

Interplay between institutions and rule of law to engender development

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Introduction

Social and economic development requires good institutions. Institutions, in turn, are essential for the establishment of rule of law. Rule of law is also indispensable for sustained economic and social development. Institutions need economic development for their continued existence. The interdependence amongst the trio goes like that.

The paper examines the relationship amongst institutions, rule of law and development. The discourse is organized in two main parts: general and specific. The general part presents the overview of institution including meaning of institution, necessity of institutions, the ability of institutions to stand independently, etc. The specific part zooms in and focuses on the interplay between institutions and rule of law as a mechanism to engender development. The necessity of institutions in establishing rule of law, and the relationship between institutions and rule of law will be examined in closer detail in order to determine whether or not there is a causation or mere correlation between rule of law and development. The paper attempts to find out whether institutions (with or without rule of law) are agents of development.

Finally, it concludes: a holistic socio-economic development requires the institutions of the rule of law.

Preliminary

Do institutions really matter? What are institutions for? Does rule of law matter? What is rule of law for? Is our world all about great powers and their interests? Do institutions, broadly construed, stand for the fulfillment of great powers' or donors' self-interested calculations? What is the role of institutions in promoting rule of law and thereby development in emerging economies? If they have role, do they promote the rule of law for donors' ultimate strategic interest; for the good of the recipient country; or for mutual interests and goals? Literatures of international law, international relations and political economy in common entertained sharp theoretical debates on this question. In effect, scholars developed theories and approaches on this issue.

Some realist scholars of the international studies discipline argue that institutions are incapable of independent existence and their sole purpose is to achieve their creators' calculated goals. This school of thought sees institutions as basically a reflection of the distribution of power in the world. In effect, institutions are based on the self-interested calculations of the great powers, and have no independent effect on state behavior.¹ This argument mainly aimed at international institutions (organizations) whose members are sovereign countries or territories such as the UN, WB, ILO, and WHO.

Institutions comprise formal and informal ones. While formal institutions are created by governments and non-governmental actors, informal institutions essentially are driven from the social fabric of the society. Moreover, formal institutions could be borrowed from outside while informal institutions mainly originate from inside the society.

Admittedly, some institutions exist to secure great powers' interests. There are institutions of various forms and goals such as NGOs operating in a foreign country (predominantly in developing countries), funded by a foreign sovereign, a foreign institution or possibly foreign individuals. In such instances it is alleged that certain institutions exist in a foreign territory to fulfill the interests of their funders. In other words, these institutions could be overtly involved in activities that benefit the host country and covertly involved to fulfill the interests of other actors.

¹ John Mearsheimer, *The False Promise of International Institutions*, 19 *International Security*, No. 3, 5-49 (Winter, 1994-1995), p. 4

A donor might establish a certain institution in a foreign country or region to advance mutual interests. Therefore, donors are interested to establish institutions for their strategic interest as well. A donor country might be happy to ‘sell’ its political, economic and even social systems/institutions so that overall interaction with that country will be smooth and predictable. For instance, doing business with and in that country reduces transaction costs as the investors from the donor country will be familiar to the system.

However, this is not the whole story. The same institutions could in fact be important for the host country as well. So long as there is no conflict of interest, adopting institutions of a donor country could actually be to the very interest of the recipient country. The advantage of doing business is not necessarily only to the benefit of the donor country. The recipient country could equally be happy with the giving and taking transaction that is facilitated due to the existence of similar institutions with the other party. However, since relationships are not only about institutions, other factors need to be taken into consideration to ensure that win-win is the net result of the overall relationship.

Although a given institution *per se* could be good, it may not fit into the existing rubric of institutions. Furthermore, that institution may not be equally useful to both the donor and recipient countries. In other words, since the level of development of the donor and recipient countries is not the same; and the relevance of some institutions in both systems is not the same, it is likely for both countries to have dissimilar institutions. A developing economy might not agree to adopt a certain institution which the donor considers favorable to the host country. However, the host country thinks it is less useful or less relevant. It rather may want to establish another institution that it sees fit to its existing system. A case between the US and Ethiopia is one example.

The US government and the Ethiopian government have been in a prolonged disagreement over the types of institutions that Ethiopia should adopt.² The former believes a Western-type democracy is necessary for the political and socio-economic wellbeing of the Ethiopian state and people. The Ethiopian incumbent disagrees with such proposal and rather believes in different institutional set up. Some of its justifications are:

² Ethiopia following different ‘democratic’ paradigm, <http://wikileaks.org/cable/2009/07/09ADDISABABA1770.html#> (last visited December 18, 2011)

- a. Both Ethiopia and the USA have different background and they may want to have different sets of institutions. They should respect each other's values.
- b. The Ethiopian government does not believe development is necessarily related to the institutions the USA wanted Ethiopia to establish. In other words, it does not think a Western-type democracy, which current rule of law concept is driven from, is a condition to economic development. There is no causation between them.
- c. The current institutions and values in Ethiopia do not affect the US strategic interest.

In fact, research did not establish causation between rule of law, and economic growth and development. Nevertheless, there exists a correlation amongst the three: institutions establish rule of law, and rule of law brings about development. It is not viable to argue we can achieve economic development only through the rule of law. Although it is true that rule of law brings about economic growth and development, the latter can be achieved even without the rule of law. In what follows, the piece takes up all these positions in separate sections.

What are institutions?

There is not agreed definition of 'institutions'. One scholar defined institutions as "humanly devised constraints that structure human interaction".³ Others posit institutions as 'explicit arrangements, negotiated among ... actors that prescribe, proscribe, and/or authorize behavior.'⁴ A more widely accepted 'standard' meaning by Stephen Krasner⁵ presents institutions as sets of implicit principles, norms, rules and decision making procedures around which actors' expectations converge in a given area of international relations. Krasner thinks his definition is closely related to other scholars' understanding of *institutions* or as he also says them *regimes*.⁶

³ Andrea Bues, *Agricultural Foreign Direct Investment and Water Rights: An Institutional Analysis from Ethiopia*, Paper presented at the International Conference on Global Land Grabbing, (April 2011), p. 3 citing North (1994), 360

⁴ Barbara Koremenos, *et al*, *The Rational Design of International Institutions*, 55 *International Organization*, No. 4, 761-799 (Autumn, 2001), p. 3

⁵ Stephen D. Krasner, *Structural causes and regime consequences: regimes as intervening variables*, 36 *International Organizations* 2, (Spring 1982), p. 2.

⁶ He believes his usage is consistent with his contemporary scholars' formulation of institutions. For example, Keohane and Nye define regimes as 'sets of governing arrangements' that include networks of rules, norms and procedures that regularize behavior and control its effects. Has argues that a regime encompasses a mutually coherent set of procedures, rules and norms. Hudley Bull, using somewhat different terminology, refers to the importance of rules and institutions in international society where rules refer to 'general imperative principles which require or authorize prescribed classes of persons or groups to behave in prescribed ways. Institutions for Bull help to secure adherence to rules by formulating, communicating, administering, enforcing, interpreting, legitimating, and adapting them. (Ibid.)

John Mearsheimer, in his article entitled *false promise of international institutions* disagrees with this definition. He criticizes Krasner's definition as broad encompassing 'all of inter-national relations, which gives it little analytical bite.'⁷ Strange (1982) also thinks the definition is vague. Nevertheless, the way Krasner defines institutions is able to assess the role of institutions in almost all walks of life. The definition makes up the *Regime Theory*, which reintegrates international law and international relations⁸, and in effect premises that international politics is highly interdependent (Keohane and Nye, 1977) implying mutual interests in cooperation and international behavior is institutionalized in a variety of ways (Ruggie, 1975).

According to Thomson and Snidal,⁹ the application of institution has been expanded to a wide variety of issue-areas, including international security, trade, finance, telecommunications, and the environment. International legal scholars have also increasingly used institutions to better understand issues such as international trade law; arms control agreements, and the law of treaties. There is also convergence among economists, political scientists and international legal scholars reflected in methodological approach and substantive interests regarding institutions.

Institutions at international level: review of relevant theories

John Mearsheimer¹⁰ derisively reviewed opinions of his contemporary scholars. He wrote that *institutionalists* consider institutions to be a powerful force for stability. R. Keohane, for example, declares that, avoiding military conflict in Europe after the Cold War depends greatly on whether period is characterized by a continuous pattern of institutionalized cooperation. Commenting on the aftermath of the Soviet collapse and the end of the Cold War, John Ruggie maintains that there seems little doubt that multilateral norms and institutions have helped stabilize their international consequences. Indeed, such norms and institutions appear to be playing a significant role in the management of a broad array of regional and global changes in the world system today.

⁷ John Mearsheimer, *The False Promise of International Institutions*, 19 *International Security*, No. 3, 5-49 (Winter, 1994-1995), p. 5. For example, defining institutions as "recognized patterns of behavior or practice around which expectations converge" allows the concept to cover almost every regularized pattern of activity between states, from war to tariff bindings negotiated under the General Agreement on Tariffs and Trade (GATT), thus rendering it largely meaningless. (Ibid.)

⁸ Alexander Thompson and Duncan Snidal, *International Organization*, University of Chicago, (1999), P. 2

⁹ Ibid

¹⁰ John Mearsheimer, n.7, p. 3

Realists maintain that institutions are basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great powers, and they have no independent effect on state behavior. Realists therefore believe that institutions are not an important cause of peace. They matter only on the margins. John Mearsheimer himself concludes that institutions have minimal influence on state behavior, and thus hold little promise for promoting stability.¹¹

If institutions cannot shape the behavior of the state, who/what else can do so? To begin with, a state is a set of institutions and it is these institutions that make up the state. Institutionalists directly challenge the realists view arguing instead that institutions can alter state preferences and therefore change state behavior. Institutions can discourage states from calculating self-interest on the basis of how every move affects their relative power positions. Institutions are independent variables, and they have the capability to move states away from war.¹²

David Mitrany's *functionalist* theory states that technological advancements and the desire to promote welfare concerns were seen as creating a need for interstate cooperation that required both international governmental organizations and non-governmental organizations to manage the necessary technical support. *Neo-functionalism* extended this argument by suggesting that successful collaboration in one area would increase the benefits of cooperation in related areas, and generate joint pressure from *domestic interest groups* and international officials to extend the realm of cooperation.¹³

Interdependence theory: Long term and increasing interactions among states in all fields of activity – including health, technology, security, environment, culture and economics – mean that even the most powerful states are sensitive to occurrences elsewhere and cannot always achieve their goals by themselves. Small states that are dependent on larger states have even stronger reasons to seek support from such organizations. Moreover, this interdependence takes increasingly complex forms, including the increase in the number of significant transactional actors such as *multinational corporations and environmental groups*. (Keohane and Nye, 1972, 1977)

¹¹ Ibid., p.4

¹² Ibid, p. 3

¹³ Alexander Thompson and Duncan Snidal, n.8, p. 9: Citing Haas, 1964; Linberg and Scheingold 1971; Groom and Taylor, 1975

The emphasis on formal international organization represents a narrow view of the forms, and possibilities for, international governance. Focusing on the formal ‘classic’ model of institutions blinds us not to see their improved roles somewhere else. It is important to note that formal organizations are only one amongst numerous institutional possibilities.¹⁴ The following conceptions provide a broad ordering principles of international system: the realist conception of self-help in anarchy, English school view of ‘society’, Marxist theories of imperialism (Lenin, 1917), and ‘world capitalist system’.¹⁵

Hugo Grotius’ *international society* focuses on the system of states as an international society that contains persistent elements of order. (Bull, 1977; Wight, 1977) According to Bull, states form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions. This framework of rules and institutions guides state behavior in patterned ways. Martha Finnimore (1996a) emphasizes on this score: states embedded in a dense network of social relations that shape their judgments, define their interests according to ‘internationally shared norms and values that structure and give meaning to international political life’. The English school theorists connote that states abide by rules and norms, even when it is not in their material interest, for they have a long-term interest in the maintenance of a ‘law-impregnated international community and share a sense of moral community.

R. Keohane’s¹⁶ *After Hegemony* (1984) is another important vanguard that provides very strong argument *for* institutions. For Keohane, regimes can respond to political market failures. Like imperfect markets, world politics is characterized by institutional deficiencies that inhibit mutually advantageous cooperation. While bargaining could correct these problems, he argues that the underlying conditions like well-defined *property rights*, *perfect information* and *zero transactions costs* do not naturally exist in the international system. It is institutions that can solve the problem so as to facilitate cooperation among states on a decentralized basis. By clustering issues together in

¹⁴ Ibid, pp. 701-2

¹⁵ Wallerstein, 1979: cited by Thomson and Snidal, n.8

¹⁶ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton University Press) (1984), p. ...

the same forums over a long period of time, regimes help to bring governments into continuing interaction with one another, reducing incentives to cheat and enhance the value of reputation. By establishing legitimate standards of behavior for states to follow and by providing ways to monitor compliance, they create the basis for decentralized enforcement founded on the principle of *reciprocity*.

There are massive international trade, investment (economic), political, and social relations that run amongst members of the international system due to institutions. They are not mere expressions of power. They are not always there for the hegemon or for the strong only. Many institutions work on their own for the common good of those who have stake on them. On the contrary, based on the more than few exceptions to the rule of smooth functioning of institutions, it is natural to conclude institutions as dependent on other variables like power – that puff towards the power breaths.

The case of institutions for rule of law *for* development

Formal and informal institutions

There are two types of institutions that could impact the rule of law. These are observable formal institutions and less observable informal institutions. The operation of formal and informal institutions is often thought to be interdependent.¹⁷ Law and other formal normal and institutions cannot bring about the desired results without the support of informal institutions and norms. There is a social fabric that always has been there since human history.

If institutions are to be effective to set up the rule of law and thereby bring about economic and social development, the mistake committed by the law and development movement of the 1960s should be corrected. The law and development movement focused on the formal legal system to the exclusion of customary law and the other informal ways in which many in developing nations order their lives.¹⁸

¹⁷ Economic Development and the Quality of Legal Institutions, <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LegalInstitutionsTopicBrief.pdf>>, p.2 (last visited Dec. 14, 2011)

¹⁸ Economic Development and the Quality of Legal Institutions, <<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement.pdf>>, p.1,2 citing Trubek and Galanter (1974) (last accessed on Dec. 14, 2011)

Institutions and rule of law

The concept of rule of law is broad. There is no universally agreed definition. Due to this nature of the concept, it even might not be possible to have one in the future. However, there are some values such as international human rights that all human beings share regardless of race, nationality, religion, etc. The rule of law is one expression of these values¹⁹.

International human rights instruments and domestic constitutions and their accompanying legislations provide for various human rights to citizens and other human beings alike. Who enjoys what kind of rights all depends on the types of rights. Moreover, although the promulgation of rights is a very important step, in order to become effective, rights require the development of a network of ancillary supporting institutions, both formal and informal.²⁰ In other words, what enables the holders of legal rights to effectively assert those rights is a dense network of formal and informal ancillary institutions that support those rights, providing the incentives and capacity for the duty bearers and enforcement agents to comply with the law.²¹

We can derive from this discussion on institutions that the latter are established to accomplish several common *values* (such as human rights). If the statement that rule of law is in one way or another expressed in these values or rule of law is another common expression of these values is true, the necessity of institutions to further rule of law is thereby established.

To further create a good nexus between rule of law and institutions, we first need to understand what the concept of rule of law is. There are many understandings of the concept. One writer developed three approaches viz. formal approach, substantive approach and functional approach.²²

The formal approach to rule of law looks to ‘the presence or absence of specific, observable criteria of the law or the legal system’. Such common criteria might include, but not limited to, an

¹⁹ See the broad description of the concept at the Report of the Secretary-General: *The Rule of Law and Transitional Justice in Conflict and Post-Conflict societies* (2004). The concept encompasses several ideas.

²⁰ Daniel M. Brinks, *Inequality, Institutions, and the rule of law: the social and institutional bases of rights* <<http://kellogg.nd.edu/publications/workingpapers/WPS/351.pdf>>, (last accessed on December 15, 2011), abstract

²¹ Id. P., 5 Citing O’Donnell 1999b; 1999a: Ch. 9

²² Matthew Stephenson, *Rule of Law as a Goal of Development Policy*, <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20763583~menuPK:1989584~pagePK:210058~piPK:210062~theSitePK:1974062,00.html>>, (last accessed on December 15, 2011)

independent and impartial judiciary, existence of laws that are public, the equal universal application of laws to all without any sort of discrimination, non-retroactive application of laws, and the existence of judicial review. The second approach looks to some substantive outcomes such as "justice" or "fairness." Quite contrary to the first approach, which avoids value judgment, this approach is not concerned with the formal rules, except inasmuch as they contribute to the achievement of a particular substantive goal of the legal system. The substantive approach is driven by a moral vision of the 'good' legal system, and measures the rule of law in terms of how well the system being assessed approximates this ideal.²³ The functional approach focuses on how well the law and the legal system perform some functions. According to Hayek (1960),²⁴ such functions could usually be the constraint of government discretion (in that a society in which government officials have little or no discretion has a high level of rule of law, and *vice versa*), making legal decisions predictable, or some combination of both. Although this approach to some extent resembles the substantive approach, it eschews value judgment.

Whatever the approach to rule of law we tend to, institutions are necessary for the establishment of the concept. On the formal approach, all the elements are by themselves institutions that require application and enforcement by state organs such as the judiciary. Similarly, the substantive approach equally requires the impartial application of laws by the independent judiciary. Still the third approach needs the judiciary and other state apparatus to work towards the achievement of the goals set by the law, specifically and the legal system, generally.

All the three approaches have their own pros and cons as well. While the formal conception places too much emphasis on the "law in the books" and pays insufficient attention to the "law in action", and the second approach faces the problem of determining how "just" a particular legal order is that requires a complex subjective judgment call; Stephen questions the relationship between the legal system *per se* and its functional goal. He argues, 'it is possible to constrain government officials or realize predictability through means other than the legal system. Suppose a society has less official discretion than its neighbor even though the latter has apparently more restrictive laws. Which enjoys a greater rule of law under a functional definition?'²⁵

²³ Dworkin, Ronald. *A Matter of Principle* (Cambridge: Harvard University Press, (1985)

²⁴ Hayek, Friedrich. *The Constitution of Liberty* (Chicago: University of Chicago Press, (1960)

²⁵ Matthew Stephenson, *ibid*, n. 22

A more explicit approach to the relationship of institutions to rule of law is presented by one scholar.²⁶ He thinks a network of mutually reinforcing institutions is necessary for rule of law. Why have all the formal legal improvements that are concomitants of twenty-first-century democracy—new constitutions, better laws, improved judiciaries, more accountable security forces—failed in many respects to produce more “democratic rule of law,” especially for the underprivileged? The role informal institutions play has not been appreciated. Therefore, a network of the combined application of formal and informal ancillary institutions is needed to bring about the desired result.

Another important supportive institution is legal education. Legal education is a critical component in any program to establish rule of law in the public psyche. Those who provide the legal service in a working democratic society have immense influence on attitudes toward the law. Those who train lawyers are key to the attitudes and approaches taken by those lawyers in their effect on society.²⁷

A focus on legal education has been used with varying degrees of effectiveness throughout the past 30 or more years in attempting to establish rule of law in states in transition. Early in that period the Law and Development movement was the vehicle of choice for educators and donors, putting the emphasis on judicial reform and training. One assumption was that improvement in the structure of the Government would trickle down to the general public and would in turn lead to strengthened social development. Another was that courts played the same role in transition civil law democracies as in mature and mostly common-law developed nations. A newer rationale supplanting this top-down approach focuses on legal culture immersion, on the influence of the legal profession on a culture of rule of law.²⁸

Donors and development institutions

Are institutions of the international development architecture for donors’ interest only? Do donors employ the promotion of rule of law and other related values as a guise to further their interests? International development actors through their law and development projects can help shape the rule of law of a given country by either making some institutional and legal reforms via transplantation or modifying them to suit democracy which inherently incorporates rule of law.²⁹ The argument here is institutions can bring about changes at domestic level including in relation to

²⁶ O’Donnell (1999b; 1999a: Ch. 9), citing Daniel M. Brinks, *Inequality, Institutions, and the rule of law: the social and institutional bases of rights*, <<http://kellogg.nd.edu/publications/workingpapers/WPS/351.pdf>> (last accessed on December 15, 2011), p.5

²⁷ See Mark K. Deitrich and Nicholas Mansfield, *Lessons Spurned: Legal Education in the Age of Democracy Promotion* (East-West Management Institute Occasional Paper Series, (2006). Cited by Booz Allen Hamilton , Ethiopia Commercial law and Institutional reform and Trade Diagnostic, (USAID), (January 2007), p. 23

²⁸ Ibid.

²⁹ See Mainwaring, Scully, and Vargas Cullell cited by Daniel M. Brinks, n. 20, P. 1

rule of law.³⁰ This does not necessarily mean to the benefit of the well-to-do states. It is purely to the advantage of the prosperity of the developing country or for mutual interest.

Rule of law and development

Increasingly, economists have come to realize that the free market depends on certain institutions and the enforcement of certain rules, such as the freedom to contract and the enforcement of contracts. Very recently, economists and development specialists have begun to discuss rule of law as the enforcement of private contracts. Contract enforcement allows people to trade and thus to increase their utility; this is thought to be a superior process of allocation because people have the best knowledge of what goods will satisfy them.³¹

Yet the narrower procedural definition of rule of law has virtues as well; it is expected to make government action predictable. This predictability is supposed to encourage investment and allow people to plan their lives meaningfully. Accordingly, rule of law is associated by economists with economic benefit, including growth.³² Meaningful law, and institutions to change it, more easily identify and change the rules by which our lives are governed by providing a "handle" for social action. Although, not much empirical work has been done on rule of law to verify the various claims made on its behalf, one reason is its difficulty to measure. From the theoretical standpoint, it is difficult to construct a measure of rule of law. From the practical standpoint, it is difficult to gather data. Especially, societies that have weak rule of law often have poor governmental transparency and recordkeeping. Nevertheless, according to one survey conducted by the WB on a business community, which included questions about the respondents' impressions of rule of law and the operation of courts, the study found that growth and development is positively correlated with rule of law as measured in a subjective survey.³³

³⁰ See examples listed at Thomas F. McInerney, *International normative and administrative drivers of domestic rule of law*, (available from PLAW 102 class).

³¹ Friedrich Hayek, *The Constitution of Liberty*, (Chicago: University of Chicago Press) (1960)

³² Ibid

³³ Knack and Keefer, 1995 cited in <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20763590~menuPK:1989584~pagePK:210058~piPK:210062~theSitePK:1974062~isCURL:Y,00.html>, (last accessed on December 15, 2011)

Institutions and development

As we discussed in the immediately forgoing section, economists have managed to establish at least a correlation between rule of law and development reinforced by institutions. Although institutions are necessary to establish rule of law and the latter is important to bring about development, rule of law is not the *necessary* cause for development.

In what follows, we will see how institutions can bring about economic development with the presence or absence of rule of law. The case at hand is a developmental state case. Why we say development with or without rule of law is possible is that a developmental state is best established in the absence of Western ideas of democracy to which rule of law as commonly understood. However, since rule of law is a broad concept and there is no consensus on what elements it comprises, it is possible to argue a *democratic* developmental state fulfills the rule of law. In effect, it is possible to establish institutions, rule of law and development in both Western and non-Western concepts of democracy.

Developmental state brings about development: the role of institutions emphasized

Democratic developmental state fosters economic growth and development. This means not only the state is able to transform its economic base by promoting productive, income generating economic activities but must ensure that economic growth has the resultant effect of improving the living conditions of the majority of its population. White³⁴ puts this succinctly: —development includes a process of economic change involving the construction of more complex and productive economies capable of generating higher material standards of living.

How?

Developmental state is an embodiment of a normative or moral ambition to use the interventionist power of the state to guide investment in a way that promotes a certain solidaristic vision of national economy.³⁵ Ha-Joon Chang³⁶ underlines that the government pursues policies that co-

³⁴ White G, 'Constructing a Democratic Developmental State', in Robinson M and White G, (eds). *The Democratic Developmental State: Political and Institutional Design*. Oxford: Oxford University Press. (1998), p. 20

³⁵ Lariax M, 'The French Developmental State as Myth and Moral Ambition', in Woo-Cumings, M. (ed.), *The Developmental State*. Cornell University Press, (1999), p. 24

ordinates investment plans; has a national development vision—implying that the state is an entrepreneurial agent; that engages in institution building to promote growth and development. The implication is that economic development requires a state which can *create and regulate* the economic and political relationships that can support sustained industrialization - the vital driver for success in a developmental state. The goal of industrialization is to create a country that produces goods and services with high added values. For example, instead of exporting minerals unprocessed, the state can train and employ people that process the minerals and manufacture goods and thus add economic value to the final products. The process by which countries add aggregate economic values to the products and services they offer is directly dependant on the level of industries in the country's economy.³⁷

Moreover, it is important to highlight on what Mkandawire³⁸ refers to as the state-structure nexus, i.e., institutional or organizational attributes and its relations to surrounding social structures. It is the organizational structures that enable democratic developmental state to promote and achieve better economic performance.³⁹ This is primarily because what sets a democratic developmental state apart from other models is that not only it is able to clearly set its development objectives, but it also establishes institutional structures to achieve the stated objectives. Hence, a democratic developmental state also has to be viewed from its institutional attribute's perspective.

This approach is located within the second strand of the developmental state literature. Taken this way, a developmental state is —one whose ideological underpinnings are developmental and one that seriously attempts to construct and deploy its administrative and political resources to the task of economic development.⁴⁰ In other words, the democratic developmental state is defined by its objectives and its institutional characteristics. It not only embodies the principles of electoral democracy, but also ensures citizens' participation in the development and governance processes.⁴¹

³⁶ Ha Joon Chang, 'The Economic Theory of the Developmental State', in M. Woo-Cumings (ed.), *The Developmental State*. Cornell University Press, (1999)

³⁷ Tshilidzi M, *Foundations for a Developmental State: A case for technical education*. Auckland Park, Johannesburg. (2006), pp. 2-3

³⁸ Mkandawire T, *Thinking About the Developmental States in Africa*, *Cambridge Journal of Economics*. (2001), p. 3

³⁹ Omano E, *A Democratic Developmental State in Africa?* [A concept paper]. Centre for Policy Studies, Johannesburg. (2005), p. 10

⁴⁰ Mkandawire T, n. 38, p. 3

⁴¹ Omano E, n. 37, p. 9

Another important attribute of such institutions is that they facilitate information flows and solve commitment problems that help the developmental state coordinate multiple actors and pursue long term economic objectives. There are specific features that give institutions such capacities to solve the *information, commitment, and coordination* problems that plague economic development. First, the complexes of bureaucratic agencies of a developmental state are Weberian in nature: recruitment is by competitive exams, promotion is by merit, remuneration is with rates in the private sector, tenure in office is *long*, sanctions in corruption are clear and effective, and leadership occurs through a pilot agency that stands out and astride individual ministries. Moreover, they operate on functional 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.⁴²

Conclusion: Rule of Law set by institutions guarantees continued development

It is established that rule of law is intrinsic to democracy⁴³ which in turn is a result of dense network of institutions – formal and informal. Therefore, once democratic governance is established, the rule of law is in place. Democratic countries' institutions and systems that primarily promote the rule of law are institutionally capable of solving problems and achieving their goals. The basic constitutional principles of transparency, accountability, legality, respect for human rights, etc are enshrined in democracy and make up the rule of law. All in all, the concept of rule of law as expressed in the principles-institutions is accepted by citizens as majority of the populace continue to benefit from the system.

There is no causation between rule of law and growth and development (as economic development can occur in the absence of rule of law and even there is evidence that countries without it outperformed those with rule of law⁴⁴). Nevertheless, there is at least correlation between rule of

⁴² Richard F D *et al.*, pp.327, 328 also citing WEISS 1998:52; SCHEIDER and MAXFIELD 1997; and KUO 1995

⁴³ Mainwaring, Scully, and Vargas Cullell cited by Daniel M. Brinks, n. 20, p. 1

⁴⁴ The cases of the Asian Tigers and East Asia Miracle

law and development.⁴⁵ Moreover, enforcement of contracts and respect of property rights, an aspect of rule of law, is important to development but series of other factors can affect or facilitate such process.⁴⁶

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