Closing Remarks

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1. When I look back to our discussions over the past two days I draw lessons for future Law and Development activities of national foreign aid groups and international financial institutions (IFIs), and more particularly, for activities in law and judicial reform.
2. The Old Law and Development emerged in the 1960s and 1970s (see Trubek and Galanter; Tamanaha). Its goal was to transplant foreign laws to Asian countries. It was not culture-specific, historically rooted nor sociologically sensitive. It had a linear view of modernization, and exalted the "nation" as the highest form of community, deriding the village, tribe and family as "backward" levels of communal life. It saw the state as completely distinct from society, and adopted law as the chief instrument by which the former would shape the latter.
3. The New Law and Development ("New L&D") emerged in the 1990s in the aftermath of law reform activities by IFIs, and saw law not as an innate "technology" of development but as having a life of its own and animated by values and norms held dear by people and not just by their governments (*Yamada*). The new scholarship typically situated law in its proper milieu: the sociology of the profession (*Rokusha*); paradigms of public interest litigation (*Sato* and *Verma*); colonization and the internalization of, for instance, contract law (*Hartono*); the centralization of prosecution, for instance, in transition economies (*Dao Tri Uc*) and socialist states (*Zheng*). Studies on alternative dispute resolution today discuss both the emerging mechanisms (*Ahmad/Paul*) and the hesitations and fears about these mechanisms (*Imaizumi*).

   The new scholarship poses challenges also at the level of paradigms, the clash between competing models of capitalism (*Yasuda*), or the incorporation into aid programs – but not into international law – of the social aspects of economic relations (*Ago*).
4. More specifically as regards law reform, the papers also show the dynamic between institutions and markets, and between two modes of securing rights, i.e., through the

welfare state or through civil society.

The Asian Development Bank's pro-poor strategy, for instance, relies on legal literacy, access and empowerment, an approach that enhances civil society rather than government institutions (*Tiwana*). Market- and civil society-based initiatives have also worked in the field of environmental protection (which also shows the dynamic between curative and preventive approaches) (*Sakumoto*). On the other hand, the power of rights-based approaches is best demonstrated by the rights of the disabled (*Kobayashi*), whose needs – but for the compelling claims of law and justice – the market is prone to ignore. Finally, women's rights show the power of both approaches where, for instance, women are empowered with both the formal right to contract on her own and her access to credit through, for instance, micro-lending (*Feliciano*).

5. How will these affect law and judicial reform programs? Writing and re-writing laws will remain one, but simply one of their many goals, among them, empowering the stakeholders, educating the judges and lawyers, and forming newer and overlapping constituencies and giving them voice. *Empowering* will mean less about taking to the streets (though that should remain in the picture) but more about literacy and communication; conversely, *oppression* not only means when police hit demonstrators with truncheons, but likewise when telephone monopolies deny phones to hospitals, homes, police stations and businesses. *Educating* will mean not just classroom lectures (though that should remain in the picture) but forming a sense of community among judges, for instance, a collective sense of responsibility and, of course, a sense that theirs is a career, a part of a tradition, and not a transient job. *Forming constituencies* will mean not just political bailiwicks but identifying the invisible but shared needs and identities, getting strangers to realize that they are kindred souls, and getting them to talk to one another and give of themselves to the world.
6. With the New L&D, we have turned our backs on the facile acceptance of "modernization" and the naïve belief in laws' transferability. While foreign models will remain the starting point, these models will be drastically remolded at the national level, domesticized and localized, as they should be.
7. The challenges no sooner emerge.

(a) The professionalization of judges and lawyers, the emergence of the Weberian ideal of the professional, detached from bias and coolly scientific, no sooner gives rise to

the dangers of cartelization and professional arrogance against the layman. "Every profession is a conspiracy against the public." Professor Roberto Unger laments that today's hottest social issues are debated within the confines of the professions and their arcane jargon, and asks that these issues be brought back to the public as a first step toward reinventing democracy.

(b) The favored concepts of the New L&D bear unique perils in Asia. The New L&D glorifies civil society, as if we were speaking of de-centralized and pluralistic communities of educated citizens. But Asian societies are typically feudal, ruled by local aristocracies or village elites. For them, civil society is feudal society! And so we then romanticize institutions as a way of escaping feudal and personalistic loyalties. But institutions themselves calcify into bureaucracies; they can begin as peoples' organizations but can end up alienated from their original constituencies. They merely replicate feudal patterns of power in a new setting, and the old aristocrats merely transform themselves into the new bureaucratic elite. And finally, the market, which has proved most reliable in breaking down feudal institutions. And indeed it shows much promise. Because while production is controlled by the same elite, consumption is necessarily public. Indeed. But marketing networks tend to be elite controlled as well, and can generate needs and re-shape demand at will.

(c) This should demonstrate the need to maintain international oversight over law and judicial reform programs. The New L&D calls for the localization of imported laws and programs. Again, typical though not unique of Asia is the peril that to localize a law is to subject it to elite manipulation, which brings back to where we started: an international forum on the erstwhile sovereign question of governance and law reform. The New L&D is mercifully safe from capture by local elites, and must remain so, but that is not just a question of political will but also a matter of knowing the power – and the weaknesses – of the weapons in one's intellectual arsenal.