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Legitimacy, Legal Development and Change: Law and Modernization Reconsidered

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#6350373 in Books Ashgate Pub Co 2012-06-22 Original language: English 9.50 x 6.75 x 1.251, 2.58 #File Name: 0754677281474 pages | File size: 68.Mb

From Brand: Ashgate Pub Co : Legitimacy, Legal Development and Change: Law and Modernization Reconsidered before purchasing it in order to gauge whether or not it would be worth my time, and all praised Legitimacy, Legal Development and Change: Law and Modernization Reconsidered:

0 of 0 people found the following review helpful. Exploring a continually evolving field of enquiry....By Phillip Taylor MBE[[VIDEOID:mo2AIODRV5E9RJC]]THE RULE AND ROLE OF LAW IN THE DEVELOPING WORLDAn appreciation by Phillip Taylor MBE and Elizabeth Taylor of Richmond Green ChambersRecently published by Ashgate, 'Legitimacy, Legal Development and Change' presents a collection of articles and essays which set out to

explore, analyse and define the often complex and wide-ranging area of what we would call comparative jurisprudence; in this case legal development in the developing world. The book brings together the work of twenty-six academics and scholars from top universities and institutions worldwide. In the words of editor David K. Linnan, the book 'explores overlapping themes, asking how legal development and change actually works and focusing on specific examples of legal systems, mainly in non-Western jurisdictions in Asia, Africa, the Islamic world and additionally, South America. The book in our view references one of Jurgen Habermas's thesis, developed in the 1980s on what was termed the 'legitimation crisis', which basically asks the question, 'who sets the political agenda? Is it Parliament, (comprising the government [executive] and legislature)? Or is it the legal establishment, including lawyers and the judiciary? Or is it social change which is eventually legitimized by law? Or is it law which dictates social change?' In common law jurisdictions, the common law often makes the cases and establishes precedents. This constitutes development largely by evolution rather than revolution, of law and legal systems, although there have been some quite explosive revolutions along the way in common law countries, with people fighting for their rights based on a particular value system which places freedom at the top of the collective wish list. Bearing all this in mind, this book is interesting in that it is a jurisprudential collection which points the way forward toward legal philosophical thinking from a global perspective, now and in the future. The learned articles are grouped under five categories, from 'Changing the ROL Narrative' (Rule of Law, in case you didn't know.) to 'International Law as Legal Development Subject', which includes an article on the European Court of Human Rights and the Diversity of Legal Cultures. Parts II and III centre on religious law, particularly The Qur'anic Perspective - (and thank goodness there are a couple of women's rights articles included). Japan and Russia are scrutinized in Parts IV and VI. The various contributors, all with impressive academic and professional credentials, each appear to discuss the multiplicity of issues involved from an entirely objective, empirical viewpoint without any obvious political or partisan bias. In striving for complete objectivity, however, some cannot fail to betray either a pro-Western or anti-Western mindset, which is, of course, understandable. Says the editor: 'given the presence of non-Western alongside Western models for legal development, whose modernization concept becomes the operative question.' Boy, it sure does become 'the operative question,' we would add -- and the choice is crucial. Developing countries generally, do not have centuries of legal evolution to fall back on as a paradigm, so what choice will they make toward their own recently evolving, i.e. 'modernizing' legal systems? Will they indeed 'modernize', or regress? The future welfare of millions depends on the answer, or answers -- and this book certainly provides an important contribution to this vital debate.

This book addresses critical questions about how legal development works in practice. Can law be employed to shape behavior as a form of social engineering, or must social behavior change first, relegating legal change to follow as ratification or reinforcement? And what is legal development's source of legitimacy if not modernization? But by the same token, whose version of modernization will predominate absent a Western monopoly on change? There are now legal development alternatives, especially from Asia, so we need a better way to ask the right questions of different approaches primarily in (non-Western) Asia, Africa, the Islamic world, plus South America. Incoming waves of change like the 'Arab spring' lie on the horizon. Meanwhile, debates are sharpening about law's role in economic development versus democracy and governance under the rubric of the rule of law. More than a general survey of law and modernization theory and practice, this work is a timely reference for practitioners of institutional reform, and a thought-provoking interdisciplinary collection of essays in an area of renewed practical and scholarly interest. The contributors are a distinguished international group of scholars and practitioners of law, development, social sciences, and religion with extensive experience in the developing world.

'This book is a welcome and important addition to the study of law and social change. The collection offers critical and novel perspectives on rule of law promotion. The contributors, relying mainly upon detailed case studies from a range of countries in Africa, Asia and the Americas, offer a wealth of information and analysis on issues relevant to legal reform, with the underlying message that law and its wider context must be studied together.' Julio Faundez, University of Warwick, UK 'Serious students of modernization, rule of law, and efforts to engineer legal change will want to read this book. Particularly strong features include multiple chapters on specific countries or areas targeted for legal development and inclusion within the impressive list of contributors of scholars from inside target countries.' John Reitz, University of Iowa, USA 'This is an indispensable collection of essays investigating the complex linkages in non-Western societies between legal development and social change, and whether either is a pre-condition for the other. The thought-provoking essays survey the themes of rule of law, legitimacy and institutional reform in these societies and investigate the important question of whose version of modernization and development is the more appropriate. This comprehensive work is a "must-have" for any scholar of contemporary legal development and of the rule and role of law in the developing world.' Alan Khee-Jin Tan, National University of Singapore, Singapore 'Anyone interested in the roles law can and cannot play, should or should not play in development, and what development does and does not mean, should read this book. It gives a clear overview of the issues and brings together quite a few points of view and experiences from around the world. Whatever one thinks of the reinvented concept of,

or renewed discussions about, "law and development", one is sure to find some good arguments in this book.' Gary F. Bell, National University of Singapore, Singapore 'I recommend this publication to those interested in the bedrock challenges to Western legal assistance, particularly rule of law. The broad sweep of the papers is intellectually satisfying, as well as provocative. It is refreshing to see both regional (Japan, Latin America and Russia) and normative (Islamic and Jewish) perceptions of these issues grouped in one publication. The reader is inspired to consider some of the great legal development questions of our time.' Australian Journal of Asian Law

About the Author David K. Linnan is a scholar of comparative, economic and public international law with a special interest in Asian law. He is Associate Professor at the University of South Carolina School of Law, and the Program Director for the Law Finance Institutional Partnership (<http://www.lfip.org>), a legal and financial sector reform project run from Jakarta via a consortium of Indonesian and foreign universities. His publications include *Enemy Combatants, Terrorism, and Armed Conflict Law: A Guide to the Issues* (Praeger Security International, 2008).