious decisions, including reducing the fixation with doctrinal law, by studying, for instance, issues within the discourse of developmental economics. The program had a strong interdisciplinary flavour that emphasized the relationship between law, social sciences, and humanities. These elements of the LL.M. program were also incorporated in its flagship course: the new

12 Para 7, UGC Guidelines.

core course titled *Law and Development*. In the rest of our paper, we focus primarily on the teaching of this course while commenting incidentally on the program as a whole.

II. Overview of the APU course on Law and Development

The course is designed to familiarise students with a critical overview of ideas relating to development from its economic, social, and political facets. One of the stated goals of the course is to enable students to reflect on the disintction between instrumental and constitutive approaches to development.

We start the course with a set of disparate readings on the broad topic of 'Development'. These readings provide the historical and institutional context for debates about development from the late twentieth century onwards. This context precedes the modules of the course that are focussed on legal institutions. The common reaction of most students at the start of the course is: "*But where is the law here?*" This discomfort among some students is alleviated by the time we cross the first third of the course, where the law and legal institutions form a significant part of the course.

The course commences, in its first module, by problematising the very notion of '*development*'. The next few modules seek to deconstruct the concept of development from different vantage points. This includes understanding development through the lens of rights, culture, geography, institutions, and economic performance. The course then highlights, albeit tangentially and very broadly, the *process* of development. This is done by critically discussing the significance of transnational actors and their reliance on quantitative indicators. In the subsequent modules that relate to the role of law, the course explores both instrumental and constitutive dimensions of the role of legal institutions. Besides tracking the evolution of what are called the different stages or 'movements' in the overall field of law and development[13], the course also covers significant approaches to law and development studies: the legal origins thesis[14]; rights-based theories of development; rule

13 See e.g., *David Trubek* and *Mark Galanter*, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, Wisconsin Law Review (1974), p. 1062; *Carol V. Rose*, The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study, Law and Society Review 32 (1998), p. 93; *Alvaro Santos* and *David M. Trubek*, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in: Alvaro Santos / David M. Trubek (eds.), The New Law and Economic Development: A Critical Appraisal, New York 2006.

14 See e.g., *Keally McBride*, Mr. Mothercountry : the Man who made the Rule of Law, London 2016, pp. 10-33; *Mahmood Mamdani*, Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism, Princeton 1996, 109-128; *Hernando de Soto*, The Other Path, New York 1986, pp. 131-187; *Brian Z. Tamanaha*, The Primacy of Society and the Failures of Law and Development, Cornell International Law Journal 44 (2011).

of law initiatives[15]; and the contemporary debate over the role of indicators.[16] Having set the stage this way, the last two modules specifically examine the development trajectory of East Asian societies, and the Indian legal system in its postcolonial phase. Although the course adopts a comparative focus throughout, these last two modules add a specific focus on Asia and India.

The overall design of our evaluation scheme seeks to help our students in (a) appreciating the complexities within the discourse of development, (b) identifying the vantage points of comprehending development, and (c) applying themselves to contextualise the role of legal institutions in addressing development. The students are assessed on the basis of two exams (30% each), a short comment (20%), and general participation in the classes (20%). The exams are held in the middle and at the end of the semester. By way of general or specific exam questions, we invite our students to articule and apply their perspectives on specific course readings by setting out their stance, in relation to a given proposition. This proposition is usually a recent factual situation, or a quote from the relevant assigned scholarship. Besides enabling our students to reflect on the prescribed readings, the exams also help them find connections between the given proposition and the specific premises of the readings. As for the short comment, the idea is to help students engage closely with one of the prescribed readings of their choice. In the comment, which does not require additional research, students are encouraged to present their responses to the reading. This is then distributed to all other students who also benefit from gaining an insight into the perspective of one of their peers. We use some of the reflections in the short comment for our class discussions as well.

B. Grappling with core dilemmas and tensions within the course and the field

The field of Law and Development is vast and includes concepts that are academically contested. It is a challenge to define the boundaries of this expanse for the purpose of a course. It is now clear that there is no generally accepted definition of *development*. In fact, *development* implies a contestation of methods, ideas, and their underlying epistemic processes.[17] Ideally, any course that claims to cover the field of law and development should explore most of these contestations. In order to comprehensively address the topic, the course must cast a wide net. However, the notion of *development* also refers to the

15 *Thomas Carothers*, The Rule of Law Revival, in: Thomas Carothers (ed.), Promoting the Rule of Law Abroad: In Search of Knowledge, Washington 2006, pp. 1-11; *Frank Upham*, Mythmaking in the Rule of Law orthodoxy, pp. 33, http://carnegieendowment.org/files/wp30.pdf (last accessed on 17 May 2022).

16 *Kevin Davis*, *Benedict Kingsbury* and *Sally Merry*, Governance by Indicators, in: Kavin Davis et al (eds.), Governance by Indicators, Oxford 2012, pp. 3-28; *Sally Engle Merry*, The Seductions of Quantification, Chicago 2016, pp. 1-26, pp. 161-222.

17 See e.g., *Philipp Dann*, Institutional Law and Development Governance, Law and Development Review 12 (2019), p. 537 at p. 544.

story of its disputed core, not just the contested periphery. This creates multiple issues when designing a course on development. How do we map the core ideas of *development* in the course, while also leaving room for criticisms? How should we limit our coverage? Must we restrict ourselves to political, economic, and cultural development? It is not surprising that on account of the slipperiness of *development*, a new concept is in the works: *post-development*.[18] Be that as it may, in the course, we still needed to account for what development consists of at a broad level.

Our approach has been to highlight the indeterminacy of 'development' at the outset, leaving room for multiple approaches to 'development'. In a way, this is achieved by understanding *development* as a process: "*a political process about societal choices … an ongoing process of contentious debates about choices. If at all there is a substantive core, it assumes that "development interventions" are about reducing inequalities between states, classes and individuals*".[19] Therefore, in the course, we chose to demonstrate to the students *how* and *why* development is ultimately about "contentious debates and choices".

We decided to demonstrate the diverse approaches and contestations of development by surveying the most important ideas that have influenced the discourse on development. Naturally, on account of their influence, these ideas were also fiercely criticised. We have sought to include some of what we consider to be the most effective criticisms in the curriculum. These views seek not only to critique, but also set out alternative ideas of development.

These choices resulted in, for example, including W.W. Rostow's work advocating a linear trajectory of development which is also manifest in the subsequently adopted Washington Consensus model.[20] We then followed it with Amartya Sen's approach to development as expressed in *Development as Freedom*.[21] Sen's ideas add nuance to the concept of development that come across as somewhat oversimplified by Rostow. These authors do not necessarily contradict each other as such; but it is difficult to discern their work as complementing each other. The nuance in Sen's approach renders the linearity of Rostow's understanding suspect.

The result of these choices is a course document that resembles a collage of ideas and their criticisms. This led us to refer it as a *survey course* – a term that we still use to

18 *Julia Schöneberg*, Development: a failed project, https://www.opendemocracy.net/en/oureconomy/development-failed-project/ (last accessed on 17 May 2022); *Sarah Delputte, Jan Orbie*, and *Julia Schöneberg*, How Postdevelopment can transform EU ("Development") Studies, https://www.convivialthinking.org/index.php/2020/09/11/transform-eu-development-studies/ (last accessed on 17 May 2022).

19 *Philipp Dann*, Institutional Law and Development Governance, Law and Development Review 12 (2019), p. 537 at p. 544.

20 *W. W. Rostow*, The Stages of Economic Growth: A non-communist manifesto, Cambridge 1991; *Nancy Birdsall*, *Felipe V. Caicedo* and *Augusto De la Torre*, The Washington Consensus: Assessing a Damaged Brand, World Bank working paper 2010, https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5316 (last accessed on 17 May 2022).

21 *Amartya Sen*, Development as Freedom, Oxford 1999.

introduce the course to our students. While including perspectives drawn broadly from the 'the West' and 'the East', the course also sought to represent the Global South, by covering Africa and Latin America.

As soon as we put together this assortment of contestations, we realised that something was still missing. We needed to weave these ideas together so that they could tell a story. Each of these ideas that we collated was influential across a certain period of time. We realised that the order in which we collate these contestations could tell a story of evolution of development (and its contestations) across time. But as academics, we were only too aware that at least within the development discourse, ideas do not evolve so neatly. It would be odd to claim that in terms of ideas, Rostow's description of *four stages of development* was neatly succeeded by Sen's theorisation of *development* as a process of expanding *freedom*. Besides, it is seldom the case that only a single idea (or even a set of ideas) can stake a claim to being dominant across a particular time frame. Accordingly, we do not formally make any claims that the course traces the chronological evolution of ideas concerned with development. Nevertheless, we made an attempt to arrange these ideas in a thematic sequence that communicates their dominance across particular time periods, and in some instances, even particular regions. This does not necessarily mean arranging the ideas in the order of their publication by date. Instead, we sorted the readings with a view to describing the unfolding of a narrative to students. This was a story of dominant ideas across time and space within subthemes of development that held favor until they were rendered either obsolete or were overtaken by events. These ideas were interconnected even though these connections were not always apparent. The overall objective is to emphasise that development is a more holistic concept than some of its earlier votaries accounted for with their very limited versions. In the current period, concepts of development would also have to account for climate change and the revelations of precarity across the globe that have been exposed by the pandemic.

In summary, we resolved the issue of defining development by referencing our priorities: (a) most importantly, to *demonstrate* the contestations within development, (b) to map those ideas that, in our opinion, were most widely contested, and (c) to weave them together so they could potentially present a story of how these contestations progressed across time, thereby placing each of the referred works in a wider context.

There is a similar tension in defining the role of law in securing development. In its various phases, Law and Development scholars have grappled with which part of the legal system should properly be the focus of reform and emphasis. In its early phase, many scholars thought that the focus should be on public law, and on reforming the primary institutions of a legal system at the macro level.[22] During the 1980s, under the influence of Reaganism and Thatcherism, as well as the ideas of Hernando De Soto that combined with the Washington Consensus, the focus shifted to private law, and to the role of contract

22 *David Trubek* and *Mark Galanter*, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, Wisconsin Law Review (1974), p. 1062.

law and dispute resolution in particular.[23] That emphasis shifted again in the 1990s and in the first two decades of the 21st century.[24] As in the case of the readings for the concept of development, we selected readings that allow students to see this evolution over time. This hopefully enables their appreciation of the continuing battles over the role that law should play in securing development, and which parts of the legal system are properly the focus of such debates.

C. Teaching the Course: Processes and Challenges

The curriculum of a course is only as effective as its pedagogy. In this Part, we describe the *manner and processes* by which we taught the course in order to meet the objectives of the course. As with any subject, even a good curriculum has its limits. Some objectives of a course can be achieved only by applying specific approaches in teaching.

As we write about our teaching experience, we acknowledge that teaching preferences are subjective and personal. These preferences are also specific to the context and circumstances of any institution. Additionally, the autonomy of the instructor to choose specific teaching methods that suit her personal style and teaching philosophy is both valuable and desirable, but may not always have free play. Such flexibility adds to the diversity of ways in which the same curriculum can be taught, allows room for the instructor to personalise the course and establish a stronger connection with it, and enables creativity thereby facilitating improvements. For this reason, we do not advocate a specific teaching style over another. However, our attempt is to describe the broad parameters that we bore in mind as we taught the subject in our specific ways.

In this section, we reflect on four specific elements of our teaching style in this course: (a) our general pedagogical approach towards encouraging dialogue, (b) leveraging our pre-existing selves as public or private law specialists to bridge the divide between public-private law approaches to Law and Development, (c) adding Indian context to the readings during the classes, and (d) assessing the significance of law in development through an interdisciplinary context.

I. General approach to teaching

Our pedagogy encourages discussions in the classroom. We believe that the classroom should serve as a space to debate and reflect over ideas, which is an approach that benefits both students and instructors. This approach is partly inspired by Paolo Freire's ideas on

23 *Carol V. Rose*, The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study, Law and Society Review 32 (1998), p. 93; *Hernando de Soto*, The Other Path, New York 1986, pp. 131-187.

24 *Alvaro Santos* and *David M. Trubek*, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in: Alvaro Santos and David M. Trubek (eds.), The New Law and Economic Development: A Critical Appraisal, New York 2006.

education.[25] Following Freire, rather than seeking to "deposit" ideas in the minds of our students, we strive to become part of the learning process ourselves, seeking to continuously learn both from the process of being in a classroom, and from our students. We are inspired by Freire's dictum that education in the classroom "*must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers and students*".[26] This is a good ideal, but is hard to achieve in practice. As instructors, we need to explain the framework of our readings to guide our students through the multiple ideas encapsulated in the course curriculum. In each class, we spend some time in introducing, summarising, and describing major premises of the relevant context for the prescribed readings. This is required especially because of the initial restraint among our students as a result of two tendencies: i) an aversion to engage with interdisciplinary components that take them outside of doctrinal law; and ii) a reluctance to be active learners and to fall into the habits of becoming passive recipients of lectures and monologues from instructors, which in turn is ingrained because of years of school and undergraduate education where these are the primary modes of imparting of instruction.[27]

While introducing the readings, we make quick decisions about which part of the readings to emphasise. In other words, guiding our students through the readings is only a means to an end. The end is to have class discussions whereby students and teachers are joined together in the learning process and both sides learn from each other. Therefore, through descriptive summaries, our guidance equips, enables, and stimulates our students to discuss these ideas with us and join us in the process of learning.

Having said that, we concede that we have had only limited success in fully achieving this. This is primarily because there is a general inertia amongst our students to participate, and they prefer to sit-back, *receive* the lectures, and listen. These difficulties are exacerbated on account of the limited time we have to complete the course. In our attempt to invoke greater student participation and to make it conducive for them to engage with inter-

25 For a detailed discussion on application of Friere's idea on a specific course taught by one of us earlier, See *Arun K. Thiruvengadam*, From a "Banking" to a "Problem-posing" model of education: The use of Small Group Discussions in an advanced elective Law seminar (Unpublished report for CDTL program, on file with the authors 2009). A recently published work seeks to update Freire for our times: *Walter Omar Kahan*, Paolo Friere: A Philosophical Biography. London, 2021.

26 *Paulo Friere*, Pedagogy of the Oppressed, in: Ana Maria Freire and Donaldo Macedo (eds.), The Paulo Freire Reader, New York 1998, pp. at 67-68.

27 The LL.M. program at Azim Premji University receives a majority of its applications from the graduates of the integrated five-year law program. Even though Indian law schools teach social science courses as part of their integrated five-years B.A.,LL.B. program, these courses are mostly taught only in the first two years to add context to the law subjects. Consequently, very few law students in these programs engage with research that is located in social sciences. The presence of social sciences is even lesser in other variations of the integrated five-year undergraduate law courses, such as B.B.A.,LL.B, B.Com.,LL.B., and BSc.,LL.B.

disciplinary aspects of the course, we included learning material outside of the academic scholarship that is more accessible, such as newspaper opinions and documentary films.[28] In some of our classes, we also engage in structured and coordinated small group discussions. In this format, students are divided into smaller groups of five each and are asked to discuss the reading among themselves, while guided by pre-circulated discussion questions. Each group has to briefly present their comments to the full class upon resumption of the class. This encourages higher participation as students feel more comfortable voicing their opinion to a smaller group of their peers, in a more intimate setting. Interestingly, the benefits of these measures are more evident in subsequent courses, where the sustained use of such methods begin to pay off beyond the first semester, spilling over into the second semester.

II. Bridging the private law-public law divide.

The categories of private and public law will be all too familiar to any lawyer. As is well known, the field of Law and Development brings together private and public law in intersecting ways. We seek to exploit this feature of the subject in the way we frame discussions in the classroom. While the basis of private and public law categorisation is subject matter of a separate debate, it is useful to briefly mention it here.

There is a long trajectory of ideas on how these categories came to be.[29] We can identify the curriculum of undergraduate teaching at Indian law schools as partly responsible for reinforcing a strong wall between these categories. Typically, the undergraduate study of law is divided into strict silos of public and private law. In their curriculum, most law schools treat this division not only schematically for designing the syllabus, but also pedagogically. On a usual day, one would be hard pressed to find any references to contracts or property in a public law lecture, much less any allusion to private organisations like corporations. The converse is equally true. Corporations are seldom discussed in the context of the changing nature of the modern state. Yet, the nexus between the nature of corporations and the state has existed all along.[30] Despite the espousal of corporations

28 *Makarand R. Paranjape*, The New idea of India, https://indianexpress.com/article/opinion/columns/pm-narendra-modi-bjp-government-the-new-idea-of-india-5813693/ (last accessed on 17 May 2022); Vox Media, Divided Island: How Haiti and DR Became Two Worlds, https://www.youtube.com/watch?v=4WvKeYuwifc&list=PLJ8cMiYb3G5dRe4rC7m8jDaqodjZeLzCZ&index=28 (last accessed on 17 May 2022); *Jared Diamond*, Guns, Germs, and Steel, London 1997, p. 9; *Paul Collier*, The Bottom Billion, Oxford 2017.

29 See *Carol Harlow*, "Public" and "Private" Law: Definition without Distinction, Modern Law Review 43 (1980), p. 241 (examining the distinction between private and public law, as understood by common lawyers); *Peter Goodrich*, Political Theology of Private Law, International Journal of Constitutional Law 11 (2013), p. 146 (analysing the idea of a distinguished private law within the theological framework that marked early Roman law, where the differentiation emerged).

30 E.g., *David Ciepley*, Beyond Public and Private: Toward a Political Theory of the Corporation, American Political Science Review (2013), p. 139.

as a consequence of liberal contracts, they are essentially "governmental" in operations and provenence.[31] Similarly, constitutionalism is rarely contextualised within theories of property, contracts or allied concepts such as ownership. However, there is value in relating political theories such as social contracts with the liberal contracts framework, effectively bridging the gap between private and public law as conventionally understood.[32] Recent scholarly literature and some teaching trends provide hope that these hard distinctions will be done away with.[33]

This is not to assert that all courses and scholarship on public law must always reference private law and vice-versa. But, we have found that the course on Law and Development presents us with an avenue to reinforce the connections between private and public law. In most of our class discussions, we draw upon developments from both private and public law. Besides helping us in expanding the premises of the prescribed readings, this assimilation of 'private' and 'public' law is valuable in its own right. In retrospect, we think that enabling this bridge between private and public law is amongst the core strengths of Law and Development.

As such, when teaching Law and Development, highlighting the complex relationship between private-public law in the classroom isn't a choice; we go so far as to say that it is an imperative. Even though this merging of private and public law hasn't been free of criticisms, it has tremendous pedagogic value.[34] It will not be incorrect to assert that law and development is a global process, both epistemically as well as procedurally. It

31 *David Ciepley*, Beyond Public and Private: Toward a Political Theory of the Corporation, American Political Science Review (2013), p. 139. See also *Peer Zumbansen*, The New Embeddedness of the Corporation: Corporate Social Responsibility in the Knowledge Society, in: Cynthia A. Williams and Peer Zumbansen (eds.), The embedded Firm Corporate Governance, Labor, and Finance Capitalism, Cambridge 2011), p. 119.

32 See e.g., *Michel Rosenfeld*, Contract and Justice: the relation between classical contract law and social contract theory, Iowa Law Review 70 (1984), p. 769.

33 E.g., *Kit Barker*, Private Law: key encounters with public law, in: Kit Barker and Darryn Jensen (eds.), Private Law: Key Encounters with Public Law, Cambridge 2013, p.3. The distinction between public and private has always been contested. "One illustration of this unresolved, dormant dispute was the lingering doctrinal and conceptual ambiguity, which surrounded legal regulatory fields such as 'economic' or 'social' law. The contested categorization of different fields to belong to either 'private' or 'public' law could either be seen as a significant (or, bizarre) manifestation of civil law private lawyers' obsession with formal-doctrinal distinctions, or as a far-reaching critique of the unquestioned political normative foundations of legal regulation." *Peer Zumbansen*, The New Embeddedness of the Corporation: Corporate Social Responsibility in the Knowledge Society, in: Cynthia A. Williams and Peer Zumbansen (eds.), The embedded Firm Corporate Governance, Labor, and Finance Capitalism, Cambridge 2011, p.119 at p. 132.

34 For a critical view on the fusion of private and public law parameters in the Indian courts: *Shyamkrishna Balganesh*, The Constitutionalisation of Indian Private Law, in: Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds.), The Oxford Handbook of the Indian Constitution, Oxford 2016.

involves ideas from across the globe that influence each other.[35] Development, howsoever conceived, involves multiple global actors, both public and private. The extent of globalisation weakens the conventional categories of private and public law because these categories were constructed on the basis of whether the relevant interaction is between the state and the citizens (vertical), or amongst citizens (horizontal).[36] Yet, in the emerging transnational legal order, governments often collaborate with private actors (domestic and foreign) in their interaction with their citizens at large, thus transcending the horizontal and vertical boundaries of private-public law categorisation.[37] Conversely, functions conventionally performed by the state are delegated to private enterprises, with important public utility functions being outsourced.[38] As a result, sometimes even though a citizen is interacting with a private corporation, the nature of such interaction is not horizontal (between citizens/private actors). Such interactions that breach conventionally understood patterns are part of the field of study of Law and Development and attract the application of both private and public law. To make sense of these interactions and their significance in the discourse, we often find ourselves assimilating elements from across private and public law.

Accordingly, our curriculum covers an amalgam of readings that invoke both the public and private spheres of life and law, as conventionally understood. Consider Trubek's account of Weber on law and the rise of capitalism.[39] In his analysis, Trubek distils the Weberian relationship between capital economy and institutions of the state.[40] During the class discussions on Trubek, we received comments from our students that were related

35 Ideas about development are part of the intellectual dialogue globally. Taken this way, in Stephen Marglin's views, most ideas of development are responsive; in other words, they are constructed in response to another construct of development. *Stephen A. Marglin*, Towards the Decolonialisation of the Mind, in: Frédérique Apffel Marglin and Stephen A. Marglin (eds.), Dominating Knowledge: Development, Culture, and Resistence, Oxford 1990.

36 *Michel Rosenfeld*, Rethinking the Boundaries between Private Law for Twenty First Century: An Introduction, International Journal of Constitutional Law (2013), p.125. By "conventional categories of private and public law", we refer to the classification that conceives public law "vertically", focusing on the vertical relationship between the citizens and the state. Conversely, in this classification, private law is conceived "horizontally" in Lockean terms, focusing on the horizontal relationship between the citizens, albeit facilitated by the state.

For a discussion on the semantic framework within which this debate is situated, see *Ralf Michaels* and *Nils Jansen*, Private Law Beyond the State? Europeanisation, Globalisation, Privatisation, The American Journal of Comparative Law (2006), p. 843. (emphasizing the scope of "law", "private law", and "globalization" – terms that are often loosely used but ought to have clearer meaning especially when they create the framework within which particular debates are situated).

37 *Michel Rosenfeld*, Rethinking the Boundaries between Private Law for Twenty First Century: An Introduction, International Journal of Constitutional Law (2013), p. 125. See generally *Gralf-Peter Calliess* and *Peer Zumbansen*, Rough Consensus and Running Code, Oxford 2010.

38 *Id.*

39 *David Trubek*, Max Weber on Law and the Rise of Capitalism, Wisconsin Law Review (1972), p. 720.

40 Id. at p. 722.

to both private and public law. These included their views on the Weberian model, based on their views of the rising East Asian or the Middle Eastern economies. Some students were eager to note an apparently predictable regime of private law in these economies that co-existed with an absence of rule of law in the sphere of public law. These vignettes also helped us closely engage with the Weberian thesis of the relationship between law and capital, including its reservations on the rise of capital in England. In fact, to add contemporary relevance to Trubek's work, it is essential to address some aspects of modern 'private' law and its 'public' institutions. Similarly, a discussion on Dani Rodrik's One Economics[41] would be incomplete without underlining the contemporary links between capitalism and the political institutions of the state. This is particularly true for examining Rodrik's claim that participatory democracy is an enabler of superior distributional outcomes and resilience to economic shocks. To discuss these claims, we found ourselves invoking examples of Asian economies in the context of the Asian financial crisis. This involved a brief discussion of how multinational corporations shape public institutions across several jurisdictions. We invoke aspects of relevant competing factors in both private and public law to highlight this. The discussion in turn enabled us to flesh out some aspects of the complicated relationship between participatory democracy and economic performance.

These links are particularly relevant in the Indian context and a subject worthy of more extensive academic engagement. To demonstrate this in the classroom, we analyse examples from the Indian telecom sector. The Indian telecom sector is overseen by regulatory bodies whose authorities and jurisdictions overlap. Over the past four decades, incremental shifts in the regulatory regime have catalysed substantial changes in the telecom industry, prompting a change in the management of telecom companies. These changes are accentuated by the fact that India still considers telecommunication as a public service that is necessary for the development of Indian state.[42] Developments in the telecom sector present a story of the changing nature of the Indian state and Indian capitalism. Similar to the Asian financial crisis, this story cannot be understood without moving beyond the private-public divide[43].

Interestingly, we found value in such connections even for readings that were not directly suggestive of them. Our discussion on Harrison & Hutntington's *Culture Matters*, where 'culture' is emphasised as one of the determining factors for development, is a good example. Here, beyond discussing the problems of paternalism inherent in such analyses,

41 *Dani Rodrik*, One Economics Many Recipes: Globalisation, Institutions, and Economic Growth, Princeton 2007, pp. 153-92.

42 See Vision statement for Digital India Initiative, Government of India, https://www.digitalindia.gov.in/content/vision-and-vision-areas (last accessed on 17 May 2022).

43 See generally *Daniel Block*, Data Plans: How government is helping Reliance Jio to monopolise the telecom sector, The Caravan, 2019, pp. 1-27; *Arun Thiruvengadam* and *Piyush Josh*, Judiciaries as crucial actors in Southern regulatory systems: The Indian judiciary and telecom regulation (1991-2012), in: Bronwen Morgan and Navroz Dubash (eds.), Regulatory State of the South, Oxford 2013, p. 27.

we also discussed comparative business cultures and the consequent shaping of political economy within nations.[44] This helped in highlighting how 'private' culture facilitated and governed by private law, affects public institutions and vice versa.

III. Adding Indian context to the readings during the classes

In their feedback on the course, our students initially complained of a lack of Indian content in the readings. In our understanding, this stems from the comparative nature of the course that covers many jurisdictions and leaves only limited space for emphasising the literature specifically on India. As discussed above, in designing the course, our intent was to demonstrate the contestations within development by surveying the most important ideas that have influenced the discourse around it. We couldn't have done this without making the course a comparative study of these ideas. We felt that any further emphasis on literature specific to India would have compromised the design of the course.

Another reason for the absence of a greater emphasis on India specific literature is the nature of Law and Development discourse itself. Unfortunately, as it is now being acknowledged, most of the Law and Development literature originated in the West.[45] For a long time, participation of the Global South in this discourse was very limited. Consequently, indigenous voices from the developing world were neither available nor widely discussed. Some authors have also framed this as the epistemic hegemony of the West over the Law and Development discourse.[46] We acknowledge that the nature of this discourse is now changing. In fact, we are seeing an increased participation from the Global South more recently. Yet, we made certain choices to remain true to the original design of the course which was to demonstrate the existing contestations. Prolonged western hegemony over the development discourse and the Law and Development movements is part of that contestation. Therefore, we chose publications that both advanced and resisted the hegemonic nature of the discourse. In this way, our course helps the students in taking cognizance of the presence of hegemony within the discourse. Our hope is that some of our students will be inspired, in their own research, to pursue scholarship to fill this gap.

Nevertheless, perhaps as a result of including these multiple voices in the course, we realised that our course is not India-specific. We recognise the need to add Indian context to the course. This is not only to make students connect closely with the premises of a course that has more localised content. It is also because India's development trajectory is, as any nation's is likely to be, quite distinctive. It offers a way to contextualise a diverse range of plural voices on development. In fact, India's development trajectory since independence is

44 *Lawrence Harrison*, Why Culture Matters, in: Lawrence Harrison and Samuel Huntington (eds.), Culture Matters, New York 2011. p. xvii.

45 See *Stephen A. Marglin*, Towards the Decolonialisation of the Mind, in: Frédérique Apffel Marglin and Stephen A. Marglin (eds.), Dominating Knowledge: Development, Culture, and Resistence, Oxford 1990.

46 Id.

itself a manifestation of many plural voices. Over the last few decades, India has managed to draw an imperfect compromise between free markets and its socialist goals. Its institutions present a story of its postcolonial identity alongside an ever present colonial past. As one of the world's largest democracies, India also offers a case study on the relationship between participatory politics and economic stability. From the standpoint of development, India's story is not just a series of contestations, but also a set of compromises. Considered thus, adding an Indian context to the course carries significant advantages. All the ideas that we study in the course can be reemphasised while studying India's development trajectory at its conclusion.[47]

Throughout the course, we emphasise relevant examples from India in most of our class discussions, even if the particular reading in the class does not refer to India. We implement this by taking a leaf out of the sophisticated framing of development that was alluded to indirectly by H.W. Arndt. In his story mapping the ideas of development, Arndt came close to articulating development as a dialectic; he presents ideas of development as a response to ideas, movements and events across the world.[48] In this way, Arndt explores whether the changes in ideas of development occur on account of the corresponding changes in intellectual fashion. This framework enables us to imagine development as a dialogue – a response to many events across the world. Imagining development as a dialectic effectively enables an epistemic connection between countries across the globe whether situated in the Global North or the South. It allows us to make relevant connections between prevalent ideas of the times and the socio-political events around that timeframe that occurred in India.

Of course, it is not necessarily true that much of India's development trajectory was a response to ideas and events across the world. We cannot present events as part of a conversation that never happened. Yet, the very process of enquiring and examining this in the classroom in the context of our readings is worthy and useful. Adding Indian context in this manner serves a functional value. As an added advantage, we were also able to solicit increased class participation from our students. Due to their familiarity with the Indian context, our students were proactive in voicing their opinions on the readings as we applied the premises of these readings to specific events in contemporary India.

47 See Generally *Benjamin Zachariah*, Developing India: An intellectual and social history: 1930-50, Oxford 2005; *Vivek Chibber*, Locked in Place: State Building and Late Industrialisation in India, Princeton 2003; *Jean Dréze* and *Amartya Sen*, An Uncertain Glory: India and its contradictions, Princeton 2013.

48 *H.W. Arndt*, Economic Development:The History of an Idea, Chicago 1987, pp. 6-7. ["The changes in thinking about development traced in this book will at times seem mere changes in intellectual fashion, the products of a burgeoning academic industry. But some of them also, not unlike changes in the history of science represent the response of intelligent observers to the failures and successes of specific national policies – uncontrolled but not unilluminating experiments, as it were, in the laboratory of the third world. Others are in the nature of political statements, articulating the viewpoints and interests of combatants in national and international struggles"].

For example, during the last semester, we discussed many of the current government's important initiatives. These included the policy on demonetisation, implementation of a new tax regime (Goods and Services Tax), introduction of citizens' identification system (Aadhaar), deletion of Article 370 of the Constitution of India, enactment of the Citizenship Amendment Act of 2019, and the new farm laws enacted in late 2020. Each of these important policies can be related to the premises of many readings of the course. This is equally true of other important policies of prior governments as well, extending all the way to the 1950s.

IV. Appraising the significance of law in development through an interdisciplinary context.

Amongst the greatest strength of development studies is its interdisciplinarity. By itself, no single discipline can claim to answer the many conundrums that are studied within the ambit of development. To economists, sociologists, lawyers, and anthropologists alike, the academic study of development presents a humbling situation where the limits of their respective disciplines are exposed.

Consequently, in order to grasp the nuances of Law and Development, lawyers often have to let go of some of their assumptions about law. This includes assumptions about law's effective control over the society where 'good' law translates to 'good' society. No other notion of law reinforces these assumptions as strongly as the "rule of law". Thanks to the positive glow that rule of law has received in legal academia, it embodies the confidence of some lawyers in the virtues of a system that is governed by law. Our reservation is not against this confidence – we agree with the intrinsic virtue of the rule of law. Rather, we are critical of overemphasising this virtue: an overemphasis that masks the complex relationship between law and society (or, between legal and social reform). Such overemphasis also compromises the space for discussions on alternatives to the rule of law in relation to development.

In fact, the successive Law and Development movements have revealed the inherent flaw in attempts to 'transplant' particular types of legal regime in any state, exhibiting features that correlate to *rule of law*, such as objectivity and predictability.[49] It was assumed that these legal regimes would be instrumental in achieving desirable social reforms. These movements failed partly due to their underappreciation of the complex relationship between

49 *Thomas Carothers*, The Rule of Law Revival, in: Thomas Carothers (ed.), Promoting the Rule of Law Abroad: In Search of Knowledge, Washington 2006, pp. 1-11. *Frank Upham*, Mythmaking in the Rule of Law Orthodoxy, Democracy and the Rule of Law Project, 2002, https://carnegieendowment.org/files/wp30.pdf (last accessed on 17 May 2022).

legal and social reform.[50] Their oversimplified approach to rule of law issues ignored the local institutions and the consequent path dependencies of the states.[51]

Of course, this is not to say that law is of little value in social reform. We believe that law remains an important tool to structure societies. As an institution, law has a significant place in bringing about any kind of social change. At the same time, we must appreciate the limits of law. In our appraisal of the Weberian framework, with the benefit of hindsight, we believe that the relationship between law and society is complicated and non-linear at best. Much as law influences institutions outside the legal sphere, the converse is also true.

Despite many setbacks, lawyers continue to romanticize the role of law and legal institutions as effective tools of social engineering. The popularity of 'rule of law' is emphasised even by institutions engaged in the development process. The many indicators and indexes of rule of law that attempt to rank countries by the strength of their rule of law are examples of this conventional wisdom.[52] In the face of this scientific or hyper-technical idea of law, Law and Development helps us highlight the wider context in which the law operates.[53] This reveals some of the complicated and difficult questions about the role of the legal insitutions in development.

This is not just a feature of our course but the hallmark of our entire LL.M. program. In their specific ways, all courses that are part of the program ground the law within its socio-political context. The complications revealed by this approach do not provide our students with simple and universal solutions. To the contrary, with these complications, we aim to add depth to how our students understand the significance of law. The hope is that this eventually helps them in avoiding the hazards of a linear and oversimplified idea of law. Therefore, as a learning outcome from the course, we expect our students to deconstruct and critically analyse the role that law plays in the process of development. We expect them to appreciate the role of social, political, and economic institutions in this process. By extension, we hope that our students realise the mutual dependency between law and these other institutions. At the very least, as development practititoners or scholars, our students ought to distance themselves from an understanding of law as providing simple and single-discipline oriented solutions to complex social problems.

This is especially important since a majority of our students, most of whom are fresh graduates, typically fall into the trap of conceiving of the law as an absolute and totalizing

50 *David Trubek* and *Mark Galanter*, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, Wisconsin Law Review (1974), p. 1062.

51 *David Trubek* and *Mark Galanter*, Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States, Wisconsin Law Review (1974) p. 1062. *Brian Tamanaha*, The Primacy Society and the Failures of Law and Development, Cornell International Law Journal 44 (2011), pp. 209-247.

52 E.g., World Bank, World Governance Indicators, using the Rule of Law index, http://info.worldbank.org/governance/wgi/ (last accessed on 17 May 2022).

53 This approach is not novel. It has been adopted in some global law schools since the early part of the century. See e.g. *Willard Hurst*, Changing Responsibilities of the Law School: 1868-1968, Wisconsin Law Review (1968), p. 336.

tool of social engineering. In our introductory class of the course, when we usually seek their ideas on development, most of our students invoke the rule of law. When we cite other socio-economic reforms that could also be constitutive of 'development', our students agree. But most of them think that these reforms can effectively be brought about by enacting 'good' laws with a focus on adequate enforcement. Most of our students find it difficult to conceptualise a society that has achieved 'development' without a well-developed system of laws.

Our course on Law and Development presents us with an opportunity to address this seemingly straight forward connection. The comparative feature of our course helps in this respect. In discussing nations from East Asia that are now considered developed (in the conventional sense), we ask our students to study the role of legal institutions in the development of such nations. Often, we highlight the role of social institutions, economic arrangements, geopolitical factors, and political considerations in their development trajectory. Similarly, in our discussions on OECD nations, we attempt to highlight whether rule of law is itself dependent on other social, political, and economic factors. We emphasise these premises by repeatedly invoking the central conundrum of development, embodied in "Yali's question": *why are some nations developed (howsoever conceived) compared to others?*[54]

In this pursuit, a critical overview of the successive law and development movements is immensely helpful. This is presented especially well in the scholarship of Trubek and Galanter where, amongst other things, they ponder over the paradoxes of transferring legal rules across borders. This theme continues in other literature that is part of the course: Santos and Trubek[55] (critically analysing the "third movement in law and development" by highlighting the "new" critical thinking on law and economics), Rose[56] (analysing the practical difference between the first and the second law and development movement using the example of legal reform in Vietnam), and Tamanaha[57] (emphasising that the mistakes of relying on law in the previous law and development movements continue to be made despite the failed outcome of those movements). Similarly, we discuss literature critiquing the overemphasis on rule of law. This includes Upham[58] (critiquing a blanket reform

54 *Jared Diamond*, Guns, Germs, and Steel, London 1997, p. 9 .

55 *Alvaro Santos* and *David M. Trubek*, Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in: Alvaro Santos and David M. Trubek (eds.), The New Law and Economic Development: A Critical Appraisal, New York 2006, pp. 1-18; *David Kennedy*, The "Rule of Law," Political Choices, and Development Common Sense, in: Alvaro Santos and David M. Trubek (eds.), The New Law and Economic Development: A Critical Appraisal, New York 2006, pp. 150-163.

56 *Carol V. Rose*, The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study, Law and Society Review 32 (1998), p. 93.

57 *Brian Tamanaha*, The Primacy Society and the Failures of Law and Development, Cornell International Law Journal 44 (2011), pp. 209-247.

58 *Frank Upham*, Mythmaking in the Rule of Law orthodoxy, http://carnegieendowment.org/files/wp30.pdf (last accessed on 17 May 2022).

based on formalistic legal institutions and emphasising that reliance on such formalistic mechanisms obscures the actual linkages necessary for socio-economic performance) and some other texts.

Nevertheless, we do not only seek to present critical views on the rule of law. In keeping with the design of the course, we demonstrate the struggle of ideas over this concept. Therefore, the aforementioned readings are preceded by DeSoto who argues in favour of the fundamental role that contracts and property law plays in socio-economic reforms.[59] In the same spirit, we have also included Carothers[60] whose views, even though balanced, are supportive of rule of law based reforms.[61] But Carothers also underscores the importance of strengthening 'law related institutions' in strengthening the rule of law reforms. [62]

We believe that this exposure to the limits of law coupled with the general law-and-society approach of other courses in the program benefits our students. The progress in thinking exhibited by our students is particularly evident in their LL.M. dissertations. All students start exploring their dissertation topics at the beginning of the academic year. In approximately three to four months from the start of the program, they informally discuss several versions of their draft proposal with their respective supervisors. A handful of our students lean towards arguing for legal change as a solution to the socio-political issues identified by them. However, by the end of the semester, some of them become wary of adopting a sole focus on law and legal institutions. Most of them exhibit this caution by limiting the claims they make in relation to legal change, and by also highlighting the role of other social institutions in their projects. Significantly, towards the end of the semester, a majority of our students are open to looking at the law as an outcome of conflicting interests in the wider social sphere. We believe that the readings and discussion in the core course play some role in creating this shift in the attitudes of our students.

D. Conclusion

Our reflections, based on teaching Law and Development to a small cohort of law graduates, relate to its design and teaching parameters. A few considerations helped us in defining the scope of our course. These included our course objectives and the academic background of our potential students. We designed the course to highlight some of the most influential ideas within the Law and Development discourse along with their criticisms. In doing so, our attempt was to demonstrate the contestations in the field of Law and Development. We covered different ways of conceptualising development, before highlighting the

59 *Hernando de Soto*, The Other Path, New York 1986, pp. 131-187.

60 *Thomas Carothers*, The Rule of Law Revival, in: Thomas Carothers (ed.), Promoting the Rule of Law Abroad: In Search of Knowledge, Washington 2006, pp. 1-11.

61 Id.

62 Id.

role of legal institutions. This helped us provide a richer context to the significant role played by law in processes of development.

In teaching the course, our general pedagogical approach remains inspired by Paolo Freire's 'problem posing' model of teaching. To the extent possible, our attempt is to facilitate discussions in the classes where students and teachers are equal participants in the process, learning from each other. We consciously attempt to bridge the divide between private and public law. We also use the interdisciplinarity of Law and Development to highlight the socio-political context that helps our students in appreciating the significance of legal institutions. However, given the comparative nature of the course, adding further Indian context to our course has remained a challenge. To the extent possible, we use our class discussions for this purpose. In discussing the premises of nearly all of our readings, we relate them to significant contemporary and ongoing developments in India, including important law and policy initiatives of the government.

Law and Development is not only vast, complex, and full of contestations, but is also a dynamic field. The nature of the field is constantly changing, and the course needs to keep up. Of course, this is true for courses on most academic disciplines. The field of Law and Development does not just encompass ideas. It is also shaped by events across the political and social realms of our world. Therefore, to account for these events, the course ought to be much more 'fluid' and dynamic than if it were focussed only on ideas.

As we write this, the Covid-19 pandemic continues to uncover many of our vulnerabilities, at both the individual and societal levels. The pandemic revealed gaping holes within our existing social and political priorities. We can expect the discourse on development to change significantly, as more scholars engage with these issues. Even prior to the pandemic, there were sustained crticisms of the many approaches to Law and Development. Consequently, we can expect substantial changes in the discourse in the near future.

The pandemic has also highlighted how nations across the world are far more dependent on each other than was previously recognised. This dependency extends beyond markets. In 2007, Paul Collier had highlighted this by arguing that the poverty of the "bottom billion" of the world will make the developed world vulnerable.[63] As it turns out, in 2021, we have realised that the extent of this vulnerability is even greater: it does not stem from the poverty of the bottom billion alone. The impact of political choices of any state transcends its domestic borders. No nation, whether in the 'developed' or the 'developing' world, is immune from these vulnurabilities. As an example, we now realise that a non-functioning healthcare system in any country can potentially wreak havoc across the globe. This realisation will make it imperative for nations across the development spectrum to participate in setting development priorities for the future. The invitation extended to the nations of the Global South to participate in the development debate is no longer a function of inclusivity and diversity alone. As a result, we can expect much more nuance and diversity of viewpoints in the field of Law and Development.

63 *Paul Collier*, The Bottom Billion, Oxford 2007, pp. 3-4.

For our course, and perhaps even for the discourse, these events will have important implications. Globally, whether we will see further divergence or possible convergence on development prioritites remains to be seen. Either way, our course will have to adapt to these inevitable changes in the field, while keeping its basic design intact.

Turning now to the special issue within which our article is located, we are excited to be part of this comparative discussion because of our belief, highlighted earlier, that courses on Law and Development will need to focus on their comparative element even more. Reading through Coutinho and Meilo's experience of teaching Law and Development within a law school and a non law-school context, we are struck by the similarity of our struggles. We could draw parallels with the debate on teaching issues that involve the intersection of law, political economy and economics, and how we have each come to similar conclusions about our teaching goals and objectives.[64] We are also struck by the similarlity in sceptcial reactions of law students in India and in Zimbabwe to courses on Law and Development, and the challenges posed to teaching this course in a doctrine-focused legal educational environment in Global South contexts.[65] All articles in this special issue use similar texts and raise similar concerns, although the individual courses have sometimes varying approaches, purposes and goals. There are immediate benefits of reading the contributions in this issue together, such as references to readings mentioned in each article that an individual teacher in one jurisdiction may be unaware of. At a more abstract level, reading about the challenges faced by fellow teachers in other contexts and their responses to them will also be instructive. Beyond this, reading about the teaching of Law and Development in different parts of the world will hopefully be beneficial for students and teachers of such courses in other jurisdictions.

64 *Diogo R. Coutinho* and *Iagê Z. Miola*, What We Talk About When We Talk About Law and Development?, this issue.

65 *Ada Ordor* and *Nkosana Mphosa*, Contested Conceptual Foundations and Practical Challenges: Shaping Law and Development Curriculum for Legal Education in Africa, this issue.