

Ethiopian Renaissance, Democratic Developmental State and Developmental Legal Regime

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1. Introduction

The emergence of —new developmental states has important implications for law. The term —developmental state was used to describe the role of the state in the development of East Asian state especially Taiwan and South Korea. In both countries states played an active role in stimulating and directing economic growth. These policies fell out of fashion during the hegemony of neo-liberalism and the —Washington consensus. Today, however, new practices and new theories of development are emerging and some countries are returning to a more active role in promoting both growth and equity. These new developmental states are experimenting with new modes of legal action.

This paper looks at recent theoretical work on the political economy of development, showing that these new developments require a rethinking of the role of law in development; outlines some of the new legal and governance processes and practices that are emerging, and discusses what would be needed construct a robust theory of the role of law in a new developmental state. These changes in theory and practice deserve our attention for they could require rethinking theories of law and development. What we see in some countries is not a simple return to the development policy and legal models of the past, but rather a search for a very different kind of developmental state than the one that prevailed in Asia or Latin America in the 1960s and 1970s. While the new theories stress the value of state intervention, they point to very different forms of intervention that have been practiced by many nations in the past. And the little empirical data that we have suggests that some countries are experimenting with novel types of intervention. Both the new theories and the emerging practices suggest a need for new types of laws and legal processes. As our country follows the path democratic developmental state finding out the role of law, legal institutions and lawyers in it are quintessentially important.

As a result we will be talking about the developmental legal regime which is a very important topic as far as our country's renaissance is concerned.

In recent years, the interest in the role played by institutions in shaping economic development has grown steadily. While many authors list them among the main

determinants of growth, some go as far as singling them out, together with economic policies, as the most important determinant of a country's success in accomplishing economic development. In fact, according to some estimates, countries with good institutions are twice as efficient and grow three times as fast, in per capita terms, as countries with poor institutional endowments. Among the institutions that most influence economic performance, the legal and judicial systems play a prominent role.

The rapid increase in the number of law and economics associations throughout the world attests to this recognition, as does the growing number of economics professors teaching in law schools. There are essentially three ways through which law and economics may interact. First, economists may assist courts and lawyers in general in antitrust cases, in antidumping and other types of foreign trade litigation, and policy-oriented cases in general. Second, economics helps understanding incentives to litigate, the process of litigation itself and the costs involved. This strand of the literature has also developed quite successfully in recent years, accompanying the rise in the number of lawsuits, the cost of trials and the size of the compensations awarded. A third area is analyzing the role of legal and judicial institutions in determining the pace and form of economic development. What are the merits and flaws of different legal and judicial systems? What are their distributive impacts? How should legal and judicial systems be reformed in developing and transition economies to foster economic growth? Who are the beneficiaries and the opponents of judicial reform in these countries?

These are all questions that economics can help to answer. In fact, the importance, even urgency, to answer them is currently widely acknowledged. As our laws, lawyers and legal institutions are paramount important in realising the Ethiopians renaissance discussing their role in economic development will be important. Here we are to find out the relationship between law and economics and especially focus on the role of the judiciary in realising economic development.

The political and economic renaissance of Ethiopia is an issue that continues to preoccupy Ethiopians' and non-Ethiopians alike. Various methods of achieving such a renaissance have been proposed. Most of these proposals are variations of the dominant neo-liberal

paradigm of development. Thanks to our country's leadership a path which is different from this and which is tested on the ground and proven to be effective is already set. Within this national set up, to find out the kind of role that the law, legal institutions, and lawyers is both timely and worth knowing topic. Here we are to relate Ethiopian renaissance, democratic developmental state and developmental legal regime and see what our role would be.

2. The nature of law

Defining the term 'law' is not an easy task because the term changes from time to time and different scholars define the term variously. Definition of the term may vary due to the

different types of purposes sought to be achieved. Definitions given to the term law are as many as legal theories.

According to Black's Law Dictionary law consists of rules of action or conduct. These rules are issued by an authority. In addition, these rules have binding force and are obeyed and followed by citizens. Sanction or other legal consequence may help the law to be abided by citizens.

From the pragmatic point of view, American jurist, Benjamin N. Cardozo defines law as "a principle or rule of conduct so established as to justify a production with reasonable certainty that it will be enforced by the courts if its authority is challenged." According to Holmes "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law". It is observable from these definitions that courts play great role in applying as well as creating the law.

From the sociological perspective, Max Weber suggests that an order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation will be applied by a staff of people holding themselves especially ready for that purpose.

It is argued that law has three features that distinguish it from other normative orders such as custom or convention.

- a) There must be a pressure that comes from external in the form of actions or threats of action by others regardless of the person wants to obey the law or not;
- b) These external actions or threats of action always involve coercion or force;
- c) Individuals whose official role is to enforce the law must enforce the coercive action.

It is the state particularly the officials who enforce the law because they are state officials who are empowered to do that. In general, law may be described in terms of legal order tacitly or formally accepted by the society and enforced. A body of binding rules sufficient compliance of them is ensured by some mechanism accepted by community is called law.

2.1. BASIC FEATURES OF LAW

Analysing the features and nature common to all laws would help us to understand the concept of law. Among these features and natures, the ones considered as essential include generality, normativity and sanction.

I) GENERALITY

Law is a general rule of human conduct. It does not specify the names of specific persons or behaviours. Hence, its generality is both in terms of the individuals governed and in terms of the social behaviour controlled.

The extent of its generality depends on-on whom the law is made to be applicable. Consider the following illustrations.

1. “Every one has the right to life, liberty and the security of a person.” [Art 3, UNDHR; 1948].

- This law is made to be applicable to every person on this world. Therefore, it is universal.

2. “Every person has the inviolable and inalienable right to life, the security of person and liberty.” [Article 14 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- This constitutional provision is made to be applicable to every person in Ethiopia. so, the extent of its generality is national. This is less general than the first illustration.

3. “Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, status, has the following rights...

- (b) On attainment of 18 years of age, to vote in accordance with the law.” [Article 38(1) (b) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- This law is made to be applicable only to Ethiopian nationals who attain 18 years of age. Therefore, it is even less general than the second illustration.

4. “Whoever intentionally spreads or transmits a communicable human disease is punishable with rigorous imprisonment not exceeding ten years.” [Article 514 (1) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia].

- This law is made to be applicable only on a person who commits the crime. Therefore, it is even less general than the third illustration.

5. “The term of office of the presidents shall be six years. No person shall be selected president for more than two terms” [Article 70(4) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- This law is made to be applicable only to a person who becomes a president in Ethiopia. Therefore, it is even less general than the fourth illustration.

Under all these illustrations, the subjects of laws are given in general terms. However, the extents of the generalities decrease from universality to an individual person. Generality of the subject of the law may serve two purposes. Firstly, it promotes uniformity and equality before the law because any person falling under the group governed by the law will be equally treated under the same law. Secondly, it gives relative permanence to the law. Since it does not specify the names of the persons governed, the same law governs any person that falls in the subject on whom the law is made to be applicable. There is no need to change the law when individuals leave the group. This is what can clearly be seen from the fifth illustration. Even if the former president’s term of office has lapsed, the same law governs the present and future presidents without any need to change the law. The permanence of law is indicated as relative for there is no law made by person, which can be expected to be applicable eternally.

Generality of law, as indicated above, does not only refer to the subjects governed but also the human conduct, which is controlled. The human conduct in any law is given as a general statement on possible social behaviour. It does not refer to any named specific act like

stealing, killing by shooting and killing by spearing. Just a law can govern millions of similar acts and that saves the legislator from making millions of laws for similar acts, which may make the law unnecessarily bulky.

II) NORMATIVITY

Law does not simply describe or explain the human conduct it is made to control. It is created with the intention to create some norms in the society. Law creates norms by allowing, ordering or prohibiting the social behaviour. This shows the normative feature of the law. Based on this feature, law can be classified as permissive, directive or prohibitive.

A) Permissive Law

Permissive laws allow or permit their subjects to do the act they provide. They give right or option to their subjects whether to act or not to act. Most of the time such laws use phrases like:

- has/ have the right to
- is/are permitted/allowed to
- shall have the right
- shall be entitled to
- may
- is/are free to

Illustrations:

1. "Every person is free to think and to express his idea." [Article 14 of The 1960 Civil Code of Ethiopia].

- The human conduct to think and to express ideas is permitted by this law. Therefore, it is a permissive law.

2. “Accused persons have the right to be informed with sufficient particulars of charge brought against them and to be given the charge in writing.” [Article 20(2) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- “have the right to” in this law shows that the subject is given the right or permitted to get the charge in writing and to be informed its particulars. Therefore, it is permissive law.

B) Directive law

Directive law orders, directs or commands the subject to do the act provided in the law. It is not optional. Therefore, the subject has legal duty to do it whether s/he likes it or not, otherwise, there is an evil consequence that s/he incurs unless s/he does it as directed by the law. Directive law usually uses phrases like:

- must
- shall
- has/have the obligation
- is/are obliged to
- is/are ordered to
- shall have the obligation/duty

Illustrations:

1. “The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed.” [Civ. C. Art. 1740(1)]. “Shall.... carryout” in this law shows that the contracting party, the debtor, is directed, ordered or commanded by the law as it is provided. Therefore, this law is directive law.
2. “Every worker shall have the following obligations to perform in person the work specified in the contract of employment.” (emphasis added) [Article 13(1) of the 2003 Labour Code Proclamation No. 377/2003].

“Shall have the ... obligations to” in this law shows that the worker is directed by the law as it is provided in the law. Therefore, it is directive law.

In general, directive laws are mandatory provisions of laws. They oblige the subject to act, as they require him/her to act.

C) Prohibitive law

Prohibitive law discourages the subject from doing the act required not to be done. If the subject does the act against the prohibition, an evil follows as the consequence of the violation. All criminal code provisions are prohibitive laws. Prohibitive laws usually use phrases like:

- must not;
- shall not;
- should not;
- no one shall/should;
- no person shall/should;
- may not;
- is/are not permitted/allowed;
- is/are prohibited;
- is/are punishable; and
- is a crime.

Illustrations:

1. “Any unmarried person who marries another he knows to be tied by the bond of an existing marriage is punishable with simple imprisonment.” [Article 650(2) of the 2004 Criminal Code of Ethiopia]

“is punishable” in this law, indicates that the law discourages such act. Therefore, it is prohibitive law.

2. “No one may enter the domicile of another against the will of such person, neither

may a search be effected there in, except in the case provided by law.”[Civ. C. Art 13].

“No one may” shows that any one is discouraged from acting as provided by the law and so it is a prohibitive law.

III) Sanction

Each and every member of a society is required to follow the law. Where there is violation the law sanction would follow. Sanction according to Black’s Law Dictionary [Garner; 2004: 1368], is a penalty or coercive measure that results from failure to comply a law. The main purpose of sanction is to prompt a party (a wrong doer) to respond. In other words, sanction will make the wrong doer to think that s/he made a fault and s/he should correct it. Sanction may be criminal. Criminal sanction is a sanction attached to criminal liability. If the fault committed is defined by criminal law, the person will be liable to a sanction provided under the criminal law.

IV) Rule of Law

For the sake of this material, rule of law is not treated in its general sense of *government under law*, but in much more specific, comprehensive manner. According to Fuller:

“... a comparison can be made between the internal morality of law and the natural law of carpentry; which the carpenter has to follow whether his aim is to build a hideout for thieves or an orphanage. The internal morality is to be distinguished from the external morality or the substantive aims or values that particular legal rules (standards) seek to promote. In other world (he) developed a conception of the Rule of Law, not by appealing to moral values drawn from the external morality, (which will, of course, vary with different legal rules and systems and from natural school perspective to other schools of jurisprudence), but by spelling out the values that underlie the concept of law itself.”

These values are characterized as the *eight desiderata*. These identified eight elements of law, recognized as necessary for a society aspiring to institute the *Rule of law* state as follows:-

1. Laws must exist and those laws should be able to win obedience.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. Laws should be written with reasonable clarity to avoid unfair enforcement.
4. Law must avoid contradictions. (intelligibility)
5. Law must not command the impossible. (Non self-contradictoriness)
6. Law must be general.
7. Laws must stay constant through time to allow the formalization of rules; however; law also must allow for timely revision when the underlying and political circumstances have changed.
8. Official action should be consistent with the declared rule. (Congruency)

Standing alone, these eight elements may seem clear and understandable. But they are actually difficult to implement in the real world because governments are often compelled to prioritize one goal over another to resolve conflicts in a way that reflects society's political choice. For example, making too many laws that are too detailed and specific may make the legal system too rigid. Inflexibility could cause the particular case. Additionally, instead of only applying prospectively, few laws, under limited circumstances are meant to apply retroactively, or to past conduct, because they were passed with the specific intent of correcting the conduct in question. Fuller recognized these conflicts and suggested that societies should prepare to balance the different objectives listed above.

Fuller's Criteria is helpful in understanding *rule of law*, because it outlines the types of rules; of formal constraints that societies should develop in order to approach legal problems in a way that minimizes the abuse of the legal process and political power.

Rule of law, however, extends beyond mere regulation and is also shaped by the so-called *institutional constraints* on government. One such *institutional constraint* is the existence of an independent judiciary; another is developing ways of promoting *transparent governance*. *Informal constraints*, such as local culture or traditions that may encourage citizens to organize their behaviour around the law, also help constrain the government, prompt liberty and, therefore, define the rule of law.

Although still seemingly vague, *rule of law* may be most concretely defined as a theory of governance relying upon a series of law, which may be most concretely designed to encourage order and to prevent arbitrary and unreasonable exercise of government power. Multilateral institutions such as the World Bank and many policymakers throughout the world believe that the *rule* promotes economic development.

Modern economic development often comes with the introduction of a *market economy*; or, an economy based on private enterprise that does not rely on *government-planned* production. Max Weber, a famous sociologist and economist, has commented that the capitalistic order, upon which a market economy is based, is organized upon a rationale of *law-bound state*. Market economy brings buyers and sellers to the market for complex transaction from many, different parts of the world and on international scale.

Law is important to the market economy because it is the common basis on which parties can make agreements; it provides parties with confidence that disputes can be resolved efficiently and fairly. For this reason, the *predictability* and *order* that the rule of law promotes in substantive laws is viewed as the stabilizing force behind much economic developments. Rule of law helps set the *rule of the game* in critical areas such as investment, property, and contract.

Rule of law also serves as an important assurance of social rights and government accountability. Government restraint is especially critical for many transitioning economies where a previously planned economy is to be transformed into one that is market base. When the government is no longer the sole owner of land, capital, and labor, rule of law

guarantees that the crucial elements of the economy will be free from arbitrary *government will*, adopt a hands-off approach to investment and production, allowing those participating to fully exercise their rights in relations to land, labor and capital.

A. Important Components of Rule of Law Reforms

I. Court Reforms

The efficiency of the courts is an important component in rule of law reforms as the existence of a judiciary is a fundamental aspect of downfall of law. for the newly independent states established after aspect of the downfall of the U.S.S.R., for example. Providing an efficient means of dispute resolution was crucial to meeting the demands of an increasingly privatized economy. At the most basic level, this simply meant that courts needed to be available to adjudicate disputes and enforce resolutions. For countries that are further along in the reform process, more complex structural reforms that strengthen court capacity “(i.e., training judges), independence, and transparency are needed.

To increase accountability and transparency, information technology systems may be installed to provide greater public access. To increase independence of the courts, the government can provide them with funding that will allow them to make there own financial and administrative decisions. Furthermore, for countries that have already established these structural reforms to encourage the adoption of the rule of law, court performance should be evaluated on a periodic basis.

Independence, accountability, efficiency, access, affordability, alternative dispute resolution mechanisms, and the quality of professionals are some of the characteristics that may provide an accurate measurement of the system’s success.

An example of success in this area of rule of law reform is the arbitress courts in Russia. Established to hear solely economic disputes, the arbitress courts underwent legislative reforms in 1991/1992, and 1995. Those reforms led to personnel and procedural safeguards, as well as the establishment of a higher-level appellate court. The immediate

result of the reforms was an increase in the number of cases filed in the arbitress court system. Moreover, it was shown that despite Russia's corruption and localism problems, the ability of the arbitress courts were able to resolve basic commercial disputes in a timely manner.

II. Developing Legal Rules and Legal Systems

Another important goal for rule of law reform is to develop the legal rules first and foremost as Fuller stated, "*law must exist*", before one begins to talk about rule of law. Economic reforms have generated a large number of new economic laws in developing countries. Between 1990 and 1995, 45 developing and former socialist countries enacted new investment laws which were passed to liberalize the existing investment regime in their countries, by offering clear and broad legal protection for all types of investments.

The very term *Rule of Law* suggests that the law itself is the sovereign, or the ruler, in a society. As an idea, the rule of law stands for the proposition that no person or particular branch of government may rise above rules made by selected political officials. These laws reflect the morals of a society, and in a Western Democracy they are supposed to be pre-established, formalized, neutral, and objective. Everyone is subject to their dictates in the same way. The rule of law, therefore, is supposed to promote equality under the law. Thus, *rule of law* should be clearly differentiated from *rule by law*; i.e. the latter does not necessarily mean that the law is legitimate for it might not satisfy most of the *desideratas*.

The term *legal transplantation* describes the phenomena of importation of legal rules from other countries. Academic debates often center on the moral and practical implications and, by extension, the imposition as rule by law. Many Developing Countries, including Turkey, Ethiopia and Japan had incorporated a good number of laws of foreign essence since World War II, despite having a variety of legal traditions of their own. When developing countries such as these adapt laws from other countries, the rules borrowed may not fit the underlying tradition, culture, and social context. Thus, in legal transplantation, countries

should strive to *adopt* rather than simply adapt laws so as the newly introduced lawfully complements and is reflective of their respective legal, economic, and social systems.

Law and lawyers are or ought to be at the center of struggles for social change, and that researcher in the law and society tradition should look for institutional and rhetorical legal spaces that can provide opportunities for rights-based strategies that can trump politics in favor of social reform on behalf of disadvantaged groups. Legal discourse and legal actors are naturally key to these strategies.

Three major themes can be identified in the Law and Development theories of the 20th century which are:

- (i) Law can be an instrument to be used by developmental states to foster change: The first law and development movement stressed the need for change in economic and social relations and expressed hope that new laws could induce such change. This body of thought drew on modernization theory and the view - widely held by economists around mid-century that a strong state was needed to manage the economy and transform society. Law, in this view, could serve as a positive instrument of change, offering incentives for people and institutions that are “modern” and promote growth and disincentives for those who resist change and cling to traditional values’.
- (ii) ‘Law may be a barrier to economic development: -From the beginning, even those who had a positive view of law understood that the wrong kind of legal rules and practices could reduce incentives for investment and increase the cost of innovation. Concern about the negative impact of law grew in importance towards the end of the century as development agencies lost faith in state intervention and began to put more stress on the role of markets and on the need for deregulation’.
- (iii) ‘Law should be a framework to facilitate private decision-making: -As development economics turned away from a belief in state-led initiatives, more and more emphasis was placed on the role of law as a framework within which private

actors would make economic decisions. Scholars stressed that to function properly; markets require a complex infrastructure of institutions and rules, including legal rules such as the law of contract and property. They also depend on the ability of legal professionals and judges to ensure that the laws are effective. Markets may also require regulations, like antitrust and securities law. Much of the interest in legal transplants and in judicial reform for development, which made up the bulk of international support for law reform in the late 20th century, was based on the importance of creating such a neutral framework.

(iv) Questions for Discussion

1. What is law? Is it simply a body of rules? Must law be created by the state? Does law require sanctions? If law is ignored by most people in a society, does it cease to be law?
2. What are the functions of law within a society? What are the different types of law? How does the concept of “natural law” differ from “positive law”? What is “customary law”?
3. What are the sources of law? Do the sources of law differ from country to country? What factors most influence the content of the law?
4. What is a legal system? How are legal systems classified? How does culture influence a country’s legal system?
5. Are there special characteristics of law and legal systems in developing countries?
6. What does it mean to say that something is “legal?” Why does it matter that something is legal or illegal?

3. The Nature of Development and Sustainable Development

3.1. The Nature of Development

Definition:

As any definition of a term, the term development is understood as diversely as the numbers of scholars. In the broadest sense, development means, as Gandhi believed, a process reducing absolute poverty and inequality and achieving full realization of the human potential. From an institutionalist approach, some scholars make a distinction between growth and development by explaining that development consists of growth – a rise in national or per-capita real income and product – plus gradual and sustained improvements in the social system and institutional arrangement. For the purpose of this material we define economic development: The combined process of capital accumulation, rising per capita incomes (with consequent falling birthrates), the increasing of skills in the population, the adoption of new technological styles, and other related social and economic changes.

Modernization theory defines development as a process of convergence on the institutions of developed Western societies. On this view underdevelopment is both caused by and reflected in traditional as opposed to modern institutions. The definitive modern institutions are free markets, a bureaucratic welfare state, a multiparty electoral system and civil and political rights. This understanding of development, whose antecedents lie in the writings of Max Weber, implicates a wide range of legal institutions, including property law, commercial law, human rights law and administrative law. It also suggests that it is important to have a competent and independent judiciary to uphold the rule of law. More generally, this perspective implies that the process of development can be hastened by transplanting legal institutions from developed Western countries to less developed countries.

3.2 Sustainable Development

The essence of sustainable development has been described as a process of change in which the exploitation of resources, the direction of investment, the orientation of technological

development and institutional change are all in harmony and enhance both current and further potential to meet human needs and aspirations. Sustainable development means in essence the human endeavour to meet the needs of the present without compromising the resources, opportunities of future generations to meet their own needs with due regard to essential needs of the present; without compromising the ability of the future generations to meet their own needs – with due regard to essential needs of the world's poor, consideration of existing social, organizational, environmental, technological, etc. limitations influencing the needs of present and future generations.

Sustainable development consists of a chain of minor and major events which are supposed to characterize and direct a process of gradually merging developmental considerations and environmental concerns in the long term perspective of re-constituting the World Order to the effect that humankind in all its parts will be given a lasting opportunity to survive in justice and peace. This raises fundamental questions of the constitutional order and its development or evolution both on national and international levels. Good governance means qualification of constitutional order as being conducive to sustainable development.

Bridging the glaring gap in terms of economic performance between the developed and the developing states, measured by whatever criteria, was considered to be an economic affair of transfer of financial and technical resources from North to South. Economic growth was identified with development.

But, a key word introduced not long ago, namely NIEO (New International Economic Order), began to be institutionalized in UNCTAD since 1964 (U.N. Conference on Trade and Development).

The NIEO process follows development strategy is applied from top-down, without questioning the stage of development and social structures of the states concerned and its available capacities. Little or no attention at all was paid to the involvement of the non-state sector – the civil society and to the increasing relevance of the informal sector with its record of self-organization and spontaneous institution building. The NIEO process was

largely governed by a development strategy following the modernization theory, in its western or eastern version. Development was understood as a linear process of replicating modernity; i.e. European statehood on a world wide scale.

However, the belief in the simple export of European, N. American, history and experiences of modernization to the Third World appears today as one major cause for the failure of the development strategy pursued in the NIEO process. Top-down social and legal engineering, according to a preconceived blueprint of development, was not sufficient to allow for sustainable development, as it did not reach down to the development of the so-called hidden resources, hidden in the socio-political heritage and normative culture of the developing states themselves.

Developing hidden resources means human centered development. It means developing locally available skills, in particular, in the sense of social, political and economic capacity building, including decentralization of government and strengthening local authorities and the so-called third dimension; bottom-up development of the informal sector. It embraces promoting the private sector and letting the informal and non-governmental sectors of the civil society to have their optimal social role in developing and sustaining a genuinely democratic system. It means developing favourable social and legal means of instituting good governance as one element of sustainable development to the sector.

So, to achieve a sustainable development, a *bottom-up-approach involving the people at the grass-roots and the so-called hidden resources, support the top-down governmental and state-centered strategies*. The question is not either/or, but how to accommodate both within the legal structures of constitutional orders.

The transition from the concept of development, underlying the NIEO-process creates expectations in an all-embracing development strategy, addressing itself as much to governments as to people; at times depending on the support of both – national and, where relevant, international.

3.3 Legal Order for Sustainable Development

Constitutional Order should help address the State's Constitution and the existing social reality. The latter is especially relevant in respect to constitution and institution building in developmental context and should allow to capture and to understand better the evolutionary potential inherent in its socio-political sub-stratum.

Sustainable development requires an interaction between government and its people; for that matter, it requires a sufficient degree of clarification and identification of the civic and interest group leaders and active promoters, service providers of the private and governmental civil services, representatives, the elite and the polity.

Developing societies usually lack properly structured social organization just as they suffer from weak statehood. Under structured means that there is a gap of communication and interaction between government and people, due to, among other things, lack of sufficiently developed mediational organization i.e. a properly organized civil populace.

As Ethiopia is and still will remain to be a country of traditional people, lack of such properly organized civil societies significantly hinders orderly and secure good governance. Thus, it seems there is a public concern on the issue of '*developing constitutional order*' – especially on the national level, but also on the international.

In developing national constitutional order and promotion of good governance the issue of *participatory development* matters. So, entitlement of civil organization in the process of developing the *constitutional order* is much sought for. In case popular organizations or so-called intermediary groups cannot claim a legal status under their national legal order, they might resort to seek other avenues to legitimize their claim.

On the national level, the question seems to be whether there is any law that governs all others beyond the actual sovereignty of the country itself? Some might resort to question whether the *order* to be set admits participation, ensures legal pluralism and in the final

stage, when it becomes practical, will be founded to a reasonable degree on the concepts of law.

On the level of *international constitutional order* the problem constantly addressed is how to reduce, what is usually denounced as high transaction costs of law making and implementing them in newly emerging fields, demanding an immediate regulation. The need to overcome the rigidities inherent in an international legal order, the logic of which derives from the doctrine of state sovereignty, reciprocity and consent, is responded to by the increasing recourse to the so-called soft law in order to come to terms with newly emerging threats and developmental demands. New constellations and forms of the interaction between state, society and law, international and national, will need support also on the level of the international constitutional order, so as to allow for the optimal promotion of good governance through a well structured interaction between the governmental and the non state sector.

A concept of law, embracing both national and international law, which derives its intrinsic information from the notion of sovereignty of states can hardly suffice in the face of the existing under-structuredness of constitutional orders of the greater number of the states and in view of the fact that weak statehood still is a common feature of the international community. However, as long as the international constitutional orders of the greater number of the states and in view of the fact that weak statehood still is a common feature of the international community. However, as long as the international constitutional order still is perceived in theory and practice in light of the doctrine of state sovereignty, reciprocity and consent, the international legal order and the potential for evolutionary legal order lacks the openness and the cotangential for evolutionary change, which is ever more needed in the face of increasing environmental threats and developmental domains. Therefore, the important question is how to re-conceive the relations between society, law and states so as to secure the interaction between national and international constitutional orders, necessary for appositive evolution in terms of sustainable development.

At this stage strengthening the basis, legal and theoretical, for promoting the self-organization of peoples becomes topical in the larger context of the international legal structures and their evolution toward a higher state of social organization. An effective policy of sustainable development requires that good governance will be institutionalized in constitutional orders both on national and international levels.

A. Questions for Discussion

1. What is development? To what extent has the concept of development changed over time? Does it matter that the definition of development has changed over time?
2. Can one measure development? If so, what are the various elements of development to be measured? Does the concept of "human development" help or hinder our understanding of development?
3. What models of development have been prominent in the world since 1945?
4. How do these models translate into policies? How do these policies translate into laws? What has been the record of successes and failures of development policies since 1945?

4. The Nature of Developmental State:

4.1. Developmental State and Development: Theoretical Overview(introduction)

There are extremely few examples of non-Western economies that were able to achieve sustainable economic growth over a long period of time. Looking for countries beyond Western Europe and North America that could serve as reference models for a successful industrialization, the eye turns almost invariably to East Asia, where most of the remarkable economic success stories have taken place: Japan's rapid growth in the last decades of the century and the years after World War II, the economic miracle of the "Asian Tigers" in the second half of the 20th century and China's economic success today.

At the height of Western imperialism in the 19th century, Japan was at the verge of being colonized by the Western powers. Partly triggered by this imminent danger, drastic political changes took place in the course of the so called "Meiji Restoration" in 1868. In the following years, the new political authorities undertook profound reforms of Japan's antiquated institutions. Furthermore, a rapid modernization and industrialization was successfully pursued with the aim of catching-up economically with the Western powers. After the devastating defeat in the Second World War, the economy of the after-war period showed another impressive growth performance that became known as the Japanese miracle. In the second half of the 20th century, Japan had surpassed most western countries economically and became the world's second largest economy behind the United States.

While Japan was the first non-western country that achieved the status of an industrialized nation , there are several East-Asian countries that achieved similar economic "miracles" in recent decades. Beginning in the early 1960s, South Korea, Taiwan and the city states of Singapore and Hong Kong formed a new wave of countries that challenged the established Western economies and Japan. Among these four "Asian Tigers", in particular South Korea and Taiwan but to a certain degree also Singapore followed the developmental path of Japan .

The East Asian economic success has caught the attention of both policy makers and economists and lead to a vast number of scientific publications. Many of the earlier contributions explained the fast economic growth as the result of market-based policies that approximated laissez-faire. This view was challenged beginning in 1982 by Chalmers Johnson, who conducted an extensive study on the role of the Japanese state in the economy, and later by other scholars such as Robert Wade and Alice Amsden , who published similar studies on Taiwan and South Korea, respectively. These scholars argued that it was precisely the active and interventionist involvement of the state in the economic development that was responsible for the high, sustainable growth rates of these countries. This concept of the state as the main promoter of economic development was termed the developmental state by Johnson.

It has to be noted that there is no commonly agreed model that provides a clear, feasible definition of what a developmental state actually is, in spite of the extensive use of this term in scientific publications within the realm of economics and political science. This is partially due to the fact that most major contributions to the developmental state literature lack an explicit theoretical framework and do not put the concept into the broader perspective of economic theory. As suggested by Kang , I will attempt to close this gap by analyzing the developmental state in the context of the New Institutional Economics (NIE).

The role of the state is one of the key issues of economic research. While economists usually agree on the regulatory functions of the state—e.g. its responsibility for establishing and enforcing the rule of law—it has been a much more controversial question whether the state should take an active role in promoting economic growth and development.

One of the key tenets of neoclassical economics is market optimism. Applied to developing economies, this leads to the notion that the best political authorities can do is to free the economy from state-imposed constraints in order to allocate its resources in sectors where it had a true comparative advantage. In contrast any kind of state

interference - especially industrial policy promoting specific sectors of the economy through subsidies, protectionism or similar measures - would cause a distortion of prices, an inefficient allocation of resources and consequently economic failure. Furthermore, a state that assumes these roles would be more prone to government failure with consequences such as rent-seeking and widespread corruption.

In his seminal book "MITI and the Japanese Miracle", Chalmers Johnson came to the conclusion that the role of the state in Japan differed drastically from the neoclassical ideal. Instead of performing exclusively or predominantly regulatory functions, the Japanese state has served as a guide for economic development, e.g., through promoting technology transfer, planning the development of Japan's industrial structure and setting incentives to achieve the desired changes.

The greater goal of catching up with the developed Western economies was not left to the market forces and the exploitation of comparative advantages through the private sector; rather, the Japanese state was actively involved in the economic process. According to Johnson, the Japanese developmental state is best described as a plan-rational state; as opposed to the Socialist command economies of the Eastern Bloc which he considered to be plan-ideological and the Western regulatory states which he described as market-rational.

Fueled by the analysis of Johnson, a whole stream of literature has emerged that analyzed the policies of other emerging economies by elaborating on his concept of the developmental state. It is widely accepted that the states in three of the high-performing "Asian Tigers", namely in South Korea, Taiwan and Singapore, acted along similar lines as the Japanese state during the period of fast growth, although Singapore is sometimes excluded from this list since its position as an *entrepôt* city-state has led to different starting conditions, constraints and opportunities. Furthermore, the emerging Southeast-Asian economies of Malaysia, Thailand and Indonesia are usually considered to be developmental states, although they do not share some characteristics of the high-performing Northeast Asian countries. Some publications also try to present a general model of late industrialization by including less successful emerging economies such as Brazil, Mexico or Turkey into the developmental state concept. However, including many countries with diverse institutional settings into a single theoretical concept

leads inevitably to more ambiguity. Therefore, this is not the approach followed here. Instead, the analysis will be focused on the three most apparent examples of developmental states, namely Japan, South Korea and Taiwan, which share many characteristics.

Of course, the diversity of the developmental state literature is not limited to the analysis of different countries, but also addresses different issues that are related to the notion of a plan-rational, capitalist state. According to Vu (2007), the literature in this field is concerned with three different but related questions:

1. What roles do developmental states play in the successful industrialization of their countries?
2. What do developmental states share and what is generalizable about them?
3. Why did developmental states emerge where they did but not elsewhere?

To put it even shorter, research has been aimed at answering what the authorities in developmental states did, how they were able to do it and why they did it. The first question refers to the strategies developmental states applied in order to promote economic development. Furthermore, it is necessary to determine which exogenous conditions facilitated the emergence of successful developmental states in East Asia. The New Institutional Economics can contribute from a theoretical perspective to answering both questions.

The New Institutional Economics as the basis of the Developmental State

The New Institutional Economics (NIE) is not a single, coherent theory, but rather a whole field of research that intends to overcome some shortcomings of the neoclassical economics. The most important shortcoming of the orthodox, neoclassical reasoning from the perspective of the NIE is that it is concerned only with the operation of markets under highly theoretical and abstract assumptions. It ignores the constraints that limit the functioning of the market mechanism in the reality. Furthermore, neoclassical economics is primarily concerned with the operation of existing markets; it does hardly provide insights into the emergence of a functioning market.

Common but rather unrealistic assumptions of neoclassical economics that are typically revised and relaxed by the NIE include perfect information and the absence of transaction cost. At the same time, most works in the field on the NIE retain the actor-centered analytical approach based on individual rational behavior. Therefore, it can be considered an approach that does not try to replace neoclassical theorizing but rather to modify and extend it.

The two major branches of the NIE are based on the works of Oliver E. Williamson and Douglass C. North. Williamson and subsequent scholars elaborating on his work have been primarily concerned with transaction costs and their influence on the emergence of the firm. The second branch of research initiated by Douglass North, which is more

relevant for this study, focuses on two different but interrelated aspects: (1) how institutions influence the economic performance of a society and (2) which mechanisms lead to the emergence of institutions and their evolution over time.

The term “institutions” has been defined in quite different ways in literature. The definition that is probably most frequently used today is the one given by Douglass North, who understood institutions as “the humanly devised constraints that shape human interaction” or less formally as the “rules of the game in a society”. It is important to notice that this definition includes not only formal rules such as laws and regulations, but also informal rules such as cultural norms. Each enforced rule limits the set of feasible choices that economic and political actors face when taking a specific decision, because some options that are theoretically available may be illegal or socially unacceptable. In this way, institutions shape the incentive structure of an economy and influence its development towards growth, stagnation or decline

When evaluating the influence of existing institutions on economic performance, apparently all different types of institutions have to be taken into account. The influence of clearly codified formal rules on economic performance is generally easier to analyze in either quantitative or qualitative studies than the effect of informal institutions. Nevertheless there is little doubt that informal institutions, sometimes

summarized under broader concepts such as culture or ideology, can have a determining influence on the decisions of economic actors and, thus, eventually affect economic performance.

Informal institutions generally tend to change more slowly and may complement or even substitute formal regulations that may not yet be fully enforced. Besides the rather static perspective that focuses on the impact of existing institutions on the economy, it is also relevant for the analysis in this paper to take a more dynamic perspective and to study how institutions emerge. Whereas the state is usually treated as an external actor that develops and enforces rules for the private sector in the static perspective, the state is clearly at the heart of the analysis when focusing on the evolution of institutions. From this perspective, it is important to determine which constraints the relevant decision makers in the government and the legislature face when they decide upon new rules.

For many of these constraints, the notion of Douglass North that “history matters” (North, 1990) becomes apparent. They can be the result of external conditions, e.g. the country’s relationship with neighboring nations or major powers, but they can also be the result of conditions within the country itself, e.g. its ethnic structure and the possible existence of easily exploitable income sources such as valuable natural resources. Cultural rules that shape the decisions of public officials also have to be taken into account.

The key elements of developmental states in East Asia

1. The political sphere

The state apparatus as an active participant is clearly at the center of the developmental state concept, therefore the political sphere represents a good starting point for its analysis. First of all, it has to be noted that the state is not a single actor that takes coherent decisions, but rather a nexus consisting of a large number of individual decision makers that are members of the government, the ministries and other agencies. The division of power between these individuals is officially determined by a country’s formal political institutions, in particular its constitution, but can also be affected by internal power struggles that do not necessarily have a predictable outcome. In a simplified way, the state can be seen as consisting of the government and the

bureaucracy, which is officially responsible for implementing the decisions taken by the government.

2. Regimes in East Asia

One of the striking circumstances of the East Asian economic success story is that virtually all emerging economies in the region were ruled by authoritarian or at least semi-authoritarian regimes during most of their fast economic growth. South Korea was under the control of different regimes from the end of the Korean War in 1953 until its democratization in 1987. However, the periods of comparatively liberal rule were short. The larger part of this period was shaped by the dictatorial regimes of Syngman Rhee, who ruled from 1950 until 1960 and General Park Chung-Hee who took power in a coup d'état in 1962. The rule of Park Chung-Hee marked the beginning of the high-speed economic growth and is usually considered the key period of the developmental state in South Korea, while the regime of Syngman Rhee is often referred to as corrupt, ineffective and chaotic. Nevertheless, Rhee can be credited for creating the conditions that later enabled Park to pursue growth-promoting policies by centralizing political power in the executive, suppressing communist ideology and weakening the labor movement

In Taiwan, the Kuomintang (KMT), which was disposed from mainland China in the Chinese civil war against the Communist Party in 1949, ruled in a single-party system until the 1980s. Until his death in 1975, the KMT and Taiwan were controlled by Generalissimo Chiang Kai-Shek. Thereafter, the most prominent political figure was his son Chiang Ching-Kuo who died in office in 1988. As in South Korea, the unions and the labor movement in general were repressed by the regime.

While democratization took place in both Taiwan and South Korea Most at the end of the 1980s, most of the other high performing East Asian economies such as Singapore, Malaysia, and the People's Republic of China are still governed by authoritarian regimes today. In contrast, the archetype of the developmental state, Japan, stands out in several ways.

Japan had an authoritarian regime from the beginning of its industrialization in 1868 until the end of the Second World War, but it has been a democracy since the post-war period,

when it achieved the famed economic miracle. However, it should be noted that all prime ministers of Japan have been members the LDP (Liberal-Democratic Party) since the foundation of this party in 1955, with the sole exception of a short period from 1993-1996.

The prevalence of authoritarian regimes in the high-performing East-Asian economies has fueled the debate on the relationship between regime-type and growth. There is no common agreement on this question. Nevertheless, it is widely accepted that a developmental state has to be “strong” in order to avoid the rent-seeking pressures typical for developing countries. Furthermore, it has been argued that the ability to make credible commitments concerning economic and particularly industrial policy was an important success factor for the emerging East Asian economies. Such long-term commitments are hardly possible in an environment of frequent government changes. In the Japanese democracy, continuity in economic policy was not only guaranteed by the dominant role of a single party but also by the powerful role of bureaucrats, who are employed members of the ministries and thus not directly affected by elections. The pivotal role of the bureaucracy in developmental states will be further analyzed in the next section of the paper.

The economic bureaucracy

Apart from the government itself, the bureaucracy of a country is a key component of the state. In the context of the developmental state, the bureaucracy has received attention in particular because it is the main focus of Chalmers Johnson’s previously mentioned book “MITI and the Japanese Miracle”. The bureaucracies in the developmental states have in common that they are organized as a strict meritocracy and have been able to attract highly qualified graduates from the best universities by offering highly prestigious positions and attractive remuneration. According to Johnson, Japan’s bureaucracy is further distinguished by several features from its counterparts in Anglo-American and most other western economies. The most important of these features is the seminal influence that bureaucrats - members of the different ministries that are neither elected nor commonly appointed by elected politicians - have on fundamental political decisions. Chalmers Johnson points out that during the period of his analysis (1925-1975), the bureaucracy drafted virtually all legislation and controlled the budget,

tasks that are clearly within the responsibility of elected politicians within the government or the parliament in Western economies. However, it is important to notice that this crucial influence on political decisions is not necessarily the result of a clear constitutional assignment of decision-making power, but in some cases rather a result of other - sometimes informal - regulations.

One source of influence for the bureaucracy is the vast amount of expert knowledge and competence that its members possess. This is particularly true in the case of the Ministry of International Trade and Industry (MITI), which Johnson considers to be the pilot agency of the Japanese state. In Japan, pursuing a career as a bureaucrat is considered very prestigious which enables the ministries to attract a large portion of the best graduates from the most reputable universities. Once hired, these high potentials usually stay in the ministry for the larger part of their professional life, rising through the different ranks and acquiring detailed knowledge about the ministries' activities. While a ministry is officially headed by a member of the Japanese government, who is subject to direct democratic control, the vice-minister—a bureaucrat who has successfully risen in the ranks of the ministry up to the highest possible position—possesses often both more support from the lower levels of the hierarchy and more detailed expert knowledge. Consequently, it is hard if not impossible for an elected government and its ministers to induce significant policy changes without the cooperation of the long established high-ranking bureaucrats. While this arrangement dilutes the democratic control of policies, it permits the steady pursuit of consistent long-term oriented policies, which would otherwise be difficult to achieve in a democratic setting such as post-war Japan.

The situation in Taiwan and South Korea has been slightly different, since the authoritarian regimes of these countries were certainly not willing to share their power with a highly independent bureaucracy. However, powerful economic agencies similar to MITI exist in Taiwan and South Korea. In Taiwan, the Council for Economic Planning and Development (CEPD) and its predecessors, while less powerful than MITI in Japan, have been responsible for tasks such as formulating the macroeconomic development plans and administering the substantial financial aid from the USA that

the country received in the first years of its high growth. In Korea, the most important agency during the rule of Park was the Economic Planning board (EPB), which accumulated considerable power over other ministries in a process of centralization (Cheng et al.; 1998: 101-103). The importance of the EPB for the Korean developmental state is further evidenced by the fact that its head was awarded the rank of a Deputy Prime Minister, the second highest position in the government hierarchy.

3. The business sector

In spite of similar developmental strategies and similarities in the political sphere, the structure of private business in the East Asian economies is not uniform. Japan and South Korea show most similarities in this field, since the private sector of both economies is dominated by extremely large and diversified business groups, namely the Japanese keiretsu and the Korean chaebol. In contrast, the Taiwanese economy is characterized on the one hand by a large number of small private companies similar to the German Mittelstand, and on the other hand by one of the largest public enterprise sectors in the non-communist world. The city state of Singapore is differentiated by the other first-tier developmental states since its economy has not relied primarily on domestic companies but has been characterized by a significant amount of foreign direct investment of multinational companies since the beginning of its fast growth.

More important than the actual structure of the business sector in the different economies are the institutions that enabled the political authorities to influence and guide the companies towards the chosen development path. In the democratic setting of Japan, the degree of government control over the private sector has varied over time and developed into what Johnson calls “administrative guidance”, meaning that the state had a coordinating influence on private companies without exercising coercive power on their strategies. One factor that has facilitated the administrative guidance by the bureaucracy has been the practice that high-ranking bureaucrats commonly assume powerful positions in private companies after their retirement. Since the Japanese economy is characterized by large business groups that are each organized around one main bank, the bureaucracy only needs to influence a limited number of decision makers in order to have a significant influence on the economy.

In Korea, the centralized structure of the political regime in combination with the prevalence of large, diversified business groups has enabled the state to exercise more control over the business sector and to pursue more ambitious industrial policies than in Japan or Taiwan. One key mechanism that enabled the government to exercise control over the private sector was the nationalization of the banking sector, which took place shortly after Park Chung-Hee came into power. In this way, the state was able to direct investment to the designated target industries. The situation in Taiwan differs from both Japan and Korea in that the government had only few personal ties with the private business sector. The Taiwanese government prior to the democratization in the late 1980s was made up by members of the Nationalist Kuomintang party, who had fled from mainland China after the lost Civil War against the communists. In contrast, the business sector was dominated by native Taiwanese. The lack of personal ties and trust between these groups caused the Kuomintang government to rely more on public enterprises than was the case in either Korea or Japan. Instead of guiding the private sector through subsidies for specific target industries, Taiwan relied more on entering new industries with state-owned enterprises to set incentives for complimentary investments of the private sector.

3.2. The Genesis (Japan)

As in the case of other Developmental States, the Japanese Developmental State also evolved over time until it assumed its mature form in the late 1950s. The beginning of modern Japanese development is generally assigned to the period of the Meiji Restoration, and by and large this chronology is right. But some preconditions for the construction of a Developmental state had been laid down before 1868. These included after Commodore Perry's successful bombardment of Japanese ports, the Japanese attained a high degree of national autonomy in policymaking. Other factors included the intense nationalism of the Japanese ruling class and its demonstrated ability to learn from foreigners such as the Chinese who had better technologies of production or war, or useful principles for organization of the state and society.

After the Meiji Restoration, the earlier, feudal categories of court noble, warrior, peasant, merchant and outcast were done away with and restructured into two new classes—a small nobility and everyone else. By 1876 the government also succeeded in pensioning off all the former members of the warrior class. Previously they had received stipends from Tokugawa or from their domains at a cost of over 200 million yen. The Meiji law also freed rural labor from various degrees of debt bondage, ranging from servitude for life to bondage only for the duration that the loan was not repaid. But the law did not give the land to the peasants as claim. It converted feudal into private tenures and most of the dependent peasantry of feudal times became tenants or part-time tenants eking out their income from their small holdings with labor on the fields of others.

Around 1853, about 80 per cent of the people were farmers. By 1940 this proportion had gone down to 40 per cent, but the absolute number of families dependent on agriculture had gone up from 5,518,000 in 1886 to 5,642,000 in 1932. Because of the highly unequal distribution of land in a land-scarce economy (with 2.7 acres of land per agricultural household in 1939), in the 1940s 28 per cent of the farmers owned land, and 40 per cent had to supplement their income from owned land by leasing land from others. Because of the scarcity of land and lack of fast expanding alternative employment opportunities, the tenants and part tenants were virtually tied to the land and landlords and had to pay very high rents. In the 1930s, a survey of 9,134 villages by the Japanese Department of Agriculture showed that in 70 per cent of the cases the rental from a single-crop field constituted more than 50 per cent of the crop; from a two-crop field the rent was around 60 per cent of the crop. The net income of the peasant was even lower than this figure indicates, because he had to bear the costs of cultivation, and pay a number of taxes besides the land tax.

Thus the Developmental State in Japan was even more hampered, before the Second World War, by the burden of a highly exploitative landlord class. This is one of the main reasons why, in spite of a tremendous effort to industrialize without allowing foreigners to gain control of any sector of the economy, the rate of growth of the Japanese economy did not attain the spectacular levels that have been witnessed since 1953 or so, by which date Japan

had reconstructed her war-ravaged economy. The annual rates of growth of Japanese national income in the periods 1897-1919 and 1919-1938 were 2.8 per cent and 3.5 per cent respectively, and these were pulled up by two war-induced spurts in the periods 1912- 1917 and 1931-1937 when the respective annual rates of growth of GNP were 4.56 per cent and 5.71 per cent. By contrast, the annual rates of growth of Japanese national income in the periods 1953-1969 and 1969-1979 were 10.0 per cent and 8.5 per cent respectively.

Despite the failure to abolish landlordism in the countryside and to take adequate measures to succor the working population, the quality of the effort made, and the strategy adopted, by the Japanese ruling classes after the Meiji Restoration remain very impressive by the standards of Japan's forerunners in the industrialization race, especially in contrast with the trajectories travelled by the ruling classes of most other non-European nations. For example, many members of the *samurai* played an important role in abolishing their own class and the old rank-order of society: they realized that these impeded the release of the energy of the country and its defense against aggressive Western powers.

The leaders of the Meiji Restoration realized the supreme importance of education in their pursuit of 'civilization and enlightenment,' and their campaign for strengthening the state so as to be able to resist the Western intruders. Hence, in 1872, a law was proclaimed which set out a scheme of education from the primary to university levels, also making primary education compulsory. The enforcement of this law was not smooth-sailing, but eventually resistance was overcome and the money was found for funding the programme. As a result, while in 1873 only 28 per cent of the school age population was attending school, the corresponding figure had risen to 98 by the end of the century, rendering Japan one of the most literate countries in the world. The close integration of government planning and business strategies also dates from the early days of the Meiji Restoration.

In a sustained effort to speed up the development of the economy and increase its military potential, the Japanese government promoted and financed railways, telegraph lines, ports, shipyards and naval installations. But it also set up pioneer factories. Most of these state-sponsored shipyards and factories were later turned over to private enterprise. But they

acted as training grounds for workers, technologists and managers, and led to adaptations of techniques and management styles to Japanese conditions and requirements. Because of the government's continued interest in the development of capital goods industries and armaments factories and its repeated involvement in war, starting with the Sino-Japanese war of 1894- 95, the close collaboration between government and business continued and was even intensified in the most militaristic phase of Japan's history viz., the period from 1931 to 1945. Despite all these remarkable features of the society and economy, the Japanese miracle did not happen until after the Second World War.

Recently, the developmental state became a widely used and understood concept as a consequence of Chalmers Johnson's seminal analysis of Japan's post-war economic reconstruction. In Johnson's original formulation the developmental state had a number of features—principal among which were competent state agencies and carefully calibrated industrial policies—that allowed it to play a decisive role in directing the course of Japan's economic resurrection. The key quality that made the state in Japan developmental was that it planned the development process rather than relied on market forces to determine the optimal allocation of resources. Unlike “market rational” states, which were concerned with simply establishing the rules of the economic game, the “plan rational” state sought to formulate and pursue “substantive social and economic goals.” In Japan's case there is no doubt that such goals were often achieved, because of a combination of domestic capacity and favourable external circumstances. The unprecedented success of Japan's post-war developmental project gave it a talismanic status for other would-be developers, and a special place in debates about and analysis of the rapidly expanding field of comparative political economy.

The story of the Japanese miracle has been frequently told. Most importantly, perhaps, Japan's resurgence occurred in very different circumstances from those confronting Korea and China. Two external conditions were especially favourable as far as Japan was concerned. First, the Japanese were actively supported rather than “contained” by the now hegemonic presence of the United States. The willingness to tolerate Japan's neo-mercantilist developmental strategies was a crucial component of the permissive

environment in which Japan prospered. This was especially important given a second factor that favoured Japan.

The U.S. promotion of a broadly “liberal” world order in the aftermath of World War II would eventually culminate in the greater degree of international economic integration that we now associate with “globalization.” For the first few decades of this process, however, Japan would enjoy the best of both worlds: It was able to take advantage of a rapidly expanding international economy and relatively unfettered access to important markets in Europe and North America, without having to open up its own markets and, crucially, while maintaining control of the domestic financial system. Japanese bureaucrats had some particular advantages in pursuing their vision of industrial rebirth. First, the idea of a powerful, interventionist state enjoyed a degree of legitimacy that it did not in the Anglo-American economies, where very different traditions of economic and political thought prevailed.

Moreover, the bureaucrats not only enjoyed a good deal of prestige, they also had real power. The nature of Japan’s political system, in which the conventional political class is famously ineffective and preoccupied with raising money to fight elections, meant that the bureaucrats were generally allowed to get on with running the economy. When the developmental state was at the height of its powers, state officials were able to exploit the sorts of “embedded autonomy” that many consider vital to effective policy implementation.

Close connections with Japan’s powerful *keiretsu* business groups allowed industrial policies to be coordinated via an “old boy network” of ex-public servants who ended their careers in the board rooms of leading Japanese corporations. Such relationships were fundamental components of the old order. The very different way in which they are now viewed is emblematic of the real material changes that have overtaken Japan and of the ideological prism through which they have been refracted. But it is important to note that the “Japanese model” had other important components that help explain its undoubted success.

The *keiretsu* networks, for example, enjoyed significant competitive advantages, partly because they were embedded in a wider array of institutionalized social relationships that together helped Japan to “catch-up” with the rest of the industrialized world; they also gave Japan’s distinctive patterns of social accommodation a good deal of stability and resilience. Not only did its industrial relations system feature “lifetime employment” and a more collective commitment to corporate goals; Japan’s economic and social institutions were also widely thought to give it a competitive advantage over other economies.

Japan’s growth record since the beginning of the 1990s has caused a major rethinking of the entire Japanese experience and about the role of the developmental state within it. While this is understandable enough, perhaps we also need to think about the wider geopolitical context in which the Japanese model appeared to founder. Of central importance in this context was the winding down of the cold war and an increased willingness on the part of the United States to pressure Japan into opening up its domestic economy. Precisely the same sorts of pressures are building up around China since it has supplanted Japan as the principal source of U.S. trade deficits. They are no more likely to address the underlying problems than they were in Japan’s case. Nevertheless, they do serve as a reminder of the dynamics, importance, and possible unintended consequences that flow from specific geopolitical contexts.

Understanding the South Korean Developmental Model

South Korea is distinguished from our earlier examples of developmental states by two major characteristics, namely: it is a former colony of an imperial power, and secondly, its spectacular growth is almost entirely a post-second World War phenomenon. It has been sometimes argued, especially by some Japanese and American scholars, that Japanese colonialism laid the foundations of postwar growth in Korea, that Korean growth can be understood as a more or less continuous process since the days of Japanese colonialism.

Since the 1960s when the developmental projects took start, South Korea has indeed been transformed from one of the world’s poorest countries into an exemplar case of the Newly

Industrializing Economics. Its per capita income rose from \$103 in the early 1960s to \$7,435 in 1993, and growth rates, which averaged 3.4 per cent per annum during 1954-62, have exceeded over 10 per cent per annum since 1965. The expansion of exports also increased from \$40.9 million in 1962 to \$76 billion in 1993. And the country joined the Organization for Economic Cooperation and Development in 1994. South Korea is currently the world's twelfth-largest economy and holds the fourth-largest foreign reserves.

It is one of the top five producers in the world of ships, automobiles, electronics, and steel. However, this rapid and impressive economic growth was matched with repressive dictatorial regimes by Park Chung-hee (1961-1979) and Chun Doo-hwan (1980-1987). Historical, geopolitical, and cultural factors have been cited to explain such economic success under centralized political power structure. But most of all, developmental intervention, has been one of the central themes of the political economy in South Korea.

Exogenous factors

As far as exogenous factors are concerned, scholars searching for the answers of the Korean miracle have looked in various aspects of Korean society and suggested that historical legacies from the Choson Dynasty, the experience of the Japanese colonial rule, the subsequent political turmoil including the Korean War and the division of the Korean Peninsula, Confucian tradition, and geopolitical situation of South Korea during the Cold War era did matter for the establishment of a strong state and its push for economic growth.

War and colonialism as the deep background for the Korean developmental state was an idea first noted scholar. It is argued that the Japanese created a kind of developmentalism in Korea, and though it was profoundly predatory in character it nevertheless, achieved rapid industrial growth; it means that the early 1960s was not the first time for such a growth in South Korea. Japanese colonial rule shaped an overloaded state structure, from which one can trace the emergence of developmental institutions afterwards. In particular, some patterns within this overall economic transformation have proved to be of long-term

significance. First, the colonial state preferred to work with large business group. Since the Korean, family centered, but gigantic enterprises also came into their own under this regime, herein may lay the origin of the chaebols. The Korean working class is also said to have been originated under Japanese rule. For example, if there were less than ten thousand industrial workers in 1910, the population of industrial workers had reached 1.3 million in 1943. And furthermore, the moment its origin came into being in a very constraint and cohesive colonial environment, it might be a causal explanation for future conformity. Along with, the bureaucracy, the police, and the military that sovereign South Korea inherited were essentially colonial creations. In sum, this historical strand suggests that it might be likely that a significant part of the explanation for why countries pursue different developmental paths lies in their colonial heritage.

The division of the Korean peninsula, brought into being by the Cold War and deepened by fratricidal conflict of the Korean War, was another reason for the establishment of strong state in South Korea. The division polarized political attitudes of Koreans and led to the emergence of powerful military and security establishments. Moreover, the rise of anti-communism, which came with the division, cultivated a hegemonic ideology legitimizing the capitalist developmental trajectory. In such political environment, developmental governments could easily exclude most non-state actors from a role in the formation of national policy through a strategy of “political exclusion”.

South Korean economic development under a developmental state system, moreover, can be attributed to its geopolitical merits, especially during the Cold War era when its development plans took start. It is inconceivable that South Korea could have succeeded in the absence of America’s willingness to throw open its markets to the export of Korean manufacturing products, and in the lack of the U.S. security umbrella, which has preserved the balance of power in the Korean peninsula and the East Asian region as well. The United States has since poured more than \$13 billion in economic aid and military assistance into the country, and it still maintains approximately troops there. Another aspect of the South Korean success is its utilization of the international environment.

Korea along with other East Asian countries experienced a dramatic de-coupling of their economies from metropolitan capital and furthermore, they did not reestablish ties until the process was well established. For example in 1967 the stock of direct foreign investment in Korea totaled only \$78 million. By contrast, nowadays, foreign investment has exceeded the total of the previous 40 years. Foreign reserves increased from \$3.9 billion at the end of 1997 to \$74.0 billion at the end of 1999. Along with when the developmental strategy shifted to export oriented light industrialization in 1963, the international economic situation was favorable to the Korean economy: since the 1960s advanced economies recorded relative abundance in international liquidity and over-production of capital goods, in general, and machinery for light manufacturing, in particular .

Another explanation for the South Korean economic success under developmental state comes from the cultural argument. Confucianism is said to explain both the impressive economic performance and the maintenance of developmental rule in South Korea. Confucianism is a code of ethics to guide the relationship between human beings and has long influenced the mentality and behavior of the Korean people. Hierarchy is the core notion in the human relationships between generations, within families and between the ruler and the ruled. The duty of the subordinate is to show respect and loyalty, while the duty of the superior is to lead by asserting the highest moral and intellectual standards. By justifying the existence of hierarchical political systems and the need for the centralized, meritocratic bureaucracy that operates within a developmental political system, the Confucian value system generates particular institutional outcomes that are reflected in political system and in industrial organizations.

Confucian emphasis on family, groups, norms, social harmony and moral, political and economic order have suffocated the development of political culture of individualism and personal freedom. Good government has been less exemplified in popular views by the rule of impersonal law but understood more as an embodiment of virtuous leadership. These norms tend to offer greater “authority space” for governments attempts to regulate personal conduct and morality and to sanction corporate arrangements that promote compromises rather than rivalries among competing interests. Thus, supremacy of the state

over societal forces seems to be based on such Confucian culture. Centralized state power which has played a leading role in mobilizing human and material resources necessary for rapid industrialization originated and could be maintained on the cultural foundation of Confucianism. Confucianism also places emphasis on hard work, diligence and a reverential attitude toward education, given that such traits are widely perceived to be the most acceptable means of career progression in a hierarchical system. This in turn implies that Confucianism encourages rapid human capital formation.

In South Korea high demand for education matched with the economy's demand for skilled manpower. Effective educational system and relatively high educational attainment of the South Korean population has produced skilled and semi-skilled labor force, which eventually has increased labor productivity and horizontal and vertical movement of the labor force. Some scholars argue that Confucianism breeds a particular type of industrial organization, in which companies are organized in community-like, almost family-like ways, with a strong emphasis on team spirit.

In sum, legacies from Japanese colonial rule, the division of the Korean peninsula and the Korean War, the Cold War politics, American economic and military support, and Confucian ethics emphasizing hierarchy and authority all favorably acted to the emergence of a strong state with excessive power to take lead in economic developmental projects and in mobilizing the population according to this aim. Yet, this does not mean that these exogenous factors were the only critical elements for the rapid development under developmental state.

These factors cannot be more than contributory factors, which may play their part, but only when other conditions are favorable. Therefore, the exogenous factors – history, geopolitics, and culture – have provided circumstances for the emergence of the state relatively free from social pressure, which, in turn created a favorable policy environment.

Endogenous Factor: The Developmental State

It is the developmental statist paradigm which has hold strong explanatory power over the economic success of South Korea under authoritarian regimes. Focus of this approach is placed on the state's capacity and efficient role for macroeconomic intervention and mobilization of resources, its insulation from social pressures, policy consistency acquired from imposed political stability, and infusion of developmental ideology. Developmental statist postulate that economic success of South Korea is attributed to the active, interventionist state, which was able to formulate efficient, coherent, and consistent economic policies, and to implement them effectively. State planners, not the free markets, it is argued, determined the direction of economic activity and a complex system of financial directives, while conglomerates were used to achieve desired ends. In all major economic decisions, in short, the state dictated economic policies, while the large conglomerates executed them.

Korean state imposed strict controls on flows of investment funds and acted systematically to change the incentive structures of commodity markets in pursuit of national economic priorities. Through control of the banking system, the state not only controlled the allocation of investment capital, but also by setting favorable terms of interaction conducive to strategic national goals it actively intervened to capture the potential benefits offered by foreign capital.

Such procedures were executed through an information-gathering network in the shape of a mandatory reporting system. This allowed the bureaucracy to keep close track of priority industries throughout the high-growth period. In return for significant state support, these industries were required regularly to report on their export performance and other areas of business activity .And hence, the credit tool was a strong measurement for the state to guide and select among industrial sectors.

4.3. The characteristics

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mobilization of resources, its insulation from social pressures, policy consistency acquired from imposed political stability, and infusion of developmental ideology. Developmental statist postulate that economic success is attributed to the active, interventionist state, which was able to formulate efficient, coherent, and consistent economic policies, and to implement them effectively. State planners, not the free markets, it is argued, determined the direction of economic activity and a complex system of financial directives, while conglomerates were used to achieve desired ends. In all major economic decisions, in short, the state dictated economic policies, while the large conglomerates executed them.

Scholars note that the developmental state imposed strict controls on flows of investment funds and acted systematically to change the incentive structures of commodity markets in pursuit of national economic priorities. Through control of the banking system, the state not only controlled the allocation of investment capital, but also by setting favorable terms of interaction conducive to strategic national goals it actively intervened to capture the potential benefits offered by foreign capital. And hence one can easily notice that in a developmental state a firm that does not respond as expected to particular incentives may find that its tax returns are subject to careful examination, or that its application for bank credit is studiously ignored, or that its outstanding bank loans are not renewed.

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Financial control is developmental state's strongest instrument to guide and accumulate the economy. The advantage of the credit-based system (or financial control) was that the state could exert influence over the economy's investment pattern and guide sectoral mobility, because in such a structure, firms relied on bank credit for raising finance beyond retained earnings, they therefore responded quickly to the state's policy, as expressed in interest

rate and other financial policies. Therefore credit-based, price-administered financial system is a crucial enabling element. The financial system serves as the eyes and hands for the state's industrial brain.

The state further influenced the structure of the economy by regulating the terms of interaction between industry and agriculture, by protecting infant industries, and by anticipating future needs in key sectors. In sum, the developmental state is important in all facets of growth – diversification, stabilization and growth momentum. In the first phase, the state would act as an entrepreneur by planning and investing in new industries and sectors. It then would deploy short-run stabilization policies to overcome external shocks and facilitated growth. Finally, government intervention would insure the economy's continued growth. The economic efficacy is explained as a consequence of the policymakers' insulation from contending societal and political pressures, and the organizational capacity and autonomy of the state. This insulation and autonomy of the developmental state will create a political environment for policy consistency because economic conditions will not be measured in terms of electoral cycles. Reduced policy fluctuations would be more credible to economic agents and have improved economic outcomes.

But why do these institutional arrangements emerge? In contrast to scholars who portray developmental states as highly *autonomous* entities, unconstrained by coalitional demands, developmental states will only emerge when political leaders confront extraordinarily *constrained* political environments. Specifically, we argue that political elites will only build such institutional arrangements when simultaneously staring down the barrels of three different guns: (1) the credible threat that any deterioration in the living standards of popular sectors could trigger unmanageable mass unrest; (2) the heightened need for foreign exchange and war materiel induced by national insecurity; and (3) the hard budget constraints imposed by a scarcity of easy revenue sources. Many scholars call this interactive condition "systemic vulnerability."

Analysts differ as to the ultimate benefits of the interventionist *policies* developmental states have pursued. Yet even economists skeptical as to their benefits agree that, because such policies have been “institutionally demanding,” the particular *institutions* comprising developmental states were critical to whatever benefits resulted from them. Any explanation for the scarcity of developmental states must be a political one. Economic institutions ultimately arise from the rough-and-tumble of elite politics, not from choices by private parties to enhance mutual welfare. But politicians are primarily motivated by concerns with securing their own power. This typically leads them to de-emphasize the provision of broad collective goods and to fashion institutions as vehicles for channeling largesse to key constituencies –typically economic elites interested in easy profits through speculation and rent seeking –rather than serving any of the more virtuous economic functions noted above.

It is argued that the political origins of developmental states can be located in conditions of “systemic vulnerability,” or the simultaneous interplay of three separate constraints: (1) broad coalitional commitments, (2) scarce resource endowments, and (3) severe security threats. Any subset of these constraints might make it somewhat more difficult for rulers to stay in power without improving institutional performance. Even mild constraints might inspire politicians to forego their individual interest in maximizing patronage resources, and press them to convert the bureaucracy into “more of an instrument, less of an arena. Our argument thus suggests that the interactive condition of systemic vulnerability is both a necessary and sufficient condition for developmental states.

How can a government build and hold together a broad coalition when revenues are desperately needed for national defense, and when there is precious little revenue to go around? Only by continuously expanding the national pie through sustained growth, yet without pursuing a cheap-labor, “race to the bottom” strategy that could alienate coalition members. We thus anticipate that systemic vulnerability will press elites to abandon low-wage-based export growth for a higher-skill, quality-based export trajectory. Elites must thus design side payments without draining the national treasury or raising exporters’ costs. In other words, sustaining broad coalitions over the long run requires the ability to export

high value-added goods, viz. to upgrade. States exhibiting weak or even “intermediate” institutions lack the capacity to overcome these political-economic challenges.

4.4. The Institutional Features of Developmental States

What specific features give institutions the capacity to solve the information, commitment, and coordination problems that plague economic development? Accounting for the origins of developmental states requires that we identify such features, independently from the national economic performance with which they are associated.

Developmental states are complexes of particular types of bureaucratic agencies and public-private sector linkages. The bureaucracies in question are Weberian in nature: Recruitment is by competitive exam; promotion is by merit; remuneration is competitive with rates in the private sector; tenure in office is long; sanctions for corruption are clear and effective; and leadership occurs through a “pilot” agency that “stands outside and astride” individual ministries. Incentives in these bureaucracies encourage the development of independent organizational perspectives and the alignment of broader organizational goals with individual incentives.

But developmental state bureaucracies go beyond the Weberian ideal by promoting linkages with private actors, particularly business and, ideally, labor as well. These public private institutions can range from formal “deliberation councils” and joint statutory boards to more ad hoc advisory councils. At least three features distinguish these institutions from the broad spectrum of “clientelist” government-business relations that characterize most political systems, especially (but not exclusively) in the developing world. They operate on functional and/or industry-wide criteria; their private sector participants tend to be “encompassing,” often in the form of official, sectoral or peak associations; and their operations tend to be transparent, at least to government and business, and to proceed according to explicit and consistent rules and norms.

External Threat: We find useful guidance in unraveling this puzzle from the literature on state formation in early modern Europe. This literature broadly agrees that strong states arise in response to security threats, as asserted in Charles Tilly's famous dictum: *War made the state, and the state made war*. Variants of this argument have been usefully applied to Japan and the Northeast Asian Countries: it is argued that economic growth was indispensable for military security" and regime survival in Korea and Taiwan; and many contend that an atmosphere of "political contestability," based in large part on external threats, compelled leaders to create strong institutions to promote growth and implement wealth-sharing mechanisms for popular sectors.

Resource Constraints: Research suggests that a state's ease of access to revenue influences institutional development. For example, "rentier state" theorists have argued that resource abundance encourages the creation of distributive rather than extractive state institutions, and Michael Ross has proposed that this "resource curse" encourages politicians to dismantle state institutions in order to "seize" rents. These arguments help to account for variation in institutional capacity between resource-rich and resource-poor economies. Indeed, some scholars argue that natural-resource exports reduced fiscal pressure on the Asian countries to promote the kinds of complementary institutional and linkage development that occurred in the North Asian countries. At any rate, whether states satisfies or maximize revenue depends fundamentally on the coalitional and geopolitical context in which they are forced to operate.

Systemic Vulnerability: Broad coalitions and external security needs constitute two critical claims on scarce resources that press ruling elites to become revenue maximizers. Under such vulnerable conditions, "easy" development strategies become difficult: shortages of foreign exchange to import inputs for domestic producers means simply subsidizing unprofitable local firms is unsustainable; coalitional obstacles to squeezing wages weaken the long-term feasibility of labor- intensive industrialization; and the lack of foreign exchange makes it difficult to grow simply by buying costly foreign technology. When elites face high levels of systemic vulnerability, they necessarily confront the challenge of

simultaneously improving living standards and promoting growth by continuously upgrading local resources.

Reconciling these competing political pressures requires strong institutions. Elites confronting systemic vulnerability must go beyond ensuring property rights, establishing macroeconomic stability, and socializing the risks of new investments. They are also pressed to redistribute assets, such as land, identify areas for new investments with real market potential, establish education and training programs that upgrade skills valued by the market, and set up manufacturing and agricultural extension programs that improve the competitiveness of firms.

Implementing policies in these areas poses particular challenges: They require the active “buy- in” of numerous parties. They have important distributional implications, with benefits often taking longer to appear than costs. They require considerable information, often of a specialized nature. And they lack clear “templates.” In these situations, Policy makers are dealing in much more complex political environments and often walking blind as to what needs to be done to resolve issues of public importance.

Policy implementation under these conditions thus requires institutions able to formulate broad developmental objectives; to facilitate information flows within state agencies and between officials and private actors regarding market requirements; to monitor firms’ performance; and to be credible in terms of both commitment to economic policies and willingness to exact reciprocity.

Contemporary Model of Developmental State

We need a new political economy of development because the context for growth in the nations of the “periphery” has changed. The classic political economy of development as well as some of the accounts of East Asian exceptionalism focused on ways that late developers could industrialize by adopting practices and models that had been created in the advanced nations. The challenge faced was not to invent new processes and products or

compete with leading sectors in advanced countries, but to duplicate the prior stages of development in the leading countries. This could be done by finding ways to produce the same kinds of products that advanced countries produced in the past or ways to produce new products those countries had pioneered but which developing countries could produce more cheaply.

The context for development theory has changed. While the contemporary political economy of development has learned from the work of its predecessors, the field is also confronting a new context that has an impact on ideas and policies. Changes from past eras include a much more integrated global economy; the information technology revolution; the growth of a knowledge economy; the growth of global supply chains; and the emergence of major powers in the developing world like Brazil, Russia, India and China.

These “emerging powers” are technologically advanced, relatively capital rich, and regionally powerful. These countries (and some other smaller developing nations) can be active competitors in global markets not simply for primary products and for the products of low-wage, low skilled labor, but also for advanced and sophisticated products and services. Thus they face the need to maintain global competitiveness which entails constant innovation and improvements in quality. Such pressures are not limited just to the developing country firms that seek to penetrate advanced markets: to the extent that all markets are more open than ever, all firms in developing countries are subject to the pressures of global competition and all nations are concerned with national “competitiveness”.

The new political economy of development (NPED) has highlighted a number of issues which have led to a reappraisal of the role of the state. They include:

- 1) ***Underdeveloped markets***: NPED returns to the insights of classic developmentalism concerning market imperfection in developing countries. They recognize that developing country markets contain relatively high levels of information asymmetry, low levels of risk tolerance, weak institutional structures, and other barriers that make them less than perfect

allocative mechanisms. New Political Economy of Development shares with neo-liberalism the importance of perfecting these markets but recognize that this is a complex process that cannot be done easily or quickly.

2) Market failure: Not only are developing country markets often underdeveloped: even if they operate optimally these, like all markets everywhere, have limitations. Thus, all markets fail to provide incentives for certain investments that will produce social externalities including technological know-how and skill development. And they may be unable to manage coordination between related investments so that market prices will fail to signal the socially optimum level of investment.

3) Strategic trade theory: NPED does not reject ideas of comparative advantage but stresses that in the modern economy comparative advantage is made, not found. That is, nations can actively pursue certain niches in the world economy through planning and targeted investment.

4) Networks: With the proliferation of global supply chains, it is important for developing country producers to be in secure positions in global networks. States can assist in this process.

5) Technological capacity: New Political Economy of Development places strong emphasis on the development of technological capacity as a key element in any strategy to maintain global competitiveness and penetrate advanced markets. Because technical knowledge and technological capacity are to degree public goods, states can play a role in expanding these capabilities and knowledge.

6) Innovation: Reflecting the new context of development as well as new opportunities, NPED places great emphasis on innovation in products and processes to achieve and maintain competitiveness. State action can foster, support, and reward innovation.

These considerations have led the NPED to place great emphasis on *processes of learning and discovery*. Great attention is paid to how best to secure knowledge of the paths investment should take for maximum social return. This inquiry has highlighted the need for new forms of state action and a call for new public services.

Prior theories had simple approaches to knowledge production. Classical developmentalism assumed that the state could, more-or-less by itself, develop the knowledge necessary for effective investment –that is why such stress was placed on planning ministries and five year plans and why it was thought that SOEs should be created in many areas of industry and finance. On the other hand, neo-liberalism took the opposite position, asserting that states would always – or almost always -- get it wrong. The solution was to bar states from making investment decisions in most sectors of the economy so the market could find the right path by itself. “Industrial policy”, once a progressive slogan, became a dirty word.

The New Political Economy Development rejects classic developmentalism’s faith in the state and abandons the idea of detailed central planning. Writers in this vein recognize that market signals are important and private actors have much of the information needed to chart effective strategies. But they also assume that, without various inputs and guidelines from the state, private actors may not get the full picture needed to make good investments or be able to capitalize on what they know. In such cases, effective development policy requires close coordination between public and private actors, search, experimentation, and tailoring of public action to specific needs and contexts.

It is important to stress the importance of *learning* in the new political economy of development. It would not be too much of an exaggeration to say that this body of thought makes learning capacity the central ingredient for a successful developmental state. Many of the features and processes suggested by this literature are designed to facilitate learning. These assumptions about knowledge and learning lead proponents of the new developmental state to move away from “one size fits all” approaches. In a sense, such approaches were common to both the classic developmental state and neo-liberalism. Both assumed there was one set of programs and policies that would lead to growth, although

they differed on the nature of the policies. Both came up with recipes that all nations were supposed to follow if they wanted to secure growth.

This “top-down, one-size-fits-all” approach has already been heavily criticized. Scholars have pointed out that even if it is necessary to have institutions for certain functions, there are different ways to deal with such functional needs. And they have noted that given the social embeddedness of economic institutions, it is often impossible successfully to “transplant” institutions from one nation to another. They argue that development policy must allow each nation to shape its institutional structure according to its own needs and traditions.

The new developmental state literature embraces this rejection of one size fits all and stresses that there is no one policy or model that will lead to economic progress in all countries at all times. But it goes beyond the idea that different solutions can be allowed at the national level in different developmental states. Because the new theories stress the idea that policies must be constructed through experimentation and public-private collaboration and tailored to the needs of specific industries and regions, the new theories suggest the need for variation within each nation as well as among them. “New” developmental states see that comparative advantage is not solely dependent on initial endowments, but rather is something that can be constructed.

But such strategic trade policy requires experimentation and public-private collaboration as state agencies and private actors conduct a search for profitable niches in the world economy. Such policy may also require various forms of public support for export industries: these include subsidies of various types and tariff protection. While NPED favors such support, stress is placed on the need to integrate them with a discovery process and to maintain disciplines that will ensure the results are competitive.

Another feature of new developmental state theory is the stress on flexibility and reviseability. This follows from the centrality of experimentation and collaboration in this body of ideas. New Developmental theorists assume that it is impossible to know the right developmental paths in advance, finding these paths requires experimentation,

experimentation must involve public-private collaboration, and a successful path must include the appropriate legal and regulatory framework. From this it follows that policy must be flexible enough to permit a variety of efforts and regulatory frameworks must be sufficiently revisable so that the fruits of learning can easily be incorporated.

Finally, new development state theory seems to imply a need for open and transparent forms of governance without which new ideas will not percolate upwards or be widely shared. This raises doubts about the continued viability of older authoritarian models and the importance of some form of democracy. If we wanted to sum up the NPED in a few words, it might be in envisioning development as a *process of discovery* in which the state seeks to empower the private sector and state and market function best when they are linked in collaborative structures that foster experimentation and revision.

It is important to note that the concept of a new developmental state is an ideal type and one need not find all of the elements and characteristics outlined in any given nation. Yet we need some way to measure the extent to which any country is moving in this direction. What follows is a tentative list of policy orientations that would indicate that such a turn or paradigm shift is occurring. In studying the new developmental state phenomenon, we should look to see to what extent there is:

- Primary reliance on the private sector as investor rather than direct state ownership.
- Acceptance of a major role for the state in steering investment, coordinating projects and providing information especially in projects with multiple inputs and long term payoff
- Extensive collaboration and communication between public and private sectors
- Strong interest in exports and relative openness to imports
- Direct attention to entrepreneurship, innovation, and new product development rather than reliance on imported technology and know-how.
- Promotion of productive (rather than speculative) foreign direct investments(FDI)
- Emphasis on making private firms competitive rather than on shielding them from competition
- Privatization or public/private partnerships in provision of public services

- Promotion of domestic capital markets and the financial sector both to generate and to allocate resources
- Attention to social protection including efforts to reduce inequality, maintain solidarity and protect against some of the costs of restructuring.
- Welfare programs conditioned to recipients' work or investment in their human Capital

4.5. The Ethiopian developmental state

1. The abolishment of command economy

The Dergue military regime has established anti democratic system and aggravated Ethiopia's backwardness and poverty under the name of socialism. With its obvious anti democratic behavior Dergue has oppressed both democratic questions and the right of equality raised by the people of Ethiopia. Thus the Ethiopian people who said it is enough resort to an armed uprising demanding equality.

As a right of self determination becomes a primary agenda for Eritrea's struggle there were some 17 armed forces who raised nationality questions in Ethiopia during the eve of the down fall of Dergue that illustrate the depth of the problem.

The rampant civil war between anti democratic and democratic forces left Ethiopia left Ethiopia devastated and consumed. In addition to the lost of human life and properties the war aggravated the country's bad economic situation to worse level. The war contributed for worsening poverty in various ways.

Initially the war made the people not to fully engage in developmental activities with their maximum capacity. The budget consumed by the huge Dergue army for food, cloth and armaments was also the other factor. Secondly the war itself destroyed the country's poor infrastructure and public property also put its impact to got worse economic situation.

The war instigated from the anti democratic behavior of the regime and its fascist characteristic also can be treated as the case for economic degradation. The main endeavor of Dergue was not development, rather consuming the country's and citizen's resource for its official personal favors in unfair way. The cost of the war which was paid to preserve the reign's authority was covered by producers especially from the pocket of poor farmers.

Unnecessary costs for the luxuries life of Dergue's officials also covered by citizens and, those high costs were beyond the economic capacity of the country.

In order to attain the reign's endeavor the government should was supposed to use every production and manufacturing plants under his control. So the reign had been controlling every agricultural production produced by individual farmers by buying at the list price and in return by selling manufactured goods its factories at the highest price possible.

It is obvious that there is no incentive to of economic nature on the part of the producers fast economic growth will not be realized. As a result as Dergue installed such type of economic system the country's economy was brought to the brink of extinction.

The command economy brought in to the nation in the name of socialism has proved that it couldn't be the appropriate system to exhibit fast and sustainable economic growth. In line with this the fall of socialism in various socialist countries and the shift of china to market economy took place happened. This situation exposed the Dergue exposed the vulnerable economic system and motivated Ethiopian people and democratic forces to gather up their forces and fight for peace, democracy and development. Also the understandings that achieve peace can't be achieved without democracy and vice versa, and the strong relationship among peace, democracy and development become clearer in citizen's mind.

The situation proved the inability of command economy to bring about sustainable development and made clear that market economy is a better alternative to doing so. Equally important A multy-party system was found to be better than one party system to fully and freely exercise democratic right, to build political community founded on the rule of law and capable of ensuring sustainable development.

The future of the developmental state

At least since the sixteenth century, the DS has played a major role in pushing forward the development of economies and societies in major regions of the world. Moreover, the DS is very much alive and kicking in East Asia. It has been argued that strong economies of scale preclude domestic nurturing of infant firms or the generation of new technologies. On the other hand, the densely networked economies of East and South East Asia have

demonstrated that many such economies can be reaped by regional cooperation within countries and between countries as well, but market driven regional integration seems to have reached its limits in that region.

In the so-called Third Italy centered on Emilia Romagna we have witnessed the power of municipal nurturing of industry associations which can overcome problems connected with large overhead expenditures, exploiting the external economies of networking. The remarkable growth and dynamism of the town and village enterprises and some of the surviving collective village organizations in China have also shown the power of consciously designed networks of cooperation in production, research, marketing and finance. In fact, with appropriate changes in social organization and continuous upgrading of human skills through education and learning by doing, a developmental state can be energized by something akin to cellular developmentalism.

The experience of the period since the Second World War demonstrates that, with appropriate strategies in place, economies can grow much faster now than they ever did before the War. Japan and Italy made their real transition to affluence after 1945. Taiwan, Singapore, Hong Kong and South Korea have also caught up with or even surpassed standards of living of many OECD countries. We have stressed the role of nationalism in enabling a state to pursue a cohesive, sustained development-oriented policy. The ability of the state to pursue such a policy is in turn contingent on the rapid accumulation and diffusion of what has sometimes been styled 'social capital' sometimes called 'social construction of economic institutions', and sometimes covered under the generic name of 'public action'.

The different analysts have focussed, however, on different aspects of the building up of social capital. Economic theorists have used game theory to model 'trust' as a 'commodity' or corporate culture resulting out of the interaction of utility-maximizing individuals. Historians have shown how trust, and hence the moral basis of major segments of society, can be destroyed through inimical public policies. 'Social capital' can also be used to designate the willingness and ability of dominant groups in society to engage in the

construction of enabling institutions and devote resources to the spread of education, sanitation and more generally, the conditions of better living.

The forms the construction of such social capital take will vary from country to country, and epoch to epoch, even in the case of a successful DS. In the case of the Dutch DS, the construction of 'social capital' involved the reclamation and protection of land from the sea and the building up of clean cities and educational institutions. After the abolition of the properties of the Roman Catholic Church and its doles, it also involved the provision of succour against destitution under highly punitive conditions. The decline of the DS in the eighteenth century was also associated with the deterioration of the institutions for supporting or building social capital. In Britain, the building of a unitary nationalism under Elizabeth I also coincided with the enactment of laws for succouring the destitute and controlling the masterless men that swelled in visibility, if not in numbers, as a result of the expropriation of the church and the massive transfers of land that took place between the sixteenth and eighteenth centuries. The Speenhamland system was introduced to cushion some of the worst effects on the poor, especially wage-earning poor, of the inflation attending the Napoleonic wars. The new Poor Law, introduced in the 1830s, was meant mainly to ease the burden of the Poor Rates on local bodies and shift some of that burden from the losing parishes on to those which gained in population because of the growth of industry. Neither in the Dutch Republic nor in Britain were property owners particularly compassionate towards the poor. They had no compunction in cutting nominal wages when they were facing stiffer competition, nor in executing or jailing offenders against property rights. However, their consciousness of the dependence the prosperity and health of their realm had on the general social conditions covering both the rich and the poor led them collectively to build up social capital. This collective action was often locally based and apparently detached from the supreme government based in Amsterdam or London. But action by the towns of the seventeen states in the Dutch Republic, or scores of local bodies spread throughout England, created a network of local and global public goods which created a positive synergy between cleanliness, health and education. The emphasis on an active creation of social capital is necessary to correct the impression that market-driven economic growth necessarily ensures sustained human development in the long run. The

Dutch DS eventually failed not only to meet the challenges of the new, larger DS of Britain but also to reverse the demographic decline of the eighteenth century. In Britain, the industrial revolution was attended with a huge increase in mortality in many of the industrial towns. The threat of social disorder was also present in many of these towns. It was only repeated action by the central government, local bodies and private charities that led to improvement in health and education, and kept the threat of social disarray at bay. By the beginning of the twentieth century, these efforts proved to be visibly inadequate (as shown, for example, by the poor physique and morale of the common British soldier fighting the Boers of South Africa) and Lloyd George proceeded to lay the foundations of the welfare state in Britain.

Similar examples of faltering and renewed build-up of social capital can be culled from the experience of the Nordic countries and Germany. The building up of social capital will often be differentiated along class lines, and in a capitalist DS the working class will be differentiated from the capitalists by education, habitat and standards of public health. But if the demarcation line becomes an almost unbridgeable barrier and intergenerational mobility across class lines becomes too difficult then the policing costs of the social order will rise, the process of continuous upgradation of skills will be hampered, productivity growth will slow down and the state will find itself lagging behind in international competition. If such stratification begins early enough, it will choke off the possibility of a country ever constructing a DS. If such stratification occurs when a DS has attained or passed the stage of maturity then capitalist affluence will be not only punctuated by the usual business cycles but also characterized by high levels of unemployment, widening earnings differentials and endemic social violence. This has been the experience of many cities of the USA for a long time, and this experience is being repeated in many European cities with large immigrant populations.

The West European DSs and Japan have joined the club of affluent nations; unregulated mobility of capital between them has led to realignments of locational patterns, and pockets and regions of severe unemployment. This pattern will be repeated again, especially if Japan ultimately demolishes most of the non-transparent barriers against the entry of foreign

goods and capital. However, with similar levels of labour productivity and with endowments of TNCs in every OECD country, these countries are likely to grow at a positive rate, even if the dominance of finance over industry leads to a slowdown of investment everywhere. However, a dismantling of the welfare state is taking its toll on living standards in most of the OECD countries. In virtually all of these countries real wages of low-skilled labour have stagnated or even declined since the onslaught of financial liberalization beginning in the 1980s, and inequality has increased enormously in virtually all the European countries, as well as the U.S.A. and Canada.

The developing countries which have failed to construct DSs are now being bullied by the IMF, the World Bank and transnational capital into opening up their economies to unrestricted entry of foreign goods, services and capital, and the state is withdrawing from all sectors of economic activity except the provision of infrastructure. At the same time, their ability to raise resources for creating social capital has been crippled by the doctrine that taxing the rich is harmful for the economy. These policies have hampered the prospects of growth at a respectable rate (say 5-8 per cent per annum) and led to an increase in income inequality in these economies, even in cases, such as Brazil, where such inequality was already very high. There is mounting evidence that in the long run, increases in inequality tend to depress income growth further. Thus without a drastic change in policies leading to increased construction of social and physical capital, these developing countries will remain doomed to poverty and social disarray.

2. The path of developmental democracy in Ethiopia.

4.5. The Ethiopian developmental state Renaissance of Ethiopia

1. The abolishing of command economy

The Dergue military regime has established anti democratic system and aggravated Ethiopia's backwardness and poverty under the name of socialism. With its obvious anti democratic behaviour Dergue has oppressed both democratic questions and the right of equality raised by the people of Ethiopia. Thus people who could not tolerate any more resort to an armed uprising demanding equality.

On the eve of the down fall of Durgue, as a right of self determination becomes a primary agenda for Eritrea's struggle there were some 17 ethnic based armed forces that raised nationality questions in Ethiopia that illustrate the depth of the problem.

The rampant civil war between anti democratic and democratic forces left Ethiopia devastated. In addition to the lost of human life and properties the war aggravated the country's bad economic situation to worse level. The war contributed for worsening poverty in various ways. Initially the war made the people not to fully engage in developmental activities with their maximum capacity. Second, the budget allocated to the huge Durgue army for food, clothes and armaments was also the other factor. Third, the war itself destroyed the country's poor infrastructure and public property also had its impact to made economic situation worse.

The war instigated from the anti democratic behavior of the regime and its fascist characteristic had negative impact and it was the major cause for economic degradation. The main endeavour of Durgue was not development, rather utilising the country's and citizen's resource for its official's favours in unfair way. The cost of the war which was paid to preserve the reign's authority was covered by peasants from the pockets of poor farmers. Unnecessary costs for the luxuries life of Durgue's officials was covered by citizens and, those high costs were beyond the economic capacity of the state.

In order to attain the reign's endeavour the government was domineering every production and manufacturing plants; So the reign had been controlling each and every agricultural production produced by individual farmers and buying their products at the list price and in return selling manufactured goods of factories at the highest price possible.

It is obvious that there was no incentive due to the economic nature it follows; there was no technology transfer and competition in the process; monopolization of all sectors by government; fast economic growth could not be realized by producers. So it is proved that such type of economic system brought the country's economy to its worst situation even than its past conditions.

The command economy brought in to the nation in the name of socialism has proved that it couldn't be the appropriate system to exhibit fast and sustainable economic growth any

more. In line with this the down fall of socialism in various socialist countries and the shift of China in to market economy took place. This situation put the Durgue in vulnerable economic situation and motivated Ethiopian people and democratic forces to gather up their forces together and fight for peace, democracy and development. Also the understanding that peace can't be achieved without democracy and vice versa and the strong relationship among peace, democracy and development become clearer among citizens. So the key question was how can we bring and sustain democracy and economic development in the state?

The situation proved that command economy's inability to bring a sustainable development and made clear that market economy is a better alternative to do so. Equally important A multi-party system was found to be better than one party system to fully and freely exercise democratic rights and participation of the people, to build political community founded on rule of law and capable of ensuring sustainable development. Even so multi-party system and market economy had been acknowledged by all there were basic differences with the frame. The neo liberal became dominant and others struggle with in this frame.

2. The choice of developmental democracy in Ethiopia

While practicing neo liberalism brought economic and political chaos in Africa; other states practiced another alternatives and brought success. Even if there is big difference within neo-liberalist; all of them are similar on the idea of government intervention in the economy to maintain fairness and sustainable development to all stakeholders.

Even though any government which stands for bringing development is called developmental state; according to theory of developmental economy developmental state refers to Easter Asian developmental states like Korea and Taiwan. the idea of developmental state did not exist in these states all of a sudden rather it has its own historical back ground and some attached it to the 19th c governments like French luwi Bonapart and Germany Otto von Bismarck. The japans at the end of the 19th c had taken many lessons from Germany and add their own demands and establish their own consistent developmental state which continued since the Second World War until the 1990s. As Korea

and Taiwan were former colonies of Japan they had experience and including their interests they had created their own and practiced it and at this time it is proved that they had exercised it fully even taken as a model.

Following economic development of Japan and drastic change of Korea and Taiwan there was similar progress on eastern Asia especially south eastern Asia. Due to this such way of development was called East Asia model but this development was not ruled by developmental government; even if governments had played key roles it is not the full flagged model because development of these states was due to general development of the region and higher assistance and investment of Japan. because their development was not brought by developmental government even after they became middle earning states they could not manage to transfer to the next category of developed nation. Even so developmental has its own historical back ground we can take Taiwan and Korea as model.

On poor states there are conditions that enforce government selective intervention in the economy to sustain and speed up economic development. On the first place in any economy there are sectors that private merchants would not involve and which would be an obstacle for further development and bringing fairness. These market failures are exhibited in all free market economies but more visible in the less developed countries. not only there occurrence but they are major obstacles for development and that is why all the developed nations were intervening on different time and degree to bring change. Government intervention on the economy would be minimized as the level development increases. So selective intervention of government is necessary to avoid obstacles and pace up development.

On the era of globalization all countries are expected to be competitive and sell their goods and services the one who cannot compute cannot take part rather would be simple observer of what is going on. To be competitive one should have citizens with the necessary knowledge, skill and developmental thinking. In addition the required infrastructure should fulfill which is competitive to others in quality and price; it also needs well qualified and self initiated merchants and professionals. But all this do not fulfilled in poor nations so to be

competitive and get profit is impossible to such nations. So individuals in this nation would be rich by ways which are out of competitive market and by getting benefits from the illegal sell of natural resources; which pave the way to rent seeking. So such states dominated by rent seeking political economy. Here the government should play great role to alleviate the problem and lay the ground for fair competition of all parties. Governments which intervene on such cases would have options to accomplish the task, and the pace of development would be better but not able to establish fast and fair developed nation. But on the other hand other government's intervention was for corruption by officials themselves rather than laying fair ground to the economy. On such condition states cannot go out of vicious circle of poverty. In general states which were able to control both problems were able to achieve development and join the group of developed nations. On the 20th c it is Korea and Taiwan that made success performance and achieve their target. Hong Kong and Singapore were success full but they do not have rural areas they cannot be taken as example to other less developed nations. India, China and Brazil are among very promising states but is china among them that can be taken as developmental state. So it is observed that the pace and fairness in attaining development is satisfactory but the door is not closed to bring development; but they need illuminate the two economic obstacles as it success fully achieved by Korea and Taiwan. So basic characteristics of developmental states to success fully attain their goals were identified as follows.

Characteristics of developmental states

1. States that took development as a matter of survival

In poor countries developmental efforts are very complex and difficult as rent seeking political economy is hegemonic and market failures pervasive. Even Taiwan and Korea have taken 50 years to achieve development while they have practiced very fast economic growth. It is obvious that working hard for 50 years continually is very difficult. Beside this the states are in danger of corruption in case of rent seeking hegemonic. In this situation power is the easiest way to make wealth and this make development activities difficult. Taiwan and Korean governments were in temptations which were sluggish for a little beat.

To pass this temptation it is important to have a government who sacrifices itself for the sake of public interest and benefits.

The Korean developmental state starts from 1960 codetta led by General Park. during that time Korea was very poor than many of African poor nations. Korea was divided in to two as South and North; the north led by communist party was in better development stage than south, and in 1950 aiming to unify two Koreas the north invaded south and during the war they were almost on the verge to victory. However the UN mission led by America pressed away the north and Korea has got its independence. After the war USA settled and kept South Korea till now. Just after the war the north were developing faster while the south were unable to get out of rent seeking political economy. The ideas of the north were transferred in to peasants, students, workers of the south so they were pressured from internal and external forces. Because there had strong fears of north's invasion; they had mobilized very large army.

General Park and his companions concluded that South Korea would not survival unless the country escapes from economic crises and brought fast and sustainable growth and improve the life standard of its people. They strongly believed that the existence of their country depend on registering fast growth. This is the major reason of the codetta and starting a new journey for development. Even though they set up such devoted state that strives for development they face various challenges in various times and even on the verge of collapse. Corruption challenged those several times. In relation to this they have even lost General Park himself. Because they didn't provide satisfactory answer for democratic questions and lack of fair distribution of wealth they faced opposition and riot from the people. In 1987 when Korea shift to democratic state sustainability of development become questionable. However they strongly resisted such conditions and continue with the pervious way of development. Because there was a firm stand on progressing fast economic growth is the matter of survival. Step by step they shared this aspiration by the people. If it was not strong and unshakable believe the government was rotten by such corruption and get out of its way which results destruction. This is the reason for us to say development is a matter of survival.

The same phenomenon was happened in Taiwan; It was Portuguese colony and again later become part of china. At the end of 19th century it was colonized by Japan, but when Japanese defeated in the WWII it once more became part of china. Komintang of china was corrupted and dominated by rent seeking political economy which was established by bourgeoisie and rent seeker riches which resist china communist party but later defeated by it in 1949.

Some remnant leaders and soldiers of Kuomintang fled to Taiwan and established their own state in the island. But they were in day dream and night mare that a communist party will invade them after it has controlled the whole China. So this was their reason to work hard day and night and accomplish the desired development by tolerating all problems on less than 50 years. What we learn from both countries is that we could pass very multifaceted difficulties if we strongly believe that development is a question of survival and being ready to struggle for many decades for bringing development by sacrificing everything to it.

Unless it has such strong belief and devotion a government cannot maintain its continuity as developmental state. Korea and Taiwan believed that development is a matter of survival of state power because they were afraid not to be swallowed by the cannibalistic communism. It doesn't necessarily mean that all developmental state must be awakened by the fright of communism. However, it is difficult to establish a state which can pass through complexity and difficulty unless there it is a matter of survival. Having a strong belief that development is a matter of survival and reliable devotion which generates to continue in development is one of the fundamental characters of developmental states.

2. states with relative political and economic freedom from the influence of the private Owners

It is an evident that a development which is undertaken within the frame work of free market will make use of the private sector as its primary deriving engine and strengthen it in the process of doing so. So developmental state must support developmental investors and takes them as a supportive part. However in poor countries due to dominance of rent seeking political economy government can't keep its developmental status unless it is free

from the private investor economic or political influence. Once the government is corrupted the investors employ the government as their rent seeking tool.

When the government is free from the control of private investors it has a capacity to dry the swamp of rent seekers. Taking some time, while rent seeking ways are closed up private investor will start troubling. To solve these problems government should be independent from investors. Such kind of government will support developmental investors and take necessary measures when it inclined to rent seeking character. In other hand one of the decisive mission of developmental state is that devotion to support developmental investors and ready to a abolish rent seekers effectively. Korea and Taiwan had such kind of political and economic independence.

When the Taiwan Kuomintang evaluates itself for its defeat it has understood that one of the basic causes was that the communist party supports farmers and responded their questions such as a question of land. But it was on the side of bourgeoisie and neglected peasant interest and question. After this evaluation the Kuomintang decided that having new land policy is important to get farmers support and detach them from communist party. This decision was made not only Kuomintang knows the case of its defeats but also many land lords were displaced from their land and hadn't land in Taiwan which doesn't affect their profit. By the help of his supporters Kuomintang made new land policy to satisfy the interest of farmers and compensated the Taiwan land owners by giving shares of companies which were taken from Japans conqueror. Following change in land ownership best agricultural development strategy plan become practical.

Kuomintang has gotten political and some economical victory because of its new land policy. This change made the feudal out of the game and in the contrary it creates strong political support for Kuomintang.

Initially the farmers were engaged on subsistence activities so to create strong political alliance was difficult. The farmer also restricted within its compound and village and has an attitude restricted in their village. On such kind of atomized but satisfied farmers, history witnessed that strong beaurocratic and anti democracy government will establish. This was what happened in Taiwan.

These satisfied and clustered, but atomized farmers gave support for Kuomintang to establish strong structure in the country side, and which was free from the influence of urban dwellers. This gives political survival for Kuomintang. This situation assured that if the rural people live peacefully the disturbance in the city cannot affect the whole state.

Besides this, Kuomintang established very huge military and police army to defend China's communist party. Those Satisfied farmers were the strong base for the army. In case, creating such huge structure of oppression and beauraucrcy can establish anti-democratic state which is free from not only investors but also city dwellers. In the rural development process farmers detached from their hand to mouth living situation and create market ties with the city .Gradually farmers hold the question of democracy. This situation destroys anti democratic rule. After the end of 1980s multi party system established and national election proceed. Kuomintang won election numerous times due to support of farmers and the developmental system continued.

Kuomintang ceased power after ruling the country for longer time through election. The new elected opposition party also keep on in the developmental way which is created by the Kuomintang so that there wasn't any trouble. Any way Kuomintang's accomplishment in the rural area helped to attain abolishing anti-democratic rule and keeps its political freedom from the investor.

When Kuomintang was ruling china, there were many rent seekers in the cities. As their evaluation these rent seekers were the cause for its failure. Few investors were also fled with them to Taiwan but they left their possession so that Kuomintang hadn't any connection with rent seekers in Taiwan. After Taiwan returned to China from Japanese and before the Kuomintang chased from China by the communist party; there were uprising of people in Taiwan cities and the then ruler Kuomintang massacred many urban dwellers in 1947. The Kuomintang commenced the developmental track in Taiwan with the people and investors who hated them and dishonest to them, especially, in urban areas. So that they were not only politically free from investors but also have no connections with them. The Kuomintang established developmental state and worked hard to develop the country.

Because they were free from investor's political and economic domination from the beginning, the Kuomintang can reinforced the developmental investors and punish the rent seekers. The Kuomintang was economically free because they controlled many developmental organizations including banks which were confiscated from the former colonizer Japan. They also controlled the infrastructure of the country. Besides like all other governments they were legislative and tax imposers and collectors. At the beginning, they had large amount of wealth and resource and did not relied on the investors gave more power to rule. Because of this the Kuomintang ruled Taiwan more powerfully than the government of Korea.

The Korean economy and political freedom has similar structure with Taiwan but the way realized was different. In South Korea land was confiscated to farmers in fear of farmers would be inspired by the northern land confiscation ; and the Americans want to squash the power of communism in South Korea, changing land policy was important so that they forced the state to give land to farmers. But the government of South Korea was influenced by feudal so it gives land to farmers because of Americans influence. That is why nothing has done in the rural areas after the new land ownership programme. Even the farmers were suffering by mortgages on a verge of losing their land. The army was mostly composed of young farmers who were against this illegal borrowing system; which was established to defend North Korea.

After the army had codetta led by General Park the timely questions of the farmers were also questions of the common army which was to cancel or minimize the loan and bringing sustainable rural development. The farmers became supporters to the junta to stay in power or at least did not oppose it. The satisfied but atomized farmers had been a base for huge anti democracy bureaucracy. so that the Korea anti democracy state built in such kind of basement which then make it free from the domination of urban dweller especially from the rich .

The relationship of the Junta with the urban dwellers especially with students and workers was not healthy. These powers were considered as if their attitude is aspired by the north so that they always suspected to bring riot. This attitude of the junta stayed long. The junta also sees the investors as a bug. Also the junta considered the main investors as having

illegal wealth and enemies of the people. So the junta sentenced them of illegal wealth generating that took them into jail and confiscated their wealth.

After arrested rent seeking investors asked for mercy and the junta forces accepted their apologies after discussion. According to the agreement they promised and signed only to work with the guidance and plan of the government. The junta also agreed to turn back their properties but not the bank. They decided that banks to be hold by government. In this way government controls the main powers of the economy and economic sector (Commanding heights) such as banks, key development enterprises and providing infrastructures. The effective investor will have full support of government and get many project and loan. This situation created a favourable opportunity to grow with in short time. But ineffectual ones were out of the game. so government of Korea was not only economically and politically independent but also specially at the beginning able to command investors as its soldiers.

In this process very huge companies such as Samsung and Hyundai were formed within a short time .As the company played big role in the development their acceptance and affection increased.

The developmental state of Korea have controlled main economic powers which made it to support developmental investors and avoid rent seekers, but it didn't have many development sectors as Taiwan's government. In fact it established governmental organization in metal engineering which had great fame in the world like Pasco metal engineering.

In general in poor nations to alter rent seeking political economy it is important to create government which is free from reliance on investor's economically and politically. Such kind of government can have the power to support developmental investors based on their performances, to remove rent seekers and to correct investors going out of track. Consequently, one can accomplish development if only government is independent politically and economically from investors. Even so both followed different ways, Taiwan and Korea created strong developmental state by being political and economic free from investors.

3. Hegemony of Developmental thinking

One of the reasons that make developmental path unique is that, it is not a onetime practice rather it continues for decades. As it is an adjustment from poverty to well-to-do it is a path that demands to undergo radical change within the society. Unless the society internalizes this path and made it its own culture; this change can never be as radical as we want it to be.

Through process each citizen, each family should willing and ready to change their way of life, culture and attitude. Because development can be sustained for many decays if only the society believes and takes the way as its own culture and aspiration.

At the beginning, Kuomintang of Taiwan had not healthy relation with the people. As mentioned before it massacred the people in Taiwan before it ambush. Even though many Taiwanese were settled in Taiwan from china many years ago, through time they created their own identity and scrutinize others who came from china doubtfully. The Kuomintang which fled from china was 1/6 of the then Taiwan people. It was not accepted by the people and considered as parasitic. So it demand firm struggle and took time to get recognition..

In this case the first big measure was change on ownership of land. This measure satisfies farmers and get political support or at least they did not oppose it; in one hand and made the feudal lords out of the game. The government of Kuomintang had done very astonishing and effective public relation and indoctrination activities. It works for decays to create understanding on the issues using civic education as a tool from kindergarten to universities. Using the government controlled media it worked intensively and constantly about developmental achievements and patriots of development.

The party conveyed its mission and messages using different groups and structures vigorously. This sensible and all rounded public relation played vital role to change the attitude and culture of the public. Especially when the system was practiced and showed significant changes. In fact whatever public relation duty performed it can't bring attitudinal change and cultural transformation unless it is practically seen. As the Kuomintang public relation activity was supported by gradual success of development it brought the supremacy of developmental thinking.

The fruitful developmental practice played decisive role to create developmental thinking all over the country. The developmental path at the beginning was labour intensive, which maximized chances for very one who wants to change his life, which resulted in popular Support. All people fairly benefits from resources of the state. By capacitating workers there would be a fast and continuous transformation of technology. There was fair distribution of wealth. It followed export-led strategy, so that investors who produce goods which were competitive in the world market became profitable while who can't afford such kind of goods and services wither.

The people believed and agreed with all their heart that the only way to get away from poverty was the approach of Kuomintang's. Every citizen understood that the only way to become prosperous is improve and organize his knowledge, skills and attitude and hired in equivalent wage or to invest his money and produce computable goods and services. Developmental thinking and culture became governing among the people. As scientific knowledge and the standard of living advanced; attitudes and cultures of backwardness replaced with modern and scientific thinking. This practice was supported with astonishing public relation & indoctrination which brought effective result. We can explain several reasons for this.

The first and the main is the people of Taiwan identified the means to development was to build skill, Knowledge and attitude continuously and at last they stands with those unique skilled nations. The investors also similarly produce quality products and print made in Taiwan on their goods and services proudly and considered that only made in Taiwan means the guarantee of quality. In the other way the people travelled more than 50 years with one fruitful way and improved its economic status indicates that the developmental thinking and culture inculcated in the people mind and become their way of life.

The other indicator of the hegemony of developmental thinking is many political transformations took place within the frame work. The activities started by Shang kayshek's leader ship who was the leader of Kuomintang in china and continue in the same position in Taiwan. After his death his son succeeded and the development process continued as planned. In 1980s when his son died Taiwan transformed in to democratic system and through free election the Kuomintang's won many times and continues on power.

It was on the 2000s opposition parties took power after Taiwan became developed state but the earlier system continued. After the opposition leaders get power they try to improve their relationship and status with China and to declare their freedom. But it goes to the worst. After that the Kuomintang won election and still at power. The reason for the Kuomintang's to stay at power was their idea of taking development as a matter of survival.

An intellectual who wrote special book about developmental state of Taiwan provides incredible evidence. According to the writer Taiwan couldn't be abolish corruption totally. Especially it continued in construction projects and customs. For instance in the bid of constructions project it was believed that the winner was the one who offer better quality and least price besides there is strong control and check up of the construction but the winner of the company was giving 10% of the project for corruption. This is also well known similarly in customs. Workers imposed 12% payment on imported goods as bribery. But important resources for development were free from bribery. Even these corrupted persons were careful not to be obstacles for developmental activities. It shows how much developmental thinking was internalized even if they were making mistakes they were assuring that it was not against the developmental way.

The process in Korea was somewhat different from this. At the beginning in Korea astonishing public relation and indoctrination work was not practiced like Taiwan. In the other hand the Junta of Korea didn't face hatred and opposition which Kuomintang faced at the beginning. Even though the effort demanded to bring attitudinal change in Korea was lower than Taiwan in quality and continuity but basic direction and the result was the same.

In Korea the fundamental direction which helps to create governing thoughts is similar with Taiwan. At the beginning they tried to answer several questions of the farmers and get acceptance and at least minimize opposition. Next applying labour intensive economic strategy they have brought development for mutual benefit and improving human resource efficiency. Public relation and indoctrination activities have done side by side even if it wasn't enough as Taiwan's. The evidence of their success is that South Korea was poor than Sudan in 1960; but now they are grouped within the developed nation they are advanced in technology and economy because they followed developmental path for long time.

When we see the political transition it had consistency, when General Park who began the developmental track and brought changes died there were riot in some parts of the country but it never retreat back. At the end of 1980s when the junta transfer power through election and substituted by civilian parties they followed the earlier direction. Many parties came to power at different times, but fundamental content of Korean development model stayed constant. There is nothing that assures the sovereignty of developmental thinking more than this.

Developmental state and its path brings and maintains change only if developmental thinking get hegemonies. This character observed from the beginning; rather at the beginning it may like as observed in Taiwan dominated by opposition and hatred. The major challenges of developmental states occur at the beginning due to fewer acceptances on their thinking from the people. So one developmental state to achieve development, it needs to stay in power for many decays. It can continuous for many decays if it is hegemonic and there is national consensus on it. As Taiwan and Korea experience shows that, this thinking hegemony can be maintained through effective public relation practices and there is sustainable development where everyone benefited fairly.

If the government considers and take development as the issue of survival and utilize all resources for bringing development; if it is politically and economically independent from investors and if it gradually maintains developmental thinking, that government is supposed to be developmental state. Whatever deficiencies and problems has, such government full fills fundamental characteristics which can assure fast and sustainable development.

1. Revolutionary democracy, Developmental Democracy and our renaissance ideology

As how and when our renaissance started is an issue already covered in another book there is no need of mentioning it here. This new ideology combines our earlier revolutionary democracy with developmental thinking give the condition as it stands now as it can only be realized by combining revolutionary democracy developmentalism with democracy making it the combination of two ideologies. As we have stated regarding developmental states, we are going to see how Ethiopia contextualize the model and practices it.

The Mission of developmental state in Ethiopia

As we have mentioned in the above we need developmental state for two reasons. The first and for most reason is changing the hegemony of rent seeking political economy step by step. And the second reason is intervening selectively and effectively in the market so as to correct market failures which are impediments to development. Like the twain and Korean at the beginning there was dominance of rent seeking political economy in Ethiopia. There are also plethoras of market failures which affect adversely affected the development of the country. So as far as our country is concerned it is obvious that developmental state takes holds of these two missions. As a result after the renaissance movement our party is making practical efforts by designating these two missions as the mission of the state. As far as the cause in the leverage is concerned the developmental state that is being built in our country is entrusted with the accustomed mission of developmental states else where. .

Characteristics of developmental state in Ethiopia

Developmental states have three basic characteristics. These are development is taken as a matter of survival and the state is relatively free from the privet sector politically and economically and through process achieving the hegemony of developmental thinking. As the closer inspection of the developmental state that is being built in Ethiopia in the post renaissance period reveals it can be safely said that the state full fills all these characteristics.

The state has taken development as a matter of survival not because of fearing influence of foreign forces or the people. Rather it is because the state has concluded by taking lesson from neighboring countries and lots of other African countries as our poverty together with the lack of democracy and good governance might lead us to the extinction of our country as a nation and igniting of non stopping fight among ourselves. Hence our party has taken a firm position that unless we start to exhibit fast and sustainable economic development and make our people auspicious about the future in the after math of the renaissance the follow up would be 'Armageddon ' which will put us in the position of destroying one against the other.

As the 1997 election has shown us the consequence of not accomplishing the mission of developmental state in clear terms our commitment and determination to a steady fast economic growth is strengthened more than ever. Though it can be said that our people have started to be auspicious about the future for we have achieved fast economic growth for the last seven years. As compared to the sky rocketing demands and expectations of the wider public unless we have to continue to renew the hope of the wider public it will expose us to a great danger. This situation has forced us to work hard by setting a higher economic development goal when compared to that of Taiwan and Korea.

In our case what we have set as a base case scenario was the best case scenario of Taiwan and Korea. Hence our commitment to development has gotten firm and certain in every passing day. Even though our vulnerabilities are different from Taiwan and Korea our conclusions are similar. i.e. achieving rapid development where everyone benefited from it is a matter of survival. Hence all resources should only be devoted for attaining development. So it shows us that our state full fills one of the fundamental characteristics of developmental state.

Our relationship with the peasant is starkly different from what was in Taiwan and Korea as our party mushroomed within the care of the peasant from the beginning, enjoyed the support of the peasant all the time, its mission emanated from full filling the rights and expectation of peasantry, has been struggling to fulfill its demands and had a solid and strong support of the peasants. The Korean and Taiwan developmental forces relationship with the peasantry was based on lack of trust, fear and immunizing themselves from the influence communism as they were right wing oriented parties whereas in our case our party is a revolutionary democratic with unbreakable tie to the peasantry. So we have the full and dedicated support of the farmers which the Korean and Taiwan forces can't even dream about leave alone enjoy it. Depending on this, it is and can be the politically free from the influence of private owners in a dependable manner. As our party is revolutionary Democratic Party, it prisms all urban dwellers in general suspicion. But it is a party that is and capable of winning the support of the wider urban dweller. . Our party's political freedom is based on the reliable support from both rural and urban citizens, which is anachronistic and higher than that of the political capital of other developmental states. As

our party has reliable support from both rural and urban citizens, for performing and activities including election, making it rely on this vast power so that any political or economic support of private owners wouldn't have determinant. In addition to this the government controls key economic institution inherited from the command economy which we kept in our command by fiercely fighting the neo liberalism's privatization prescription. So compared to other developmental states regarding the second characteristics, it can be safely said that our government and party do have a higher capacity of meeting the second characteristics of developmental states.

It is obvious that all governments of Korea and Taiwan had attained the hegemony of developmental thinking through well organized and consistent public relation campaign and practical undertaking. Understanding this, our government is embarked on a wide scale and well organized public relation campaign and practical undertaking so as to build the hegemony developmental thinking step by step. In doing so, we have exhibited encouraging outcomes and continues to do so. Regarding this, our government has faced better and worst conditions compared to Korean and Taiwan governments.

Contrary to government of Taiwan that share the majority of the profit with the people, our party is a revolutionary democratic force it stands for assuring the wider public's right and interest. Hence the people's actual benefit from development will be higher than any of the developmental states elsewhere. This situation puts us in best situation to build national consensus.

Regarding the process of making developmental thinking the dominant (ideology), we have faced complex internal and external challenges which are different from Korea. when the Korean were practicing it Neo liberalism was not a powerful force and additionally they had the support from western powers and their strong media conglomerate. But when we started it neo liberalism was already dominant worldwide and in coordination with internal forces it was challenging our developmental efforts. Our country's diversity has also served as an umbrella umbrella for different rent seeking thinking posing a grave danger when conjoined by external forces.

Our government has its own strength and weakness on creating the hegemony of developmental thinking when it is compared to Korea and Taiwan. But keeping this as it is by combining public relation with real practices there is no doubt that our government has tried to achieve the dominance of developmental thinking and still is performing and has achieved encouraging results. So our government fulfills the third characteristic of development states. In general regardless of differences our government is considered as developmental state because it is dressed with the characteristics and mission of developmental states. In addition to the above our government is different from earlier developmental states by two basic characteristics.

Our Developmental and democratic state

There were two basic enabling conditions for undemocratic nature of Taiwan's developmental state at the beginning. The first and basic reason was it has taken and confiscated land from the feudal and distribute it to peasants making the peasants atomized and the feudal up rooted. The other was they are composed of almost one ethnic group. As the basic enabling reason for undemocratic governance also exists in our country it shows that there is a strong base to undemocratic behaviour and our struggle to build democracy might be complicated. On the other side of the coin as our country hosts diversity building democracy from the beginning is a priority issue.

- Consider the readings to analyse clearly the different visions of the development state.
- Discuss the models of state which apply to Ethiopia since liberation from the Italian invasion.
- Which of the competing visions of state role do you consider to be the most appropriate for Ethiopian development?

5. Law and Economics

To what degree does law promote economic development? To what extent does creating wealth through the accumulation of human and nonhuman capital require a set of rules securing property rights, governing civil and commercial relationships, and making the exercise of the state's power more predictable? To what extent might economic growth be

affected if rules are clearly defined, made public, and applied in a consistent manner? To what extent are investment projects affected by mechanisms to resolve conflicts based on the binding decisions of an independent judiciary and procedures to change the rules when change is needed? Measuring the extent of the impact of the law is an empirical inquiry.

The answers to these questions represent the new frontier in law and economics. In less developed countries, uncertainty related to the application of the law due to discretionary power and an inefficient administration of justice are affecting trade and investment by increasing transactions costs and fostering corruption. First, an explanation of the main substantive legal factors that nations need to address in order to promote economic growth and development will be made. Accordingly, the substantive legal requirements for economic development by identifying the main efficiency-enhancing sources of legal norms that is, bottom-up formalization of legal norms; legal transplants and legal integration will be addressed. The second part of this sub topic addresses the procedural aspects of the law and economics of development. In relation to this, the role of the judiciary and its impact on economic development is addressed.

The process of economic transformation through deregulation and the privatization of the means of production in many developing countries coupled with intensified international trade of complex goods and services require a legal framework with clear rules for economic interaction. The magnitude of the economic transformation experienced by many developing countries in recent years involves increasingly complicated contractual relationships among savers, producers, investors and customers. This process of growth needs a system of rules able to enhance risk management in a increasingly complex economy. Legal, judicial and alternative dispute resolution systems are potential institutional improvements in how society deals with higher social complexity and increasing risks generated by human interactions. The clear identification and specification of these improved mechanisms is the first problem waiting to be solved by the economic analysis of law in developing countries.

A modern market economy requires laws that are able constantly to redefine rights and market relationships when new forms of corporate structure emerge; to provide ever-changing determinations of contractual obligations, and extend them to new forms of financial instruments, tangible and intangible property; to redefine and enforce the rights of victims of new technologies and activities while protecting the environment from newly emerging risks. These are only some examples of the tremendous flexibility that the legal and judicial systems require in order to adapt the laws to a dynamic economic system. If economic law is poorly adapted to the economy, expectations conflict, cooperating is difficult, and disputes consume resources. Conversely, if economic law is adapted to the economy, people cooperate with each other, harmonize their expectations, and use resources efficiently and creatively.

If public institutions are defective and political conditions too unstable, private contractual arrangements will also become riskier and negatively affect private investment. In short, the formation of larger markets and the possibility of longer-term contracts, both necessary conditions for economic growth, are hampered by an unclear or undefined system of legal rules and inconsistent application and interpretation of those rules. The application of the economic analysis of law to development issues sponsors a clear and consistent definition and enforcement of the conditions of ownership in developing countries undergoing transformations.

A government that credibly commits itself to upholding rights of property and contract enforcement not only provides a basis whereby partners in economic transactions can trust each other; it also reinforces the hope that the government itself can be trusted to transact honorably and to meet its contractual obligations. Yet high costs for determining property rights are still common in most developing countries. Unclear definition of contractual obligations, inconsistent application of the laws coupled with corruption, and ad hoc regulations have all made property rights more insecure and have also caused increased transaction costs within the marketplace.

This institutional instability increases the discount rate applied to social interactions in future periods, thereby hampering investments, savings, and the consumption of durable goods. The most interesting question then remains: What are the structures of the most effective legal and judicial mechanisms that would be able to interpret and translate those social norms into laws in less developed countries? The economic analysis of the law in developing countries represents an attempt to identify changes in laws, regulations and enforcement mechanisms that, within the legal tradition of each country, would be able to enhance economic efficiency and improve equity. Some scholars argue that law and economics focuses on the study of the impact of a system of rewards and penalties that affect individual behavior. These rewards and penalties are defined by laws, regulations, doctrines, court cases, social norms, and so on.

The central goal of law and economics is then to analyze the individuals' and firms' maximizing behavior within a system of rules in order to identify the effects of laws. In this sense, law and economics follows a methodology compatible with a legal realism and within an elaborate framework of analysis provided by microeconomic theory. In this context, it is more important to analyze how legal doctrines are not hermetically sealed, self contained, or even self sustaining. Thus, an understanding of how to enhance a more efficient social order through legal reform will be attained through an empirical study of human behavior.

i) Substantive Aspects of the Law and Economics of Development

One recently emergent line of research in the law and economics of development literature concentrates on the microeconomic foundations of the sources of those rules that will allow the law and its enforcement mechanisms to adapt to a modern economy and, by adapting, foster economic growth. Accordingly many scholars argue that efficiency is enhanced by a 'bottom up' process of capturing social norms that are already in place as 'informally' relevant in human interaction. Norms are understood here as coordinating mechanisms for social interaction. This decentralized approach to lawmaking stands in sharp contrast to the centralization proposed by the first law and development movement that during the 1960s and 1970s proposed a clear centralization and 'modernization' of the laws through transplants.

There are four legal traditions relevant in this century: civil law, common law, administrative law and socialist law. Eastern Europe and China have slowly shifted from a socialist legal system characterized by the production of centralized public rules to prerevolutionary private civil law. The common or judge-made law sustained by *stare decisis* has suffered from the significant expansion of administrative law. In this scenario, administrative law, as the framework establishing the rules to be followed in the relationship between the state and private individuals, has been the byproduct of the expansion of the government role in western societies. Therefore, these legal traditions are in a constant state of flux.

The civil law systems are currently facing a choice between legalizing and enforcing social norms in a bottom-up approach by following the policy prescriptions of Hayek (1973) or creating regulations in a centralized top-down manner. For example, the civil code can either capture the norms of local and international business communities or simply impose rules on a top-down approach. One of the most important dilemmas facing developing countries in their current legal evolution is the choice between centralized laws versus decentralized law-making capabilities. Hence, one could argue that the higher information constraints that are the product of added social complexity require public policy to decentralize law-making by capturing norms and thus reducing market transaction costs.

From this perspective, the irrelevance of the laws enacted by parliaments in many countries must be understood as a reflection of the lack of links between the essence of what the law stipulates and the social norms followed by people and businesses in their daily life. When regulations or laws show this lack of compatibility, the costs of complying and enforcing the law become higher. These are the so-called 'bad laws' which are identified as a deficient rule by comparing the approximate transaction cost of complying with the law against the transaction cost of following the social norm within an informal market. These higher transaction costs are rooted in the drive of governments to centralize lawmaking without regard to the true social practices followed by people. Only when the laws and regulations reflect these practices will the transaction costs of the social interactions affected decline

and a movement towards efficiency occur. Accordingly, many scholars agree that the size of many informal sectors around the globe is intimately related to the way laws and regulations fail to capture the social practices followed by society.

Perhaps, one could argue that the laws generating obedience are the ones truly compatible with the ethical code prevailing in society. Individuals in social frameworks seek the kind of predictability that will tend to increase their capacity to generate wealth through their interactions. The state of nature or 'grab what you can' is not a priori desirable or compatible with long-term survival under a 'veil of ignorance'. Different levels of concentration of political and economic power may be compatible with predictable rules of the game. Yet for all levels of concentration of political and economic power, the social norms and values supporting the prevailing and predictable rules of political and economic interaction would tend to enhance allocative and productive efficiency by reducing transaction costs of interacting.

In order to enhance efficiency, politics must follow not just the market but also the non-market social norms. In a more comprehensive fashion, civil society's market and non-market rules for social interaction provide a law-making guide for the legislature and the judiciary. By making laws familiar to the individual, the transaction costs of human interactions decrease and allow society to achieve efficiency in its market and non-market activities. The evolution of intellectual property laws in developing countries, described in the next section, provides a good example of how legal transplants provided a channel through which national laws started to capture business practices and social norms.

Let us now address the economic analysis of efficiency-enhancing substantive legal reform in developing countries. There are two main choices for a developing country when selecting the source of its laws. A country can adopt a law from within its own institutional mechanisms, or it can transplant rules from outside its political-legal zone of dominance. A key need in the economic analysis of the law is to determine a framework for predicting which of the two options the most efficiency-enhancing alternative.

Legal transplants are a key main source of trade-related legal changes in developing countries. Most less developed countries have chosen an export-led approach to economic growth and they are also eager to attract much needed foreign direct investment. In order to enhance trade openness abroad and at the same time attract foreign investment to their domestic markets, they must provide a more stable environment in which to do business. Therefore, competitive pressures arise on less developed countries to harmonize their legal systems with those in countries exporting capital by incorporating foreign legal frameworks that developed-country firms perceive to enhance their productive efficiency.

A central topic to be addressed in law and economics of development must focus on the study of what are the main economic factors explaining the formation of legal transplants and legal integrations that tend to enhance productive efficiency. Law and Economics has been one of the most important and productive innovations in legal scholarship of the twentieth century. Yet its contributions to the issues of constitutional law, including federalism, are relatively modest. From this perspective, one could add that the attention paid to the analysis of legal and economic integration have also been insufficient.

Many may argue that civil law systems would tend to reject the economic analysis of their laws. Yet, Judges allegedly make law in civil law systems by interpreting codes, not finding social norms. Compared to common law countries, the codifiers in civil law countries apparently have more influence and the judges allegedly have less influence. Interpreting some codes, however, looks a lot like finding social norms. Comparative lawyers, consequently, debate whether the apparent differences in the two systems are real or illusory. From this perspective, one could argue that civil law systems have the capacity to react to efficiency forces as much as common law systems do. Moreover, it may come as a surprise to many sponsoring a centralized legal system that the civil law originally evolved as a common law system.

Developing nations are currently facing a unique opportunity created by global free trade, the continuous decline in transportation and communication costs coupled with the unprecedented availability of generic applied knowledge and the expanding flows of

international financial investments. However, many of these countries lack the institutional capability to create or absorb the applied knowledge aforementioned. Legal and economic reforms that are currently occurring in least developed countries are, in some cases, strengthening the foundations for economic growth. In all cases, these legal and economic reforms are based on strategies aimed at giving domestic producers a more important role in the development of their economies.

The impact of substantive norms on productive efficiency needs to be assessed by identifying the type or organizational structures that would emerge under different sets of legal rules. The full identification of the implicit price transmitted by institutions to firms and individuals, on the one hand; and the specification of the institutional structure needed to attain allocative and productive efficiency on the other, are two areas where law and economics possesses a comparative advantage with respect to other social sciences. Thus, the works presented in this field cover a positive and a normative approach to the economic analysis of the law.

Scholars have already indicated have shown that transaction costs determine the nature and organization of economic activity and the distribution of income. One interesting aspect to be addressed in development studies are the changes in legal rules and their enforcement mechanisms that are needed to promote the existence of public and private organizations in which their members' increase in wealth position is compatible with attaining the goals of the organization and improving the overall wealth of society. In this scenario, behavioral patterns such as low factor productivity incentives and corruption (that is, a transfer of wealth caused by the use of public office for private benefit) can be understood as symptoms of organizational defects explained by systems where individuals perceive that their wellbeing does not go hand in hand with the wellbeing of the organization in particular and society in general. In this scenario, a pattern of defective organizational structures hampers the creation of wealth and economic growth.

There are specific key variables whose dynamic interplay determines the performance of all organizations. These key variables correspond to the following two main areas: (a) the

internal organization of an economic or political unit that includes the internal structures and arrangements between the principal and the agents by which the owner causes the managers to act for the goals set by the owner; and (b) external incentives that are composed of all those variables relating primarily to market factors that, although not under the control of the principals, discipline the agents and principals in performance. The past eight years of economic and political reforms across Eastern Europe, Latin America and Africa have made it clear to those working on public policy reforms that the social and economic development of nations requires newly designed organizations that are able to harmonize the incentive to create private wealth with the progress of society in general. This amounts to an invisible hand within the organization that can be explained by its own structure.

The links between the impact of private and public law on organizational structures in developing countries has not been explored until recently. The work advanced by goes into the main links between the quality of public sector governance, organizational structures and the economic progress of nations. This work covers the relationship between the nature of a political system and its economic performance. Subsequently, it answers two main questions: (i) what type of institutions are most conducive to economic development and (ii) what factors or conditions encourage or alternatively impede the adoption of efficient institutions.

The research conducted an original examination of the property rights framework in developing countries, described the way in which the lack of predictable property rights rules have affected the structure of private firms, investment and economic growth. These analysis provide a decisive link between ownership rules and the complexity in the pattern of market transactions. Clearly, they provide answers to key questions through the use of the economic theory of property. First, these researchers ask what should be privately owned in an environment where state ownership has been the norm until recently; and second, how property rights should be enforced in order to assure compatibility between social norms and written law. In this scenario, scholars require this compatibility in order to assure that the law will be followed by the average citizen. In this context, researchers

stresses the fact that in the absence of clear and enforced legal rules, people will substitute clear and enforceable customs and norms for the collectively enforced set of legal rules.

Procedural Aspects of the Law and Economic Development

The Judiciary and Economic Development

As developing countries continue their process of economic reforms, the need for a well functioning judiciary becomes increasingly evident. Yet, the empirical dimension of the economic analysis of legal procedures is in its infancy. As stated in many literatures, democratization, growing urbanization and the adoption of market reforms have all created additional demands for court services throughout the region. These three factors have increased the complexity of social interactions, thereby making the enhancement of the judiciary's conflict-resolution capabilities even more necessary. In addition, the shift of most economic transactions toward the market domain and away from the public administrative sphere of the state has created an unprecedented increase in private sector demand for an improved definition of rights and obligations.

The judiciary is a key element of economic development. The judicial system includes all the mechanisms needed to interpret and apply the laws and regulations. More importantly, the judiciary is the main link through which the economic impact of the legal system can be identified. The productive role of the judicial sector within the economic system consists of resolving conflicts by providing the substantive and procedural structure to facilitate the exchange of rights to physical and intangible assets. Judiciaries in most developing countries, however, suffer from increasing backlogs, delay and corruption. As shown in many Gallup polls, this has generated complete distrust of the system by the private sector and the public in general. Moreover, the judiciary can also affect the behavior of private investment. Lack of access to an equitable and efficient judicial system creates added uncertainty and hampers the realization of beneficial transactions. In the absence of an impartial and efficient judiciary, the performance of mutually beneficial transactions depends upon the presence of pre-existing reputation and repeated transactions among

parties. This requirement excludes many potentially beneficial transactions involving previously unfamiliar parties or startup businesses from occurring.

Legal principles supporting the prevailing economic systems in many developing countries are nominally based on the freedom to exercise individual property rights. But legislation is meaningless without an effective judicial system to interpret it. Consistent interpretation and application of the laws by courts provides a stable institutional environment in which the long-term consequences of economic decisions can be assessed by businesses and the public. In this context, an ideal judicial system is composed of institutions capable of applying and interpreting laws equitably and efficiently. Under most of the judicial systems in Latin America, however, laws are not subject to predictable interpretation. This uncertainty, coupled with delays in resolving cases, further increases the costs of access to justice and doing business.

The belief that the judicial sector in most developing countries is ill-prepared to foster private sector development within a market system is growing. Business surveys conducted by the World Bank (1993) indicate that the judicial system is considered to be among the top ten significant constraints to private sector development. Basic elements that constitute an efficient judicial system are missing: relatively predictable outcomes within the courts; accessibility of the courts by the population, regardless of income level; reasonable time to disposition; and adequate court-provided remedies. Increasing delays, backlogs and the uncertainty associated with expected court outcomes have diminished the quality of justice throughout the region. The judiciary is faced with several obstacles, including a dysfunctional administration of justice, lack of transparency and a perception of corruption.

One of the main premises within the economic analysis of the law is that institutions transmit implicit prices. An empirical analysis of legal procedures must identify the extent to which the prices imposed by legal procedures change the court users' behavior. For example, the court system can increase the cost of resolving disputes when times to disposition increase. People react to this added cost by reducing their filings and not redressing their grievances within the court system. A judicial crisis is also identified by law

and economics scholars using the quantitative measures based on growth rates in times to disposition and growth rates in filings per court. Specifically, a judicial crisis begins at the point where backlogs, delays and payoffs increase the cost (implicit or explicit) of accessing the system. When costs become too high, people start restricting their use of the judiciary.

The enhancement of the capability of the courts to satisfy the demand for dispositions is one of the most challenging and important aspects of judicial reform. In almost all developing countries, courts are unable to supply enough services to satisfy the current demand. The lack of ability to satisfy this demand manifests itself through the increasing backlogs and time delays. These delays are usually ascribed to lack of resources or procedural defects. For example, it is often argued that many developing countries provide inadequate budgets to the courts, which impedes the judiciary from sustaining even the minimal needs to ensure the public's access to justice. It is also believed that inadequate budgets perpetuate the dependence of the judiciary, generate corruption among court personnel and prevent the judiciary from attracting well-qualified judges and support staff. In this context, many judges and legal scholars argue that the judiciary must have a separate budget subject to its control and management.

If the judiciary is to provide the impartiality and efficiency necessary for public trust, a well defined program for judicial reform needs to address the major causes of deterioration in the quality of court services. This reform effort must address the root political, economic and legal causes of an inefficient and inequitable judiciary and not simply deal with its symptoms. Basic elements of judicial reform must include improvements in the administration of the courts and case management practices; the redefinition and/or expansion of legal education programs and training for students, lawyers and judges; the enhancement of public access to justice through legal aid programs and legal education aimed at fomenting public awareness of its rights and obligations in the courts; the availability of ADR mechanisms, such as arbitration, mediation and conciliation; the existence of judicial independence (that is, budget autonomy, transparency of the appointment process and job security) coupled with a transparent disciplinary system for court officers; and the adoption of procedural reforms, where necessary. Each component is

an integral part of judicial reform as a whole. It is unrealistic, however, to think that all the components can be dealt with at once. Stages of action must be planned with consideration given to the costs and benefits of reform as perceived by the judiciary.

Some countries propose allotting a pre-specified proportion of the government's budget to the judiciary as a way to address the low-salary problem but also as a mechanism to reduce times to disposition and backlogs. However, a country-by-country approach is always required. International differences in procedural requirements, substantive law and cultural legal history mean that the resources needed by courts in commercial jurisdictions to produce a certain type and quantity of services will greatly vary among countries. This means for example 3 percent of the government budget devoted to the judiciary in one country may have a very different impact on times to disposition than the same amount devoted to the courts in another country. Therefore, it is doubtful that a higher fixed proportion of the government's budget would necessarily improve the functioning of the judicial system.

The enhancement of the courts' capacity to satisfy the demand for dispositions is one of the most challenging and important aspects of judicial reform. Everywhere in Latin America courts are unable to perform their basic function as mechanisms for the interpretation and application of the law. The inability to satisfy this demand manifests itself in increasing backlogs and time delays observed throughout the region. These delays are due, in part, to the lack of resources or, in many cases, to procedural defects. Other reasons are the lack of legal training, the absence of an active case management style, or an excessive administrative burden falling on judges.

The development of an economic theory of judicial and procedural reform is in its infancy. Only by defining the factors enhancing or hampering judicial reform can we propose policy prescriptions for the modernization of the judiciary. In this context, we must take into account not only the present and future costs and benefits of reforms to society, but also the changes in present and future individual benefits (rents) as perceived by court officers in particular and government officials in general. We need to examine two elements of judicial

reform implementation. First, the causes of institutional inertia that impede much needed court reforms need to be identified. Second, we also need to ask why reforms occur in some places but not in others by identifying the costs and benefits of implementing judicial reforms, as perceived by members of the court. Nevertheless, one key question remains: Why are the very judicial reforms that would eventually benefit most segments of society often resisted and delayed by the judiciary? The answer stems from the institutional inertia observed during the implementation of judicial reforms.

There is a widespread perception in Latin America that government officials use the courts as rent-seeking mechanisms. We can here identify substantive, procedural and organizational factors explaining the increasing presence of corrupt activities within the courts. Let us first point at the lack of consistency found in the jurisprudence that gives judges discretionary power to decide cases within a wide range of possibilities. The lack of a computer system that would permit judges and lawyers to monitor the latest decisions and to detect doctrinal inconsistencies adds to the persistence of irregularities and corrupt practices. Moreover, poorly trained judges in an overburdened legal system are also susceptible to corrupt influences and create an environment where the rule of law cannot be guaranteed. From a procedural standpoint, *ex parte* communication is permitted and common practice in most Latin American countries where judges can spend a good part of the day meeting lawyers and parties separately. Such communication creates incentives for corrupt behavior and lack of accountability within the courts.

A second procedural element contributing to the existence of corruption has to do with the lack of standards applied to the times to disposition experienced by each type of case. Lack of time standards coupled with court delay allow court personnel to 'charge a price' for speeding the procedure. From an organizational perspective, the concentration of power given by the multiple roles assumed by a typical judge (that is, in most courts the judge is responsible for strategic planning, managing personnel, administering resources, budgetary control and planning and adjudicating cases) create incentives for corrupt behavior due to the lack of external and internal organizational control mechanisms. Addressing these

substantive, procedural and organizational factors is a necessary condition to eradicate corruption within the court systems.

If the judicial sector and other members of the government use the courts for rent-seeking purposes, then it should not be surprising to find members of the bench and their clerks blocking efficiency-enhancing judicial reforms. In this context, court reforms promoting uniformity, transparency and accountability in the process of enforcing laws would necessarily diminish the courts' capacity to extract rents, in the form of illicit payments from the private sector.

Previous studies argue that judicial inertia in enacting reform stems from the long-term nature of the benefits of reform, such as added economic growth or investment. These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably a perceived decrease in rents to the courts (for example, explicit payoffs and other informal inducements provided to court officers). This asymmetry between short-term costs and long-term benefits tends to block judicial reforms and explains why court reforms, which eventually benefit most segments of society, are often resisted and delayed. Reform sequencing, then, must ensure that short-term benefits compensate for loss of rents by court officers responsible for implementing the changes. That is, initial reforms should allow for short-term benefits for court officers. In turn, court reform proposals generating longer-term benefits to the judiciary need to be implemented in later stages of the reform process.

Additional forces also enhance the judicial reform process. We usually observe that periods of judicial crisis come hand-in-hand with a general consensus to reform the court system. As stated above, a judicial crisis begins at the point where backlogs, delays and payoffs increase the cost (implicit or explicit) of accessing the system. When costs become too high, people restrict their use of the judiciary to the point where the capacity of the courts to extract rents will diminish. At that point members of the court and governments embrace judicial reforms in order to recover their prestige and rent seeking capacity. The judiciary would

more likely be willing to conduct deeper court reforms during a crisis as long as reform proposals contain sources of short-term benefits, such as greater administrative power of lower courts, judicial independence and increased court resources.

In short, two counteracting forces explain why many developing-country governments have failed to provide an efficient judicial sector compatible with a market economy. On the one hand, efficiency-enhancing institutional change accounts for the actual reform and institutional transformation of developing countries' judiciaries, while on the other hand, issues related to corruption within the courts account for institutional inertia in enacting judicial reform. Then, the nature of the relationship between a society, its legal rules and its judicial sector can be explained in terms of political rent-seeking activities and economic efficiency arguments. These two influences can also contribute to the understanding of the legal and judicial development of a nation.

Before a judicial crisis strikes, however, corruption runs rampant within the judiciary. In all cases one can observe that corruption generates immediate positive results for the individual court-user who is *willing and able* to pay the bribe. Nevertheless, the widespread effects of corruption on the overall social system are extremely pernicious. Those court-users who are not able or willing to supply illicit incentives will be excluded from the provision of a supposedly 'public good' (that is, court services) that in reality corruption transforms into a private good subject to an uncertain price. Even though corruption may remove red tape for those who are able to pay the bribe, the judicial system becomes inequitable in the perception of all of those who are excluded from the system. This sense of inequity has a long-term effect on social interaction. A corrupt judiciary promotes an inequitable social system where the allocation of resources subject to adjudication is less correlated to rights and obligations and more directly determined by the initial endowment of resources held by the court-user.

In terms of legal development initiatives, we seem to be living in an age not merely of legalisation and institution-building, but of *judicialisation*, the tendency to submit greater areas of social and political life not merely to law, but to law as interpreted and enforced by

the courts in cases adjudicating private rights. Judicialisation is not synonymous with legal reform, as many reforms involve rule changes or institutional innovations that do not greatly increase the role of the courts in governance. Judicialisation insists instead that courts be at the centre of governance processes, readily available to enforce rights claims put forth by private actors. The hallmark of judicialisation initiatives is that they seek to bring about social change by harnessing the energies of private litigants, channelled through the litigation process.

6. The Nature of Development and Democracy

6.1. Development Explained

Inequality, a complex and multi-dimensional phenomenon, is caused by different factors and is linked to gender, culture, space, race, welfare and opportunities. Income inequality, is of growing concern in many countries: having increased in the last few decades as a general rule, particularly in transitional and developing economies, it has been more recently detected as a serious obstacle for development.

Indeed, there is more and more evidence that less unequal societies are associated with better growth performances because equality is perceived as an advantageous ingredient for the development process. More equal societies grow in a more sustainable manner compared to unequal ones and by the same token, very unequal countries tend to grow more slowly. Moreover, GDP growth combined with inequality reduction - i.e. a decline in the gap between the rich and the poor - results in more effective poverty mitigation as compared to distributive neutral growth.

Some development economists argue that poverty and inequality inhibit growth and depress domestic demand and that the persistence of inequality at high levels makes it much more difficult to reduce poverty. The higher the level of inequality, the less impact economic growth has in reducing poverty – for any rate of economic growth. Where markets are underdeveloped, inequality inhibits growth through economic mechanisms. In other words, leaving aside the fact that inequality is highly problematic on moral,

philosophical and legal grounds, today it also matters for economists for purely instrumental reasons.

In the developed world, the rise in inequality of income was first noticed in the United States and in the UK in the 1970s and, not uniformly, all OECD countries have seen increased income inequality in the last few decades. In the developing world, inequality has risen to various extents in the former Soviet bloc, Latin America, China, East, Southeast and South Asia and Sub-Saharan Africa.

Nonetheless, inequality has not always been seen as a problem in capitalist societies. In the early days of development policy, as explained by Addison, raising output, in particular increasing overall labor productivity by shifting labor from those sectors in which productivity is low to sectors in which it is high, was the substantive goal to be achieved. In fact, from the 1950s to the 1970s poverty and inequality reduction were considered much more ancillary outcomes than primary objectives.

The argument that economic growth should be the first priority in any developmental policy and the related idea that inequality can be seen as a previous - perhaps unavoidable - step for development have been prevalent for decades in economic literature as a result of the adoption of a narrow notion of the development process. Underneath the assumption of growth as a previous stage of poverty reduction was the premise that growth benefits will eventually “trickle down to the poor” through mechanisms not always clearly specified.

In spite of this, it is well known that the effects of GDP growth are distributive neutral, i.e. they are not necessarily progressive in causing transfers from the rich to the poor. Growth increases output but does not change its distribution in any pre-determined way. As explained by many scholars, assuming that increased output is reasonably distributed among the population (which is not always the case, to say the least), it is unsurprising that growth alleviates poverty as a result of a general increase in the output –i.e. the poor will end up benefiting from a larger and richer economy. However, growth rates have to be

persistently high for a relatively long period in order to reduce poverty effectively. And there is no guarantee whatsoever that inequality will also decline as a result.

After a short-lived discussion in the literature on poverty reduction and “redistribution with growth” during the Washington Consensus years (the 1990s), it was assumed that poverty might be alleviated by targeting basic services to the poor and providing “social safety nets”, but then again, equality and redistributive policies were not part of that agenda. It was not until the mid 1990s that a number of studies and evidence suggested that liberal adjustment programs in the 1990s had had an adverse impact on poverty and inequality and, at best, did not improve the conditions of the poor. In any event, poverty alleviation - not inequality reduction - was an objective discussed by the neoliberal political voices.

In a nutshell, redistribution might require more State interventions than poverty alleviation. And the type of interventions redistribution requires varies according to several criteria and uses two main channels: directly, through fiscal or budgetary interventions (taxes and transfers) and indirectly, through interventions that affect the determinants of market or primary income. Government actions through both direct and indirect interventions can affect the level of distribution of assets, returns to those assets, and post-fiscal (after tax transfers) incomes.

Today many studies suggest new causalities involving growth and inequality reduction, and the view based on the alleviation of poverty with emphasis on market mechanisms and signals is being criticized as insufficient, and is increasingly combined with the assumption that structural social policies are a primary function of the state, and that they are more than a limited set of safety nets and services to correct market outcomes. Markets simply do not promote social justice and well-designed and implemented social policies can powerfully shape countries, foster employment and development, eradicate marginalization and overcome conflict.

In view of that, redistributive policies are increasingly considered not only adequate to reduce poverty, but also relatively autonomous tools to fight inequality and boost

development. They are not considered “doomed” to be inefficient and have been substantially studied in the last years. Moreover, such policies, which reduce inequality and poverty simultaneously, can, when *combined* with growth, significantly strengthen a development trajectory.

By and large effectiveness of social and economic rights requires successful policies. Without well-structured, implemented and assessed social policies, constitutional principles embracing distributive goals end up as empty promises or, what is worse, generate regressive and unfair outcomes. As also suggested above, public policies are, in turn, heavily dependent on the law as a consequence of the wide range of tools, administrative measures and institutional arrangements required from the legal technocratic apparatus and its staff to implement abstract distributive goals.

6.2 Democracy and Economic Development

As sanctified by school of ethical rationality, democracy is an aspect of the human political life that is sought for its intrinsic values considered worth for its own sake.

This school of thought elevates the concept as universally necessary by characterizing it as self evident in the human political collective urge and personal experience. The above preach might be tantamount to the possible inequity whether democracy is good or not. But it doesn't suffice to say so in as much as one set out to discover the role of democracy in economic development. Hence the question Does democratic institutions facilitate economic development? Demand a ripened analysis riddled with theoretically elegant and empirically substantiated presentation given to the controversial nature of the issue at hand. Equally important answering the question throughout many researchers have posed an insurmountable obstacles since the fluidity of the phenomena, the dynamics of the concept and the incorrigible difference among literatures make any effort projected at striking a middle ground between economic development and democracy theoretically infeasible and practically impossible . Being cognizant of this inherent short coming, the writer has approached the question through at first dealing with the basic principles of democracy, and there by presenting an overview of the three strands in which case it

constitutes the compatibility theory which espouses positive relationship between economic development and democracy, the conflict theory which is a draconian critics of the compatibility theory and the agnostics theory which claims that the research held so far are not indicative of either way of the arguments.

6.2.1 The fundamental concept

In its minimal state, democracy is meant a system of government in which people choose their leaders and representatives and can replace them in regular, free and fair elections. Equally democracy when defined in sitars robust form reads as follows:

Democracy is not just about the right to vote in a government as that is it is about a whole set of which citizens must be accorded if a governed is to be open, accountable and participatory. These rights include freedom of speech, an independence of press, freedom to associate for e.g trade unions or for these directly affected by them and the right to be consulted in such decisions and freedom from discrimination whether on grounds of sea, race or creed.

As opposed to the minimalist state definition, the robust form definition gives democracy much mote broadens outlook. From the vantage point of the later, democracy is not only about election but also about freedom of speech, accountability participation...encompassing a wide range of ideas?

As the above quote uncovers, albeit the fact that democracy is devoid of a read made and unilaterally acceptable definition, an ideal democracy will have the following points as its intrinsic part.

A. Election

It enables the people, at periodic interval, to hold their rulers accountable and enable to elect representative that will respond to their developmental needs and concerns elections are not bold and bullet proof concept that is immured from categorical treatment. Needless to say, firstly an election held in democracy should be free and fair. Equally important, the electoral arena should be open and the level playing field is at repayable level.

B. Extensive public freedom of speech, press, information, assembly, movement. . .

In an ideal democratic state election state election is not an end. Rather election will be complemented by the parallel existence of freedom of speech press . . . supportive of this idea; Professor Larry diamond's article deserves a lengthy quote:

Only if people are free to organize, protest and petition, only if groups can assert their interest and values, only if the media can report, investigate and expose government policies and action without fear of favor can there be meaning full completion, responsiveness, transparency and accountability. Only in a climate of true political and civil freedom can a country achieve the absolute fundamental condition for development responsive; government that is committed to that advancement of the private interest of its citizens and their clones.

C. Participation

In as much as the saying people are the makers of democracy' goes true participation stands fall in democracy and serves to be the dividing line between democratic states and autocratic ones Ineffably epigrammatic, Amartya Sen has written that democratic institutions are not mechanical devices for development Rather from sin's standing point its use is conditioned by our values and priorities and by the use we make of the available opportunities of articulation and participation to put it bluntly a democracy which is victim is victim of participation constraint and suffers from a civic neglect is incapacitated to bear fruits expected of it . All the aforementioned merits are not necessary complements to be enjoyed by the mere prevalence of democracy in to the politics of any nation. Rather, it is merit to be enjoyed by the prevalence of an active participation.

To this effect the logical question will be what is the grey between participation and development?

AS Professor Diamond has classically disclosed participations enshrined, inter alia, on priorities of expenditure and public funds, monitoring of implementation, policy design, promoting social inclusion which will result on political ownership of policies.

To the same effect by augmenting participation consensus triumphs over conflict as a result of which policies enjoy popular understanding and support. In the other way round through classified participation that pays tribute to the social inclusion problems such as women participation promotes the sacred goal in democracy- equality political inequality for it stands by the side of the impoverished and disadvantaged groups by enabling them to establish trade unions and association of all kinds.

6.2.2 The role of democracy in Economic Development

The role of democracy in development is a subject of bitter academic debate in plethora of academic gatherings and a concept that has been the focus and genre flavor of many literature across all times. Evidently democracy has turned out to be intricately tied with development. John Clark produces the factor for the incidence

The traditional emphasis on production politics- capitalist vs. socialist ownership of the means of production politics demanding a popular right to determine what is produced , and how , and the quality of the society we live in.

Hence, the increase in the intricacy of their relationship is part of the general shift of production politics to consumption politics. Strikingly development is no longer to be a bone of contention along the lines of socialist- capitalist siege. Rather development has evolved to be choice of quality of growth where in the people are the makers of it or not. As the closer inspection of literatures dealing with role of democracy in development displays, there appear to be three widely held theories- compatibility theory, conflict theory and the agnostics' theory. The first is the compatibility theory which spouses a positive

relationship between development and democracy. The second is the conflict theory which ventilates a draconian criticism on compatibility theory by establishing a negative relationship between democracy and economic development. The third is the Agnostics theory which claims that it is not yet known whether democracy positively or negatively influences development.

6.2.2.1 The compatibility theory

This theory has a deep seated conviction on the assertion that democracy is a necessary condition for economic development. As to a certain writer, democracy has a net positive influence on economic development. The reason for this is

- Progressive development requires policy choices that lead to a development path way that produces a wide distinction of benefits of growth. Democratic regimes are more effective at producing distribution of benefits (because of strong tendency of authoritarian regime to structure economic activity towards “ rent seeking “ activities, enrichment of the ruling circle and wide spread corruption
- Democratic regimes are less prone to corruption and rent seeking, they are less predatory.

From the vantage point of Amartya sen who is the leading advocate of the compatibility theory democracy has three distinct roles on economic development.

A. The Intrinsic Role

As the theory of ethical rationality preaches, there are things that are self evident whose existence per se is enormously important. IN similar vein there are advocates of democracy who claim that it is self evident and an all out important species in any socio- political-Legal relationship of be it a nation or society. In its farfetched form this theory claims that democracy is so important that if this is a price to be paid for having it so be it; a limited reduction in growth that may ensure is not too much of a price. But there is a dichotomy of thinking in intrinsic role advocates. The first view of the dichotomy is already explored in the above. The second view of the dichotomy is led by Amartya sen who believes that

democracy per se is an important species in economic development in that it augments and serves to create a level playing field to society's and individual's basic capabilities via political and social participation. Similarly a certain writer claims that democracy in its own right is a necessary condition for economic development because it is a necessary component to the ability of individual's to live freely and autonomously. So if democracy has an incremental effect in individual's freedoms which is a core element on individual's productivity, this itself is a net positive contribution to development. Equally important if democracy has an incremental effect on freedom which so the ultimate goal of development, this is still a manifestation of the correctness of the claim for warranted democracy has a positive effect on development. As John Clark in his book "democratizing development" has impressively showed unparalleled by other writers,

The claim on the relationship between development and democracy in itself is a path breaking call for development thinking and one which downplays the used to be upheld notion on development thinking as passé.

Needless to say development is not meant a commodity to be weighed or measured by GNP statistics. It is a process of change that enables people to take charge of their own destinies and realize their full potential. It requires building up in the people the confidence, skills, assets and freedom necessary to achieve this goal. John Clark's above remark adds strong hold to the instrumental role advocates since it resists itself on freedom as major threshold to be fostered by development. As is noted by Clark the effective reconstruction of the economic effect of democracy lies on the ashes of the dictates of the old dogmas of development economics.

In a much more stronger terms, same writer defines just development

Just development is about attacking the web of forces which cause poverty. This demands that equity, democracy and social justice be paramount objectives, alongside the need for economic growth- it must combat vulnerability and isolation. It must combat oppressions of women. It must make institutions of the society accountable to the people.

Through forwarding such a path breaking idea, same writer has questioned the status quo. As to the writer the cleat appreciation of one understands on the net positive association between democracy and development spends on the previously held view about the latte. And the book democratizing development written by same author as profoundly conceived and meticulously researched is of paramount importance. From the vantage pint of the above quote democracy is as important as economic growth. Similarly it puts democracy to the helm of economic development by arresting its importance with economic growth

Same author in his bid to adduce supporting evidence of this claim noted that:

In any geographic region, these countries where people are to speak out, to associate in political parties or trade union, where there is a free press, where government are openly and freely elected, and where institutions of the state are purely accountable tend to be far better and to have mote content population. Just development calls for an effective partnership of the government and the people, and this is only possible through the achievement of democracy in its broader sense.

At the heart of a successful economy what stand tall are popular participation and the best way to achieve a widely popular participation and the best way to achieve a widely popular participation is building a democratic state. Hence in this case democracy has positive effect on economic development as it enhances wider popular participation.

B. The Instrumental Role

The instrumental role claim is essentially a sea change shift from the intrinsic role one for it rests on displaying the enhancement of the hearing people get in expressing and supporting their claim to political attention as opposed to the latter's claim which rests on the direct and immediate effect of democracy. In an unquestioningly manner the master of it, the Noble laureate Martha sen has the following to say

We have reason value liberty and freedom of expressing and action in our lives and it is not unreasonable for human being the social the social creature that we are-to value unrestrained participation in political and social activities

In a far distance manner from the intrinsic role which put the mere existence of democracy as valuable ,in case of instrumental role democracy also up holds other merits because of the multiplier effect of the liberates and freedoms of expression that are the major components of democracy. Hence, freedom of expression and liberty as unraveled by the above quote are not ends in themselves. Rather their prevalence has a lot to do with development as can be appreciated below;

Also informed and unregimented formation of our values requires openness of communication and arguments and political freedom and civil right can be central for this process. Furthermore to express publicly that we value and to demand the attention be pied to it, we need free speech and democratic choice

In exploring the multiplier effect of the very prevalence of democracy, communication and it's by products which are the very links in any social-political- economic relations are elevated to be the first hand instrumental benefits to be enjoyed from democracy.

The instrumental role advocates goes on to explain the double edge word effect of democtacy on development in its instrumental sense. It has a double edible edges word effect in that democracy results in the enjoyment of the aforementioned benefits from the ruled perspective equally important it also results in a corresponding responsibility on the part of the rules for they will have the commitment interest to lend their eat to the people's urge by way of which it installs a self correction mechanism if the rules are to get elected again. Over and above democracy has also the institutional structural set up and arrangement that guarantee polices and laws are inconformity with the interest of the people residing within that nation.

As is disclosed above, the writer for one believes that owns understanding of the roles of democracy on economic development is base on the individual's previously held view of

development thinking. And this is the reason way the writer has labeled the move towards showing a positive association between democracy and economic development as status quo questioning trend on development thinking. To this effect the logical question will be what is the effect of this trend of questioning the status quo? The immediate effect of this wisdom of questioning the previously held rules of development will be shift of the very definition of development as has happened in recent years. But the full-fledged effect of this trend will go to the extent of categorizing development that comes via democracy or not. As to a certain writer the devolvement that comes via democracy has the following distinct characteristic development that comes via democracy or not. As to a certain writer the devolvement that comes via democracy has the following distinct characteristic.

- Growth in the productive capacity of the society: Growth in the productivity of labor , agriculture and capital(leading growth in per capital in comes and per capital assets)
- Development leads to significant and continuing improvement in the quality of life for poor and the near poor(that is, the majority of the population in most developing societies)
- Development that serve to broaden the distribution of economic asset and incomes.
- Development that leads to improvement in condition of health and safety in work place.
- Development that leads to “quality of life” issued for all improved to health care, clean water, education.
- Development that leads to sustainable environmental change and resource use
- Development that leads to tender equality over time

These all are blatant theoretical rhetoric that is subsumed in the island of mental gymnastics. It is decade’s old academic practice to set out to prove or disprove the claim in the helm via empirical or practical observation

But quite sadly none of the empirical tests or practical observations has succeeded in winning an academic consensus for they were victims of either methodological short coming or observational short falls.

Among the writers that set out to unravel the positive relationship between democracy and development Amartya sen deserves the precedence measured at every corner and nooks of yard sticks. In a greater departure from the tradition of the literatures Sen has used famine to articulate the positive relationship between economic development and democracy:

No substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press. . . But they have never materialized in any country that is independent, that goes to election regularly, that has opposing parties to voice criticisms and that permits to report freely and question the wisdom of government policies without extensive censorship

By uncovering the India's experience and its success in avoiding famine which is credited to be the land of largest democracy, sen has impressively shown up the importance of democracy to economic development. Supportive of sen's view Clark has written the following:

IN Ethiopia during the famine years of 1985, relief workers tacking a localize pocket of famine in the south of the country were out raged to discover that the local state farm had rotting on the Starks, a quantity of maize roughly equal to the relief food they were desperately trying to bring. When the order to harvest was received most of the cobs were not ripe in this farm (the climate varies greatly from valley to valley) and so the laborers left them. No one in the relevant ministry in Addis Ababa thought to give the instruction to go out and pick the remaining maize and the farm workers left unable to do so without instruction from the center.

The then government of Ethiopia – Dreg- is a classic case of authoritarian government that has almost attained the climax of its state of existence as a result of which it turns out to be a subtle and best way to probing the failure of autocrats in combating famine in a similar fashion another writer adding further evidence has written the following:

In 1956-61 china had the worlds' worst famine, which has written the millions of people, where as post independent India, with a much lower average availability of food for the poor china largely avoided such disasters.

China through its abrupt and miraculous economic growth unprecedented by any other nation has inscribed a quantum leap in its economy. But Amartya sen has said that information on china's economy is of a selective one and limited in quality which will deny it to a definitive proof the positive influence of autocratic government on economic development. What runs of to be myth is even if china inscribed a double digit economic growth – greater than India, the latter was found out to be in a better position in avoiding famine reaping the benefit of democracy.

Furthermore there is belief by new institution of economics that the pre condition for development is a minimum legal and contractual structure and asset of well defined and enforced property rights in which case democracy is in a best position to provide with. To put it bluntly minimal legal structure is a common place phenomenon in democracies. Further more for there is a perennial predictability there is also basic contractual structure. Over and above a necessary compliant democracy is asset of well defines property rights. Therefore since democracy is better suited to bring about proper rights Predictability. . . which are believed to be preconditions of economic development, democracy has an instrumental effect on realization of the later.

The writer for one believe that the new institution of economics anachronistic of many literature has put forth an argument with full force of power , persuasiveness and is dressed with a non contentions causal observation. So the categorical divide treatment as supplied

by same school of thought is the signal most persuasive evidence as far as the analysis of the effect of democracy on economic development is concerned.

C. The constructive role

As the name implies, democracy in its constructive sense is meant its linkage effect between economic needs and political freedoms. In arena where political freedom stands tall, right policies will be framed in responding to the economic need and there will be an enabling circumstance for the comprehension of the real economic needs of the people. Sen noted.

It can be argued that a proper understanding of what economic needs. Their content and force- including comprehension of economic needs itself may require discussing and political rights and civil rights. Especially those related to guaranteeing of open discussing. Criticism and dissent are central to the process of generating informed and reflected choices.

As can be understood above, the constructive role analysis argument experiences a shift of focus as it is not any longer a question of prominence between basic political freedoms and economic needs. Rather what it preaches is their complementarities- the exercise of political freedoms will not only complement the economic needs of a certain society but also is pivotal in ascertaining, framing and setting the very nurture of economic needs of the society.

In concluding the compatibility theory, it is imperative to cite social democratic coalition in Scandinavian countries, and center-right coalition of the post Second World War Japan as a classic case of the practical validity of this theory.

6.2.3 The conflict theory

For the sake of the full appreciation of the concept at hand, it is necessary to see the other side of the coin- counter arguments, critics. . . The conflict theory both in theory and practice is essentially an East Asian experience in origin. Though Amartya Sen has ridiculed it

off hand on account of selectiveness and limitedness as far as the information on its success is concerned. Many academicians and nation's like china put forward that democracy is neither the necessary condition nor the sufficient element in realizing economic development. In other words they claim that autocratic states are better suited and autocracy is unnecessary and sufficient condition to realize economic development. In its genetic sense, the conflict theory argument synthesis is the following.

- Development requires decisive policy choices and effective policy implantation, authoritarian regimes more decisive and more effective in implementing policy.
- Ethnic and sun national conflicts inter face with economic development and are most effectively suppressed by strong authoritarian government.
- Authoritarian governments are more able to effectively deter consumption in favor of saving. Democratic regimes are under a political imperative to increase social welfare spending which reduces the rate of accumulation.
- Democracy mines investment.

In subjecting the conflict theory in to depth analysis, the following are the sub theories that are clustered under the grand theory.

- A. The lee thesis (named after kuan yew lee-the former prime minister of Singapore) in the generic sense of the term, the lee thesis has a deep rooted conviction of the notion that democracy hampers economic growth. In splitting the hair of the theory, it ventilates that democracy arranges level playing field for patronage and rent seeking .Their theory espouses that developmental state is a way of attaining economic growth rather than democracy. in its extreme out growth, since democratic state is riddled with electoral system, it jeopardizes the prospectus for continuous and sustained growth as election robs off the state policy continuity which is the stinging Mystery in the shadow behind sustained economic growth.

B. The legitimacy critiques: These critiques in drawing a seemingly escapist ploy, cements its argument on the art of prioritization. It goes on to explain that if people are given the chance of choosing between democracy and meeting economic needs, as certain as tomorrow's shining sun they will choose the later. It went on to state that it is a foregone conclusion that

People will invariably choose economic needs in the place of their democratic rights.

C. The cultural relativist critique: The last city of the conflict theory has its basis on the fact that the genesis of ideals of democracy is in the west that antagonizes with the wishes, aspiration and social. Political and cultural relationship of the governed and the governments of other societies such as Asian values. This theory dashes in to pieces the importance of democracy whole sally as unnecessary as its origin is a western one.

2.1.4 Agnostics

This school of thought is led by pirzewroki is believed to be a leading contemporary political scientist. The advocates of this theory believe that it is not yet known whether democracy hinder or fosters economic growth. They ridicule the researches held so far in this area as premature, unhelpful and unreasonable that denies reaching any conclusion as to the correctness of ether of claims of the theories.

2.1.5 The law of non transferability of laws

On the outset of their freedom developing counties that achieved in dependence from the yoke of colonialism, sought to copy laws that are belied to have been successful in building as strong economy in other countries. But the paradox is that this act of copying laws has not induced the effect and behavior as it does in the mother nation regrettably, the successful in inducing the behavior it was meant to instigate this is what Ann and Robert Seidman termed as the law of non transferability of laws. The writer believes that the same

holds true with democracy. These all read in tandem develops the central thesis that there is no direct relationship between democracy and economic development.

7. Theoretical Relationship among Developmental State, Development and Law

Introduction

Through much of the 1980s and early 1990s academics and policy makers interested in development focused on policies that had little or nothing to do with the legal system. The overriding goals of development policy were macroeconomic stabilisation, privatisation and 'getting prices right'. Recently, however, the focus of attention has shifted to institutions, which Douglas North (1995) defines as 'the rules of the game of a society'. Those rules of the game include formal legal rules, and consequently the new reform agenda—the Second-Generation Reforms—is typically understood to include legal reforms.

Despite the resurgence of interest in reforming legal institutions as a means of pursuing development, there is a great deal of room for debate about the relationship between legal reforms and development. The debate begins at the theoretical level. Different perspectives on development generate different claims about both which legal institutions are important in the development process and how those institutions ought to be reformed to induce or facilitate development. Our brief review of the theoretical literature only allows us to hint at the potential conflicts between the prescriptions associated with different theoretical perspectives. The utility of many legal reforms can also be challenged on empirical grounds.

Theoretical perspectives on law and development

Modernisation theory

Modernisation theory defines development as a process of convergence on the institutions of developed Western societies. On this view underdevelopment is both caused by and reflected in traditional as opposed to modern institutions. The definitive modern institutions are free markets, a bureaucratic welfare state, a multiparty electoral system and civil and political rights. This understanding of development, whose antecedents lie in the writings of

Max Weber, implicates a wide range of legal institutions, including property law, commercial law, human rights law and administrative law. It also suggests that it is important to have a competent and independent judiciary to uphold the rule of law. More generally, this perspective implies that the process of development can be hastened by transplanting legal institutions from developed Western countries to less developed countries.

Dependency theory

By way of reaction to modernisation theorists, dependency theorists reject the notion that different countries should be expected to experience similar forms of development. Instead they argue that development in many less developed countries is inevitably conditioned by the fact that it occurs in the context of complex economic, political and cultural relationships with developed countries. Consequently, legal scholars influenced by dependency theory tend to be relatively sceptical of the merits of relying on legal institutions transplanted from developed countries to promote development in less developed countries.

However, to the extent that law is seen as an instrument for political and social change, dependency theorists would emphasise its redistributive potential. Specifically, many dependency theorists advocated the replacement of capitalist forms of development with socialist ones.

Economic growth

One of the most prominent of all contemporary perspectives on development is defined by its focus on policies that promote aggregate economic growth. Within this broad class of theories there is considerable diversity concerning the role of the state and formal legal institutions. Early growth theorists adopted the view that market failures were endemic in developing countries and assigned a large role to the state in transforming the economic structure of these economies. More recently neoclassical or neoliberal theories of economic growth have advocated a dramatic shrinkage in the role of the state and a corresponding increase in the role of markets. An intermediate position is taken by proponents of the so-

called 'New Institutional Economics' who view the state and the institutions that comprise it as endogenous to the development process, and view the design and functioning of institutions as critical determinants of countries' development prospects. The current consensus seems to be that certain legal institutions are particularly conducive to economic growth, namely, well defined and alienable private property rights; a formal system of contract law that facilitates impersonal, non-simultaneous contracting; a corporate law regime that facilitates the capital investment function; a bankruptcy regime that induces the exit of inefficient firms and rapid redeployment of their assets to higher valued uses; and a non-punitive, non-distortionary tax regime.

Welfarism

Welfarist perspectives on development challenge the premise of growth-oriented theories of development that conventional measures of economic growth capture all important aspects of human well-being. In particular, welfarist proponents claim that measures of GNP or GDP per capita do not capture inequalities in wealth in general or more specific inequalities such as those relating to women or ethnic minorities. Aggregate measures of income or wealth also fail to capture other instrumental and non-instrumental dimensions of human well-being such as health and educational status and political and economic freedoms. The legal implications of this perspective have not yet been explored in any detail. It is reasonably clear, however, that adopting this perspective means giving priority to various substantive areas of law such as a progressive tax policy, redistributive property tax regimes, social welfare policy, and civil and political rights. From a welfarist perspective institutional reforms that serve to reduce levels of violent crime also merit particular attention, since the fear of violence can significantly impair the quality of life in ways that are not fully captured by economic variables.

Feminism

Feminist perspectives on development have evolved over time. Initially the emphasis was on ensuring that women performing their traditional functions in developing societies obtained adequate access to public services such as health care and food subsidies. The next stage in the evolution of feminist thinking about development resulted in an emphasis on

policies that facilitate the integration of women into the economic system, for example by combating gender-based discrimination. Variants of this approach place different degrees of emphasis on using economic integration to facilitate poverty reduction, reduction of inequality and economic growth. More recently feminists have paid attention to factors that affect the overall well-being of women, taking into account their experiences in both public and private spheres and the perceived need to challenge established gender roles. Contemporary feminists also tend to emphasise promotion of self-empowerment and bottom-up rather than top-down policies.

In LDCs feminists have devoted considerable attention to family law, property law, employment law, criminal law and human rights law. The focus on family law is derived from the concern with improving the quality of women's private as well as their public lives by, for example, increasing their rights to economic support from their spouses in the event of marital breakdown. As far as property law is concerned, feminists are primarily concerned with reversing the effects of both formal and informal legal rules that limit women's rights to own and inherit land. Labour and employment law demands attention to the extent that laws governing discrimination, sexual harassment, the provision of child-care facilities, parental leave, and part-time work affect women's abilities to combine child-rearing with participation in the workforce.

The criminal justice system can contribute to reducing various forms of violence against women, including domestic violence, rape, genital mutilation and trafficking in women. Entrenching rights to gender equality in human rights laws can serve to provide a legal basis for challenging all sorts of public policies that unjustly reduce women's quality of life, including limits on reproductive freedom. Finally and more generally, the overarching goal of empowering women demands that they be given meaningful roles in legislative, administrative and adjudicative processes.

Sustainable development

The prevailing understanding of sustainable development emphasises causal relationship s between environmental quality and the well-being of both present and future generations

of human beings. Specific relationships between the environment and health status have been identified, as well as relationships between poverty alleviation and enhanced environmental quality. Environmentalists have also drawn attention to the ways in which collective action problems and scientific uncertainty can thwart sustainable development.

Concern about sustainable development dictates the adoption of legal rules that restrict pollution and promote conservation. Furthermore, in order to mitigate collective action problems this perspective would advocate the adoption of legal institutions that ensure that the widest possible range of interests is considered in the formulation of rules that influence human interactions with the environment. In addition, in appropriate cases special attention should be paid to the views of people whose well-being is closely tied to that of a particular ecosystem. As a result, this perspective has important implications for public international law, constitutional law, administrative law, civil procedure and property law, which in their traditional forms may or may not assign the power to instigate, make and enforce environmentally significant decisions to those who have appropriate interests or expertise.

7.1. The Relationship between Developmental State and Law

1. Law and the Classic Developmental State

Although the relationship between law and economic development has been studied by prominent scholars since (at least) the 19th century, systematic efforts to reform legal institutions became part of international development practice only after World War II. The first wave of law and development has been referred to as “law and classic developmentalism.” While scholars refer to this period by different names, there is consensus around its key characteristics. It emerged in the 1960s, and was based on development economics theories that emphasized the role of the state as the driver of economic growth. Under this model, the state played an active role in the economy through planning and industrial policy, as well as state ownership of major industries and utilities. The state was placed at the centre of the economy because dominant thinking viewed the private sector as inadequate for promoting industrial growth. Import substitution

industrialization (ISI) policies were implemented in developing countries to delink their economies from world markets in order to protect domestic industry from competition and build independent manufacturing capacity.

The state-centric law and development movement of the 1960s-70s was rooted in modernization theory. Modernization posited that underdevelopment was the product of local “traditional” cultures, societies, and institutions. Viewing a kind of linear progression from tradition to modernity that was largely based on the experiences of the advanced countries in which the theory was born, modernization theorists such as Rostow believed that development would result if third world countries could replicate those experiences and traits of the developed world. As state-led industrialization had led to economic growth in advanced countries, ISI became the basic model for much of Latin America, Africa, and Asia.

With its central role in the economy, the classic developmental state required laws and legal institutions that would allow it to direct and mould economic behavior. Legislation served as a tool for effecting national economic planning, and law more generally served to create the framework for bureaucratization and governance of state industry. Lawyers working in development agencies, universities, and other organizations in the United States and Europe took up the agenda of law reform in this context. Thus, they held a functionalist conception of law as an instrument with which to facilitate state-led development.

Law and development planners viewed legal formalism as the central impediment to a functionalist legal culture in the developing world (particularly in Latin America). The basic idea of legal formalism is that law contains an autonomous set of abstract principles, and an internal logic that can be deduced and applied. The key problem with this notion for legal reformers was that law was taught, written, applied, and practiced without regard to socio-economic context or policy objectives. Therefore, just as bureaucracies required modernization in order to run a state-centric economy, so too did the legal system.

Law reformers in the 1960s sought to modernize legal culture in part through educational reform. Legal education was seen as the source of legal formalism, thus reforming law schools was the first step toward effecting a more functionalist legal culture. Law and development practitioners attempted to influence legal education by working with legal elites in the developing world. Not only would less formalist-oriented law schools produce more pragmatic lawyers, they would also form the base of critique against formalism through academic writing and think-tanks. Most importantly, the reformers thought that change in the education system would organically effect changes in lawyering and adjudication. On the other hand, the focus on law schools may have been driven by the fact that early members of the law and development movement were European and American legal academics.

This early law and development movement was also marked by the concept of *legal transplants*. As state-led development required modern laws and legal institutions, which the developing countries lacked according to practitioners and scholars, the modern legal institutions of the developed world were transplanted into third world countries. Legal transplants during this era were focused on economic laws. This was not because social and democratic legal institutions did not concern law and development at the time, but because economic growth was seen as a necessary condition for political change. In line with functionalist thinking, modern economic laws and their resulting development would have a spill over effect and create a liberal-democratic order.

The spirit of the first wave of law and development practices appeared exhausted by the 1970s. While hampered by its internal weaknesses, its demise was chiefly the result of shifts in the global political economy which undermined its theoretical basis, namely the classic developmental doctrine of state-led growth. The developmental state was predominant in developed as well as underdeveloped countries, largely because of the Bretton Woods international economic regime that emerged after World War II. Stemming from Keynesian economics, this regime allowed for a substantial degree of protectionism and domestic regulation both to stimulate growth and protect domestic economies from global shocks. However, as the international economic system shifted away from the Keynesian state, the

corresponding rationale for the initial law and development movement was critically weakened.

II. Law and the Market

International development policies shifted from state-oriented to market-oriented economics in the early 1980s. The global shift (back) to free markets can be seen as the result of global integration through trade, the diffusion of transnational corporations, and the massive increase in private foreign investment, which occurred in the 1970s as a result of the dramatic rise in oil prices. The weakening and eventual collapse of the Soviet Union further legitimized the move to market-oriented policies. This shift to “neoliberalism” transformed economic ordering. It involved a set of development policy prescriptions - commonly known as the “Washington Consensus” – that emanated from the Washington-based international financial institutions (IFIs), namely the IMF and World Bank. These prescriptions championed free markets through privatization, deregulation, and liberalization. The model was revolutionary in that it reversed the classic developmental prescription – public industry, state regulated markets, and protectionism – that had been so prevalent in the post-war era.

Most importantly, market-centric economics fundamentally altered the role of the state in promoting economic growth, and thereby triggered a new law and development orthodoxy centred on promoting a market-oriented rule of law. Under this law and development doctrine, the primary function of law reform was to dismantle command or authoritarian institutions and protect private rights against state interference. David Kennedy goes so far as to argue that law rose to become *the* instrument of development policy under neoliberalism. Reversing the state structures supporting ISI required legislative and administrative devices. Entirely new legal frameworks were needed to allow the market to function freely, and especially to protect market participants. These included new regimes for finance and banking, corporate/commercial law, intellectual property, insurance, privatization, trade, and foreign investment, among others. With these new regimes, private

law became the primary tool for limiting state interference in the market through property and contract rights, and consequently private law regimes came to order the economy rather than public law.

Initially, these law reforms were institutionalized through large-scale transplants, also known as “shock therapy” or the “big bang” approach. Constructing a neoliberal rule of law was viewed by international development actors as an essential step toward creating the conditions for market-led growth because systems of state regulation and intervention were viewed as inefficient, stagnating, and corrupt. While law reform was never at the core of development efforts in the 1960s, rule of law reform was implemented across all aspects of legal systems in the 1980s and early 1990s. Rule of law assistance became a multi-billion dollar enterprise that involved massive overhauls of legal regimes all over the world. A central characteristic of this rule of law project was the idea that the formalization of Western-style laws in the developing world was sufficient for promoting economic development. The idea was that implementing the market-based legal framework – or getting the rules the right – would create the necessary conditions for growth. As this rules-based system would require effective enforcement, rule of law builders were also heavily focused on effective adjudication and judicial independence.

The Washington Consensus was expanded to incorporate a wider range of development goals by the late 1990s. In particular, IFIs increasingly proclaimed an interest in equitable growth and human rights. This is referred to as “comprehensive development” by University of Toronto law professor Kerry Rittich. By incorporating these humanitarian and social concerns, Rittich notes, law itself became both the means and ends of development.

The role of legal reform as an instrument of economic development was broadened to reflect human rights as well. Further, while building a market-oriented rule of law remained central to law and development, the strict legal constraints imposed on the state in terms of its ability to regulate the market were also loosened. For many, this was a significant change from the more rigid, dogmatic approach embodied by the neoliberalism of the 1980s and early 1990s.

Indeed, an entire collection of leading law and development scholarship grew out of the idea that a “major shift” in law and development was occurring along with development policy more generally. However, in reality the shift seems to have been no more than a “chastened neoliberalism.” There were revisions and additions to the basic model, but, at least until recently, the legal and institutional architecture of development did not appear to have substantially changed.

III. Different Approaches, Common Problem: Engineering Law Reform

The shift to comprehensive development was largely a result of the various shortcomings attributed to the method of implementing legal reforms under the market-centric paradigm – namely the legal transplant. As mentioned, legal regimes, institutions, and frameworks were transplanted *en masse* into developing countries despite the “complex and disappointing history of legal transplantation.” Yet as this quote highlights, the problem of legal transplants was not unique to the modern era; reform efforts attached to classic developmentalism also incorporated legal transplants, albeit on a much smaller scale.

The central challenge of legal transplantation and of law reform more generally lies in overcoming the difficulty of creating legal institutions that are able to achieve certain ends by mixing foreign laws with domestic social, political, economic, cultural, and legal circumstances. Pistor and Berkowitz offer four explanations for this. One, less economically developed countries may lack the expertise to make the foreign laws function, and thus the laws may exist on paper but not in reality. Two, formalist laws that are intended to be applied without regard to policy or ideology may be rejected by domestic actors that perceive to be threatened by changes to the status quo. Three, transplants will have difficulty being effective in countries where social ordering is not achieved primarily through law. Four, while laws may not be rejected, they may be adjusted and altered from their originally intended form when they are placed in new contexts, and thus not function as they appear to in other settings. Pistor and Berkowitz go on to argue that contextual factors

such as political conditions and pre-existing institutions are the chief determinants of the outcome of law reforms.

These findings are in accordance with several other leading authors' positions on the subject. The consensus is that "one size fits all" approaches to law and development have not produced their intended results. It seems clear that no universal system of law can be effectively imposed on a given country, let alone one that does not share the characteristics of a modernized or advanced capitalist state that would seem hospitable to such a system. In this light, the conclusion offered by Bridget Hauserman in an early review of Trubek's and Santos' volume for the German Law Journal seems instructive:

"[T]here is no sure fire formula for development—the best that can be done is to proceed from a contextual and detailed analysis. Then, in a sea of 'contending ideas, contending interests, contested theories, and complex unknowables...we must decide... [and perhaps] even experiment."

Though conclusions such as this have been well-documented and repeatedly demonstrated in academia and development institution reports, their utility is fairly questionable. As Thomas Carothers argues, this kind of "lesson learned" suffers from being too general and too obvious. It will be important to take this into account as we move on to consider the potential evolution of contemporary law and development. Trubek and others launched the "Law and the New Developmental State" research project. It stemmed from the growing observation that states are re-assuming an active role in promoting economic growth - not by simply returning to the discredited ISI policies implemented in the 1960s and 1970s - but with more sophisticated methods of intervention and, thus, new laws and institutions.

The rise of new developmentalism has prompted a rethinking of the role of state. While the market is still key to economic growth, it is now generally recognized that developing countries require the state to enable markets to grow. As in the classic developmental era, markets in the developing world are seen to lack the capacity to function efficiently and

create incentives to make long-term investments in areas like innovation and skills development.

This is a significant shortcoming in a globally integrated economy driven largely by innovation. But rather than replace the market as the driver of industry and growth, the new developmental state seeks to *empower* the private sector through extensive collaboration and communication between public and private sectors in policy formulation, promotion of foreign direct investment towards growth sectors, and pushing firms and industries towards competitiveness rather than shielding them with protectionism. It organizes systems for public-private information sharing; searches for promising products and markets; initiates cooperative public-private efforts to construct competitive and efficient regulatory systems; makes investments in education, R&D, and technological innovation; uses tariffs, taxes and subsidies to create comparative advantage; creates public-private partnerships; and makes major investments in infrastructure to connect domestic markets to the global marketplace.

An integrated, technologically sophisticated, and highly competitive global environment has shaped the core elements of the new developmental state. This helps explain the emphasis on innovation, integration, and creating competitive industries - yet ultimately relying on the market to promote growth. Thus, the main function of the new developmental state is to strategically assist the private sector to compete in a globally integrated economy. Furthermore, in contrast to previous development orthodoxies, new developmentalism does not involve a rigid “either/or” conception of state and market, but involves a substantial degree of collaboration and overlap, and places both public and private actors in new roles.

IV. Two-Way Learning

It is worth repeating that this conception of development is defined as a “*process of discovery*” in which the state seeks to empower the private sector and state and market function best when they are linked in collaborative structures that foster experimentation

and revision.” ‘Experimentation’ in this context can refer to “a predisposition to find out what works through policy innovation.” New developmentalism places learning at the centre of economic growth in this way, thereby representing a sharp distinction from previous thinking. The classic developmental model assumed that the state independently possessed the capacity and expertise needed to stimulate growth through centralized planning, and similarly market economists posited that private actors possessed the knowledge to achieve the optimal conditions for growth on their own. New developmentalists take a kind of middle ground, but go beyond a mere compromise. They emphasize that the state can empower the market by providing inputs and information to private actors, which can otherwise form their own decisions and strategies.

Developmental policy therefore involves a large degree of knowledge coordination between governments and market participants, as well as “search, experimentation, and tailoring of public action to specific needs and contexts.” In this way, it is argued that learning is the “central ingredient” to developmentalism. While talk of ingredients may remind one of the failed recipes of the past, a further explication of the new developmentalism indicates that the model may embody the very detailed and contextualized analysis called for by a number of critical law and development scholars today.

While *learning* is seen as the core tenet of the new developmentalism, it really does not offer any readymade solutions. Rather, the opposite is, and, in fact, must be true. New developmentalism rejects one size fits all strategies; learning and experimentation are not directed at the entire economy but tailored to allow for a set of policies that vary across economic sectors and between geographic locations. Thus, new developmentalism takes into account disparities that exist within developing countries as well as between them.

In addition, the only commonality that exists across new developmental states is that bureaucracies should converse with the private sector in order to identify and take advantage of market opportunities, and correspondingly should have the flexibility to revise policies and take action when opportunities are identified. This follows from a decidedly anti-orthodox assumption that it is impossible to know *ex ante* which development policies

will be successful, and therefore we need to engage in experimentation and revision. In turn, this novel approach of learning, collaboration, and flexibility requires a new legal framework – a theoretical orientation which powerfully mirrors the assessments of domestic regulatory law over the last decades.

2. The Relationship between Development Theory and Law and Development Doctrine

In this part we will set forth a theory of the relationship between economic ideas and various “doctrines” in the field of law and development. The history of thought about law and development shows that there is an intimate relationship between prevailing economic ideas and dominant notions of the proper role of law in development.

When we speak of “law and development”, we sometimes use the term to refer to a body of ideas that guides the reform of legal institutions in developing countries. This “law and development doctrine” is more than a simple recipe book of projects and less than an autonomous academic theory. Rather, as Alvaro Santos and I have argued, it is best seen as the product of the interaction of legal theory, economic development theory, and the practices of development agencies.

In some periods in the past, economics, legal theory and development agency practices came together to form a relatively coherent vision and doctrine that guided the practices of Western foreign aid agencies and influenced domestic reformers. When law, economics and agency practice are all aligned, a relatively clear set of policies can be derived and projects planned. This has happened twice in recent memory. The first such moment was the law of the developmental state: in this model law was seen primarily as a tool to render state intervention more effective. The second was the role assigned to law in the neo-liberal market order which sees law basically as a framework for the market and a shield against undesirable state intervention in market activities.

Each of these models was associated with the dominant economic theories of the time. In the 1960s development economists favored a strong role for the state, believed that private enterprise lacked the resources to build key industries and state ownership was essential, and thought that import substitution industrialization and delinking from world markets was the only possible road to development. The first moment of law and development doctrine was based on these theories and pointed to the need to strengthen the state apparatus so it could perform these roles. But as the limits and distortions flowing from this model became clearer, economists began to question the prescriptions and counsel a narrowing of the state's role and an opening to world markets. This move within economics helped generate the second or neo-liberal moment in law and development doctrine. This second moment stressed the role of law in protecting investor expectations, facilitating private transactions, and limited the role of the state.

Each of the two primary models of law and development doctrine dominated aid efforts for a specific period of time and had a major influence on domestic reform efforts. But both those moments have passed. While aspects of both these models remain in thought and practice, neither mode is hegemonic. Rather, we find ourselves in a period in which there is no prevailing orthodoxy either in development theory or in law and development doctrine. This is a period of contending visions which range from the reconstructed neo-liberalism of the World Bank's *Doing Business* Project to such endeavors as the effort to revive socialism and moves to rebuild a more classical form of the developmental state.

It is in this climate that ideas about a new developmental state are emerging, and in which some people are starting to work out the implications of these ideas for law. The consensus on which the neo-liberal model was built is crumbling and we see new ideas emerging both in development economics and state practice. These ideas point to different models of development and different roles for law.

3. Law and the New Developmental State: A preliminary analysis

At an intellectual level, the idea that there is a new developmental state idea emerges from the work of a group of political economists whose theories point to the continued

importance of state intervention while eschewing the kind of state ownership and top down centralized controls favored by past developmental state. And the new model can be glimpsed in the practices of some states like Brazil that show signs of wanting to move beyond neo-liberalism without simply trying to return to the developmental state of the 1950s and 1960s.

The theoretical project has yet to be fully accepted in academic circles and the experiments with new forms of state intervention may not have crystallized in a robust model. But there is some evidence that change is occurring and that it will have important implications for the law. In this part I point to some of the implications of the new developmental state theories and practices for the law, and outline some of the issues that must be dealt with if we are to construct a legal theory and practice for the new developmental state

A) Legal Practices

What changes in the legal order, and what new legal institutions, might be treated as evidence of a shift to a new developmental state? The answer is that we really don't know: if evidence of NDS state practice is fragmentary, data on legal practices is almost non-existent and the theory of law in the new developmental state has not yet been created. But we would expect that among other things we will find a great deal of interest in creating the legal framework for various forms of public-private collaboration; emphasis on creating the legal structure for a kind of capital market that can will identify and reward entrepreneurship; attention to shifts in corporate governance to encourage investment and promote innovation; recognition of the need for flexibility and for ways to encourage experimentation; and efforts to challenge any aspect of international economic law that might hinder state intervention.

B) Legal Theories

We need a legal theory counterpart for the new development economics. This work has yet to be done although there are some ideas now circulating in the legal academy that might be adapted for this purpose. Before turning to that discussion, however, it is important first to explore the implications of the new political economy of development for prevailing theories of law and development. In so doing, we will see more clearly how NPED requires

legal ideas that differ from any of the models of law employed in the original developmental state in Latin America, in the Asian developmental state, or in neo-liberalism.. This analysis will help us see the challenge faced by those who seek to develop a legal theory adequate to the NDS phenomena.

1) Conflicting functions: the dilemmas of law in a new developmental state

In the law of the original developmental state, emphasis was placed on the effectiveness of law as a tool for state management of the economy and state led-transformation of society. Since the role of private investment was secondary, more emphasis was placed on increasing the powers of the state than in protecting the rights of private actors or facilitating their interactions. There was relatively little concern for legal stability and predictability at least if that would get in the way of active measures to be taken by the state.

The neo-liberal model, in contrast, put protecting private property, facilitating contract, and limiting state discretion at the center of its legal model. For neo-liberals, a cardinal feature of the law of the market should be that it was predictable. That meant it should not be easy to change the rules. Neo-liberalism even flirted with the idea of rehabilitating legal formalism as a way to ensure legal certainty, predictability, and stability.

The new developmental state seems to need both flexibility *and* stability. The commitment to experimentation creates a need for flexible, specialized, and easily revisable frameworks. Such frameworks are needed at the procedural and substantive level. Procedural frameworks are needed to manage the kind of public-private collaboration required to identify new markets, products, and processes. Substantive frameworks are needed to provide the kind of specialized regulatory regime best suited both to elicit private investment and ensure it serves the public interest. Because the whole point of the exercise is to try new ideas and seek new paths, it would seem that procedures need to allow for maximum flexibility and substantive frameworks should be easily and quickly revisable.

But at the same time, because of the new developmental state's reliance on private investment, its' legal architects need to ensure that private investors have sufficient confidence in the legal framework so they will be willing to invest in the ventures that

emerge from the experiments. How can we provide flexibility and allow a high degree of regulatory specificity without raising a series of concerns on the part of the private sector? How can we ensure that private investment is protected while allowing for rapid revision of the rules? How can we avoid fears that the discretion which is needed for flexibility will be exploited by rent-seeking officials? How can we reduce the risk that specialized regulatory regimes will be crafted solely to benefit the industry rather than the nation's strategic priorities? How can we have systems of industry-specific rules that are easily revised without by-passing normal parliamentary procedures and safeguards?

2) What questions should be addressed by the legal theory of the new developmental state?

We are yet to find answers for these questions. Indeed, they are only beginning to be posed as we confront the emergence of the new developmental state and begin to understand its importance for the law. But it is possible to identify some of the questions that we would need to explore and to point to some developments in the US and Europe that may be helpful for those who wish to create the legal theory of the new developmental state.

As we think about the legal order of the new developmental state, there are a series of very specific inquiries that we need to make, Preliminary analysis suggests that the success of these approaches will be materially affected by the extent to which domestic and international economic law fosters or impede the kinds of policies and programs thought to be an intrinsic part of the new developmental state. Thus to understand the relationship between the new developmental state and the law, one would want to know answers to such questions as:

- How to protect property rights without stifling innovation or creative destruction
- How to create transparency in public-private relationships without deterring the free flow of information between state and private actors
- How to manage government support and subsidy for specific industries without creating monopolies or inefficient firms or conflict with global trade rules
- How to tailor regulatory regimes to industry needs and global opportunities while maintaining a commitment to legal equality

- How to ensure that private investment in public services and infrastructure meets national objectives
- How to ensure that corporate governance law encourages both investment and innovation
- How to craft legal institutions that will foster attention to social needs and poverty reduction
- How to ensure that “the haves don’t come out ahead” because complex, flexible, and revisable rules of the game unnecessarily favor large economic actors over others

3) Is there a general theory of law that might allow us to develop institutions capable of managing the complex needs of new developmental state?

While all these rather specific questions will need to be answered, the multi-functional challenge presented by the new developmental state may require a basic rethinking of the nature and function of law. And for that we may be able to turn to a recent set of developments in legal theory in the US variously called “new governance”, democratic experimentalism, and hybridity. This body of thought seeks to re-imagine the legal order to promote just the kind of public-private collaboration and experimentation that lies at the heart of the new developmental economics. Scholars in this tradition have dealt with many of the issues raised by the legal dilemmas of the emerging new developmental state.

The first and most basic dilemma is how to have a regime that is both flexible and yet provides the certainty and stability that investors may require. Recent studies of “new governance” in the US and Europe point to two basic mechanisms that might operate in this fashion. The first is to create hybrid systems that combine some “hard” and legally binding aspects with softer, more flexible norms and guidelines. A second is to make rule revision easy to bring about but allow it only with full participation and consent of all actors. Applied to NDS issues, this might mean having a system that allows rapid change but requires investor approval of them.

The second is the problem of capture. The need for close public-private collaboration and for shared crafting and revision of appropriate regulatory frameworks opens the door to agency capture, or even to collusion, or corruption. The solution to those issues favored by new governance theorists is to require broad participation in the new collaborative regimes so that interests other than industry are at the table and to insist on maximum transparency.

The third are the issues of democratic control, parliamentary sovereignty, and legal uniformity. The classic model of law assumes that parliaments obey the general will, their writ is supreme so that the rules they enact bind subordinate agencies of government, and rules enacted are uniform so like cases are treated alike. Proponents of new governance argue that this “transmission belt” model is a myth and seek alternative mechanisms to ensure that regulatory regimes are accountable to stakeholders. They question whether parliaments respond to the popular will; whether agencies are really constrained by the rules at that laid down; and whether given the resulting discretion like cases are treated alike. Since this model does not seem to meet the standards of democratic theory, they look to new forms of participation and transparency to ensure that regulations are responsive and regulators accountable.

These ideas are neither fully developed nor widely accepted even if the parts of the world where they have emerged. Nor has any effort yet been made to apply the insights of this literature to the developing world. But I believe that within this body of thought we will find clues to dealing with the dilemmas set forth above and help as we seek to construct the legal theory of the new developmental state.

III: Some Evidence from Practice: Brazil

In this part, I describe the new approach to an activist state, provide evidence that suggests Brazil is experimenting with new approaches, and list some of the characteristics one would expect to find in any country that is moving in this direction.

B) Basic Orientation

In the past in Latin American developmental states operated much of the economy through public ownership, limited contact with the world economy, did not combat monopolistic

practices, banned imports that competed with national industries, looked to the domestic market to spur growth, industrialized by importing existing technologies, and focused on growth over distribution. What we are seeing today is a new orientation in which nations still seek to play an active role in promoting growth but are placing primary reliance on the market to allocate resources; privileging private investment and ownership as the engine for growth; exhibiting openness to international markets; and paying direct attention to social equality and protection.

C) Emerging Practices: Brazil

If we look at recent developments in Brazil, we can see a number of changes that signal intent to move in the direction of the new developmental state paradigm. Brazil was one of the major proponents of the original developmental state in Latin America. Much of the national economy was owned by the government, government provided substantial subsidies for industry, exports that competed with national industries were effectively banned, and a central planning apparatus created. All this changed in the 1990s when Brazil opened its borders to international trade, embarked on a major privatization process, withdrew from an active industrial policy and created independent regulatory agencies to monitor privatized sectors.

Today we see a number of moves that suggest a desire to return to more active intervention in the economy. Yet this does not seem to signal a desire for a return to the policies and practices of the classical developmental state of the 1950s-1960s. Rather, it seems that Brazil is exploring new directions along the lines suggested above. Among the important developments are:

1) A public-private coordinating body

The Brazilian Agency for Industrial Development (ABDI) is a network that brings together federal ministries, state funding agencies, private sector representatives, civil society, and universities to promote technological and economic development in sectors of Brazilian industry. ABDI has helped develop Brazil's new industrial policy and identifies and guides investments in technological research, innovation and industrial development.

2) A new industrial policy

The Lula da Silva administration has experimented with various forms of industrial policy. The most recent is called the “Productive Development Policy Initiative”—PDP.

This policy stresses the importance of public investment and support to build capability in infrastructure, capital goods, exports, and technology firms.

3) A new role for development finance

State finance plays a major role in the Brazilian economy. BNDES, the Brazilian National Bank for Economic and Social Development, is one of the largest state development banks in the world, dispersing more funds annually than the World Bank. It is supplemented by other entities at the federal and state level that provide development financing. While most of these institutions have been around for a long time, recently there has been a change in policy emphasis. Of special interest is the role being played by BNDES’s investment bank arm called BNDESPAR.

BNDESPAR’s goals include support for technological innovation, small business and start-ups producing innovative and competitive products, the creation of a seed money and venture capital market, and support for the acquisition of foreign assets by Brazilian firms. BNDESPAR both operates like a private equity fund and venture capitalist and supports other institutions that perform these roles. BNDESPAR can make direct investment in start-ups and unlisted companies, participate in their management, and affect corporate strategy and governance. In some cases, BNDESPAR requires that firms receiving its support submit innovation plans. It also encourages the firms it supports to secure private capital through IPOs. But the bank also supports closed investment funds that provide private equity and venture capital especially for small and medium size firms. BNDESPAR invests in privately managed closed funds that are targeted at specific sectors and attract substantial private funding: currently these funds have raised \$4 for every \$1 committed by the Bank.

D: A new role for law?

Do these and other shifts in state policy suggest a changing role for law in Brazil? We lack the detailed information necessary to answer those questions. But, surveying the current situation in Brazil in the area of investment and finance, Brazilian scholars Paulo Mattos and Diogo Coutinho concluded that:

“New mechanisms, legally institutionalized by the state, have been identified. They share risk with private investors to increase investments in technological research and innovation, industry capacity and exports, and the acquisition of foreign assets for the internationalization of Brazilian companies. The main characteristics of these new mechanisms, considering their objectives, tools, and arrangements are

- a) Flexible industrial policies defined by governmental letters of intention that bind public investments strategies and are indicative for the private sector, inducing private investments decisions;
- b) Governmental investments through private equity, venture and seed capital, alongside subsidized credit, as the main tools to support or complement private investments;
- c) Public-private partnerships and cooperation agreements between governmental agencies and public credit companies, research centers, and private companies; and
- d) Use of flexible private contracts (credit contracts, shareholders and fund investors agreements) by public credit institutions to bind private companies to industrial policy's investments and corporate governance objectives.” (Mattos and Coutinho, 2008)

E: Is there a new development model?

In a paper produced in 2007, Paulo Mattos states that while there may not as yet be a completely coherent set of policies and practices, the current Brazilian administration is searching for a “...new conception of the role of the state in the promotion of economic development.” This role, he argues, differs from the “...nationalist, bureaucratic ‘Keynesian State’ model of the fifties and sixties which engaged in direct intervention through

artificially created monopolies or barriers to entry...” in which the government chooses the winner. But it also deviates from the neo-liberal approach of the 1990s. Rather, the current administration seeks to institute new forms of industrial policy and new governance arrangements based on collaboration between the public and private sectors “...in which government and private sector exchange information and get engaged in learning processes to promote economic development.” (2007).

In their recent study, stress that the emerging model involves a substantial degree of collaboration and risk sharing between public and private sectors and employs new tools and legal-institutional arrangements. They see this as marking a new period in state action in Brazil and contrast it with prior periods in the history of state action and economic law. This analysis is summarized in Table II, below:

Table II

	State-Owned Companies Model	Privatization Program Model	The State - a Risk Taker Model
Objectives	Direct production of goods and services.	Privatization of state-owned companies.	Shares risk with private investors to increase investments in technological research and innovation, industry capacity and exports, and the acquisition of foreign assets for the internationalization of Brazilian companies.
Tools	Direct public investments to develop industrial sectors of the Brazilian economy.	Selling of state-owned companies' assets; concession contracts.	Private equity, venture and seed capital, as well as subsidized credit.
Legal-Institutional Arrangements	Public companies created by law; legal monopolies established by law (before the 1988 Constitution).	Selling and management of public assets; economic regulation.	Flexible industrial policies defined by governmental letters of intention; public-private partnerships; cooperation agreements; private contracts.

Source: Mattos and Coutinho 2008

IV: Conclusion: Beyond the “Rule of Law” Consensus

Both the law and development movement and neo-liberal thinkers focused on the relationship between state and law, but they came to opposite conclusions about both. For L&D, the state was central to effective development and law should be its sword. For Neo-liberalism, state efforts to promote growth were likely to prove counterproductive, so the law should be a shield against the state. That led to the “Rule of Law” initiative and to massive reform efforts.

Each of these approaches was important for a time and elements of both are still with us. But neither today is dominant. Just as development experts once became disillusioned with the strong developmental state, so today many are questioning some of the assumptions behind neo-liberal prescriptions. And these concerns should bring about a reappraisal of some of the legal reform models that were prescribed.

One area of interest to those concerned with the political economy of law in the development process is the growing interest in reviving—or rediscovering—the role for the state in growth. In first place, while neo-liberalism did lead to a reduction of the state role in many developing countries, and major segments of the economies in many countries were privatized, the privatization process was often selective. Moreover, when privatization was carried out it was often accompanied by the creation of regulatory bodies that maintained substantial state control. So even in the heyday of neo-liberalism many states continued to play a central role in economic governance. Secondly, as the neo-liberal era wanes, we see some states beginning to experiment with new forms of intervention and new tools of governance. It is these forms and tools that present the current challenge for the ROL initiative.

The continuation of a major role for the state in developing economies, and the emergence of forms of intervention not employed in the past, suggests that we may be seeing the emergence of a “new developmental state” that is inspired by a new political economy. If so, we would expect that new forms of law and legal order may be needed.

Of course, some of the things going on seem to be more a reversion to older and possibly discredited forms of state intervention. For example, in some countries privatized

industries are being renationalized in ways that may prove counterproductive for growth. But there also are a number of initiatives that involve substantial state action of a new kind. These include efforts by states to share risks with the private sector through venture capital investment; the growth of public-private partnerships; new forms of social policy that stress activation and workforce development; and a variety of efforts designed to promote innovation and ensure competitiveness.

At the core of these new initiatives is the effort to *use state action to empower the private sector*. Unlike the classic developmental state, new developmental states often prefer to assist the private sector rather than directly engaging in finance, manufacture or other primary economic activities. But unlike neo-liberalism, the political economy of the new developmental state recognizes that the private sector may lack the entrepreneurial orientation, technical capacity, or risk-taking proclivity necessary to exploit new opportunities and maintain competitiveness in an open world economy. As a result, state intervention may be needed to empower the private sector by stimulating entrepreneurship, subsidizing knowledge creation, and reducing risk.

This doesn't mean a return to the centralized, planned forms of state intervention common in the past. Scholars and policy-makers have come to recognize that states have no monopoly on strategic economic wisdom. As a result, the new initiatives are often carried out through close partnership between the state and the private sector and are often based on experimentation and constant program revision.

To the extent that we see the rise of a new development state, and a new political economy of development, what may be the consequences for the law? It seems to me that there will be less interest in fixed, specific rules of general application and more in open-ended standards, individualized contracts, flexible legal regimes, and revisable partnerships. There will be less attention to courts, and more to agencies, regulation, state development banks as venture capitalists, conditional grants and loans, administrative law, and the creation of a problem-solving orientation in the bar.

Both neo-liberals and proponents of the new political economy believe that the ultimate goal is to empower the private sector. Neo-liberals taught that the best way to do that

was to limit state action, curb discretion, and employ the courts to police the resulting boundaries. But if states are entering into risk-assuming partnerships with private actors, promoting experimentation, accepting the need for constant fine-tuning and revision of legal regimes, there will be more concern for effective use of discretion and alternative approaches to ensuring accountability.

All this may bring about a move from classic “rule of law” prescriptions to a broader idea of economic governance in which traditional legal tools and new forms of governance will be found in complex and hybrid constellations. This will not only require some rethinking of ROL practice; it also should reunite the ROL movement with broader trends in legal theory and practice. There is a strong movement in legal thought today that seeks to envision new forms of governance and law that are more experimental, participatory, flexible, multi-level, and revisable.¹ As ROL confronts the new developmental state, this literature may prove a valuable source of ideas and practices.

Roles for Law in the new Developmental state

There is no single conception of the place of law within the new developmental state. This is largely because the common elements associated with new developmentalism have not crystallized into a complete model. Correspondingly, there is no overarching theory of law that can be put into practice in support of a developmental state, and indeed little data on developmental legal processes is available. Yet these evolving ideas about development do point to new roles and challenges for law.

In general, law may serve six purposes with respect to the developmental state. And the list follows:

1. Transforming the justice sector

1.1 Introduction

The Judiciary is one of the three co-equal arms of government. Its chief mission is to resolve disputes in a just manner with a view to protecting the rights and liberties of all, thereby facilitating the attainment of the rule of law ideal. It performs this function by providing

independent, accessible and responsive fora for the resolution of disputes. However, at a time of societal transformation heralded by our new Constitution, the Ethiopian Judiciary is now called upon to do more than simply resolve disputes. It must be deliberately repositioned to play the critical role of protecting the Constitution, fostering social and political stability, and promoting national socio-economic development. It must do so by implementing the Constitution in a manner that promotes the national values and principles of governance. In short, it bears the onerous duty of breathing life into the aspirations of the Ethiopian People as expressed in the Constitution. The aspirations of the Ethiopian people are explicitly stated in the Preamble to the Constitution- a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

Through this Constitution, Ethiopians wish to create a society undergirded by all the national values and principles of governance and have tasked all government organs – including the Judiciary – to advance the substance, objects and spirit of the Constitution in a manner which coheres with these national values and principles. For the Judiciary to effectively fulfil its constitutional mission and mandate, respond to the high public expectations and demands for improved performance, and command the respect of the public, its first task must be to transform itself. If we trace back history, we learn that the Judiciary was in a state of, in which is an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic. We found a Judiciary that was designed to fail.

The institutional structure was such that Power and authority were highly centralised. Accountability mechanisms were weak and reporting requirements absent. When we put people on a pedestal it is based on negative power and authority. That is the old order. Even without further elaboration, these words clearly and succinctly capture the need for the transformation of the Judiciary. Hence, the Judiciary must undergo a transformation to overthrow the Old Order and usher in the New Order promised by the new Constitution. Indeed, the transformation of this important institution is a constitutional imperative. It is

also a popular imperative fuelled by genuine and deep public demands and expectations. The public has spoken loudly and clearly in demanding that the Judiciary improves its performance, enhances the quality of justice it provides and improves its service delivery culture.

However, the transformation of the Judiciary should transcend its dealings with other branches of government and the public. It is also crucial that the transformation agenda addresses internal matters of governance, administrative systems and processes. For instance, the staff of the Judiciary desire to be part of a dynamic and functional organization with an appealing organizational culture, suitable organizational structures and an enabling and conducive working environment where productivity and creativity are valued and rewarded.

The staff of the Judiciary wishes to be treated with respect and aspire to be part of an institution that is effective, upholds integrity and commands public respect. The imperatives for the transformation of the Judiciary are therefore manifold. To respond to these imperatives and ensure that the transformation is authentic, through-going and sustainable, we need trainings of this kind. It should be informed by previous internal and external reports, and a wide range of consultations with all relevant stakeholders. It is hoped that this Framework will enable the Judiciary to adopt a holistic approach that is built on sector-wide collaboration, strategic and technical partnerships and benchmarked on emerging national, regional and global smart practice.

This Framework articulates, in bold strokes, the blue-print of the Judiciary's transformation; the policies which animate the transformation; and the broad strategies which will deliver the ultimate goal of the transformation: expeditious delivery of justice in a fair, impartial, and equitable manner irrespective of status. It is upon this Framework that the Judiciary Strategic Plan – which contains specific and detailed strategies of intervention for each of the Key Result Areas identified here – is grounded.

1.2. Impetus for Transformation

The Constitution, lays the foundation for the transformation not only of the Judiciary but also of the Ethiopian society as a whole. This is through the normative values and principles that have been adopted and enshrined in it. For the first time all facets of public and private life are governed by national principles and values that are founded on human dignity, equality and the rule of law. Legislation has been, and continues to be, enacted to further elaborate and actualise these constitutional values and principles. In addition, a new team that has undergone thorough public vetting has assumed leadership of the Judiciary. This leadership has embraced changed management approaches and embarked on building institutional delivery mechanisms to fulfil the Judiciary's mandate.

1.3. TRANSFORMATION OF THE JUDICIARY: THE FOUR PILLARS; TEN KEY RESULT AREAS

3.1 Pillar One: People-Focused Delivery of Justice

- 1: Access to and Expeditious Delivery of Justice
- 2: People-Centeredness and Public Engagement
- 3: Stakeholder Engagement

3.2 Pillar TWO: Transformative Leadership, Organizational Culture, and Professional and Motivated Staff

- 4: Philosophy and Culture
- 5: Leadership and Management
- 6: Organizational Structure
- 7: Growth of Jurisprudence and Judicial Practice

3.3 Pillar THREE: Adequate Financial resources and Physical Infrastructure

- 8: Physical Infrastructure
- 9: Resourcing and Value for Money

3.4 Pillar FOUR: KRA 10: Harnessing Technology as an Enabler for Justice

As further detailed in the rest of this document, the Transformation of the Judiciary entails several goals:

- A. Transforming the Judiciary to be an independent but complementary partner with the other branches of government and to constructively collaborate with other components of the State to make Ethiopia a constitutional democracy founded on

- the values of the rule of law, human dignity, equity, social justice, human rights, transparency and accountability;
- B. Transforming Court procedures, processes, organizational culture, and management to re-orientate them towards a culture of responsive, friendly, and effective service delivery accompanied by an integrated performance management system to ensure accountability, improvement and transparency;
 - C. Reordering the Judiciary's administrative and judicial processes so that the former supports the latter to enhance delivery of services; improve the speed of justice; and improve access to justice especially for the marginalized and traditionally under-served communities;
 - D. Reorienting the work environment in the Judiciary with a view to providing a conducive and affirming work place where all Judiciary employees are treated fairly and with respect, and which offers career advancement possibilities for all without discrimination;
 - E. Redesigning the institutional and administrative arrangements of the Judiciary to create a unified national institution with appropriate levels of devolution aimed at enhancing service delivery and empowering personnel in the outstations to craft local visions and innovations for Court administration and local solutions to local problems;
 - F. Transforming the Judiciary's relationship with other institutions of the justice chain and other stakeholders involved in court administration to better manage inter-dependencies and other matters of common interest; and
 - G. Equipping the Judiciary to develop a robust, indigenous, patriotic and progressive jurisprudence that:
 - i. Will give the country direction in dealing with historic perceptions and experiences of marginalization and exclusion;
 - ii. Will be aligned to international best practice especially in the area of human rights; Enable it to play a constructive role in the consolidation of democracy; and,
 - iii. Will contribute to the realization of a united, free, and prosperous Ethiopia where human rights and freedoms are enjoyed by everyone without discrimination.

TRANSFORMATION: THE FOUR PILLARS

The Judiciary Transformation Framework is anchored on Four (4) distinct but interdependent Pillars, and Ten (10) overlapping Key Result Areas. Founded on the Constitution, all these Pillars and KRAs have one overriding objective: to achieve access to and expeditious delivery of justice to all. The Four Pillars are (a) People/User-Focused Delivery of Justice (b) Internal Human Resource Capacity (c) Infrastructure and Resources (d) ICT As Enabler.

3.1 Pillar ONE: People-Focused Delivery of Justice

Under this Pillar, the Judiciary will pursue strategies aimed at creating a legal system which ensures equality of all before the law and an equitable legal process. The strategies under this Pillar are clustered in three Key Result Areas: Access to Delivery of Justice, People-centredness and Public Engagement, and Stakeholder Engagement.

3.1.1 KRA 1: Access to and Expeditious Delivery of Justice

The Constitution guarantees equal protection of the law for everyone. It therefore demands that justice must be done to all irrespective of status. It also demands that all State organs must ensure access to justice for all persons. These twin constitutional demands guarantee justice for all persons regardless of status. They also require that justice be delivered expeditiously and without undue regard to technicalities. Most importantly though, they require the Judiciary, as the custodian of justice in Ethiopia, ensure proximity and physical access to courts; and simplify court procedures so that all litigants can understand and effectively participate in court processes. In guaranteeing equal protection of the law, the Constitution demands that the Judiciary must not only remove barriers to access to justice, it also obligates it to take effective steps to ensure that the Judiciary remains open and available to all who seek its assistance. Taking these measures will simultaneously serve the objective of enhancing the expeditious delivery of justice and reducing the citizenry's alienation from the justice system.

Under this Key Result Area, the Judiciary will put in place strategies aimed at ensuring awareness of and understanding of the law and procedures by litigants; simplification of

court documents and procedures building ; easy availability of information pertinent to litigants' cases; physical accessibility of courts within reasonable distance of where people live; affordability of the adjudication system; cultural appropriateness of court procedures and processes; promotion and enforcement of dispute resolution systems which are in line with the Constitution; friendly and non-intimidating courts; and timeliness in the processing of claims and enforcement of judicial decisions.

Some of the strategies which will be implemented under this Key Result Area, therefore, will include: building more courts to reduce the distance to courts; increasing the number of mobile courts and developing a strategy to ensure that they work; establishing an effective system – including a litigant's charter – to provide information on courts' jurisdiction, fees, and calendar; reducing the costs of accessing judicial services; promoting and facilitating Alternative Dispute Resolution (ADR); establishing an office of Court Counsel in each court to assist litigants who are representing themselves to understand court procedures; simplifying court procedures; and making the courts non-intimidating places – including establishing a customer care desk at every court station.

The Judiciary will also set up special courts for children and other vulnerable groups. Small Claims Courts and Courts of Petty Offenders will also be established. To expedite the delivery of justice, the Judiciary will, among other things, develop and deploy an electronic Case Management System; an integrated document management system; embrace ICT and apply appropriate technology to enhance court efficiency and effectiveness – including audio-visual recording and transcription of court proceedings; and ensure appropriate staffing levels to deal with caseloads.

In addition, to avoid disparities in sentencing between different judicial officers who sentence similar criminal defendants with similar background who commit similar offences, the Judiciary will spearhead the development and implementation of a Sentencing Policy. This policy will provide a coherent sentencing structure based on the principles of fairness, justice, proportionality and commitment to public safety. It will also remove arbitrariness in

sentencing and enhance public confidence in our criminal justice system. In partnership with other relevant agencies, the Judiciary shall, also, expand the Legal Aid Scheme.

3.1.2 KRA 2: People-Centredness and Public Engagement

The Judiciary has been insular and remote both in its poise and processes giving rise to grave misunderstandings of how it runs its affairs. As a result, public confidence in the justice system has been greatly undermined. The Judiciary will engage the public in the administration of justice at various levels. It will develop and implement a structured approach to the achievement of successful public information, education and communication strategies as well as those for re-branding of the Judiciary. Open Days, Judicial Marches, Public and Student Visitation programmes will be initiated and institutionalised to close this public distance.

The Chief Justice will give an Annual State of the Judiciary Address. For the avoidance of doubt, open court proceedings will be the norm and chamber hearings the exception. Robust Bench-Academy and Bar- Bench programmes will also be initiated. An elaborate media and communication strategy will also be developed and implemented. Further, the Judiciary has established and will expand the Office of the Ombudsperson to receive and deal with public complaints. An internet-based and SMS Code complaints system has been developed and will be rolled out during this Framework period. A Public Feedback Mechanism will also be established to harness public opinion and views on the Judiciary's performance.

3.1.3 KRA 3: Stakeholder Engagement

For the Judiciary to achieve its ultimate objective of access to and expeditious delivery of justice to all, the other actors in the justice chain must perform corresponding and complementary roles. The responsibility of a just society and State is shared between the Judiciary, the various Executive actors, Independent Commissions and members of the public. This Key Result Area is underpinned by the principle of a robust independent Judiciary and constructive interdependence (with other actors). Further, the Judiciary will provide strong leadership.

3.2 Pillar TWO: Transformative Leadership, Organizational culture, and Professional and Motivated Staff

There are four Key Result Areas clustered under this Pillar, namely: Philosophy and Culture, Leadership and Management, Organizational Structure, and Growth of Jurisprudence and Judicial Practice.

3.2.1 KRA 4: Philosophy and Culture

The philosophical and cultural orientation of the Judiciary has reflected its founding history of dominance, power, prestige and remoteness, as opposed to service and equality. Further, its architecture, rules, dress code and other rituals have uprooted it from social reality. As a result, the public perceive the Judiciary to be alien and insensitive. In seeking to change this image, the Framework will provide a clear philosophical compass for the Judiciary founded on the Constitution and informed by the country's social context.

The Judiciary must be eternally conscious of its 'near-sacred' role as the temple of justice and, in dealing with the public, must realize that the people are not only the source of its authority but also the target of its service. The Framework seeks to create a Judiciary that is sensitive and responsive to the needs, feelings, and aspirations of the people. Further, it seeks to create an institution that is friendly and fair to people, both in the hardware of its outlook and in the software of its decisions and processes.

A progressive philosophy requires imaginative jurisprudence from the Bench, and a responsive staff from the Registry. In this Framework, accountability, integrity, openness, results and humility are values that will undergird the institutional design of the Judiciary and inform the daily conduct of its staff. Accordingly, the Judiciary will adopt modern management practices driven by a clear focus on results and a reliable accountability, monitoring and evaluation framework. It will also institutionalize performance management and evaluation in its systems and processes.

Additionally, the Judiciary will strengthen judicial processes to eliminate unethical practices and corruption by setting up an integrity assurance mechanism, revising the Judiciary Code of Ethics and Conduct and establishing effective ways of educating Judiciary staff and sensitizing the public on it. Finally, through regular trainings and internal communication, the Judiciary will accentuate values and ethics into its implementation programs.

3.2.2 KRA 5: Leadership and Management

The Judiciary faces a number of challenges with respect to leadership and management. The key ones include chronic under-capacity in leadership and management offices; lack of mentorship, ethnicity, excessive centralization, absence of consultation, privatization and personalization of leadership spaces, clientelism, poor attitudes and ethics, discrimination and a weak culture of professionalism in the management of the courts. Other challenges are weak professionals at the administrative level, weak financial and human resources policies and operations, absence of a performance management system, poor internal and external communication capacity, lack of professional support services to judicial staff, and a supplier rather than a user driven procurement policy, among others. People are the most critical resources in any organization.

One of the key challenges in the human resource situation in the Judiciary is the imbalance in the ratio of judicial officers to administrative staff, in favour of the latter. This imbalance needs to be rationalized to ensure that the administrative function supports the judicial function. The other challenges are: inadequacies in critical skills required, low productivity and inadequate motivation, poor remuneration and terms of service, acute inequalities in remuneration, chronic career stagnation and punitive and haphazard transfers. Among other things, these problems undermine staff morale and productivity.

The following activities will be implemented to address these challenges: rationalization of the internal staff ratio; skills and rationalization audit; review of career progression paths to make them clear, stable, and predictable; improvement of the terms and conditions of service, including the provision of mortgage, medical scheme and other loan facilities;

institutionalization of a stable transfer policy; and the development and operationalization of a staff training and scholarship programme at the Judicial Training center (JTI).

In addition, performance contracting will be introduced and applied across the board to ensure that the staffs of the Judiciary is highly competitive and professional and that it serves the public with utmost dedication. The Judiciary will also implement the following activities and strategies to enhance service delivery and sustain the transformation proposed in this Framework: decentralization; Performance Management and Contracting; establishment of capable Institutional arrangements; professionalizing the Directorates; building budget management capacity; and staff training and induction. Each leadership and management office, such as the offices of the Chief Justice, Deputy Chief Justice (DCJ), Chief Registrar (CRJ), will have small but efficient professional and executive offices designed to support them to deliver on their responsibilities.

Further, the Judiciary shall standardize offices in all court stations to eliminate the variations and asymmetries that presently exist. Improving the work environment will require enhanced budgeting capacity, prudent financial management systems and modern working tools and equipment. It now plans, in an accelerated manner, to build the capacity of the Judiciary to manage this Fund in an efficient, accountable, and transparent manner for the benefit of the Ethiopian people.

We shall institutionalize results-based budgeting, financial management and accountability. The primary responsibility for the successful and sustainable transformation of the Judiciary rests with its leadership, management and staff at all levels and in all capacities. A clear and robust organizational design; a dynamic leadership and management team; and a competent and motivated staff are conditions necessary for a successfully transformed Judiciary and in this Framework period, all this will be undertaken. Additionally, the Judiciary shall establish a devolved internal Disciplinary Mechanism with fair administrative procedures. To incentive and reward innovation and productivity, the Judiciary shall also establish a Judiciary Award Scheme.

3.2.3 KRA 6: Organizational Structure

The current organizational structure is highly centralized and concentrated. The structural and operational relationship between the judges, registry, and administrative staff is dense, unclear and incomprehensible. There is a lack of clarity in reporting lines; there are no terms of reference/ job descriptions for officers upon recruitment nor are there induction programmes. Vertical and horizontal accountability systems are also lacking; judicial and administrative functions are fused. The Judiciary's organizational structure is convoluted in form and outlook thus impairing quality decision making and location of authority and responsibility. This Framework will bring organizational clarity to this structure by, first, decentralisation of both judicial and administrative offices and functions, where appropriate.

For example, the Judiciary shall devolve the human resources and budgeting and finance functions to seventeen identified regions throughout the country. Similarly, the Court of Appeal will now be established in all major towns. In the same vein, the Judiciary will re-engineer its organizational structure to establish clear units of responsibility, clear reporting lines and clear demarcation of territory and accountability. Every staff recruited, from judges and to judicial staff, will undergo a formal induction process and will have formal job descriptions. A continuous learning and training programme will be institutionalised at the JTC.

In this area, the Judiciary proposes operational structures that will define the roles and mandates of organizational units of the Judiciary – Courts, Court Stations, Divisions, and Directorates - to facilitate effective steering, designing and implementation of the transformation and other ordinary programs. The focus under this result area is to establish clear governance structures and practices that facilitate access to and expeditious delivery of justice to all.

3.2.4 KRA 7: Growth of Jurisprudence and Judicial Practice

The Judiciary is required to develop jurisprudence which is the lifeblood of any Judiciary. Sound jurisprudence will enable the Judiciary to assert its authority, command respect and distinction among its peers, and earn respect and legitimacy in the eyes of the public. Accordingly, the true and ultimate test of transformation of the Judiciary should be manifest in the quality of jurisprudence emanating from the Bench. It is through the use of its jurisprudential power that the Judiciary will live true to its constitutional mission. Consequently, the Judiciary shall invest heavily in developing, on the one hand, a jurisprudence that is robust, indigenous, and patriotic, and on the other, one whose quality will attract global appeal by dint of its reasoned rigour and intellectual depth. In particular, the Judiciary shall leverage and build on the new Supreme Court established by the Constitution to engage in progressive jurisprudence conscious of and faithful to the constitutional basis of its origins and mandate. This will involve investment in research, training, partnerships, benchmarking, research and development initiatives, as well as consistent continuous learning, mentoring and peer review programmes.

There should be the judicial think tank: an institute of global excellence and the nerve centre of rich intellectual exchange. It will be the interface between the Judiciary and contemporary developments in society, on the one hand, and learning interaction between the Judiciary and other agencies, on the other. It will provide the intellectual anchor in making our courts the hearth and home of a robust and functional jurisprudence that meets the aspirations of Ethiopians.

2. Lawyers as transaction law engineers

that transactional lawyers add value primarily by reducing transaction costs, acting as reputational intermediaries, anticipating and counselling clients about risks and outcomes, identifying differences in valuation between parties, and creating economies of scope that transactional lawyers add value by (1) minimizing the potential for ex post litigation; (2) reducing transaction costs; (3) reducing regulatory costs; (4) acting as reputational intermediaries; (5) providing client privilege and confidentiality; (6) creating economies of scope. Each of these roles is further explained below.

1. The hypothesis that transactional lawyers add value by minimizing the potential for ex post litigation. This hypothesis predicts that lawyers add value to transactions by anticipating and minimizing the likelihood that failure of the transaction will result in litigation.
2. The hypothesis that transactional lawyers add value by reducing transaction costs. Under this hypothesis, transactional lawyers reduce certain transaction costs, thereby increasing the size of the pie for all parties. They reduce moral hazard, for example, by drafting transaction documents and agreements to eliminate adverse actions due to changes in incentives. Thus, if the purchase price of a capital asset in an M&A transaction is adjusted based on buyer's revenues in the year following the sale, the seller's transactional lawyer could negotiate and draft the contract so as to eliminate the buyer's incentive to increase current costs (and thereby adjust the purchase price downward). This hypothesis also predicts that transactional lawyers reduce agency costs by implicitly monitoring (as independent advocates for their client's position) that their client's officers act on the client's behalf and that they effectively reduce asymmetric information by giving legal opinions. Although complying with law might be broadly viewed as a cost of engaging in a transaction, the relevant literature does not generally include legal compliance as a transaction cost. It is therefore discussed as a separate hypothesis, below.
3. The hypothesis that transactional lawyers add value by reducing regulatory costs. In its narrow form, this hypothesis predicts that transactional lawyers add value by understanding their clients' regulatory concerns, thereby being able to negotiate deals without compromising regulatory compliance. This "client-regulatory" legal work involves understanding the law and regulation that bind the client, qua client. Because most clients, just like most companies, are not highly regulated (if regulated at all), this article posits a broader hypothesis, distinguishing between client-regulatory legal work and "transaction-regulatory" legal work. Transaction-regulatory legal work involves understanding the law and regulation that govern the particular type of transaction, irrespective of the regulatory concerns of the client

engaging in the transaction. As an example of this distinction, consider a typical legal opinion, concluding (among other things) that an agreement is enforceable according to its terms and that performance thereof would not violate law. In rendering this opinion, transactional counsel would be performing client-regulatory legal work to the extent counsel's conclusion goes to no violation of law, and would be performing transaction-regulatory legal work to the extent the conclusion goes to enforceability of the agreement qua agreement. Whereas literature to date examines only client-regulatory legal work, this article also examines transaction-regulatory legal work as a possible source of transactional lawyer value.

4. The hypothesis that transactional lawyers add value by acting as reputational intermediaries. Under this hypothesis, as repeat players in the transactional world, transactional lawyers add value by renting their good reputation to clients. If, for example, a particular law firm is well known for representing underwriters selling securities, the hypothesis predicts that underwriter-clients, by using that firm, signal a measure of reliability and soundness to potential investors in those securities. The high-reputation law firm not only has expertise but, more importantly, bonds itself to good performance; it would lose at least part of its reputation if it failed to perform well. In this regard, reputation appears to be a more effective "bond" than liability because professional negligence is hard to prove and, when proved, is usually covered by insurance. The hypothesis also predicts that hiring a high-reputation law firm adds even greater value when the client does not already have a high reputation (e.g., is not a repeat player) in a type of transaction. This hypothesis appears to be the most agreed upon scholarly theory of the value added by transactional lawyers.
5. The hypothesis that transactional lawyers add value by providing client privilege and confidentiality. According to this hypothesis, lawyers add value by providing clients with a measure of privilege and confidentiality. Clients gain these protections through the attorney-client privilege: a lawyer's work product, including correspondence with clients in preparing for a deal, may be privileged under

applicable state law. Thus, a client may be able to communicate through its lawyers without revealing confidential matters to opposing parties.

6. The hypothesis that transactional lawyers add value by creating economies of scope. Economies of scope represent the savings resulting from having the same investment support multiple profitable activities less expensively in combination than separately. Because transactional lawyers already play a legal role in transactions, this hypothesis predicts that “economies of scope should give them an advantage in performing the [non-legal] aspects of transaction structuring as well.” According to this hypothesis, non-legal jobs include negotiation and drafting of deal documentation, identifying differences in valuation, reducing transaction costs, and engaging in due diligence. This hypothesis predicts, for example, that although a non-lawyer scrivener could instead negotiate and draft deal documentation, a lawyer would still be needed to review the documentation from a legal standpoint. Having the reviewing lawyer also do the negotiation and drafting creates the economy of scope. In examining this hypothesis, it is important to distinguish economies of scope from economies of scale.

The latter represents the savings resulting from the greater efficiency of large-scale processes. Transactional lawyers can and do create economies of scale, such as by counselling multiple transactions of a given type, thereby apportioning the cost of gaining experience and expertise. Although that adds value, it is not value that is unique to transactional lawyering: any party who advises on multiple transactions of a given type could add similar value. For that reason and since economies of scale are not singled out in the literature as a source of transactional lawyer value, this article does not separately test whether transactional lawyers add value by creating economies of scale. To some extent, however, that value is implicit in certain of this article’s other hypotheses. For example, transactional lawyers should better perform transaction-regulatory legal work by counselling multiple transactions, should better perform client-regulatory legal work by counselling multiple clients subject to the same regulatory framework, and should be better reputational intermediaries by

engaging in repeat transactions. More marginal ways in which transactional lawyers may add value.

In addition to the foregoing hypotheses, transactional lawyers may add value in more marginal ways. From a behavioural-psychology standpoint, for example, transactional lawyers—by training if not also by the temperament of many who go into the legal profession, especially those who avoid being litigators—are likely to be more risk averse than their business clients. These lawyers therefore may provide a sounding board to help clients balance risk-prone ideas. Transactional lawyers also might add value by enhancing the perception of social ordering: society has a fundamental need for order, and lawyers are the priests who provide the order through law, granting confidence and authority to transactions.

Transactional lawyers additionally can add value to the client by providing a measure of risk-shifting, in that the client might have a claim against the lawyer if the transaction results in losses. Any such claim would succeed, however, only if the lawyer was negligent in failing to protect against the losses, and clients should be able to insure more efficiently in other ways against bad outcomes. Furthermore, this reallocation in overall value is not the type of value on which this article focuses.

3. Defining the goals of the developmental state through regulations and legislation

This would involve clarifying the underlying norms, strategies, and policy objectives regarding the relationship between the state and the market.

4. Identifying the tools for achieving these goals, such as enforcement methods for inducing compliance

5. Law may establish the institutional framework with which to structure the developmental state as well as new relationships between public and private actors

Thus, a developmental legal regime would guide and direct public and private institutions in the implementation of development strategies. These roles present problems for lawmakers and reformers given the dual function that developmental law as a hybrid of state-led economic law and neoliberal economic law –must carry out in the new developmental state. Under the former, of course, law was directed at increasing the power and flexibility of the state to carry out its policy objectives. And under the latter, laws were created to protect stable and predictable private rights such as property and contract in order to facilitate investment and prevent state interference. The new developmental state requires features from both regimes.

In particular, the legal framework must afford the state a fair amount of flexibility if it is to experiment with various development paths and strategies. The rules must be fluid enough to allow the state to engage with the private sector in its various collaborative decisions and projects, but also maintain a level of stability and legal protection that is adequate for maintaining investor confidence. Moreover, developmental laws must grant the state discretion to pursue market “experiments” and invest in particular firms and industries, yet prevent actual or perceived corruption.

Trubek points to various legal ideas and mechanisms that have recently emerged in legal scholarship to offer solutions for dealing with the contrasting functions of the developmental state. One is a hybrid system that combines legally binding “hard” laws with more norms-based regulatory guidelines, referred to as “soft” laws. Another approach is to require broad participation- beyond the state and industrial actors- in collaborative decision-making, particularly where funds are being allocated to the private sector. Whether or not third party interests would actually be taken into account by way of broader participation, this method could bring a greater degree of transparency and legitimacy to the developmental regime.

8. Ethiopian renaissance and the judiciary

8.1. How do Judicial Systems Affect Economic Growth?

There are only two ways to expand output: increasing the amount of inputs used in production and/or raising the productivity with which these inputs are used. Total factor productivity growth may, in turn, result from either technological progress, i.e., a shift in the frontier production function, or an increase in the efficiency with which the available technology is used. In this way, if one wants to understand why some countries are poor and others rich, or why some grow more than others, it is on these components that one has to center one's attention.

The literature on cross-country differences in economic performance is extensive and reviewing it is way beyond the scope of this paper. It is enough to note here that differences in public policies and institutions are currently recognized as one of the key explanations for the large differences in levels and growth rates of per capita GDP among countries and Barro and. To some, it is not only an important cause, but the most important one and Olson. In fact, for Olson, reforming economic policy and institutions is sufficient for rapidly getting a country into a high growth track: "But any poorer countries that adopt relatively good economic policies and institutions enjoy rapid catch-up growth."

Olson's arguments are given empirical content by Scully, who analyzed the impact of institutions on the efficiency levels and growth rates of 155 market economies. Scully reaches three main conclusions. First, countries with good institutions -- that is, "politically open of resources" -- grow three times as fast, in per capita terms, as countries with poor institutions (2.73 to 0.91 percent annually). Second, countries with poor institutions are only half as efficient as those with a good institutional framework. Third, countries with poor institutions tend to show a continuous decline in efficiency, whereas those with good institutions have already captured all efficiency gains, so that in these countries "one should not expect an improvement in efficiency over time."

The institutions Olson calls attention to comprise "the legal systems that enforce contracts and protect property rights and ... political structures, constitutional provisions, and the extent of special-interest lobbies and cartels". The importance of well-functioning judicial systems is stressed:

“Indeed, the difficulty of creating a relatively impartial judicial system that enforces agreements has been a critical stumbling block in the path of economic development. In the Western world the evolution of courts, legal systems, and a relatively impartial system of judicial enforcement has played a major role in permitting the development of a complex system of contracting that can extend over time and space, an essential requirement for economic specialization.”

According to the supply-side growth decomposition suggested above, well-functioning judiciaries may foster growth through essentially three different channels: technological progress, investment and high efficiency.

9.1.1. Technological Progress

Good legal and judicial systems may stimulate growth by protecting intellectual property, and in this way fostering technological progress and absorption. There are two different mechanisms that could produce this result. One, less developed countries with stringent intellectual property legislation may find it easier to buy advanced technology from firms in industrialized countries, whether embodied or not in capital goods. Two, by encouraging domestic firms to invest in R&D. Some evidence in that direction is provided by Gould and Gruben, who use cross-country regressions to analyze the impact of intellectual property rights on growth, while controlling for trade regime and different country-specific characteristics. Their results suggest that countries that protect intellectual property grow faster than the ones that do not, and that this effect is slightly more pronounced in open economies. Researches indicate that empirical evidence that the strength of a country's system of intellectual property protection appears to influence its ability to attract American, German and Japanese investment and technology to high-technology industries

Furthermore, timely and consistent enforcement of private contracts reduces transaction costs and stimulates economic agents to increase the number and breadth of their market transactions. This, in turn, leads to a wider diffusion of knowledge, including not only technological spill-overs, but also the transmission of sound managing, marketing and financing practices. Two other mechanisms operate through the stimulus provided by the market-enlargement effect of low transaction costs. One, as the size of the market increases

firms face stiffer competition. Two, a larger market means that more sales and profits could be made out of a specific innovation. Both mechanisms will tend to encourage firms to innovate, either by developing or acquiring technology.

9.1.2. Investment

Another way well-functioning judicial systems foster growth is by stimulating a more rapid accumulation of factors of production. In particular, investment in both physical and human capital will be encouraged by secure property rights, well-functioning legal and judicial systems and political stability [Schmidt-Hebbel, Servén and Solimano and Alesina and Perotti. In the case of rights that depend on a grant from the state, such as land, intellectual property and the right to explore mineral resources or other public concessions, poor enforcement and the risk of administrative expropriation reduce the expected value of the property right and, therefore, the returns on new investment. Dysfunctional judicial systems may also discourage savings and stimulate capital flight, reducing the volume of funds available to finance investment.

As noted by Williamson, the impact of poor judicial systems on investment in physical and human capital will be larger the more specialized and specific is the nature of this investment:

“Nations that pose severe investment hazards will support smaller amounts of specialized, durable investment [...] than will more credible investment regimes; nations with problematic judiciaries will be similarly disadvantaged. That will show up in technology. Regimes that afford weak supports for investment and contracting will rarely be able to provide strong supports for intellectual property rights. High-technology industries or industries that benefit from specialized, durable investments will thus flee from regimes with great investment and contractual insecurities -- for safer havens.”

The reason for that is articulated by Makler. Private agents will only make long-term and highly specialized investments if they are secure that the contracts that support their activities will be properly enforced. Because specialized production often requires transaction-specific assets, contracts that support it are usually affected by the ability of the

parties to exit the agreement. Legal restrictions may also limit the ability of the parties to freely dispose of their assets. Long-term contracting, on the other hand, suffers from the difficulty of the parties, at the time of contracting, to forecast and address all possible contingencies that may arise during the life time of the agreement. Because they were not predicted beforehand or were too costly to contemplate in the contract, contingencies have to be dealt with as they arise, requiring both parties to exercise some degree of discretion during the operation of the contract. Hay, Shleifer and Vishny et al. note that contracts may also be incomplete if they contemplate clauses the courts cannot verify and rule on.

In all these cases, one or both parties will have an incentive to behave opportunistically; i.e., seek its self-interest with guile: "While it is reasonable to expect parties to pursue their own self-interest ... the guile component addresses the propensity of a party to abrogate or depart from the original bargain in pursuit of his self-interest". Well-functioning judicial systems, broadly understood to contemplate the drafting of contracts and the existence of accounting methods that allow verifiability by courts, are essential to reduce contractual hazards. Especially when the state is a part in the agreement, strong and independent judiciaries will be essential to stimulate economic activities that involve specific investment.

The country studies summarized in Levy and Spiller clearly indicate that in sectors with specific investment -- that is, investment that cannot be salvaged for other purposes -- a strong and independent judiciary is a necessary condition for the participation of private investors. In countries where judiciaries are weak, laws are unstable and administrative discretion common, investment in these sectors will only take place if undertaken by the state. In this way, malfunctioning judicial systems lead either to lack of investment or to usually dysfunctional public production. The telecommunications sector, as exemplified by Levy and Spiller, illustrates the problem well:

"Establishing a telecommunications network involves large sunk investments because assets have very low alternative, or salvage, value. Consequently, utilities are particularly vulnerable to administrative expropriation, with regulators setting prices below long-run replacement costs so as to capture the quasi-rents (returns above the opportunity cost

when a good is temporarily in short supply) associated with the operation of those assets. Firms end up with incentives to invest less than socially optimal.”

9.1.3. Efficiency

Finally, malfunctioning judicial systems hamper growth by stimulating an inefficient use of resources and technology, moving countries away from their potential or best practice output. High risk and large transaction costs move the country’s price system away from international standards, distorting resource allocation. Because contract and property rights are not properly enforced, firms may decide not to pursue certain activities, forego the opportunity to specialize and exploit economies of scale, mix inputs inefficiently, not allocate production among clients and markets in the most efficient fashion, keep resources unemployed etc. Efficiency may also be affected if weak judicial performance segment markets to an extent that competition is significantly reduced. A simple model will help understanding the impact of weak judicial systems on the price system and, as a consequence, on economic efficiency. Assume a firm caters to a market with

9.1.4. Securing Property Rights against Administrative Expropriation

The most oft-cited channel through which functional judicial and legal systems stimulate growth is by protecting private property rights from administrative expropriation. The risk of expropriation arises from the fact that the state, as any party in a contract, has an incentive to behave opportunistically. Also as in any contract, the risk is higher the more specific is the investment the other party has to make to fulfill its side of the bargain. What makes the state so special is the monopoly of legal coercion given to it by society, which increases its degrees of freedom to unilaterally change the terms of the contract or not abide by them, while still not breaking the law.³¹ Therefore, while contracts may specify clauses aimed at constraining government opportunism, transacting with the public sector is particularly dependent on the protection awarded by an independent judiciary.

Levy and Spiller deal extensively with the problem of administrative expropriation in the case of telecommunications and public utilities in general, in which the risk of opportunistic behavior by the state is particularly high, due to asset-specificity and long-term

contracting.³² Based on the analysis of five country experiences, Levy and Spiller conclude that: “A necessary condition for sustained and large-scale private investment in utilities is that administrative arbitrariness on the part of government be restrainable.” In that respect, the study conveys two key messages: one, well-functioning judicial systems are necessary to limit administrative discretion; and two, they are not a sufficient condition.

As pointed out by Coase, governments influence the actions of economic agents by changing the law and/or its administration. Economic policy consists, in this sense, “of choosing those legal rules, procedures, and administrative structures which will maximize the value of production. There are, however, two different levels of economic policy. One, parallel to what Levy and Spiller (1994) call detail regulation, comprises the laws themselves, as defined in Section 2 of this paper. The other, akin to Levy and Spiller’s basic regulation, consists of the substantive and procedural constraints used by society to make firms less vulnerable to administrative discretion and more inclined to invest.

To limit governments’ incentives and freedom to behave opportunistically, countries resort to three mechanisms. First, they constrain the discretion with which the state may administer the law, by setting limits in the law itself or in other legislation. Second, they establish rules limiting the ability of governments to change the law and the constraints imposed by it. Third, they create independent and strong institutions that enforce these substantive and procedural constraints on administrative discretion.

Obviously, neither the restraints built into the law nor those constraining the government’s ability to change the law, carry any commitment unless enforced by an efficient, impartial and powerful judiciary. It is not surprising, therefore, that Levy and Spiller conclude that “[a]ll three countries whose regulatory systems have successfully constrained the discretionary power of regulators have independent and well-regarded judiciaries.”

A second key message in Levy and Spiller is that well-functioning judicial systems are a necessary but not sufficient condition to effectively protect property rights from administrative expropriation. This because if the law imposes few limits on administrative discretion, or there are no stringent constraints on changing the law, there is little judiciaries may do. A particularly unfavorable situation is the one in which the executive branch of

government is able to largely influence the legislative agenda, either because it has legislative powers, or because the same party controls the executive and legislative branches of government. In these cases, even if the judiciary impeded the opportunistic behavior by the government in one instance, the latter could get its way by simply changing the law. An important conclusion from Levy and Spiller's case studies was, therefore, "that private utilities were willing to make sustained investments only when all three components of restraint worked adequately."

9.1.5. Improving the Quality and Reducing the Instability of Economic Policy

The importance of sound and stable macroeconomic policy to economic development has been well emphasized in the literature. Recently, however, Borner, Brunetti and Weder have argued that the emphasis on macroeconomic instability has been excessive. Institutional uncertainty, resulting from volatile and highly discretionary economic policy, makes the "rules of the game" very unstable, discouraging investment and production. In addition, because the effect of policy instability on markets is not neutral, it distorts resource allocation and reduces incentives for specialization. As discussed above, well-functioning judicial systems contribute to reduce policy instability by upholding specific legislative or constitutional commitments and constraining administrative discretion.

Dysfunctional judicial systems not only reduce the stability of economic policy, but also its quality. In countries where legal and judicial systems do not perform well, economic policy, regulation and government policies of intervention in the marketplace in developing countries can be seen at least in part as substitutes for an independent, well-functioning legal system." The widespread presence of state-owned enterprises in different sectors of developing economies is a telling example. In most cases, state enterprises substitute for private investment, which was absent because governments failed to provide a credible commitment that they would not expropriate investment in these activities.

Another instance of low quality economic policy due to malfunctioning judiciaries arises in the fiscal area. Weak enforcement encourages tax evasion, which is pervasive in many developing countries. To maintain the level of tax revenues, governments resort to low yield and highly distortionary taxes, compromising economic growth. In addition, since not all

taxpayers have the same opportunity to evade taxes, poor enforcement will also have an important distributive impact.

9.1.6. Increasing the Flexibility and Credibility of Economic Policy

When defining how rigid the substantive and procedural constraints imposed on administrative discretion should be, countries have to address a basic trade-off. On one hand, the stimulus provided by the legal system to investment will increase with the strength of the restrictions imposed on government discretion. Because most investment in an economy carries some degree of asset-specificity, governments will be permanently tempted to behave opportunistically. The more degrees of freedom allowed to economic policy, the higher will be this risk. From that perspective, laws should be detailed, rigid, hard to change and self-contained. On the other hand, because circumstances in which the economy operates change over time, economic policy may only be efficient if governments enjoy some flexibility in administering the law. In a rapidly changing environment, a legal system that permits wide adaptation will allow economic policy efficiency to an extent not possible in very rigid settings. Excessive flexibility, however, increases the risk of opportunism.

Striking a sensible balance between these two objectives is therefore fundamental to accomplish high investment and efficient policies. The existence of independent institutions that constrain opportunistic behaviour while allowing sufficient flexibility is a key factor in attaining economic growth. Strong and independent courts allow legislation, regulation and long-term contracting with the government to be left relatively open without compromising investment, because private investors know their rights will be protected. In this way, well-functioning judicial systems can enhance the flexibility of economic policy without concerning investors that excessive discretion will allow administrative expropriation.

9.1.7. Attenuating Circumstances

The actual impact of a malfunctioning judicial system on economic performance will depend on an array of complementary factors.³⁴ First, the availability of alternative mechanisms for securing property rights and their characteristics with respect to cost and effectiveness.

Even in economies where judicial systems function properly, many companies specialize in collecting and selling information about other firms' and people's creditworthiness. As the cost of processing information falls, so does the price charged for these services, even in less developed economies. These services allow firms in countries with weak judicial systems to trade and contract widely and in rather impersonal terms. Reputation is also a reasonably effective substitute for third-party contract enforcement in sectors characterized by non-atomistic market structures and repeated transactions, reducing the incentive for opportunism.

Obviously, the existence of a strong judiciary will stimulate self-enforcement to be even more effective. Sherwood, Shepherd and Souza note that these mechanisms for screening business partners and stimulating self-enforcement have been identified in several World Bank studies and that in many instances they provide cheaper alternatives to stimulate compliance with the law than resorting to litigation. In the same fashion, alternative mechanisms are also available to resolve disputes without resorting to courts. As noted by Williamson:

"The legal centralism tradition presumes that efficacious rules of law regarding contract disputes are in place and applied by the courts in an informed, sophisticated, and low cost way. [...] The facts, however, disclose otherwise. Most disputes -- including many that under current rules could be brought to a court -- are resolved by avoidance, self-help, and the like.

9.2. Ethiopian Renaissance

Historical documents and tangible relics attest that Ethiopia, the cradle of mankind is one of the great powers of the world by the 3rd and 4th century AD. Her civilization was at the height of its peak during the Axumite kingdom. This fact is well evidenced by the skillfully crafted architectural heritages like the Axum obelisks and the Lalibella rock hewn churches.

Nevertheless, after the fall of the Axumite and its successor the Zagwe dynasty, Ethiopia's economic hegemony declined significantly. During the past 8 centuries the country's economic supremacy reverted for many reasons. Most emperors who ruled the country during these periods had engaged themselves and the people in endless civil wars with the

aim of expanding territories further. Moreover, there were wars with foreign invaders and colonizers. To make matters worse the recurring draught and resulting famine had tarnished the country's positive image. The most powerful and civilized nation which was at the forefront became the most backward nation found at the tail of the world. Ethiopians became subject to live in abject poverty. This period is considered by some scholars as the "Darkest age of Ethiopia"

On the other hand, thanks to our brave forefathers who sacrificed their lives at the battle of Adwa in 1880 fighting back Italian colonizers, Ethiopia has become the only African country beside Liberia that retained its sovereignty as a recognized independent country. Hence, Ethiopia had played a vital role in supporting African nations in their struggle for independence. Addis Ababa, which is the seat to AU, UNECA and many international organizations and embassies is the capital city to both Ethiopia and Africa.

The victory which we gained over foreign invaders and colonizers was a good opportunity to herald the country's development and prosperity. Unfortunately, the oppressive feudal monarchy and the war monger military junta who ruled the country from early 19th to late 20th century deteriorated the livelihood of the people.

In an effort to unshackle and liberate the peoples of Ethiopia from oppressors and poverty once and for all, some devotee Ethiopians marched together and sacrificed their lives. May 28, 1991 all peoples of Ethiopia liberated from the shackles of centuries long oppression and poverty. The historical May 28 victory ushered the Ethiopian renaissance thereby ensuring sustainable development, peace and democracy. The nations, nationalities and peoples of Ethiopia are able to ratify their own constitution through their representatives.

The wise leadership of the FDRE government combined with the active participation of the public at large we are able to register a significant development in the socio-political and economic spheres. Today, Ethiopia is one of the fastest growing countries in the world that registers double digit economic growth for the past nine consecutive years.

In an effort to materialize the Ethiopian Renaissance, the government of Ethiopia has devised a five year growth and transformation plan (2011- 2016) and had already begun acting accordingly. The GTP is intended to up lift the country to a medium income state with

in ten to fifteen years. Hence, the government launched various mega projects as part of the GTP.

There is no denying the fact that public motivation and direct involvement is the very foundation of the Ethiopian Renaissance. All peoples of Ethiopia have committed it self to end poverty. Thus, it had already begun striving along with the government in every development endeavours.

There was a chain of mass demonstrations soon after his Excellency Melles Zenawi, the late prime minister of Ethiopia laid the corner stone of the Grand renaissance dam on April 2/2011. Such mass demonstrations are clear indications of the public's firm determination to end poverty once and for all. Therefore, it is very crucial to maintain such public motivation as it is the very accelerator of the Ethiopian Renaissance. To this end more is expected from the political leadership

8.2. The Three Dimensional Task

These days, all nations across the world strive to coup up with this competitive global economy. In other words it is the time when only the fittest could survive.

As we move forward others will move for and far away from us. We have lots of unfinished home assignments which we failed to do during the previous centuries. Thus, our task is triple. First, we have to do the undone home assignments which we failed to do for various reasons. Second, we have to do today's assignments and tasks. Third, we are obliged to do tomorrow's assignments a head of time. If we can accomplish these tasks effectively we can bring up the renaissance of Ethiopia as we have anticipated. That is why our challenges are said to be three dimensional. Therefore we are expected to move forward at a quantum level.

As a matter of fact the efforts which we exert in infrastructure development is not an end by it self. The renaissance of Ethiopia is not limited to retrieving the ancient economic hegemony of Ethiopia. It is beyond that. Of course, we were one of the powerful nations of the world in terms of economy and technology two to three millennia ago. But there were no justice and democracy during those times. To day we are aimed at realizing the Ethiopian

renaissance in every economic development indexes. When we think of our legal institutions, laws and lawyers we still owe three dimensional tasks. The first task is compensating the undone home work from the past regimes. If we see legal institutions, laws and lawyers we can learn that there are lots of undone homework's.

Our legal institutions were not as strong as they were supposed to be. Our laws were not as democratic and progressive as there were supposed to be. Our lawyers were not in match of the demand in the ground both in terms of quantity and quality. So today were here trying to do the undone home work. Furthermore we are also trying to respond to the today's demand. As we all witness there is a thriving economic development in Ethiopia and this development needs its own laws, legal institutions and lawyers if we are to play our part in this historic trajectory. So here also we are trying to build legal institutions that are up to the task of today's demand. In a similar vein we should also come up with laws that are responsive of today's demand and we are trying to do so.

Equally important we are also trying to produce as many lawyers as possible both in quantity and quality with a view to meeting today's demand emanating from our rapid economic development. More and above there is a future demand on the part of our legal institutions, laws and lawyers given the goal of our renaissance. Unless we come up with laws that do shoulder this future development, institutions that are up to the task of tomorrow's vigorous demand, lawyers that are fit to carry out their task both in quantity and quality we will not be in a position to play a historic role in the renaissance of our nation. So with this demand in mind our task of creating effective legal institutions, making best law and producing best lawyers is not only confined to answering yesterday's and today's questions. It is also related to the future and this shows us that standing at a time we are trying to respond to the demand emanating from three periods and this shows the gravity of our task.

8.3. *The Era of Mega Projects*

Infrastructure development is very crucial for a country's economic growth. We should give due emphasis for infrastructure development to forge the new Ethiopia. During the darkest ages of Ethiopia there was few or no infrastructure all over the country. The provision of

Health services, roads, water, education and telecom were limited to the ruling class and their environs. The mass is deprived of such basic services and rights. Such injustice has forced the people to live in misery.

Thus, we are expected to reverse such trend and move forward at quantum leap to solve the great demand and eradicate the unjust distribution of infrastructure. It is then that we can materialize the Ethiopian renaissance. Taking this gap in to consideration, the government has made applauding activities in mega infrastructure development during the past five years. Let us pin point some-

ROADS- The great investment and the relative achievement we gained from road infrastructure development are incomparable with other countries. Before the launching of road infrastructure development program in 1990 the road distribution was about 24.14% per square kilo meter. To day it has increased dramatically by 66.4% per square kilo meter. During the past eight years the government of FDRE has constructed 20,141 kilo meters of standard roads across the nation. This achievement can be considered as a miracle when compared with the total length of roads that existed eight years before.

EDUCATION- The efforts and the achievements that we score in the education sector signifies the inevitability of the Ethiopian renaissance. The provision of primary education was about 67.6% before 1998. With the view of providing primary education for all citizens the government has increased the distribution of primary education to 94%. Today, more than 16 million children can get easy access to primary education.

There were two universities before the advent of EPRDF. But today are 31 Universities have been constructed across the nation there by ensuring fair distribution among all regional states. Currently, 280,000 students are able to attend their higher education at their disposal. 500,000 students are attending their higher education at the degree level in both state and privately owned Universities. Technical and vocational training institutions are also flourished across the nation. This technical and vocational schools are playing a vital

role in solving the great demand of skilled man power for the country's mega projects. TVETs are instrumental in motivating entrepreneurship. Graduates who attend TVET are able to create jobs for them selves and for their fellow citizens.

Generally speaking, the education sector is playing a significant role in the country's effort to realize the Ethiopian renaissance.

HEALTH- In realizing the Ethiopian renaissance we should have healthy productive citizens. In cognizant of this fact the government has given a special attention for the health sector development.

In line with this, the government has designed a health policy which focuses on prevention and has begun acting accordingly. Till 2012 it has trained 38,000 health exertion professionals and recruits them in the remotest rural areas of the country. Hence a significant achievement is scored in the health sector. Today there are about 16,000 health posts and 2,700 health stations across the nation. The government has given due attention for the fair distribution of health service. It gives priority for the remotest areas of the country so that farmers and pastoralists can get easy access to health services.

In this regard the government's effort can be cited as an exemplary for other nations of the world.

ELECTRIC POWER- Ethiopia has scored a significant achievement in the electric power generating schemes marking the beginning of the Ethiopian renaissance. the country used to generate 500 mega watts of electricity before 1988. today it has increased to 2200 mega watts. In addition to hydroelectric power, Ethiopia is potentially rich in wind and geothermal energy. The government had already launched various projects in some regional states of the country to generate wind and geothermal energy.

Since 1988 a number of mega projects have been executed to generate thousands of mega watts of hydroelectric power. The Gibe 1, 2 and 3, the Tana Beles and the Tekeze hydroelectric power projects can be cited among others.

Last but not least, the grand renaissance dam which is being under construction at Bbenschangul Gumz regional state is one of the mega projects of the world. Up on

completion, the dam will generate 6000 mega watts of electric power. The grand renaissance dam will accelerate the Ethiopian renaissance as the country makes a shift from agricultural lead to industrial lead economy.

TELECOM- a century has passed since telecommunications introduced to Ethiopia. However the development of the sector was very slow. The technology and its area of coverage are too limited.

During the past few years the government of FDRE has taken a series of actions to modernize the sector and to improve the scope of its service provision. The sector is being supplied with modern and state of the art technological gadgets so that peoples all over the nation can get easy access to telecom services.

Today there are about 16 million mobile telephone users in Ethiopia. The internet service has also expanded significantly despite the ever growing demand. The government has also devised a plan to install networks to create connection among woredas and schools across the nation. Thus, the telecom industry is playing a pivotal role in enhancing the Ethiopian renaissance.

8.3.1. Mega Projects for the Justice Sector

It is inconceivable to think of development with out justice and democracy. The justice system, as an institution of democracy, should be further strengthened to materialize the Ethiopian renaissance in all aspects.

Modern justice system was introduced during the regime of Emperor Haile Silassie. Though it is called modern, it lacks fairness. The constitution gives absolute power to the king while depriving basic human rights and equality for the mass. The courts were a good haven to bribery and corruption. As a matter of fact the judges were in synonym with bribery. During the Dergue regime the justice system was highly influenced by the then military system. Innocent civilians had been executed with out judgment.

In our effort to realize the Ethiopian renaissance, the justice system should be our prime focus. We can not bring up development and prosperity with out peace, democracy and good governance.

To this end the government of FDRE has taken various measures to improve the justice system. The constitution of FDRE is the first and fundamental step which ensures all nations, nationalities and peoples of Ethiopia justice and equality. The legislative organ has taken various measures to modernize the justice system. The executive and the judiciary organs have also undertaking various measures to ensure all citizens justice and peace fairly and objectively.

Unlike the Dergue regime, criminals are being sent to court. Peoples who are charged for red terror, corruption and treason have been sent to courts to be judged according to the laws of the country. This is a great forward move which signifies the renaissance of modern Ethiopia. Like in the infrastructure development the measures which the government took to improve, the justice system is a mega measure by it self. As we have learnt above in the justice sector we are trying to respond three tasks emanating from three periods. Where the task is such a case, it is understood to be vigorous and demanding that unless we come up with a mega project of ours own we can't meet it by panning for the sporadic and small things. That's why we say that it's time to have our won mega projects that will help us to inscribe quantum leap forward making us to fit to play our part in the big task of realizing Ethiopian renaissance.

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