

The Role of Law and Governance in Economic Development: A Clear-Eyed Inquiry

**Keynote Address by Jeffrey S. Lehman to the
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Good morning.

It is hard to believe that five years have gone by since I had the opportunity to speak at the dedication of the O.P. Jindal Global University. In many ways it seems like only yesterday.

And yet, when I see how rapidly this university has blossomed into a true center of intellectual excellence, I must say that I am in awe. Five years ago, you were preparing to teach your first classes, in a building that was not yet complete. Today you are a symbol of India's renewed commitment to support universities that operate at international standards of excellence. When a Justice of the Indian Supreme Court chooses to single this university out as an example for the nation to emulate, you have truly moved mountains.

I would like to publicly express my profound admiration for Chancellor Naveen Jindal, Vice Chancellor Raj Kumar, and all the faculty members, students, and staff of this academic community, for what all of you have accomplished together.

NYU Shanghai is even younger than the O.P. Jindal University, as we are now in only our second year of activity. But our aspirations are eve-

ry bit as lofty. It is therefore especially exciting for us to be partnering today and tomorrow with the O.P. Jindal University and also with our older and more distinguished Shanghai sibling, the Shanghai Jiao-Tong University, in this conference on Development, Governance, and Law in China and India.

The theme of this conference holds profound significance for the entire world. China and India have been the two largest countries by population for a very long time. They represent two of the oldest civilizations, with histories of profound intellectual, social, and cultural contribution. And over the past 25 years, they represent astonishing economic development. Between them, they have produced more rapid and significant economic growth, more rapid and significant poverty reduction, than ever before in human history.

In each case, the nature of economic development has presented important new questions for our understanding of the importance of law and governance. All of us who have been professionally committed to the rule of law naturally want to believe that we are committed to something important. Our perspective on the world naturally leads us to apply a legal framework to all that we see, to believe that systems of law and transparent governance contribute to, and might even be necessary for, true national progress on a meaningful scale.

And yet, as academics, we need to be conscious of the biases that our perspective creates. We need to show discipline and examine the facts. To what extent, and in what contexts, are law and transparent governance necessary? To what extent, and in what contexts, are they beneficial? And to what extent and in what contexts might they actually inhibit development?

As an American who has lived during the second half of the twentieth century and the first half of the twenty-first, it is natural for me to associate prosperity with a mature rule of law. A mature rule of law comprises substantive legal norms such as respect for individuals and their property, a belief that contractual promises should be enforced through the power of the state, and a belief that all members of the society must be equally subject to its requirements. It comprises institutions such as leg-

islatures, executive agencies, and courts that operate only according to norms of stewardship for the public good, resisting the corrupt temptation to transform public power into personal gain. And it comprises a culture of compliance – a shared belief that members of the society should follow the law, even if there is no risk that a violation would be punished.

I believe that those features do characterize my country today. Not completely, not absolutely. But to such a degree that it is meaningful and plausible to assert that America is a society that respects the rule of law and respects norms of democracy.

But that is America today. During its brief lifetime America has undergone several different periods of explosive economic growth. During the late colonial period fortunes were made and general living standards soared. During the nineteenth century, an industrial revolution brought steam power and steel, so that railroads could revolutionize transportation, creating vastly more efficient and productive markets. During the early twentieth century, another industrial revolution brought electricity and assembly line production, and a wave of inventions that made America the world's center of manufacturing. And then at the end of the twentieth century, a third revolution in information and communications technologies has created yet another transformation of how we live.

But was America a rule-of-law, democratic society throughout that period? Only partially. During the colonial period and the first half of the nineteenth century, we were a country built on the institution of chattel slavery. In the nineteenth century I do not think British inventors and writers would say that America was a country that respected norms of intellectual property. And in the first half of the twentieth century, nobody familiar with the political institutions of America's greatest cities – New York and Chicago – would suggest that they were light on corruption.

And democracy? In some ways, America's political system was worthy of admiration right from the start. But most adults were not allowed to vote until the twentieth century. And to this day it is difficult to de-

find the disproportionate voice that the wealthy are granted as a matter of constitutional right.

It is indisputable that a certain kind of development, to a certain extent, can happen in countries with deeply flawed systems of law and governance. We should not be at all surprised that the past quarter century's explosive development in China and India has taken place in countries whose systems of law and governance leave a very great deal to be desired.

No, the relationship between economic development on the one hand, and systems of law and governance on the other, is much more complex, much more subtle. And I wonder whether modern China and modern India might give us insight into some profoundly interesting questions. For example:

1. Is it the case that, for economic development up to a certain point, it is advantageous not to have consistent rule of law or transparent governance. Might a certain amount of disrespect for law and honor make it easier for a country to thrive in the global economy?
2. Or is it the case that, even in those early stages, there are some essential legal and governance prerequisites, without which no real progress can happen? Might it be, for example, that no real economic development will happen unless holders of capital feel a certain degree of confidence that the coercive power of the state will protect their property and enforce their contracts?
3. To put it slightly differently, suppose that one conceives of corruption and lawlessness and tyranny as a kind of cumulative tax on economic activities. Is it possible that the effective tax rate must be lowered to a certain level before meaningful economic development can take place.
4. Fourth, is it possible that, as a country develops more and more, it encounters certain metaphorical ceilings, so that it is impossible to continue climbing to the next level unless the

effective tax rate is lowered more – unless further progress is made in improving the rule of law and improving the transparency and accountability of government?

These are empirical questions. They lend themselves to systematic and rigorous examination. And I believe that this participants in this conference are perfectly situated to carry out such an examination.

Popular public discourse would surely suggest that progress in law and governance is a prerequisite to further development in China and India. The communiqué and decisions of the of the recently completed Fourth Plenum of the Party Congress announce that this is so, and it is clear that, through the Plenum, the Party was echoing its perception of the national mood, a mood expressed every day on Weibo and QQ and WeChat.

The governing powers in every country are concerned to a certain extent with sovereign legitimacy. In some countries that legitimacy is grounded in features of the process through which those who claim governmental power were identified and granted the authority to wield it. Were they properly elected? In other countries that legitimacy is grounded in public acceptance of the manner in which those who hold governmental power have wielded it. Have they served the people well?

In both India and China today, the governing powers have made sovereign legitimacy a key question for debate. In both countries, the governing powers have suggested their belief that certain features of law and governance are necessary to legitimacy and to continuing economic development, whereas other features of law and governance are unnecessary for both legitimacy and economic development. Whether the positions taken by those governing powers is sound is an empirical question that is a legitimate topic for academic inquiry and debate.

The organizers of this conference have shown admirable intellectual clarity by breaking this inquiry down into a series of distinct domains that will be explored sequentially over the next two days.

In the first session, we will be looking at economic development, human development, and urbanization. We cannot consider the merits of

law and governance without first considering the ends to be promoted. What features of economic development are deeply valuable ends, if what we aspire to is a world of human flourishing? And to the extent sustained economic development requires people to move from low-density rural environments to high-density urban environments, does the process of urbanization itself create new and different kinds of needs in the domains of law and governance?

In the second session we will be looking at education, health, the environment, and food security. In a developed economy, a greater and greater premium is paid to those who are well educated; what kinds of regulatory responses are needed to ensure that the precious good of education is allocated in a way that legitimates rather than undermines the legitimacy of the government? In a developed economy, market failures can threaten human health and safety; what kinds of regulatory responses is it reasonable to expect the governing powers to provide?

In today's third and final session we will turn directly to the subject of governance. The rhetoric in Beijing and Delhi leaves no room to doubt that the public in China and India believe that the levels of corruption today are not tolerable. People are mad as hell and they are not going to take it any more. But exactly what kind of governance frameworks need to be in place if those feelings are to be addressed in a legally fair and rigorous manner?

Tomorrow we will have three more discussions, approaching governance and law from three very different angles.

The first panel will explore the concept of democracy as it is understood in China and India. Do the countries have a common perception of what the abstract ideal of democracy entails in the specific context of twenty-first century Asia? Do they have a common perception of how the virtues of democracy can, as a practical matter, be experienced on the ground today?

Tomorrow's second session will turn to the rule of law. What substantive norms, what institutional norms, and what culture of compliance are we supposed to be developing? And how exactly are we going to get there, given how far away we are from being there today?

Last but not least, the final session of the conference will turn to specific legal reforms that are underway or under serious consideration in the two countries. Do the two countries see what is needed in ways that are consistent or inconsistent? And how likely is it that each country will succeed in realizing its reform ideals?

The work that this conference is undertaking is of critical importance – both to the countries in question and also to our academic understanding of this complex and subtle relationship. My own intuition is that opinions here will converge over the next two days. My own intuition is that a careful review of the evidence will lead us all to conclude that a set of particular law and governance reforms must be accomplished if economic development is to continue, if the middle income trap is to be avoided, if the governments of these two countries are to retain sovereign legitimacy.

Permit me to conclude with a challenge. Over the next two days, please do more than simply listen to a series of distinct perspectives from different speakers. I challenge everyone here instead to work, session by session, to produce two lists. One list would include legal and governance reforms that this group believes are essential to the next stage of economic and social development. The other list would include legal and governance reforms that, while they might be nice, are not essential to progress over the next decade. If a group of this caliber is able to achieve consensus along those lines, you will have given the world an exciting demonstration of the possibilities that await us when China and India work together.