



Review: Does Law Matter for Economic Development? Evidence From East Asia

Author(s): Tom Ginsburg

Source: *Law & Society Review*, Vol. 34, No. 3 (2000), pp. 829-856

Published by: [Blackwell Publishing](#) on behalf of the [Law and Society Association](#)

Stable URL: <http://www.jstor.org/stable/3115145>

Accessed: 28/07/2011 12:19

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=black>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Blackwell Publishing and *Law and Society Association* are collaborating with JSTOR to digitize, preserve and extend access to *Law & Society Review*.

<http://www.jstor.org>

Does Law Matter for Economic Development? Evidence From East Asia

Tom Ginsburg

Katharina Pistor and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development, 1960–1995*. New York: Oxford University Press, 1999. Pp. xi + 294 pages. \$39.95 cloth.

Kanishka Jayasuriya, ed., *Law, Capitalism, and Power in Asia: The Rule of Law and Legal Institutions*. New York: Routledge, 1999. Pp. xiii + 345 pages. \$99.99 cloth; \$32.99 paper.

Robert S. Brown and Alan Gutterman, *Asian Economic and Legal Development: Uncertainty, Risk, and Legal Efficiency*. Boston: Kluwer Law International, 1998. Pp. xv + 477 pages. \$148.00 cloth.

The relationship between law and economic development has been a central concern of modern social theory, providing a focal point for the analyses of Marx, Durkheim, and Weber. In the 1970s, law and society scholars drew on these traditions to inform international development policy in what was then called the “Law and Development Movement.” These scholars, who focused primarily on Latin America and who were informed by an activist vision of law as a tool for social change, sought to export U.S. models of law and legal education, suggesting the possibility of a theoretically informed development policy focused on law (Tamanaha 1995).

The Law and Development Movement ultimately fizzled (Gardner 1980; Trubek and Galanter 1974), and with it went the budgets for legal policy reform in developing countries. Donors

The author would like to thank Robert Kagan, Richard Steinberg, and Stephen Parker for early discussions of the themes considered here. Address correspondence to Tom Ginsburg, University of Illinois College of Law, Champaign IL 61820; e-mail: tginsbur@law.uiuc.edu.

turned their attention elsewhere. However, new theoretical developments, as well as the lingering importance of the underlying questions, have given momentum to a new wave of law and development activities on a far larger scale than ever before (deLisle 1999). Today, the relationship of law and economic development is again at the very forefront of development policymaking, as government agencies, international organizations, and the non-profit sector advocate the need for strengthening the rule of law in developing countries. Although it is probably a mischaracterization to assert that the new activity is institutionally and intellectually cohesive enough to form a "movement," it is clear that legal institutions occupy a central place in development assistance again (deLisle 1999:212–15).

The resurgence of law and development corresponds with renewed interest in the rapid postwar growth of economies in East and Southeast Asia. By most accounts, law has not played a major role in Asian economic growth. Scholars have placed more emphasis on particular policies, institutions, and cultural underpinnings rather than on law per se (Upham 1994). For example, in its monumental study, *The East Asian Miracle*, the World Bank (1993) does not discuss the legal system. Preliminary evidence from Chinese economic reforms indicates that, for the most part, increased reliance on legal ordering has not displaced a system of economic organization based on connections, or *guanxi* (Lubman 1996; Jones 1994). Having drawn on evidence from Asia, some have claimed that the rule of law is dispensable in the pursuit of economic growth (see Davis 1998:304).

There is clearly a tension between the centrality of law in theories of development and existing evidence from Asia. There are at least two possible resolutions of this tension, one empirical and the other theoretical. One possibility is that existing evidence is insufficient and that a more detailed study of Asian legal institutions would elucidate their central importance in Asian growth. The other possibility is that theoretical assumptions of donors and scholars about the universal importance of legal institutions are mistaken and that there is a need to adjust conceptual frameworks accordingly. At the broadest level, then, the questions of whether and how law matters for economic growth in Asia are of great importance for both theory and practice.

Three recent studies address these questions in different ways. Together, they expand the empirical base for the study of Asian economic law and suggest new directions for policymakers concerned with the role of law in development. In this essay, I place these studies in the broader context of the new wave of law and development and consider their particular contributions. I also suggest directions for further research that law and society scholars are well placed to conduct.

Theoretical Underpinnings of Law and Development

The new wave of law and development activity corresponds with a shift toward market-oriented economic policies in the developing world (Chua 1998). Reform of legal institutions is now seen as one pillar of a tripartite package of reforms that also includes democracy and economic liberalization. The relationships between law and politics on one hand and law and economy on the other are not well understood, but they are usually seen to be mutually reinforcing. In both the political and economic spheres the task of law is to constrain the state and empower private economic actors. Thus, liberal notions of autonomous law are at the core of the new law and development activity.

Because these issues touch on old themes in sociolegal studies, it is useful to begin with an examination of Weber, the most influential of classical social theorists in terms of the relationship between law and development.¹ Weber argued that a rational system of law played a crucial role in the economic development of the Protestant West by allowing individuals to order their transactions with some predictability (Weber 1979). The first generation of law and development scholars drew on Weber's sociology to conclude that, because rational law played an important role in the early development of capitalism, modern-day policymakers concerned with sustaining the conditions of economic growth should promote the rule of law (Trubek 1972).

As has often been observed, Weber's theory is not wholly internally consistent in its analysis of the causal relationships among law, capitalism, and culture (Trubek 1972; Likhovski 1999). For purposes of examining the influence of his ideas on development policy, it is useful to separate two strands of Weber's thinking: one that emphasized the role of ideal interests and belief systems, and another that focused on institutions. These two strands have very different implications for the theory and practice of law and development.

Weber's idealist approach was developed most concisely in *The Protestant Ethic and the Spirit of Capitalism* (1958). In this branch of Weber's scholarship, institutions alone were not sufficient to generate modern capitalism. Although rational law underpinned economic growth by providing predictable rules for private exchange, the development of capitalism required the change in consciousness associated with the Protestant reformation. Weber's analysis of China bolstered his argument that with-

¹ Some scholars interested in law and development have written from a Marxist perspective (for a review, see Tamanaha 1995), and of course Marx himself was centrally concerned with the relationship between law and capitalism. However, these views have had minimal influence on policymakers who are associated with the neo-liberal, market-oriented paradigm that is dominant today; hence, they fall beyond the scope of this essay.

out a cultural transformation technological innovation was insufficient to create capitalism.

This branch of Weber's thinking interacted with his distinction between tradition and modernity to underpin modernization theory, which informed postwar development policy into the 1970s. Modernization theory held that the development process entailed a shift away from traditional institutions and culture. The normative implication was that developing countries should adopt systems of social organization as well as technologies from the modern West. The first law and development movement was closely associated with modernization theory (Galanter 1966). Legal rules and modes of scholarship became technologies exported wholesale to developing countries in the hope that they would stimulate broader socioeconomic change, but the focus was primarily cultural rather than institutional.

In contrast, the second strand of Weber's thinking relevant to law and development focused on institutions more narrowly. Legal rationalization provided a central underpinning for capitalism, and was reflected not only in the ideal realm of culture but in specific institutions as well. Foremost of these was the hierarchically organized state administration, reliant on general rules in the form of codified law. Weber saw rational institutions as technically superior, efficient, and hence supportive of economic growth. This branch of Weber's sociology of law has been criticized on empirical grounds, not least by the existence of the England problem (Trubek 1972; Kronman 1983; Likhovski 1999: 383–85). This critique arose from the fact that industrialization occurred first not in Northern Europe but in England, with its uncodified common law. According to Weber, the common law system was less rational than the code system of his native Germany. The England problem was the first hint that law may have less to do with development than otherwise assumed.

Weber's view of the discrete role of law as facilitative of capitalism has been revitalized by the research of economic historian Douglass North (1990, 1991; North & Thomas 1973). North examined long-term differences in economic performance among nations and concluded that countries that protect property rights and establish predictable rules for resolving contract disputes provide a better environment for economic growth than those that do not. "How effectively agreements are enforced," North asserts, "is the single most important determinant of economic performance" (1991:477). The rule of law as developed in 17th and 18th century England, by ensuring that the government followed clear rules, provided a predictable, transparent environment in which capitalism later flourished. North thus avoids Weber's England problem by shifting the emphasis from legal "rationality" to effective constraint. English law may not have been "rational," but it interacted with political and social institu-

tions to reduce the state's capacity for expropriation and thereby enhance security. North's explanation of the rise of capitalism entails a subtle shift from the predictability of substantive norms to the predictability of enforcement.

North places the individual entrepreneur at the center of his theory, and in this sense he is clearly a neoliberal. Individuals are the source of capital and decisions about how best to use it. These wealth-creating private actors are threatened with appropriation from two fronts: from the sovereign on one hand, and from other entrepreneurs on the other (see Olson 1993). Property rights constrain the sovereign and prevent expropriation by the state. Enforceable contract law prevents private firms from appropriating value. These two sets of institutions extend the time horizon for the entrepreneur and make many more types of contracts possible. Without them, people would be reluctant to cooperate and entrust their capital to others.

Just as Weber's view inspired the first law and development movement in the 1960s and 1970s, North's ideas have had great influence in development agencies in the "second wave" of law and development in the 1990s. The United Nations Development Program, for example, when designing a package of assistance to promote market-oriented reforms in Vietnam, stated that the two most essential elements were a complete definition of property rights and a complete system of contract law (Jayasuriya 1999:121). This view has become a new orthodoxy for law and development programs all over the world.

Both old and new law and development activities are rooted in theories that suggest that law plays a central role in facilitating social and economic change; both have informed development policy on Asia and elsewhere (deLisle 1999:216–26). But there are theoretical differences between the two "movements." The newly ascendant neoliberal approach emphasizes the autonomous role of law in constraining the state, while the old approach emphasized culture and sought to spur broader social change. The move toward neoliberalism has paralleled a shift from one branch of Weberian thought to another, from an emphasis on cultural factors (which implicate groups) toward technical institutional arrangements (which provide an environment for individual entrepreneurs). Today's development policy assumes that a country must adopt the proper institutions to facilitate growth and that institutions can be transferred across borders.

The question then becomes What are the proper institutions? The theoretical underpinnings of law and development in both of its waves were derived almost exclusively from the historical experience of the emergence of capitalism in England and Northern Europe. There has been little attention paid thus far to the arguably different roles of law in later-developing countries,

where the role of the state may be much greater (Gerschenkron 1962; Upham 1994). Furthermore, some have asserted that theories based on the experience of Western countries may be inapplicable to societies with very different cultural traditions.

The experience of East Asia provides a rich source of material for consideration of the relationship of law and economy. With a few exceptions, accounts of East Asia have thus far not emphasized the role of law in economic development (but see Ramseyer & Nakazato 1999). There are at least two major aspects of law and economic development in Asia that deserve more empirical and theoretical inquiry: the widespread use of informal alternatives to law, and the role of the state in facilitating economic growth. In the following sections, I frame the issues at stake in considering these aspect of East Asian law and economic development.

Informal Alternatives to Law and the Challenge of Chinese Capitalism

North and Weber both emphasize the central position of private actors in capitalist development. In North's view, the legal system's protection of property rights and enforcement of contracts lowers transaction costs for exchange and allows resources to be transferred to those who can use them in the most productive fashion. Similarly, Weber's elusive concept of rational law was oriented toward individual decisionmakers needing to plan their affairs.

Clearly, the enforcement of private contracts was not the primary function of law in traditional Asian societies. Most accounts of law in imperial China, for example, discount the role of the formal legal system in facilitating commercial activity and emphasize the orientation of the law toward state interests and penal matters (Bodde & Morris 1967; cf. Bernhardt & Huang 1994). Law was seen as an instrument of state power to facilitate unified governance over a vast administrative empire. The Chinese notion of law stands in contrast to the Western view of law as a system of dispute resolution for private individuals. The harsh and sometimes unpredictable exercise of law in traditional China led merchants to seek to avoid encounters with the formal legal system. Similarly, societies under colonial rule developed informal orders that paralleled the system of state law (see, e.g., Marr 1981).

Where state-provided rules are unavailable or unenforced, economic actors develop reputation-based alternatives to obtain the crucial predictability in commercial transactions (Landa 1981; McMillan & Woodruff 1999). Under conditions of weak formal protections, business is conducted within extended family groups, and firms are typically family owned. In imperial China,

other informal institutions, such as guilds and clan groups, also served to coordinate economic exchange by signaling trustworthiness. These various institutions solved problems of trust and facilitated exchange by embedding economic activity within social relations, without relying on the formal legal system. The contrast with Western law is significant: “[W]hereas Puritanism objectified everything and transformed it into rational enterprise, dissolved everything into the pure business relation and substituted rational law and agreement for tradition, in China the pervasive factors were tradition, local custom and the concrete personal favor of the official” (Weber 1951:241).

Relational capitalism remains central to the success of overseas Chinese communities (Hamilton 1991; Redding 1990). In the various countries of Southeast Asia, ethnic Chinese minorities control vastly disproportionate shares of assets. As politically weak immigrants unable to rely on the law, the overseas Chinese have been able to compensate for the lack of a legal protection through politics and long-term contracting. In most developing countries today similar mechanisms exist to facilitate capital formation, the establishment and protection of property rights, and contract enforcement (de Soto 1989).

We know little about the relative costs and benefits of informal and formal alternatives of ordering economic transactions (Ellickson 1991; Posner 1996). One of the weaknesses is that reliance on personal reputation necessarily limits the scope of partners with whom one can contract. Informal transacting may work reasonably well in close-knit trades where people all know each other, such as the diamond business (Bernstein 1992). In complex economies, however, it can prevent many potentially beneficial transactions with new businesses or persons with whom the firm is unfamiliar (Buscaglia & Ulen 1997:276). Furthermore, internalizing transactions within family firms can lead to succession issues that depend on cultural practices. For example, in China, unlike in Korea and Japan, land was traditionally divided up among the various sons rather than distributed to the eldest son through primogeniture. When this cultural institution is adapted to modern businesses firms tend to break up after two or three generations as the children divide up the assets (Redding 1990). This in turn affects industrial structure.

Nevertheless, in times of uncertainty the family business may have certain advantages, a finding confirmed again in the recent Asian economic crisis (Gilley 2000). Social ties are more resilient than business ties and may actually be strengthened in times of economic difficulty. An interdisciplinary inquiry into the relative efficiency properties of formal versus informal modes of social ordering and their impact on social structure would be useful. Asia provides a rich research environment for evaluation of these

and other issues concerning the relationship between formal and informal norms.

The Challenge of the “Developmental State”

Another source of tension between accounts of East Asian growth and conventional development theory is the role of the state. Political scientists for a generation have emphasized the role of the state in Asian economic growth. According to many, the East Asian state did not pursue hands-off policies, as required by liberal theories, but instead led the process of growth, using a variety of instruments to cajole private actors. The government coordinated larger development efforts seen to be in the interest of society as a whole, such as cartelizing research, channeling capital, and structuring market share in declining industries. The state and large firms in Asian states concluded a pro-growth bargain.

The law is implicated mainly by its absence in this story. Anti-trust rules had to remain unenforced to facilitate cartelization. Formally transparent import rules had to be manipulated to maintain high informal barriers. Formal rights of shareholders were rarely invoked to constrain management. The so-called developmental state therefore presents its own set of issues for understanding law and economic development. The problem here is not informality per se, but collusion between regulators and regulated to keep outsiders out. Rather than facilitating capitalism, the legal system becomes an instrument of exclusion and a means of structuring who will participate in the bargaining process (Upham 1987). The developmental state requires its own particular legal configuration: stable rights of property and contract among private actors but an administrative law regime that allows maximum bureaucratic flexibility and minimum transparency.²

To be sure, not all scholars agreed with the state-oriented analysis. Some argued that market forces explained most of East Asia's success. Recent scholarship in the political economy of Asian growth has moved away from this state-market dichotomy (Klitgaard 1991; Evans 1995). These scholars study specific institutions that shape negotiation, bargaining, and information flows in the Asian economies. Developmental coalitions that span the public-private divide are crucial in these analyses, in part because they ensured that policy remained open to outside influences: “by establishing dense private-public sector networks to identify potential market opportunities, world market trends and prices

² Indeed, one of the key findings of the World Bank's *East Asian Miracle* study was the role of an insulated macroeconomic technocracy among all the “High-Performing Asian Economies.” Such insulation is easier where administrative law regimes are weak.

became the litmus test for policy-making in East Asia" (Trebilcock 1996:5).

These coalition-oriented accounts of development challenge the conventional theory about the role of law in two ways. First, they appear to undermine the assumption that general, uniformly applicable rules are necessary. General rules allow private firms to order their arrangements in ways they see best and to have some certainty that others are operating under similar rules. When such general rules are not enforced or followed, however, firms will seek alternative mechanisms of governing economic arrangements—for example, through cartelizing or entering into partnerships with government officials who can protect them. Weak law creates incentives for what Weber called a "political capitalism" (Weber 1979).

The second challenge to the conventional paradigm posed by this literature addresses the liberal emphasis on government constraint rather than empowerment. Because of the requirement that administrators follow procedural rules and avoid impinging on citizens' substantive rights, law in the liberal view is seen as a device to constrain government. But public-private coalitions require a government that is not only constrained but also empowered. They require institutions to transmit information to and from policymakers, and a capacity for effective state action when necessary. Bureaucratic flexibility may facilitate such action, perhaps sustained through very broad laws that are then filled in through the exercise of discretion (Upham 1987). This in turn may reduce predictability.

There is clearly tension between the role of the state of East Asian development and the current emphasis on secure property rights and contract enforceability. Export incentives, for example, constitute an interference with the property rights of entrepreneurs. Freedom of contract may be hindered by government-sponsored cartels and other barriers to entry. Just as the rise of Asia forced economists and political scientists to revisit assumptions about the role of the State in economic growth, so too does it call into question assumptions about the role of law in economic growth. In the next section I consider several approaches to these issues, as tendered by the three volumes under review.

Improving the Base of Empirical Evidence

The Role of Law and Legal Institutions in Asian Economic Development, 1960–1995, written by Katharina Pistor and Philip A. Welton (1999), is the product of a multiyear, comparative study conceived and funded by the Asian Development Bank (ADB) and executed by the Harvard Institute of International Development. The Office of the General Counsel of the ADB has been at the forefront of the resurgence of interest in law and development

and has made concrete efforts to draw more scholarly attention to the issues in an effort to inform more sophisticated development programming.

The study covers India and five of East Asia's high-growth economies, namely, Japan, China, Korea, Taiwan, and Malaysia, for the years of 1960–1995. The selection of cases thus includes variation in political regime, cultural background, common law/civil law legal tradition, and economic performance. For each country, leading local scholars were asked to address a common set of questions on legal and economic change. Their reports were then synthesized by the project leaders. The study identifies different policy periods for each country and examines the evolution of legal institutions and key substantive areas of law, including corporate governance and capital markets and credit and security interests. The result is a useful overview, along with a more-detailed narrative of specific areas.

The authors, seeking to explain the causes of legal and economic change in Asia, grapple with perhaps the leading theoretical issue concerning law and development, that is, whether legal systems are or ought to be converging to facilitate development. This question is particularly important in the context of Asia, where the proponents of “Asian values” have questioned the utility of universal frameworks (Mahbubani 1998). If Asia is indeed different, “[i]t would suggest that the prevailing social theories, which were derived from the experience of economic development in the West, cannot be generalized. It would also caution against the use of legal technical assistance programs as an instrument to stimulate and support economic growth and development” (Pistor & Wellons 1999:2).

To address this question, the authors present four hypotheses concerning the relationship between law and economic development (p. 21). First, laws and legal institutions may *converge* with economic development, if not formally, then in a functional sense. Second, laws and legal institutions may *diverge*. Law matters for development, but there are no discernible trends across autonomous legal systems. Third, law may be *irrelevant* for economic development, so there is no link between economic growth and legal change. Fourth, the response of law may be *differentiated*, thus some parts of legal systems may converge while others may develop idiosyncratically.

The period 1960–1995 was not one of radical legal reforms in Asia, with the important exception of China, which initiated economic and legal modernization with the ascent of Deng Xiaoping in 1979 (Lubman 1996). For the other economies, the study focuses on how existing legal frameworks in place before 1960 were used in the period under review. It also asks how the legal frameworks changed over the period in response to economic change. The causal arrows of the hypotheses and the inquiry run

in two directions: law influences development, but development also influences law.

In all the economies state discretion played an important role in economic ordering at the outset of the period. The study notes that “a relatively high level of state involvement was compatible with, and perhaps even conducive to, economic growth” (p. 10). State involvement acted as a substitute for legal ordering of private transactions in many cases. But law was not totally marginalized. Development itself created demands on the legal system and contributed to changes in economic policy. By the mid-1980s, all the economies had initiated efforts to reduce the role of the state and its discretionary power over the economy. As policies shifted to more market-oriented solutions, law became more important. Ultimately, “[l]aw mattered for economic development in the period after the policy shift” (p. 12).

This account highlights that the relationships among law, economic policy, and economic development are multidirectional. Formal legal rules were not sufficient to generate rapid growth initially, but growth resulted from specific (statist) policies. Only when the policy shifted to reliance on market mechanisms did legal change begin to have an important impact. This finding suggests not only that law is essential to underpin markets but also that unfettered markets are not the only route to economic growth in all places and times. A state that takes “property rights” in firms can in certain conditions promote growth, at least over the medium term (Milhaupt 1998).

Complicating this story is the fact that pressures for legal reform *resulted* from economic change. As economies grow and become more complex, new interests arise that create pressures for reliance on legal ordering of private transactions. Although the ADB-sponsored study (Pistor & Wellons 1999) rejects the simplistic assumption of 1960s modernization theory that development would entail a decline in traditional social institutions, it does find increased recourse to formal law as time went on in most countries. With the exception of Japan, all the countries experienced increased civil and administrative litigation rates over time. This growth in litigation raises the question of the impact of economic development on legal culture. Although the authors reject 1960s-style modernization theory, one cannot help but see echoes of that theory in the shift toward law with marketization in many countries.

The ADB’s explanatory framework derives from a two-by-two box (see Figure 1). Along one dimension, legal systems vary according to the extent that economic allocation is based on the state or the market. The other dimension is a procedural one, focusing on the extent to which decisions are based on rules or discretion (1999:55). The procedural dimension addresses the extent of Weberian rationality in the legal system (p. 53), and the

Figure 1: Typologies of legal systems.

| | | Allocative Dimension | |
|----------------------|------------|----------------------|---------------------|
| | | Market | State |
| Procedural Dimension | Rules | market/rule-based | state/rule-based |
| | Discretion | market/discretionary | state/discretionary |

SOURCE: Pistor & Wellons (1999:55).

allocative dimension implicitly captures the extent of government regulation.

The authors found that all the economies under examination, save one, shifted from the lower right box of discretionary state allocation to the upper left box of rule-based market mechanisms during the period under review, or from state allocative/discretionary law to market allocative/rule-based law (Pistor & Wellons 1999). The exceptional case is Malaysia, which experienced a slight shift toward the lower right within the upper left box, reflecting increased controls over the economy over time (1999:278).

As a general framework, this two-by-two scheme is not particularly useful. The only dimension of change is from the lower right to the upper left, again with some reverse movement in Malaysia. As a methodological matter, then, the shift occurs in single-dimensional space. In fact, this is not really a two-by-two box, as no economies fit into the upper right or lower left boxes. Even though the upper right box might correspond to an ideal-type Communist system, to which India's market socialism bears some resemblance, the combination in the lower left box of market orientation with discretionary rules is difficult to conceptualize and is probably a contradiction in terms. The study's finding that law is necessary to underpin markets illustrates the Weberian insight that discretionary rules are incompatible with market allocation.

The single-dimensional shift toward markets and formal rules implicates the issue of legal convergence. There are valid reasons for doubting that the shift toward rule-based law is inevitable, even in an era of global capitalism. Some economies will enjoy economic niches that would be hindered by greater reliance on legal ordering. For example, if strict enforcement of intellectual property law imposes domestic costs and only benefits foreign producers, local enforcement will only occur if sufficient international political pressure is brought to bear. From this perspective, globalization produces results that are similar to those of modernization theory, but does so as a result of specific political and economic pressures rather than because of a universal cultural shift. In other words, reliance on law reflects local political outcomes. Globalization is not a uniform phenomenon, but one that

exists in specific institutional contexts. There is no universal shift, but many specific ones that are intertwined.

Pistor & Wellons' study argues that convergence is occurring to the extent that economic strategies are becoming more market-based. However, independent evidence from the Asian crisis (which occurred after the bulk of the ADB's research was completed) shows that economic policy responses varied and that no uniform, market-based approach was followed. Prominent examples of responses that contravened free-market orthodoxy are the Hong Kong government's intervention, using public funds to ward off a speculative attack on the country's stockmarket in 1998, and the Malaysian government's imposition of capital controls (Krugman 1999:128, 142–46.) In other words, market solutions and particular policy responses are still being contested, and any legal convergence will remain incomplete as long as this is the case.

Part of the empirical contribution of the ADB-sponsored study is an examination of two specific areas of economic law: corporate governance, including capital formation, and credit and security interests. Both areas are of central importance for economic growth. The approach is broad-brush, however, and lacks the detail that would be useful for a more-scholarly consideration (which perhaps existed in the national reports that were the basis of the final volume).

The discussion of credit markets is useful for understanding the interaction of formal and informal means of social ordering in economic relations. Earlier studies of informal substitutes for credit interests suggested that informal institutions can "marginalize" formal law (Winn 1994). The ADB study effectively undercuts that thesis by noting that the substitutes are themselves dependent on legal norms. For example, a customary "solution" that requires insolvent small firms in Taiwan to pay a set percentage of outstanding debts (Winn 1994:207) relies on underlying legal concepts of equity ownership, contract law, and criminal sanctions for default (Pistor & Wellons 1999:16). The study also notes that the choice between formal and informal substitutes depends on the relative prices of each. When one legal substitute became unavailable or relatively less effective—namely, criminal sanctions for default—lenders shifted toward the use of security interests.

One strength of the study is its explicit concern with the legal process and legal institutions as separate subjects of analysis. The study finds less evidence for convergence in legal institutions than in substantive law. Although it does not offer a full account of why this may be the case, it does suggest that the legal process may be more path-dependent than substantive law (1999:283). The legal process is institutionalized and requires sustained and

coordinated efforts to change, whereas substantive law can be easily modified through legislation.

The study concludes with the authors' acceptance of the "differentiation hypothesis" with regard to patterns of legal and economic change. There is no global convergence of legal institutions, but neither are national legal systems hermetically sealed. The "differentiation hypothesis" proposes that law and economic development interact in complex ways. Some parts of a legal system may converge, for example, those dealing with substantive economic law, even though others, including legal processes and ideas about the role of law, may be more resistant to change. The ADB study has provided empirical support for this proposition, in turn inviting further research.

The Role of Law and Legal Institutions in Asian Economic Development, 1960–1995 is a fine attempt to deal with complex issues, avoiding simplistic explanations and stressing multidirectional causal relationships among legal change, economic development, and economic policy. It takes seriously the notion that law is embedded in culture and an economic policy framework. But the missing word in this analysis is politics. This omission may reflect constraints faced by the ADB as an intergovernmental institution without a mandate to work on "political" activities. This is a world with policies but no politics, and the analysis may therefore be incomplete from a scholarly perspective.

Consider the assertion that legal process is more "sticky" than substantive legal norms. It is well-known that prohibitively low pass-rates on bar exams restrict entry to the legal profession in Northeast Asia (Hood 1997; Ahn 1994; Chiu & Fa 1994). This outcome is supported by a coalition consisting of lawyers who capture monopoly rents, big business firms, and, in some cases, state actors who seek to minimize and contain legal challenge and social change through litigation. One should not expect rapid expansion of access to legal services until the underlying coalition of interests shifts, for example, when the government needs to encourage more lawyers to achieve other policy goals. An understanding of the political conditions that underpin the legal process might provide us with a more complete account of why Asian legal systems look the way they do and may suggest the conditions for convergence, divergence, or differentiation.

The study does not explicitly seek to address the important question of whether and how economic liberalization contributes to political liberalization, but it does suggest that the early statist strategies generated the seeds of their own demise. In many Asian countries, legal changes in the later years of the study were demand-led, as a local business class became more and more assertive as time went on (see also MacIntyre 1995). As markets became more complex, bureaucratic control became more difficult and costly. External forces also exerted pressures as trade

disputes deepened. Initially, incremental changes allowed new entrants to the marketplace, further expanding pressure for market-based law and new forms of regulation in, for example, securities markets.

The ADB authors claim that attention to political regime type is beyond the scope of the study. Nevertheless, as my discussion suggests, political factors reappear implicitly in the analysis. Politics is better addressed explicitly if the objective is to provide a comprehensive understanding of the content of economic law and its role in development. The link with politics is the dominant theme of Weber, and it has reappeared in the emphasis on "governance" in international development policy (Thomas 1999). The term governance may be useful in convincing recipients of the neutral, technical character of reform. As an analytic tool, however, it may obfuscate more than it elucidates.

These constraints notwithstanding, the 1999 ADB-sponsored study provides useful empirical data supporting the proposition that law indeed played a role in Asian economic development. Further detail, including the background papers that led to the synthetic study, would be useful. The study's empirical contributions outweigh its theoretical innovations, however, and this is not surprising given the poor state of research and the constraints on a multicountry study involving a large project team. The main theoretical shortcoming of this work is the lack of an emphasis on politics.

Bringing the State Back in to Theory

An important corrective on this score is *Law, Capitalism, and Power in Asia: The Rule of Law and Legal Institutions*, the 1999 volume edited by Kanishka Jayasuriya, a project of the Asia Research Centre of Australia's Murdoch University. Jayasuriya's approach seeks to "challenge the conventional wisdom that there are necessary connections between markets, liberal politics and the rule of law" (1999:1). Thus, Jayasuriya and the contributors self-consciously attack the liberal paradigm of the rule of law and its relationship with economic development. This book is more cohesive than the typical conference volume, as Jayasuriya's introductory framework provides an explicit reference point for most of the authors' analyses.

One of the themes of the book is the importance of anchoring the rule-of-law ideal to specific historical and institutional contexts. Unlike the ADB study, Jayasuriya and his contributors strongly suggest that Asia is indeed different from other regions, thus requiring a different theoretical model of law and society than that offered by liberalism. This alternative model is based on "non-cultural commonalities that can be identified in East Asia . . . a common set of normative understandings of the purpose

and function of state power and governance . . . and a form of managed and negotiated capitalism (that goes under the generic label of the developmental state) of the Japanese variety that has influenced the political economies of East Asia" (Jayasuriya 1999:2). The subtext of this self-consciously antiliberal approach is an effort to link the concept of the developmental state to notions of legality and the rule of law.

Jayasuriya's paper on judicial independence looks at China, Singapore, and Indonesia and proposes a corporatist model of judicial-executive relations that is in contrast to the liberal model of the separation of powers. In this corporatist model, organic notions of state-society relationships lead to collaboration between the judiciary and the executive, regardless of legal tradition (1999:198). Law becomes an instrument of state power rather than a means of constraining the state. This is statist legalism, in which legal rationality does not result from internal social evolution, but is imposed by and for the purposes of the state. This approach emphasizes historical continuities, for example, the similar use of law by the colonial and postcolonial states in Indonesia (Lev 1978).

The shift of focus—from liberal individualism to the needs of the state—necessarily entails an examination of political forces, both domestic and international, that shape the role of law in particular contexts. These themes are nicely illustrated by Andrew Rosser's paper on Indonesian intellectual property law (pp. 95–117). Like many developing countries, Indonesia resisted external pressures to enforce intellectual property rights for many years. In the 1980s and 1990s, faced with declining oil revenues and a need to increase other exports, Indonesia relented to U.S. pressure and adopted intellectual property reforms, over domestic objection. Talking about such a shift as a generic move toward "market-oriented" law, as the ADB study might characterize it, obfuscates the particular political forces at play. This is not merely an efficiency-enhancing technical reform: it is arguable that developing countries such as Indonesia are net losers when intellectual property rights are enforced (Nogues 1993). The description of legal reform as merely technical in nature disguises the important distributive consequences of many reforms, and makes both positive and normative analysis more difficult.

One of the virtues of focusing on the state is that it facilitates comparison across the communist-capitalist divide (Jayasuriya 1999:125). For example, policymakers in present-day Vietnam explicitly view the capitalist developmental states in Northeast Asia as a model. At the same time, the comparative framework in this volume of conference papers is by design less rigorous than in the ADB study, and important areas are thus left out. The volume contains two papers on Indonesia, two on Vietnam, and three on the People's Republic of China (PRC) and Hong Kong. Papers

on Malaysia and Taiwan, a theoretical piece on the rule of law, and two comparative papers round out the volume. A broader comparative selection might have been helpful. There is no full-length paper on Japan, the source of the developmental state model and the country with the oldest modern legal system in Asia, nor on Korea, the Philippines, or Thailand, each of which has its own important contributions to a comprehensive understanding of law in Asia.

This selection of cases impacts the findings. Japan has been continuously democratic since 1945, and the Philippines, Thailand, and Korea have liberalized significantly in recent years. It is arguable that the "statist" perspective on law does not apply to these liberalizing countries. Of the countries addressed in full-length chapters, only Taiwan can be called democratic. A paper on the dramatic legal reforms in Korea since 1987 would show the important roles played by the Constitutional Court in that country, the increasing size of the legal profession, and the judicialization of politics (Ahn 1998).

The utility of a transitional perspective is demonstrated by the paper on Taiwan by Sean Cooney, who has now written several papers on the Council of Grand Justices there (Cooney 1996, 1997, 1999). The Council has issued a series of important decisions expressing and advancing the democratic transition. Jayasuriya (1999:21) differs with Cooney on the extent to which the Council's decisions are truly independent, but Cooney's suggestion that law has been an instrument of democratization undercuts the broader argument of the editor that a liberal perspective is of no utility. If law can become an instrument of constraining the state in Asia, then a liberal perspective has much to offer, both descriptively and normatively. Democratization—accompanied by revitalized systems of constitutional adjudication—in Taiwan and Korea suggests that the hypothesis that economic development leads to forces for liberalization may also have explanatory power.

The best papers in this volume are those that focus on events and discourses that have received insufficient attention outside the region. Khoo Boo Teik's account of the Malaysian judiciary, for example, contains a description of Prime Minister Mahathir Mohamad's 1988 removal from the office of Lord President of the Supreme Court. Malaysia, it seems, has a judiciary that is independent and effective as far as private law is concerned, but it is hardly bold in political matters, as the recent trial of former Deputy Prime Minister Anwar Ibrahim confirmed. This fact appears to support the differentiation hypothesis of the Pistor and Wellons study; namely, that different parts of a legal system can move in different directions and that any economic convergence is not likely to be accompanied by a parallel process in the political sphere.

No country has experienced more “waves” of reform than has China. These waves include the late-19th-century attempts to modernize imperial institutions, the nationalist reforms of the Republican period, the adoption of Soviet models in the 1950s, the rejection of law in the Cultural Revolution, and, since 1979, the reestablishment of a legal order. In Jayasuriya (1999), Jianfu Chen’s paper on Chinese legal reforms provides a useful discussion of shifting legal discourse in the most recent set of reforms. He places special emphasis on the formula of a “socialist market economy,” inspired by Deng Xiaoping’s “Southern Tour” in 1992 (p. 73). This pragmatic euphemism provided ideological cover for legal scholars to consider foreign legal models. The attention to foreign models has led to calls to abandon Soviet transplants, to improve on the piecemeal and experimental approach to legal reform that characterized the early years of the Deng era, and importantly, to separate public and private law, with greater emphasis on the latter (pp. 74–75). The flourishing of these discourses among Chinese legal practitioners and scholars suggests that statist law is not always uncontested or uniform, and may not be permanent.

Similar debates are occurring over legal reform in Vietnam. The debate over statist law is illustrated by the competition between the principles of the rule of law and a Vietnamese analogue, *nha nuoc phap quyen*, a formulation better translated as rule *by* law (p. 124). Although outsiders advocate the rule of law (Sevastik 1997; Bergling 1997; Rose 1998), John Gillespie finds that “Vietnamese policy makers are attracted to neo-liberal modes of law and development advocated by multilateral agencies precisely because they hold out the possibility of centralized economic and legal mechanisms” (Jayasuriya 1999:118). This finding suggests the power of political considerations in determining what reforms are adopted.

More importantly, political considerations have an impact on what reforms are enforced. For example, in Ho Chi Minh City only 37% of all court judgments are enforced (1999:130). Evidence from Chinese reforms suggested that enforcing judgments against military-owned companies and others with political connections has proved relatively difficult (Clarke 1996). Gillespie’s study of Vietnam contains much useful detail on the incomplete state of Vietnamese legal reforms, many of which have not been fully effective or enforced. Partial enforcement does not mean law is irrelevant, but that it is contested, and the question of enforcement likely involves considerations of power and politics. Ultimately, Gillespie concludes with a qualified “yes” to the question of whether law matters: “Laws shape market behavior just by being there” (Jayasuriya 1999:140). The ways in which law can matter just by “being there” deserve further exploration (Hendley 1996).

The volume concludes with Penelope Nicholson's paper, "Vietnamese Legal Institutions in Comparative Perspective." Although Nicholson provides some data on constitutional and legal development in Vietnam, in this paper she actually presents a methodological essay that seeks to defend a moderate postmodernism for comparative law. Postmodern approaches, with their emphasis on contextualizing meaning, pose a challenge for comparative enterprises. Postmodern comparativists argue for an internal understanding of a legal system (Ainsworth 1996; Taylor 1997), implicitly suggesting that the comparative enterprise is futile. If a legal system can only be understood from inside, true comparison is nearly impossible, as few can claim to have such an internal perspective on more than one legal system. Fortunately, Nicholson (and Jayasuriya) reject this approach, noting that it "would prevent a range of insightful work being done, some of which is valuable precisely because it is done by 'others'" (Jayasuriya 1999:305). They argue for the more-moderate position that researchers should proceed with self-conscious awareness of their subjectivity, but that comparative work is nevertheless useful.

The range of papers in the Jayasuriya volume is testament to this pragmatic approach to comparative work and its contribution to understanding the relationships among the state, law, and development. As the first comparative study of the role played by law in the Asian developmental state, it is an important empirical and theoretical contribution. It poses challenges to conventional theories that view the rule of law as a product of "bottom-up" economic and social change and that are overly focused on the domestic, as opposed to international, forces at play in legal reform. The solution to both challenges is to focus more explicit attention on political factors, and the volume is an important first step in this regard.

The Dangers of Eclecticism

Of a different order is *Asian Economic and Legal Development: Uncertainty, Risk, and Legal Efficiency*, the 1998 book by Robert S. Brown and Alan Gutterman, two practicing attorneys in San Francisco. Consistent with the conventional wisdom, Brown and Gutterman argue that "inefficient legal system costs" hinder economic development and that a shift to transparent rules is necessary for further development. Unfortunately, their work does not demonstrate their thesis. Brown and Gutterman focus on important questions and have a superb bibliography but, ultimately, the quote from Frank Knight in the Introduction is apt: "There is little that is fundamentally new in this book" (quoted at p. 21).

The first half of the book consists of a series of chapters in which Brown and Gutterman summarize important literatures re-

lated to the role of law and economic development, which they treat through a favorite author. Chapter One is a summary of Karl Polanyi's classic work on the historical emergence of the market. Chapter Two consists of an account of the development of the Western legal tradition as described by Harold Berman. Other important authors summarized in later chapters include Oliver Williamson, Ronald Coase, Geert Hofstede, Douglass North, Alexander Gerschenkron, Frank Knight, and Hernando de Soto.

The authors' grand contribution is a synthetic chapter that leaves much to be desired. They rely heavily on Frank Knight's distinction between risk and uncertainty, and argue that this distinction is relevant to their analysis, but then never apply the distinction. Their theoretical framework confuses rather than elucidates, and bears no visible relation to the second half of the book, a series of country reports organized by areas of law.

Included in the second part are Japan, Korea, China, Hong Kong, Indonesia, and Thailand. For each of these, the authors provide a cursory description of the legal framework in ten areas of law that are essential for economic development, including banking, contracts, and intellectual property. This section is purely descriptive, and presumably useful as a reference, but as a broader account it offers little because the authors attempt no comparative analysis. Why some countries adopt certain rules and others do not, for example, is never brought to the fore.

One also wonders about the selection of the areas of law to be covered. Even though each area is no doubt important to the economy, others that may be relevant could have been included. Corporate reorganization, for example, is not discussed, even though the process of workouts is a crucial test for the extent to which law affects economic behavior. When decades of rapid growth in Asia came to an abrupt end in 1997, sudden pressures were placed on bankruptcy systems that had heretofore been peripheral. Also, there is no discussion of administrative law, despite the prominent role of the state in most accounts of Asian economic growth.

Furthermore, *Asian Economic and Legal Development* is full of careless errors, which calls into question its utility as a reference. For example, Marx and Weber are located together within a branch of the "historical jurisprudence school" (p. 40) that assumes that "the driving force in society is economics or the market" (p. 41). But it is elementary that Weber was writing against the economic determinism of Marx (Giddens 1973; Kronman 1983). Similarly, "export-oriented" development strategy is seen as one in which there is no discrimination between production for the domestic market and exports (p. 1). But export-orientation is usually associated with the rise of East Asian economies that deliberately "got the prices wrong," against the dictates of

neoclassical economics, precisely by “providing incentives for exporting firms” (p. 1; see also Amsden 1989:139–55).

The understanding of Asian legal systems suffers from similar elementary errors. “The Chinese legal system,” we are told, “was never codified” (Brown & Gutterman 1998:78). In fact, the most distinctive feature of the imperial Chinese legal system was its early and continuous codification. No one with even a cursory understanding of Chinese legal history could make such an error. On the same page as the Chinese statement is the bizarre assertion that modern Israelis are tolerant of ambiguity, despite their common law history, in part because they were originally subject to codified law, in the form of the Book of Leviticus.

The most original element of the book is an intriguing set of data in the last few pages comparing the length and age of the civil code with economic development rates. After spending 425 pages arguing that legal rules are essential for economic development, however, the authors pass up the opportunity to demonstrate the relationship empirically. If we are to believe their thesis, the length of the civil code should correlate roughly with legal certainty, as more rules are elaborated and less is left to the discretion of courts and bureaucracies. One would also expect that growth rates would increase after the adoption of a civil code, holding other factors constant. Rather than attempt this elementary test, the authors compare the length and age of the civil code in a number of Asian countries with their aggregate growth rates from 1981 to 1993. There is no reason to expect that the length of a code adopted decades before should have an effect on the recent annual growth rate, and unsurprisingly the authors find that there is no correlation (p. 428).³ Despite their apparent fondness for the social sciences, the authors do not apply them.

To save themselves from the failure of their empirical test, the authors dodge. Transparent rules do reduce uncertainty, they claim, but informal rules can play this role as well, as long as they are “clear, easily available and equally applicable.” (p. 428) This will not do. An obvious distinction between informal and formal rules is that the former are not backed by the coercive apparatus of state enforcement. By definition, they are unlikely to be applied equally. Furthermore, although informal rules may be clear and available to those within the relevant community, they are unlikely to be as clear to outsiders, such as foreign investors who may have an important role to play in economic development.

³ Rather than defend their position, Brown and Gutterman note on this final page of their book that this finding “is quite ominous for all that has been discussed.”

Future Directions

What is at stake in the analysis of law in Asian economic development is precisely this relationship between formal and informal rules. As suggested by the Pistor and Wellons ADB study, Asian economies did just fine for decades while heavily reliant on informal rules. For most Asian economies formal law existed as a set of default rules, but relational contracting, networks, and social norms of ethnic minority groups, rather than formal rules, dictated behavior.

Much of the discourse surrounding the "Asian Crisis" of 1997–1998 frowned on reliance on informal norms as examples of "crony capitalism" (Vines 1999; cf. Krugman 1999:37). But there has been little research on the precise roles played by informal norms or on the real impact of relational alternatives to markets. We know very little about the interrelationship of formal rules and informal practices. On one hand, norms may be efficient as compared to formal law because they rely on decentralized mechanisms for enforcement. Trust can reduce monitoring costs and minimize opportunism. On the other hand, reliance on local reputational networks can facilitate corruption and hinder state legitimacy. Network capitalism hinders not only entry by foreigners who are pushing for greater legal transparency but also those local firms that are not part of favored networks. These questions should be explored empirically and theoretically.

We also need more research on the reaction of informal structures to economic change. The Asian crisis no doubt changed the configuration of informal economic relations, as the failure of chains of firms and suppliers broke social and economic ties. Alternately, some social ties were undoubtedly reinforced as reciprocity saved many relationships. The crisis highlighted the welfare functions of family ties in Asian societies. Asian family structures have historically played an important role in capital accumulation. Families, by internalizing costs for health care and retirement, have relieved stresses on the welfare system and government expenditures. The role of these "traditional" social institutions must be understood in greater depth to have a complete perspective on economic development, and law and society scholars may be well positioned to make a contribution.

None of this is inconsistent with Douglass North's writings. North's emphasis on informal substitutes for formal institutions has received far less attention than his focus on property and contract, broadly conceived. The reasons for this lie in the programmatic implications of focusing on formal as opposed to informal institutions. Formal institutions are easy to identify, analyze, and engineer; hence, they provide a naturally attractive field for large, bureaucratically organized development agencies that

need to produce results. Informal institutions require careful empirical study and are not capable of simple external interventions. The risk is that the emphasis on formal institutions leads scholars to forgo important lines of inquiry concerning informal ones.

Another direction of future research is to examine the political underpinnings of the rule of law. How does a system based on personalistic social relations and close ties between business and government move toward a more open and transparent system governed by generally applicable rules? What configuration of political interests are required to initiate and sustain such a transformation? The recent political liberalization in many Asian countries offers rich ground for examining these questions.

When conducting this research, the rational choice approach has more to offer than might be ascertained from the Jayasuriya (1999) volume's harsh critique. Jayasuriya's critique focuses on the instrumental use of North's theory by development policymakers and North's incomplete attention to the state. But as a methodological attack, this criticism overreaches. A commitment to methodological individualism is conceptually distinct from normative liberalism. An understanding of the incentive structures that sustain legal institutions could benefit from rationalist approaches. Such approaches have generated important insights into politics in East Asia (Hahm & Plein 1996; Kohno 1997; Ramseyer & Rosenbluth 1993) and offer the potential to improve our understanding of legal institutions as well if sufficiently informed by historical and institutional detail (Ramseyer & Nakazato 1999). Rational choice approaches need not be conflated with modernization theory (cf. Jayasuriya 1999:175) since they can also explain why "traditional" outcomes are efficient or stable and, conversely, why "modern" outcomes are rent-seeking and suboptimal.

Some of the most exciting work in the rationalist vein concerns the law and economics of social norms (Posner 2000; McAdams 1997; Symposium 1996). This work is still in its early stages, but it potentially offers tools to examine one of the key issues in research on law and development: the interplay of formal and informal norms in generating institutional environments. The new literature on norms has already contributed insights to the understanding of such diverse topics as the stability of the caste system in India, sanctions among ethnically homogeneous diamond traders, and the economics of Japanese Sumo (Kuran 1995:196–204; Bernstein 1992; West 1997). By examining under what conditions institutional configurations are stable and how change can occur, this work may provide us with sophisticated tools to analyze corruption, network capitalism, and the political underpinnings of the rule of law.

Studying informal institutions requires extensive empirical work, which law and society scholars have undertaken and which development agencies are well positioned to support because of their in-country presence. One example is a study of the nascent private sector in Vietnam, supported by Swedish International Development Agency, one of the leading agencies in thinking about law and development (Bergling 1997). It uses empirical data to describe how legal reforms that are adopted too quickly can create risks of corruption. The implication for policymakers is that reforms must be paced and sequenced to allow for adjustment by economic actors. This study is an excellent example of a collaboration between development agencies and researchers that informs both policy and theory.

This type of examination suggests another direction for future study; namely, a sophisticated look at the conditions under which intentional legal transfers can be effective. The two waves of law and development are clearly part of a broader history of transfers, to which colonialism and colonial-era voluntary transfers should be added (Ginsburg 1995). With this broad historical perspective in mind, scholars and development agencies might explore legal transfers in greater depth. An important question here is whether the “voluntariness” of legal transfers makes a difference for the legitimacy and effectiveness of legal reforms. For example, did formal law take root more deeply in Japan or Thailand, countries without a colonial past, than in those countries, such as Korea or Indonesia, where modern law was imposed by a colonial power? Does law play a different role in such societies? These questions have obvious implications for Chinese legal reforms, which are being undertaken in a voluntary manner.

The Role of Law and Legal Institutions in Asian Economic Development, 1960–1995 suggests that the judiciary in common law countries (with the notable exception, since 1987, of Malaysia) may generally be more outspoken than the judiciary in the civil law tradition (1999:283). This insight sets the stage for future comparative research into how role conception can be relevant to judicial activism or passivity. Judges operate in institutional environments in which ideas of the proper role of judging have a great influence. Conducting such research will require methods familiar to traditional law and society work.

The role of law in conditioning foreign investment is another area for future research, for many assumptions are made with little concrete evidence. Law and society work in this regard has emphasized the irrelevance of, and even the costs of, law. In Vietnam, for example, the proliferation of laws, regulations, and ordinances has occurred because of the regime-level commitment to the rule of law. But without a conflict-of-laws system, investors rarely know how to deal with confusing and contradictory rules (Gillespie 1993, 1995). Recent “clarifications” of the land law

have restricted leaseholders' rights and have prompted confusion as to what the government's policy actually is. Too much law adopted too quickly may be as much a deterrent to investment as the more conventional problem of too little law. This point resonates with the view that gaps between the formal rules and local customs enhance the space for corruption and rentseeking by officials (Rose-Ackerman 1999).

Conclusion

The questions concerning the role of law in Asian economic development are absolutely crucial to development policy and to existing theory. We now have two solid volumes that begin to address them and point to directions for future research. Asia's complexity invites a diversity of approaches to address the important questions concerning the relationship of law and development.

At the outset of this essay, I suggested two possible resolutions of the existing gap in knowledge about Asian law and economic development: either the existing empirical data are incomplete and law has mattered in Asia, or the Asian experience requires adjustment in our theoretical frameworks. The volumes under review suggest that elements of both approaches are necessary. Both the Pistor and Wellons and the Jayasuriya volume make important empirical contributions, using different methodologies, but both volumes also make clear that the theoretical issues surrounding the role of law and development are by no means resolved.

References

- Ahn, Kyong Whan (1994) "The Growth of the Bar and the Changes in the Lawyer's Role: Korea's Dilemma," in P.S.C. Lewis, ed., *Law and Technology in the Pacific Community*. Boulder: Westview Press.
- (1998) "The Influence of American Constitutionalism on South Korea," 22 *Southern Illinois Law J.* 71–115.
- Ainsworth, Janet E. (1996) "Categories and Culture: On the 'Rectification of Names' in Comparative Law," 82 *Cornell Law Rev.* 19–42.
- Amsden, Alice. (1989) *Asia's Next Giant: South Korea and Late Industrialization*. New York: Oxford Univ. Press.
- Bergling, Per (1997) "Theory and Reality in Legal Cooperation: The Case of Vietnam," in P. Sevastik, ed., *Legal Assistance to Developing Countries: Swedish Perspectives on the Rule of Law*. Cambridge: Kluwer Law International.
- Bernhardt, Kathryn, & Philip C. C. Huang, eds. (1994) *Civil Law in Qing and Republican China*. Stanford: Stanford Univ. Press.
- Bernstein, Lisa (1992) "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," 21 *J. of Legal Studies* 115–57.
- Bodde, Derk, & Clarence Morris (1967) *Law in Imperial China*. Cambridge: Harvard Univ. Press.

- Buscaglia, Edgardo, & Thomas Ulen (1997) "A Quantitative Assessment of the Efficiency of the Judicial Sector in Latin America," 17 *International Rev. of Law & Economics* 275-91.
- Chiu, Hungdah, & Jyh-Pin Fa (1994) "Taiwan's Legal System and Legal Profession," in M. A. Silk ed., *Taiwan Trade and Investment Law*. New York: Oxford Univ. Press.
- Chua, Amy (1998) "Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development," 108 *Yale Law J.* 1-107.
- Clarke, Donald C. (1996) "The Execution of Civil Judgements in China," in S. L., ed., *China's Legal Reforms*. New York: Oxford Univ. Press.
- Cooney, Sean (1996) "The New Taiwan and Its Old Labour Law: Authoritarian Legislation in a Democratised Society," 18 *Comparative Labor Law J.* 1-61.
- (1997) "Taiwan's Emerging Liberal Democracy and the New Constitutional Review," in V. Taylor, ed., *Asian Laws Through Australian Eyes*. Sydney: LBC Information Services.
- (1999) "Arbitrating Reform: Taiwan's Constitutional Reform in the Transition to a Liberal Democratic Political Order," in K. Jayasuriya, ed., *Law, Capitalism, and Power in Asia*. New York: Routledge.
- Davis, Michael C. (1998) "The Price of Rights: Constitutionalism and East Asian Economic Development," 20 *Human Rights Q.* 303-37.
- deLisle, Jacques (1999) "Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond," 20 *Univ. of Pennsylvania J. of International Economic Law* 179-308.
- de Soto, Hernando (1989) *The Other Path*. New York: Harper & Row.
- Ellickson, Robert C. (1991) *Order Without Law: How Neighbors Settle Disputes*. Cambridge: Harvard Univ. Press.
- Evans, Peter (1995) *Embedded Autonomy: States and Industrial Transformation*. Princeton: Princeton Univ. Press.
- Galanter, Marc (1966) "The Modernization of Law," in M. Weiner, ed., *Modernization: The Dynamics of Growth*. New York: Basic Books.
- Gardner, James (1980) *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*. Madison: Univ. of Wisconsin Press.
- Gerschenkron, Alexander (1962) *Economic Backwardness in Historical Perspective*. Cambridge: Harvard Univ. Press.
- Giddens, Anthony (1973) *Capitalism and Modern Social Theory*. Cambridge: Cambridge Univ. Press.
- Gillespie, John (1993) "The Evolution of Private Commercial Freedoms in Vietnam," in C. A. Thayer & D. G. Marr, eds., *Vietnam and the Rule of Law*. Canberra: Australian National Univ.
- (1995) "Recent Developments in the Commercial Legal System," in B. J. Tria Kerkvliet, ed., *Dilemmas of Development: Vietnam Update 1994*. Canberra: Australian National Univ.
- Gilley, Bruce (2000) "Pulling Away," *Far Eastern Economic Rev.* 42-46 (10 Feb.).
- Ginsburg, Tom (1995) "Law and Development: The Third Wave." Presented at the Law and Society Association Annual Meeting, Toronto (June).
- Hahm, Sung-Deuk, & Christopher Plein (1996) *After Development: The Transformation of the Korean Presidency and Bureaucracy*. Washington: Georgetown Univ. Press.
- Hamilton, Gary, ed. (1991) *Business Networks and Economic Development in East and Southeast Asia*. Hong Kong: Univ. of Hong Kong Centre for Asian Studies.
- Hendley, Kathryn (1996) *Trying To Make Law Matter: Legal Reform and Labor Law in the Soviet Union*. Ann Arbor: Univ. of Michigan Press.
- Hood, David (1997) "Exclusivity and the Japanese Bar: Ethics or Self-Interest?" 6 *Pacific Rim Law & Policy J.* 199-218.
- Jones, Carol G. (1994) "Capitalism, Globalism, and the Rule of Law: An Alternative Trajectory of Legal Change in China," 3 *Social & Legal Studies* 195-221.

- Khoo Boo Teik (1999) "Between Law and Politics: The Malaysian Judiciary since Independence." in Jayasuriya, ed., *Law, Capitalism, and Power in Asia*. New York: Routledge.
- Klitgaard, Robert (1991) *Adjusting to Reality: Beyond 'State Versus Market' in Economic Development*. San Francisco: Institute of Contemporary Studies Press.
- Kohno, Masaru (1997) *Japan's Postwar Party Politics*. Princeton: Princeton Univ. Press.
- Kronman, Anthony (1983) *Max Weber*. Stanford: Stanford Univ. Press.
- Krugman, Paul (1999) *The Return of Depression Economics*. New York: Norton.
- Kuran, Timur (1995) *Private Truths, Public Lies: The Social Consequences of Preference Falsification*. Cambridge: Harvard Univ. Press.
- Landa, Janet Tai (1981) "A Theory of the Ethnically Homogenous Middleman Group: An Institutional Alternative to Contract Law," 10 *J. of Legal Studies* 349-67.
- Lev, Daniel S. (1978) "Judicial Authority and the Struggle for an Indonesian Rechtsstaat," 13 *Law & Society Rev.* 37-71.
- Likhovski, Assaf (1999) "Protestantism and the Rationalization of English Law: A Variation on a Theme by Weber," 33 *Law & Society Rev.* 365-91.
- Lubman, Stanley, ed. (1996) *China's Legal Reforms*. New York: Oxford Univ. Press.
- MacIntyre, Andrew, ed. (1995) *Business-Government Relations in Industrializing Asia*. Ithaca: Cornell Univ. Press.
- Mahbubani, Kishore (1998) *Can Asians Think?* Singapore: Times Editions Pte. Ltd.
- Marr, David (1981). *Vietnamese Tradition on Trial, 1920-1945*. Berkeley: Univ. of California Press.
- McAdams, Richard (1997) "The Origin, Development, and Regulation of Norms," 96 *Michigan Law Rev.* 338-443.
- McMillan, John, & Christopher Woodruff (1999) "Dispute Prevention Without Courts in Vietnam," 15 *J. Law, Economics & Organization* 637-58.
- Milhaupt, Curtis J. (1998) "Property Rights in Firms," 84 *Virginia Law Rev.* 1145-94.
- Nogues, Julio J. (1993) "Social Costs and Benefits of Introducing Patent Protection for Pharmaceutical Drugs in Developing Countries," 31 *The Developing Economies* 24-53.
- North, Douglass (1981) *Structure and Change in Economic History*. New York: Norton.
- (1990) *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge Univ. Press.
- (1991) "Institutions, Ideology, and Economic Performance," 11 *Cato J.* 477-87.
- North, Douglass, & Robert Paul Thomas (1973) *The Rise of the Western World: A New Economic History*. Cambridge: Cambridge Univ. Press.
- Olson, Mancur (1993) "Dictatorship, Democracy, and Development," 87 *American Political Science Rev.* 567-76.
- Posner, Eric. A. (1996) "Law, Economics, and Inefficient Norms," 144 *Univ. of Pennsylvania Law Rev.* 1697-1744.
- (2000) *Law and Social Norms*. Cambridge: Harvard Univ. Press.
- Ramseyer, J. Mark, & Frances McCall Rosenbluth (1993) *Japan's Political Marketplace*. Cambridge: Harvard Univ. Press.
- Ramseyer, J. Mark, & Minoru Nakazato (1999) *Japanese Law: An Economic Approach*. Chicago: Univ. of Chicago Press.
- Redding, S. Gordon (1990) *The Spirit of Chinese Capitalism*. Berlin: de Gruyter.
- Rose, Carol (1998) "The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study," 32 *Law & Society Rev.* 93-140.
- Rose-Ackerman, Susan (1999) *Corruption and Government: Causes, Consequences, and Reform*. New York: Cambridge Univ. Press.

- Sevastik, Per, ed. (1997) *Legal Assistance to Developing Countries: Swedish Perspectives on the Rule of Law*. Cambridge: Kluwer Law International.
- Symposium: *Social Norms, Social Meaning, and the Economic Analysis of Law* (1998) 27 *J. of Legal Studies*.
- Symposium: *Law, Economics, and Norms* (1996) 144 *Univ. of Pennsylvania Law Rev.*
- Tamanaha, Brian Z. (1995), Review Essay: "The Lessons of Law and Development Studies," 89 *American J. of International Law* 470–86.
- Taylor, Veronica, ed. (1997) *Asian Laws Through Australian Eyes* Sydney: LBC Information Services.
- Thomas, Chantal (1999) "Does the 'Good Governance Policy' of the International Financial Institutions Privilege Markets at the Expense of Democracy?" 14 *Connecticut J. International Law* 551–62.
- Trebilcock, Michael (1996) "What Makes Poor Countries Poor? The Role of Institutional Capital in Economic Development," unpublished manuscript.
- Trubek, David & Marc Galanter (1974) "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Rev.* 1062–95.
- Trubek, David (1972) "Max Weber on Law and the Rise of Capitalism," 1972 *Wisconsin Law Rev.* 720–53.
- Upham, Frank (1987) *Law and Social Change in Postwar Japan*. Cambridge: Harvard Univ. Press.
- (1994) "Speculations on Legal Informality: On Winn's 'Relational Practices and the Marginalization of Law'" 28 *Law & Society Rev.* 233–41.
- Vines, Stephen (1999) *The Years of Living Dangerously: Asia—From Financial Crisis to New Millennium*. London: Orion Books.
- Weber, Max (1954) in E. Shils & M. Rheinstein, eds., *Max Weber on Law in Economy and Society*. Cambridge: Harvard Univ. Press.
- (1951) in H. H. Gerth, ed., *The Religion of China: Confucianism and Taoism*. Glencoe, IL: Free Press.
- (1958) *The Protestant Ethic and the Spirit of Capitalism*. Trans. Talcott Parsons. New York: Scribner's.
- (1979) in G. Roth & C. Wittich, eds., *Economy and Society*. Berkeley: Univ. of California Press.
- West, Mark (1997) "Legal Rules and Social Norms in Japan's Secret World of Sumo," 26 *J. of Legal Studies* 165–201.
- Winn, Jane Kauffman (1994) "Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan," 28 *Law & Society Rev.* 193–232.
- World Bank (1993) *The East Asian Miracle: Economic Growth and Public Policy*. New York: Oxford Univ. Press.
- Yamamoto, Tadashi, ed. (1995) *Emerging Civil Society in the Asia-Pacific Region*. Singapore: Institute of Southeast Asian Studies.