

we think about mediation, the claims we make about its relative strengths and drawbacks, and the framework we use to assess it. It does all of those things by putting comparative work at its core, and including a set of case-studies that literally spans the globe. Ali's tendency to qualify her results and underplay her conclusions is part of what makes the book so compelling. It is not a cudgel, insisting on a particular point of view, and adding to the ideological divide over mediation. It is a scalpel, carefully dissecting overblown claims and adding desperately needed comparative data to an area that has been long on opinion but short on facts.

In sum, this is a rigorous, thoughtful, and innovative analysis of a set of questions important to every country. It is also timely. At this point, there are no clear global patterns as to whether most countries are devoting resources to mandatory mediation, voluntary mediation, or neither. Legal elites pondering their options ought to read this book; and so should anyone interested in civil justice, and how best it can be achieved.

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Oxymoronic Applications of Neo-Institutional Economic Models

Frank K. Upham, *The Great Property Fallacy: Theory, Reality, and Growth in Developing Countries* (New York/Cambridge University Press, 2017) pp 160. Paperback: \$23.

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Frank Upham's book provides a critical examination of the well-accepted, neo-institutional economic axiom shared by many international economic scholars and experts—that is, the establishment and formalization of legal property rights is the *conditio sine qua non* for an effective economic growth strategy. This neo-institutional economic theory was advanced by Ronald Coase, Harold Demsetz, Douglas North, and other prominent economists, and embraced by international economists and neoliberal experts of the World Bank (WB), the United States Agency for International Development (USAID), and other international financial institutions (IFIs). Based on this theorem, these institutions initiated not only the first “Law and Development” movement in the 1960s, but also the second movement in the 1980s, under the expanded programme of neoliberal policies. The book then poses a serious question for legal experts, scholars, and policy-makers as to whether the Western legal system and economic model should be applied indiscriminately across different countries with multitudes of varying legal traditions and practices, including those nation-states that were economically not “well-developed.”

The book consists of seven chapters, five of which are devoted to the analysis of case-studies in different countries, including England and the US (Chapter 3), Japan (Chapter 4), China (Chapter 5), and Cambodia (Chapter 6). The book presupposes that the application of property law and property rights in these countries has led to the destruction of the existing socio-legal realities, namely the eradication of “the Commons” through the enclosure movement in England; the destruction of private property of absentee land

owners by the postwar Japanese government, supported by the Allied Forces that were largely led by the US; and the destruction of the customary local order by the 2001 Cambodian Land Law, the language and regulations of which were exclusively drafted by foreign experts who, according to the author, lacked any knowledge of local rules, customs, and practices.

Chapter 2 examines neo-institutional economic theories. This scholarly enterprise advanced by prominent neo-institutional economists suggests that the clear legal title should facilitate “Coasian bargaining,” namely the use of contracts by owners to exchange property rights until they enjoy all benefits and bear costs of property use, including externalities. This economic process is viewed as ultimately contributing to effective and vibrant economic growth and development.

The historical transition of property law and property rights in England and the US is the focus of Chapter 3. Both English and American legal systems shifted property laws and allowed powerful landowners to exploit economic opportunities. The author states that the important discussion hidden in the enclosure movement is related to the social-legal framework of property entitlements that modified existing productive activities in order to respond to new opportunities for wealth. The end results were seen as “net social progress,” and the achievement of such progress was measured and defined differently. For instance, Karl Marx saw the enclosure as the loss of the means of subsistence among poor rural farmers who then became massive industrial workers, while Barrington Moore saw it as the liberation of farmers from the feudalistic model of production, which ultimately laid the foundation for democracy and facilitated the development of the welfare state in England.

The legislative destruction of landlords’ property rights in Japan is addressed in Chapter 4. The new agricultural land law of 1952 issued by the Japanese Legislature eliminated the absentee ownership of much of Japanese agricultural land. This law also transformed the pre-war rural poor tenants into millions of independent family farmers who then became the middle-class pillars of mainstream Japanese society. The newly created Liberal-Democratic Party (LDP) in 1955 took advantage of the creation of millions of independent farmers and made them a reliable conservative constituency by organizing radical judicial activism to respond to their needs, including the appointment of justices to the Japanese Supreme Court whose rulings supported sweeping land reform, while sidestepping lawsuits filed by a small class of absentee landlords. The government also adopted strong labour laws that made the firing of employees extremely difficult, based on the reciprocal loyalty of the labour relation, and eliminated no-fault divorce based on the inherently moral basis of marriage. The LDP then “essentially governed Japan throughout its almost seven decades of postwar peace, prosperity, and freedom” (p. 74). The author states that Japan’s land reform helped “create one of the world’s most successful and stable democracies” (p. 82).

Chapter 5 then focuses on the example of China’s property rights and economic growth. As opposed to the case-studies of England, the US, and Japan, China’s miraculous economic development radically deviated from the necessity of formulating specific property rights laws for economic growth and development. Instead, China’s one-party state created an institutional framework with a bureaucracy and social order that supported investment and sustained markets without the establishment or formalization of property law and property

rights that neo-institutional economic theorists proclaim to be necessary. The rapid urbanization of Shenzhen, which is north of Hong Kong and is the country's fourth largest city, with ten million inhabitants, took place without the formality of the rule of law, as lawyers facilitated the deals in direct defiance of law as well as the orders of its local bar association (p. 100).

The impact of the 2001 Cambodian land law is examined in Chapter 6. The legal framework was created by foreign experts in international aid organizations, including the WB, whose purpose is economic growth, but not democratic development in Cambodia. These experts had no knowledge of, or failed to pay attention to, domestic culture, legal practices, and local customs. Two case-studies of Boeung Kak Lake and Sre Ambel District projects showed that local residents, including subsistence farmers and small merchants, were expelled to become manual labourers, often working for the same foreign firms that had displaced them. The land law ultimately provided legal cover for the Cambodian government to lease the lands to foreign companies.

The final chapter begins with the analysis of political economist Joseph Schumpeter's theory on capitalism, socialism, and democracy, in which property and contract rights are seen only in terms of the normative decay of capitalism. For Schumpeter, the essence of capitalism is how markets are created, destroyed, and recreated, not in terms of the functionality of market, namely how markets are being operated or managed. The author states that lawyers and economists are more likely to pay attention to the new order based on property rights and entitlement, while neglecting the pain of "destroying existing systems to get there" (p. 133).

The author concludes that property law and property rights facilitate or even legitimate the destruction of the existing order. He questions the paradoxical practice of uniformly applying the rule of law in different legal contexts, noting that "it is not necessarily an uplifting view of law to claim that its role is to destroy legitimate social structures in order to usher in economic growth" (p. 137). One story cited in the book illuminates the oxymoronic adoption of property rights: in responding to a student's question about the definition of property rights under the neo-institutional economic approach, a prominent economist responded that property rights are a shortcut for any mechanism that ensures "investors can appropriate returns to their economic activities," no matter how grievous the impact on general population.

Neo-institutional economics also tends to negate the concern with externalities, so that measures of economic growth are likely to exclude such questions of major human significance as sustainability, effects on the environment, depletion of resources, and the destruction of ecosystems. Coasian bargaining, for example, does not take into account the concern of future generations, who are not present in any bargain process. In the concluding chapter, the author makes a strong argument against the indiscriminate application of the neoliberal economic model across countries by foreign experts "without detailed local knowledge and experience" (pp. 144–5). The author describes his own experience in the role of the WB's legal consultant in Laos, when he was powerfully persuaded by a WB official to formulate a lecture on the importance of privatization, the private ownership of property, and the fair market-value compensation of the land taken by eminent domain, yet not permitted to include China's land reform and success as one of the potential Laotian development models.

Based on his broad international experience and knowledge, the author concludes that the contemporary development model applied in the Third World by Euro-American experts contradicts the historical experience of their own countries and how they became economically successful. This is similar to the principle of the “free market” and “free trade” models taught in university economics classes across the globe, but never applied in the US, Western Europe, or Japan. And yet they are applied in Haiti, Mexico, and the rest of the Third World, thereby raising the question of the oxymoronic application of the Western economic model throughout the world. For example, no Western country has ever been willing to subject itself to the “free market” but has long protected its own market by tariffs and trade restrictions. However, these principles have been powerfully imposed by the First World countries on the Third World that has had to face “free market disciplines” and has been left with little protection for their market. Their “Third World” status has then been maintained and perpetuated by such international organizations as WB, IMF, WTO, and other institutions that the First World countries helped create and control.

The book is a comprehensive and historical treatise that should be read by all legal experts, economic practitioners, policy-makers, and academic scholars across disciplines specialized in law and development. The author raises an important moral question as to what is meant by the objective of “development and economic growth” and who should benefit from it. The book will serve as a foundational work for all legal scholars and practitioners for many years to come.

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Capitalist Economic Development

Sung-Hee Jwa, *A General Theory of Economic Development: Towards a Capitalist Manifesto* (Cheltenham, UK: Edward Elgar Publishing, 2017) pp 232. Hardcover: £75.00.
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The book *A General Theory of Economic Development: Towards a Capitalist Manifesto* is both ambitious and provoking. It sets out to specify the drivers of economic development, challenge mainstream economic theories, consolidate the Eastern and Western developmental experiences, combine economic and political perspectives, better integrate business management and economics for the goal of economic growth, give advice on public policies for sustainable economic development, and identify and solve the causes for economic polarization and growth stagnation. Author Sung-Hee Jwa tackles this hefty agenda with confidence and takes a strong stance on many contentious issues. In the course of developing his general theory of economic development, Jwa is prepared to ruffle some feathers. Some controversial points that stand out are, for example, his criticism of the “failing” welfare state and egalitarian democracy, and his exonerating views on the shortcomings of capitalism and authoritarianism. An important caveat though—the author’s main focus is on how to promote economic development, not on a normative debate on what is ultimately better for