Preface

This book seeks to offer a concise overview of a field of studies that is often called ‘law and development’. It focuses on the idea that institutions in general – and legal institutions in particular – matter for development, a topic that has generated a voluminous literature in the past ten years. This literature moves away from the assumption that development is primarily an economic problem, and one of its most relevant implications – as we argue in this book – is that lawyers have a very important role to play in this field of study. The central challenge faced by the field of law and development today is that we do not know how to reform dysfunctional institutions. While there is empirical evidence to support the argument that institutions matter for development,\footnote{One example is the World Bank publication, Governance Matters, initially coordinated by Daniel Kaufman. More evidence has been provided in recent papers by other economists, such as Dani Rodrik from Harvard.} a series of academic books that have assessed recent institutional reforms in developing countries come to the dismal conclusion that many – perhaps most – of these attempts have failed.\footnote{Some examples include Thomas Carothers, Promoting the Rule of Law Abroad: In Search of Knowledge (Carnegie Endowment for International Peace, 2006); Kenneth Dam, The Law-Growth Nexus: The Rule of Law and Economic Development (Brookings Institution Press, 2006); Michael Trebilcock and Ron Daniels, Rule of Law and Development: Charting the Fragile Path of Progress (Cheltenham, UK: Edward Elgar Publishing, 2008). A more recent publication by Paul Dragos Aligica and Peter Boettke, Challenging Institutional Analysis and Development: The Bloomington School (Mercatus Books, 2009) focuses on the philosophical foundations of the institutional discourse.} This book offers some insight into how lawyers and institution builders can best employ their skills to address some of the challenges of institutional reform.

The book starts with a brief overview of different concepts and theories of development, situating institutional theories within the larger academic debate on development. It then proceeds to discuss why, whether and how institutions matter in different fields of development. In the domestic sphere, we try to answer these questions by analysing institutional reforms in the public sector (rule of law, political regimes, bureaucracy) and the private sector (contracts, property rights and privatization). In the
international sphere, we discuss the importance of institutions for trade, foreign direct investment and foreign aid. In each chapter, we briefly review the theoretical claim that explains why certain institutions matter for a particular aspect of development, then we briefly review the empirical evidence available to assess whether those institutions indeed matter, and we conclude by discussing how the details of institutional design are likely to affect the efficacy of attempts to promote institutional reforms. Our general conclusion is that lawyers indeed have a role to play in these reforms, but this role lies in taking seriously the intricacies of institutional design, and producing solutions that are best suited to different contexts and realities.

The book is intended for readers seeking an accessible overview of the area. By highlighting the important role that lawyers can play in this field, it should be of particular interest to a legal audience, but should also be useful to anyone interested in a concise introduction to broader academic debates in the development field.

This project grew out of our course entitled Law, Institutions and Development taught at the University of Toronto, Faculty of Law. The course has been modified over the years and the current structure of the book is largely based on central themes of the course today. The process of building, shaping and polishing this course started long before we started co-teaching it in 2007. About a decade ago, Michael Trebilcock first taught this course with Kevin Davis, and continued later with another colleague, Ron Daniels. A great deal of the materials and analyses canvassed in this book were contributions by Kevin and Ron to the course in its pre-2007 version. Thus, both Kevin and Ron were involved (albeit indirectly) in the conception of this book and have significantly enriched it.

We could not have undertaken the intensive research and writing process of transforming a course into a book without the help of five very talented and extremely dedicated research assistants: Tess Bridgman, Natasha Kanerva, Jee Yeon Lim, Joanna Noronha and Michelle Segal. In addition to our research assistants, the JD, LLM and non-law graduate students from many countries around the world who have taken our course over the years have contributed invaluable insights into many issues addressed in this book. One doctoral student, Theresa Miedema, deserves a special thank you. She provided insightful comments on an earlier draft of Chapter 4 and was extremely generous in sharing with us parts of her doctoral dissertation on this subject and other unpublished work on ethnic conflict.

Last but not least, we are deeply grateful to Nadia Gulezko, our administrative assistant, for incorporating multiple rounds of revisions, keeping track of the latest drafts and for taking care of everything that was not
related to the book project with her usual expedition and competence so as to minimize distractions we would otherwise have faced.