

**Day 2**

**RETHINKING OF “LAW AND DEVELOPMENT”:  
AN ASIAN PERSPECTIVE**

**SESSION IV  
LAW AND MARKETIZATION**

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# **Southeast Asian Law in Transition: The Law and Political, Economic and Social Systems in the Post Crisis of 1997**

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## **Introduction**

The Asian financial crisis which first broke out in Thailand in 1997 spread in an instant to Indonesia, Malaysia, South Korea, and the rest of Asia. These countries suffer from institutional problems which made them vulnerable to the crisis, and some of which have been working to make reforms under the guidance of the IMF and the World Bank. There is a growing recognition that the crisis was due not only to simple technical glitches in economic policy, but institutional issues involving the very culture of the region.

Considering the current situation in Japan, which has been pressed to make fundamental reforms in its politics, economy, and institutions due to its serious 10-year long recession, we may hypothesize the existence of an East Asian type capitalism different from the western-derived capitalism. This capitalism was based on different system and values from and has lost out to the western, in particular the Anglo-Saxon capitalism in the current wave of globalization which began in earnest while incorporating elements of the information technology revolution in the 1980s and is being forced to change. This can be glimpsed from the terms "transparency", "accountability", and "self responsibility" being bandied about as slogans of reform in almost all of Asia. It is considered essential to change from the old "rule of man or relationships" to a system of "rule of law" clarifying the responsibilities of the individuals. Reform of the judicial system is consequently becoming the issue of the utmost important in all the countries of Asia.

This paper proposes the concept of two types of capitalism, and considers the best approach to judicial reforms in the fields of politics, the economy, and society in

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Asia through a comparison of these.

## **I. Two Types of Capitalism: Market Capitalism and Community Capitalism**

As a factor on the Asian side which invited the economic crisis since 1997, it has been explained that “East Asia had exposed itself to financial chaos because its financial systems were riddled by insider dealing, corruption, and weak corporate governance, which in turn had caused inefficient investment spending and had weakened the stability of banking system” (Radlet and Sachs, 1998), and that "all suffered from a lack of transparency about the ties between government, business, and banks, which has both contributed to the crisis and complicated efforts to defuse it. " (Fisher, 1998).

Rajan and Zingales (1998) consider the current crisis to have been caused by the financial business practices typically seen in Asia compared with those of the western, in particular the Anglo-Saxon, model, describing them as "relationships versus an arm's length system". According to them, the former "ensure a return to the financier by granting her some form of power over the firm being financed (for example, monopoly) ", while the latter should be called the “Anglo-Saxon system, where the financier is protected by explicit contracts ... (and therefore) institutional relationships matter less and the market becomes a more important medium for directing/governing the terms of transactions". That is, for relationships, maintaining and strengthening relationships between the parties in question are considered important rules of behavior and therefore there is a tendency to lean toward exclusion of outsiders or secrecy. The arm's length philosophy stresses competition based on free decision-making by the parties involved. Transparency and accountability are emphasized as presuppositions.

The approach to relations between economic entities as in the former case is the same as the features used when comparing the Japanese system with the western, in particular, the American system, such as seen in the "inter-personalism" of Yoshitoshi Hamaguchi or the “relationalist” understanding of contracts<sup>1</sup>. The stress on "relationships" as spoken of in interpersonal relations in China and the "personalism" in Southeast Asia etc. are related to this as well. From this, it is possible to postulate a "community capitalism" in contrast to the Anglo-Saxon "market capitalism" - which

may be called genuine or textbook capitalism based on individualism and market competition<sup>2</sup>. The current crisis can be concluded to have resulted from the defeat of the Asian "community capitalism", which depends on interpersonal relations and lacks any rationalist basis, by the Anglo-Saxon "market capitalism", which is based on rational contractual relations.

More detailed features of these two types of capitalism are given in the following table.

Market capitalism	Community capitalism
Western (Anglo-Saxon) model	Asian model
Hunting and commercial type	(Rice growing) agricultural type
Monotheism	Polytheism
Competition	Cooperation
Individualism	Communalism (group consciousness)
Financing and services	Manufacturing
Legal and contractual relations (rule of law)	Nonlegal and interpersonal relations (rule of man)
Transparency and openness	Closeness and exclusion
Accountability (explicit explanation)	Tacit understanding (full trust)
Neutral government (noninterference in market)	Positive government (developmental state)

Market capitalism is pedigree capitalism with roots in Western Europe. As exhibited so strikingly by the actions of the hedge funds and other financial institutions in the current crisis, it has a hunting and commercial nature in the point of targeting short-term profit. While such lightning transactions are unquestionably products of the new information technology era, western capital found them amenable because of its familiarity with the game of competition in the market place. In capitalism, economic entities are linked with each other by free contracts while using the medium of market competition. Considering the fact that contracts are predicated on independent, free individuals, individualism is naturally reflected in this type of capitalism. This individualistic and contractual view is historically deeply rooted in monotheistic, that is, Judeo-Christian traditions. Further, it is naturally essential to clearly define the relations between parties (transparency) and clarify responsibility for their actions (accountability). The question is how to guarantee free and fair activities of individual

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<sup>1</sup> See Macneil, I, 1985 on the Relational Contract

<sup>2</sup> Note that Dodd, 1999 postulated the models of "lineal family type capitalism" and "individualistic capitalism" based on the family structures. The former is typically seen in the capitalism of Germany, Japan, and Asia, while the latter appears to be limited to the Anglo-Saxon capitalism of the West. Hasmpden-Turner and Trompenaars,

economic entities. Direct interference of the government in the market is averted, while the role of the judiciary as a neutral mechanism for solving disputes between parties has become essentially important. Economic freedom is ranked parallel to political democracy<sup>3</sup>.

Before Western European capitalism was introduced, Asian society was basically agricultural. In particular, in the East Asian monsoon rice-growing society, communal cultivation and communal work were essential. As a result, people lived out their lives cooperating with others in village communities based on polytheistic beliefs and farming etiquette. It is difficult to imagine that individualism and its extension, capitalism, would be born from this. Capitalism spread in earnest in these regions starting from the introduction of market capitalism, that is, genuine capitalism, from Western Europe in the process of their colonization or modernization. This capitalism, however, had to change in the process of being transplanted to such a foreign soil.

What was born from this was community capitalism. Priority was given to group harmony as opposed to the autonomy and freedom of the individual and to cooperation as opposed to competition. Group consciousness (communalism) and cooperation enable the abilities of the group to be exhibited to the fullest through the pooling of information, but are by nature closed to the outside and exclusionary and further tend to result in less rational management as a result of ties among group members. These non-(market)economic factors are complemented, adjusted, and integrated with various industrial and fiscal policies by the state and government as symbolized by the “developmental state”<sup>4</sup>.

Market capitalism is suited for commercial activities based on individual freedom and self-responsibility in view of its source, while community capitalism reflects the nature of an agricultural society and therefore has merits in production of material goods through "communal work" of groups of people. This approach to labor is basically similar to the approach of agriculture although the turnaround time is shortened. Japan has achieved rapid industrialization since the Meiji Restoration and was able to achieve high growth again from the ashes of the Second World War due in

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1997 postulated similar models from a survey of business practices of seven developed countries.

<sup>3</sup> von Pfeil, 1998 stated, while citing the arguments of Shumpeter and Hayek, that "capitalism is free and fair competition that leads to profits. Democracy is free and fair competition that leads to better governance" and concludes that neither capitalism nor democracy have been born in Asia.

<sup>4</sup> Chalmers Johnson, 1982, analyzing Japan's Ministry of International Trade and Industry, defined Japan to be a "developmental state" in nature - different from an American-type market state and a Soviet-type socialist state and thereby focuses on the communal (collusive) relationship between the public and private sectors. This

large part to its success in organizing manpower in this mode. Japanese management proponents argue that behind this success was largely the establishment of a group consciousness through lifetime employment, the seniority system, the "ringi" corporate consensus-building system, QC activities in the factories, and other institutionalized bottom-up practices.

Since the 1970s, Japanese companies have invested heavily in East Asia. This was through joint ventures and mostly in the manufacturing sector, so these Japanese-style management practices permeated both labor and management in this area. The countries receiving the avalanche of Japanese investment motivated by the Plaza Accord of 1985 achieved startling economic growth - then termed the "East Asian Miracle" <sup>5</sup>, through a strategy of export-oriented industrialization.

The stress there was on interpersonal relations in production and management. Production was improved by close communal cooperation and the pooling of knowledge in the process. That is, an extremely specific form of community capitalism was formed as an extension of agricultural society. Even in investment strategy, in sharp contrast to market capitalism, which has as an essential element a return on short-term investment, it was possible to achieve superiority in respect to the ability to set long-term strategies. In the 1980s, the western-style market capitalism grew fatigued and stagnated due to individualistic labor-management relations. The Asian companies were able to flourish due to the superiority of their system on the production floor - leaving aside the fact that such communalism concealed the infringement of the rights of the individual workers.

This being said, the fact is that community capitalism differs from market capitalism, that is, genuine capitalism, and harbors institutional problems. While Japan achieved high levels of growth by a close linkage between labor and management by the lifetime employment and seniority systems, it failed to sufficiently consider capital (stockholders). Behind this, on the one hand, was the entrenchment of a system of indirect financing by financial institutions protected as a group by the government in the process of the post-war government-led economic development. On the other hand, there were various factors on the stockholders' side enabling this such as the capital gains enjoyed due to the permanent like rise of stock prices resulting from the rapid economic growth.

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relation applies to all Asian developmental states including China. See also , Woo-Cumings, 1999

The globalization which began in earnest at the end of the 1980s caused particularly revolutionary changes in financial technology. The advances made in information technology enabled capital to cross national borders in the blink of an eye. As a result, **first**, industrial production lost its old superiority and fell under the dominance of the financial and service sectors. **Second**, the policies of countries and governments regarding industry and financing were greatly reduced in effectiveness. The former was due to business organization, while the latter due to government, business, and society. These became issues in the structural reforms in these countries after the crisis.

## **II. Two Types of Capitalism: Comparison of Business Organizations**

A comparison of the two types of capitalism by business organization reveals the following. In western style market capitalism, differences are pointed out between the Anglo-American type stressing the market and the European type stressing social fairness. The two however are the same in being predicated on business organizations being formed by individuals or independent economic entities. Therefore, business organizations (joint stock companies) are comprised of independent parties such as company stockholders and managers (these also being groups of independent entities)<sup>6</sup>. The biggest objective is the maximization of profit. In so far as profit belongs to the stockholders, that is, the owners, the stockholders have the final authority and the main obligation of the managers is to provide the stockholders with the maximum dividends.

Along with the growth in the size of companies, the dispersion of stockholders has become unavoidable. In the process, a phenomenon of "separation of management from ownership" has occurred. As a result, stockholders and managers constitute independent and contractual parties in a company. Properly balancing the interests of the two has become an important issue in corporate law. To clarify their relative interests, transparency of business accounting and clarification of accountability are considered essential in determining management responsibility. A system of business accounting has developed for disclosure of information.

In particular, in the U.S., workers are basically considered external factors of business organizations. Companies have been refined into financial mechanisms for the

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<sup>5</sup> World Bank, 1993.

<sup>6</sup> Workers, an important factor giving rise to wealth in a company, are being recognized as one of the main components of a company through the participation of laborers in management. In the U.S., they are outside the

creation and distribution of profit to the stockholders and managers<sup>7</sup>. In market capitalism, a business organization is strongly by nature a financial mechanism or fictitious product rather than an organization for production. For this reason, in the West, takeovers and other transactions of the companies themselves are routine. Needless to say this reflects the hunting and commercial nature of market capitalism.

One of the features of a western-style business organization is that the biggest goal of management is to increase dividends to the owners of the corporation, that is, the stockholders. This results in the pursuit of short-term profit as a corporate strategy and makes long-term business planning difficult. On the other hand, there is the merit that thinking of companies as a mere means for generating profit makes it easy to transform or reorganize them to meet with changes in the market and economic situation.

The legal framework of the corporate system in the Asian countries is based on company laws and other business related laws introduced from the western countries. For example, in basically the same way as the West, company laws are set based on the rights and obligations of stockholders and managers over their companies. The actual situation, however, is considerably different, it has been pointed out. Many companies are owned and managed by the same group members. Even in large companies listed on the stock exchanges, there are no clear contractual relations between the (dominant) stockholders and managers and a company. The relation between the two in the distribution of profits is also unclear. In such close knit relations, transparency and accountability, predicated on managers and stockholders as being separate parties, are not that important.

This approach to business management may be similarly seen in the prewar "zaibatsu" and postwar "corporate groups" of Japan, the "chaebol" of South Korea, the "relationships" characteristic of ethnic Chinese-run companies in Southeast Asia, and the "conglomerates" of Indonesia. In Japan, before the war, relations between stockholders and managers consisted of integral, personal relations in the "zaibatsu". In the postwar "corporate groups", the bonds between management and workers were strengthened (for example, with the lifetime employment system and seniority system). As a result, it is pointed out, responsibility toward the stockholders has been neglected.

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company and considered as parties to a labor contract with the same.

<sup>7</sup> As is well known, in Europe, from the viewpoint of the stress on social fairness, progress has been made in the institutionalization of the voice of workers (management and profit participation) in company laws ever since the



This kind of relationship, however, as seen not only inside companies but within corporate affiliations (Keiretu), forms a net extending down from the main banks and encompassing the entire range of business activities including even subcontractors. As shown so forcefully by the term "a corporate family", companies and corporate groups form single entities. Differences between entities inside them have been cast aside.

Communal elements have been generally present in the other Asian countries as well as shown by their traditions of relationships and inter-personalism. In addition, the business investment of Japan in the rest of Asia starting in the 1970s increased at a faster pace in the late 1980s, as mentioned. Along with this, Japanese business management techniques evolved into a more broad-based form in East Asia as a whole while resonating with the local communal elements.

The community capitalist companies of Japan and the rest of Asia demonstrated superiority in the fields of production and manufacturing. **First**, in these fields, business organizations are not mere financial profit-making mechanisms, but groups of people organized for the communal cooperation of turning out a physical product. On the production floor, solidarity between managers and workers and among workers works positively to increase productivity in a major way. **Second**, the manufacturing sector requires factories and other production facilities, so the time span of management becomes long. These companies tend to invest with a long-term perspective, even if resulting in minus profits in the short term, rather than working to generate profits while closely following movements in the market.

Whatever the case, these companies are extensions of the mode of agricultural production and have little familiarity with transparency and accountability, which are predicated on disclosure of management information such as short-term profit and loss. Their management techniques, however, make it difficult to obtain a grasp of the state of management, especially of financial status by clear figures. Further, when excessively relying on communalism, there is a strong possibility of the spread of nepotism and cronyism. This danger becomes greater in the field of financial services which does not produce physical products and has to be managed by abstract figures. The current crisis was also caused by this vulnerability.

Facing international wave of liberalization and deregulation together with acceleration of free movement of goods, capital and services called "globalization" of

the 1990s, Japanese capitalism failed to reorganize an effective financial system based on transparency and accountability after the collapse of the economic bubble and entered a period of long-term stagnation. Further, the Asian countries were thrown into crisis due to the roller coaster run in speculative financial capital as seen in the hedge funds, the symbols of market capitalism, due to the above problems inherent in community capitalism. As seen here, the Asian-style community capitalism, strong in manufacturing, was tripped up by the western capitalism based on globalization of financing. This can be said to be the true lesson of the current Asian crisis<sup>8</sup>.

### **III. East Asian Systems and Law Reform: Law and Politics, the Economy, and Society**

As a result of the current crisis, Asian community capitalism has been forced to change to the individualistic western market capitalism in the economy, politics, and society. These changes were compelled by market force - strengthened overwhelmingly by the information revolution, as epitomized by globalization. As a result, the effectiveness of the former developmental state type policies with regard to the economy and society is being sapped.

There is no denying that there are major problems in the political system under the Asian-type community capitalism. Capitalism naturally cannot stand without support of the nation state. As time goes by, the state (government) finds greater room for intervention in the economy and society as is seen in market capitalism modeled on the West as well. In market capitalism, however, even in this case, the state is considered an independent public institution which functions as a neutral political mechanism to govern but to be independent from private interest such as business companies. As a result, transparency is sought between the two. As opposed to this, in community capitalism, like with other relations, the relation between the state and companies is non-contractual and personal. In terms of mobilizing the resources of the state for economic development through companies from a long-term perspective without giving that much consideration to short-term costs, community capitalism can be said to have its own measure of sense for a developmental state pursuing "development" above all. The natural results, that is, the lack of transparency between

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<sup>8</sup> Due to the financial crisis and the subsequent austerity policies imposed by the IMF, the manufacturing sector suffered from a massive production surplus and reached an impasse. This further exacerbated the economic conditions in these countries. For this, see FEER, Oct. 1, 1998, 10-15.

the government and business and the lack of economic accountability, however, inhibit rational economic management. As seen in recent incidents in Japan, there is the inherent problem of it creating a hotbed of economic and political corruption<sup>9</sup>. Further, in the Asian developmental states, protest against this type of corruption of power has been forcibly suppressed. The problem of corruption, nepotism, and strong-arm tactics can be said to be the Achilles heel of community capitalism and the developmental state.

In this article, we will predict or assess what kind of changes will occur or should occur in the law on three systems, political, economic and social<see **Appendix**><sup>10</sup>, of Southeast Asia as a result of the crisis.

### **1. The Political System and the Law**

The political system is basically the area relating to power. In that area, there is naturally a relationship between the dominant and the subordinate ("command principle" referred at Appendix by the author). The political system of Southeast Asia is characterized by "developmental dictatorship" and authoritarian systems, but can be understood as not being comprised of mere means of physical and psychological coercion, but as including also nepotism and cronyism and being strongly defined by communal values.

As a result of the current crisis, however, at least at the nation state level, the limits of coercion have been exposed. The amendment of the Thai Constitution in 1997, right after the crisis broke out, and the search for a new Constitutional Governance in Indonesia in the midst of all of the turmoil there show that there is a marked shift toward the western style market democratic system. Along with the complete protection of the right to vote and be elected, appointments of the military as to the national assembly members are being cut back (Indonesia) and fundamental reforms made in the assemblies based on this (Thailand). Further, as a result of the crisis, a "civil society" supporting such governance is being actively debate.<sup>11</sup>

In this debate, along with the amendment of the election system, the curbing of

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<sup>9</sup> This postulation naturally is persuasive in Japan as well. Yuzo Niiyama (1999) gave the existence of "hindsight, supervisory state interference" as a reason for the lack of the concept of "fairness" in the corporate culture of Japan, but our opinions match in the point that this collusion between developmental states and business at least made the crisis more serious.

<sup>10</sup> These three systems are predicated on three types of legal principles hypothesized by the writer, that is, politics = command principle, economics = market principle, and society = community principle. For the three types of legal principles, see the attached table in appendix

the power of the president, measures to prevent corruption as seen in Indonesia and Thailand, and other reforms on the national level, local community level activities such as exposure of corruption of local officials are being introduced. The latter however has more to do with the devolution of power to the local governments and stronger participation of the public in politics.

Democracy is naturally predicated on the idea of the "rule of law". The improvement of the judicial system, in particular the reconstruction and strengthening of the judiciary, which had not necessarily functioned sufficiently up until now, is becoming an important issue. The establishment of clean, efficient courts is essential for ensuring human rights, which are being stressed in the process<sup>12</sup>, and is considered important for smoothing economic activity in the market capitalism model.

Regarding human rights, along with such a system of guarantees by the judiciary, the concept of "Human Rights Commissions" to serve as organizations for enlightening all levels of the public about human rights and fighting for the same more flexibly is being more actively pursued. These commissions have already been successively established in the Philippines and Indonesia and in Thailand as well by the 1997 Constitution<sup>13</sup>. This movement recognizes and strengthens human rights at the grass roots level and may give birth to a new concept of human rights different from the one argued over by the opposing camps in the old "human rights versus Asian values" debate<sup>14</sup>. Further, in the midst of the internationalization of the concept of human rights, for example, an international human rights organization such as a human rights commission may take form in Asia.

Power is already being devolved to the local governments at a considerable speed. This issue is tied to separatism as well seen by the independence of East Timor. If this is linked with the activities of the NGOs etc. aiming at the construction of a civil society, a new concept of a **multicultural nation** state may be born.

## 2. The Economic System and the Law

As clear from the current crisis, in particular as it relates to financial services,

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<sup>11</sup> For example, "Asia's Reformers, Winning or Losing" FEER Nov.5 1998, PP10-18)

<sup>12</sup> This movement and theory of Judicial Reform of the World Bank can be learned from the information of its home page (<http://www1.worldbank.org/publicsector/legal>). Judicial reforms are discussed in the sections on Constitutional Review and Government Liability, Judicial Independence: "What it is, How it Can be Measured, Why It Occurs, Human Rights Instruments and Judicial Reform, and Access to Justice".

<sup>13</sup> The Human Rights Law of 1999 in Indonesia strengthens the power of Human Rights Commission, which have now a kind of settlement mechanism to solve the human rights disputes.

the Asian countries have undeniably been backward in their institutions. Modernization of these institutions is therefore a major issue. The old unwary, lackadaisical measures used up until now, however, have to be revised. This is seen in the reversion of Malaysia to a fixed exchange rate. If considering the fact that introduction of foreign capital is necessary for the economic growth of these countries, in the long term, Asia will probably head in the direction of an international framework (for example, an Asian Monetary Fund (AMF)) under the umbrella of ASEAN or a larger entity such as ASEAN plus 3 (Three Chinas, Korea and Japan).

If viewing the movement toward liberalization of trade etc. in APEC and the WTO along with financing, the role of the government in international economics is steadily declining. It appears inevitable that the Asian countries will be incorporated into the international market system.

Financial regulations, intellectual property law, investment laws, bankruptcy laws, and other economic regulations are being forced to change from regulatory laws (**law as policy**) giving governments large discretionary powers to institutional laws (**law as institution**) aimed at providing rules for resolution of disputes. The legislation of competition laws now being advanced all over the world may be considered part of this. Further, hopefully the basic laws and judicial system for running the same will be reformed to serve as the basic system for supporting the market.

Of course, in the manufacturing and agricultural sectors which produce physical objects, a communal value system should function effectively in its own right. Such values may be maintained separately from the law. Further, in so far as these countries are still oriented toward "development", development policies will be significant. As a result, the role of the nation state cannot be overlooked.

Economic liberalization cannot be stopped in Asia unless the current wave of globalization is ended. As a natural consequence, the problem of market failures will be unavoidable. Social unrest broke out in Indonesia when the value of the currency dropped, although temporarily, to one-sixth of its height. Unemployment is becoming a serious problem in other countries as well. These problems must be solved in short order. As explained next, in so far as this makes urbanization and marketization of the lives of the people unavoidable, the nation state will be expected to play an aggressive role in combating unemployment and correcting the disparity between the rich and poor and in

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<sup>14</sup> See Baul & Bell, 1999 for more detailed discussion on this problems.

protecting the environment<sup>15</sup>.

### **3. The Social System and the Law**

The biggest victims in the current crisis have been the workers, urban residents, and farmers<sup>16</sup>. They have rapidly been impoverished. The World Bank report proposes that a safety net be built for them as an urgent task while giving due consideration to the environment. Several reports point out that even the rural areas, which have functioned as shock absorbers in economic crises up until now, cannot necessarily be expected to play the same role today after the industrialization and urbanization of the 1980s<sup>17</sup>. Further, urban populations are increasingly breaking down into individuals and nuclear families. The large helpful extended families and local mutual assistance organizations of the past also no longer function as before.

In view of this situation, construction of a social security system on a national level has become essential. How should it be designed? In view of the fact that the national society security systems of many industrialized nations are on the verge of bankruptcy, it is not possible to introduce the systems of those countries as they are. Consideration should be given to revitalizing the mutual aid organizations of the villages and towns now on the brink of extinction. Starting in the 1980s, a kind of cooperative association has been at work in city slums and rural areas with the cooperation of foreign NGOs. This will become increasingly important in the future.

The devolution of power to the local governments and participation by the common people mentioned in the section on the political system would seem to suggest large possibilities in relation to this. Therefore, such local government organizations are by nature not only mere base level political organizations, but also communities of all of the people relevant to the lives of the public. Negative elements such as nepotism and cronyism undeniably enter into the picture, however. In that sense, the participation of domestic and foreign NGOs as outside collaborators will be important in keeping these ills to a minimum.

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<sup>15</sup> For this issue, see The World Bank; 1998, and "Will Government Help?" FEER, Oct. 8, 1998, 10-13

<sup>16</sup> In Indonesia, the country suffering the most from the current crisis, it was reported that 17 million people faced a food crisis and that 4 million households in Central and East Java only had one meal a day (FEER, Oct. 1, 1998, 90).

<sup>17</sup> The World Bank, 1998, FEER, Oct. 8, 1998

## **Conclusion**

Above, we looked at the factors behind the Asian financial crisis which spread rapidly starting in 1997 and the directions in law reforms for overcoming the same. A consensus is reportedly being reached among the industrialized countries, though with different nuances in the West, regarding the need for some sort of regulation of the hedge funds and other global speculative financial capital which triggered the crisis. Along with this, the economic situation in all of the countries except for the still turmoil wracked Indonesia, is gradually settling down.

The conflict between the market and community, however, will be difficult to complete resolve considering the qualitative differences in the principles between the two, that is, the market principle and the community principle. This is because there will unavoidably be routine contradictions and clashes between globalization, which is powered by the market, and society, which seeks to ensure its continuity through social cohesiveness.

The existing framework of the “nation state” is being eaten away by globalization on the one hand, and starting to lose its effectiveness in the midst of the diversification of various communities trying to ensure their own solidarity. The European Union extends over nations and yet recognizes political communities of a level lower than the nation state. This suggests this.

Further, as opposed to the pervasion of multinational enterprises into the arena of nation states in search of profit, that is, liberalization and deregulation, organizations are also being born from NGOs formed from various civil societies promoting the protection of the environment and human rights. Therefore, the nation states, which used to be the centers of power, are being limited to the role of mechanism for coordinating between multinational enterprises (business organizations) and NGOs (social organizations). This coordinating power is passing on the one hand to larger international organizations, for example, the UN, super-state organizations such as the European Union, and sector wise coordinating organizations such as the WTO and OECD. On the other hand, it is gradually devolving to smaller communities, for example, local governments. Based on this understanding, regional international organizations such as ASEAN, which has substantially weakened functioning as a result of the current crisis, should again increase in importance as the crisis ebbs.

As economic systems do not encompass all dimensions of human life, market

capitalism is not necessarily all powerful. The market is an essential apparatus in the process of exchange of goods between people. This is because even limited to economic acts, clearly people live in communalism in the production and consumption of physical goods. In so far as the market has to have only winners and losers, in the most basic areas of people's lives, production and consumption, adjustment by communalism is unavoidable. If looking at the revival of the social democratic governments in Europe<sup>18</sup>, the idea that the market should be regulated from the viewpoint of social fairness is picking up steam. We witnessed that NGOs revolt fiercely against Global marketing powers at Seattle in September 1999 when Bank and IMF meeting as held. This indicates that the community force at global level starts blocking against market force which mobilized the current globalization, and building its own global community beyond the nation- states based on our community principle.

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<sup>18</sup> Gidens, 1998



## References

- Yoshitoshi Hamaguchi, 1998, *Nippon Kenkyu Genron* (Introduction to the Japanese Study), Yuhikaku.
- Bauer, Joanne R. Daniel Bell (ed.), 1999, *The East Asian Challenge for Human Rights*, Cambridge University
- Brook, Timothy and Hy V. Luong (ed.), 1997, *Culture and Economy: The Capitalism in East Asia*, University of Michigan Press.
- Fischer, Stanley, 1998, *The IMF and Asian Crisis*  
(<http://www.imf.org/External/np/speeches/1998/032098.HTM>).
- Gidens, Anthony, 1998, *The Third Way The Renewal of Social Democracy*, Polity
- Hamden-Turner, C and A. Trompenasrs; 1997, *Seven Capitalisms*, Nihon Keizai Shimbunsha.
- Hefner, Robert W. (ed.), 1998, *Market Cultures: Society and Morality in the New Asian Capitalisms*, Allen & Unwin, St. Leonards, NSW.
- IMF 1998, *The IMF's Response to the Asian Crisis*, Factsheet, Oct. 1998  
(<http://www.imf.org/External/np/exr/facts/asia.HTM>).
- von Pfeil, Enzo, 1998, "Can Asia Want Capitalism", *Far Eastern Economic Review*, Oct. 1, 1998.
- Johnson, Chalmers, 1982, *MITI and the Japanese Miracle The Growth of Industrial Policy, 1925-1975*, TUT Books
- Macneil, I, 1985, "Relational Contract : What we do and do not know", *Wisconsin Law Review*, 483-
- Radelet, Steven and Jeffrey Sachs; 1998, *The Asian Financial Crisis; Diagnosis, Remedies, Prospect*, Harvard Institute for International Development, April 20, 1980  
(<http://www.hiid.harvard.edu/pub/other/bpeasia2.pdf>).
- R Rajan, Aghuram G, and Luigi Zingales, 1998, *Which Capitalism? Lessons from the East Asian Crisis* (<http://www.gsbl.uchicago/Psappers/whichcap.pdf>).
- World Bank, 1993, *The East Asian Miracle: Economic Growth and Public Policy*, Oxford University
- Woo-Cumings, Meredith (ed.) , 1999, *The Developmental State*, Cornell University Press

## Appendix

### Three Types of Legal Principles

Principles	Community Principle	Market Principle	Command Principle
Basic relation	Unifying and solidifying	Horizontal, and equivalent	vertical order and obedience
Basic value	Fraternity	Liberty	Equality
Model social action	one for all, all for one	Voluntary exchange of goods	compulsion by the superior
Core sphere or dimension	Communal society (community)	Economic society (economy)	political society (state)
State model	(commune state) proto-states	Modern capitalist state Colonial states	(former) socialist state developmental states
General pattern of norms	not clear, depending on community feeling	Supplying clear interpretation rules	giving discretionary power to the authority
Typical branch of law	family law	Civil and commercial law	public (political) law
Nature of disputes settlement	Amicable settlement (mediation or conciliation)	Adjudication by third party (like courts)	reconsideration by the authority
Basic value for the settlement	Identification (solidarity)	Legality (justice)	Reasonableness (fairness)
Typical settlement Agent	Community mediation or conciliation center	Judicial Courts	Administrative tribunal

### Similar Trichotomy

Name	Community Principle	Market Principle	Command Principle
Unger, R. (1986)	Customary-interaction law	Legal order and legal system	Bureaucratic law
Nonnet & Selznick (1977)	Responsive law	Autonomy law	Strict law
Kamenka & Tay (1980)	Gemeinschaft type of law	Gesellschaft type of law	Bureaucratic-administrative type of law
Ghai Yash (1986)	Custom	Market	State and its law
Miller (1976)	Primitive	Market	Hierarchy
Pollani, P. (1977)	Reciprocity	Exchange	Market
Paul Tillich (1954)	Love	Justice	Power

Sources: Unger R.M., *Law in Modern Society; Toward a Criticism of Social Theory*, New York, The State Press, 1976. Nonnet P. and Selznick, P, *Law and Society in Transition, Towards Responsive Law*, New York, Harper Colophon Books, 1978. Kamenka Augen and A.E. Tay, "Social Traditions, Legal Traditions" (in Kamenka & Tay (eds.), *Law and Social Control*, Edward Arnold, London, 1980. Ghai Yash, "Land Reform and Paradigm of Development: Reflections in Melanesian Constitutions" (in P. Sack (ed.) *Legal Pluralism*, Proceeding of Canberra Law Workshop VII, Research School of Social Science, ANU, 1986). Miller, D., *Social Justice*, Clarendon, Press, 1976. Polanyi, K., *The Livelihood of Man*, (ed., by H.W. Peason, New York, Academic Press, 1977. Paul Tillich, *Love, Power and Justice*, Oxford University Press, 1954.