

Discussion in Session IV

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A contrasting of 'market capitalism' to 'community capitalism' stimulated the entire discussion of this session. Since the Asian Economic Crisis, Asian countries have been under pressure to reform their legal and judicial systems into functioning ones, based on Western concepts. The idea of Asian-based community capitalism drew interest from several participants. This idea was seen as a proposal for an antithesis to Westernization under the name of globalization, and as a clue for countries searching for a new direction for capitalism. One participant commented on this idea, suggesting that mixed capitalism/pluralist capitalism already exist, and that it is necessary to look at the respective components of capitalism named in this way. Whereas there seemed to be expectations for the emergence of community as a means to overcome the shortcomings of feudalism, there was criticism that communities can never be free from vested interests or cronyism. There was also a suggestion for an idealistic mixture of community principles and the methods of transparency.

The impact of the Asian Economic Crisis on law was then discussed. The Crisis was caused by a lack of the legal instruments and institutions necessary to provide for healthy banking and economic systems. One speaker pointed out that developing countries needed to immediately establish sound legal systems; however, putting such systems in place requires much time. Another participant suggested drawing a parallel between the Japanese experience in the Meiji Era and the current challenges facing Asian developing countries. However, huge differences were pointed out in terms of the strength of external pressures, development of information technology, and governmental capacities.

One participant expressed the fear that the wave of marketization might be so huge that it would destroy or adversely affect the social security system that had been cherished within traditional society. She added that there was a possibility that increasingly globalized markets would generate more marginalized people. She stressed that we need to closely watch social development, and not simply focus on economic development.

Further, with regard to the legal technical assistance provided by donor institutions, the accountability of such assistance was questioned. Participants questioned who would monitor the execution and enforcement of law and how it would

be done without treading on national sovereignty.

In the latter half of the session, questions on law and poverty were discussed. How do we distinguish poor people from non-poor people? How can we combat poverty by using legal instruments? One speaker proposed that focusing on the poor would be a more useful approach for development assistance than assisting the private business sector. This meant directly targeting the neediest rather than waiting for the trickle-down effect. This approach defines the poor in terms of the knowledge of rights and the ability to make actual use of those rights, and tries to promote legal incentives to allow them to get access to basic services. Opposing the use of legal instruments, another speaker suggested that an alternative mechanism to legal rights for protecting the poor and alleviating poverty could be established by stressing community solidarity. The argument was that we cannot demand everything or rely entirely on the government and formal legal institutions, but that the community has a responsibility that cannot be explained in legal terms. Still we were left with the following questions: Do legal rights and community bonds really stand in sharp contrast? Must camaraderie reject law?