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It is a signal honor to be invited to participate in these ceremonies of dedication. The vigor of dynamic growth at this most distinguished center of legal thought and training can provide reassurance to all who believe deeply in the central place of law in American democracy.

I must confess a sense of uneasiness and humility in addressing this distinguished gathering. In part I am humbled by being the political scientist, the amateur observer of governmental processes, confronting the legal community, the professionals of the processes of rule. As a political scientist my confidence has been constantly challenged by the regularity with which our graduate training programs lose out to the law schools in our competition for the brightest young men interested in public affairs. I cannot resist adding that I profoundly hope that in winning so many of these eager minds you appreciate the great responsibility you have to stimulate with ever more imaginative and intellectually challenging programs of education.

In addressing this audience I am further humbled by the fact that even as a political scientist I am not personally a student of constitutional law or legal philosophy. Even as a student of comparative politics my interests have led me more to analyzing the newly developing countries, countries which often appear to be impervious to principles about the rule of law.

Out of this awareness of my limitations for this occasion, I have chosen as my theme what I feel to be a significant paradox about the role of law in the modernization process which is now engrossing the energies of the underdeveloped countries of Asia, Africa, and the Middle East. Boldly stated, this paradox is that historically, when Western law was introduced into traditional societies with the intent of providing political order and stability, the consequence was always revolutionary social changes and tensions. Yet in the post-colonial era, when government policies have often been to accelerate social change, the weight of law has been that of a restraining and stabilizing force.

The difficulty seems to have been that in neither case were law, public administration, and the political process integrated as a part of a coherent system of social behavior. In the colonial environment law was coupled with administration, but the two realms of govern-

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ment were not related to a broad polity rooted in the general society. In the post-colonial period efforts to bring together the political life of a people and the operations of governmental administrations have not been outstandingly successful; indeed, such efforts seem often to have created tensions that weakened the links between law and public administration.

From these rather abstract generalizations we may conclude that if law is to perform a rational and constructive role in the relationship between order and change the law, public administration, and the polity of the society must fit together as a functionally interrelated system, in which each component preserves its own integrity.

Let me quickly add that by imposing upon you this degree of abstraction, I have taken a calculated risk of taxing to the limit your spirit of courtesy and hospitality. I want therefore to turn to more concrete matters and to try to illustrate my conclusions on the basis of the historical record.

I. LAW AND THE WESTERN IMPACT ON ASIA AND AFRICA

There are many themes available for telling the extraordinarily complex story of the diffusion of Western civilization throughout the world and the establishment of the era of Western colonialism. We might speak of motivating forces such as the thrill of adventure or the urge to share religious insights and to propagate doctrines, as well as all the basic and base human sentiments ranging from the quest for glory to avariciousness. Fundamental among all these themes would be the persisting demand by European civilization that human relations, and more particularly the management of disputes, should fall under explicit and universally-based laws.

As Europeans moved restlessly into the non-Western world—as traders and merchants, missionaries and adventurers—they carried with them the expectation that all societies should properly be organized as states possessing attributes of sovereignty and adhering to rules of law. Wherever the European went, one of his first revealing queries was, "Who is in charge here?" According to the logic of the European mind, every territory should fall under some sovereignty and all people in the same geographic location should have a common loyalty and the same legal obligations. Also, in these early clashes of culture the European response was to search for legal redress, and the absence of a recognizable legal order must have made life uncomfortable for these early Europeans.

If we focus our attention on the sequence of incidents which led to the establishment of any particular colonial system we are able to see the extent to which the European was driven to make commitments

and demands of all kinds because of his notions about the proper place of law in the general scheme of things.

For example, in the nearly three hundred years it took to establish their ultimate administrative empire in Indonesia, the Dutch constantly pressed for the creation of a legal order which would be consistent with that they knew in Europe. They were willing to allow traditional forms of authority to remain but steadfastly demanded that such authorities act according to a legal order. When the Dutch East India Company was first established in Java in 1619, it sought to establish a base at Batavia which would permit trading in an environment governed by law. Although in every other respect the environment at Jactra was most inhospitable to enterprise and modernization, once the conditions of law and order were met the physical obstacles of steaming swamplands and rampant malaria did not deter the rapid growth of Batavia, which today, as Jakarta, is the largest city in Southeast Asia. As the Dutch moved across Java they had to develop working relations with a large array of sultans and local potentates, each with his own tradition of rule and custom of authority. In each locale the Dutch insisted upon the recognition of certain principles of universal law even while supporting parochial, historical forms of rule. By 1830, when Dutch administrative control blanketed all of Java, they had created an extraordinary patchwork of local rulers and direct company-administered areas. The common element throughout this system was the notion that government should be related to law, and that administration should be premised upon an explicit legal order.

Relations between the British East India Company and local rulers, first in India and then in Malaya, followed very much the same pattern. Certainly one of the dynamic factors in the clash between Western traders and Chinese mandarins which accompanied the opening of China was this same persistent Western belief that human affairs can be satisfactorily carried out only under a rule of law. If we were to elaborate upon the events which took place in Canton, or the encounters between the British and Chinese which led to the Opium Wars, or the first encounters between Westerners and the Burmese and Siamese kingdoms, we could readily demonstrate this constant ingredient of the West's feelings about law.

II. Law, Administration, and Nation-Building

In tracing the story down through the colonial period to the current era of concern for the development of the newly emergent nations, we can observe that these sentiments about law have dominated not just the beginnings of the diffusion of Western culture but the entire history of Western thought about nation-building and political de-

velopment. Before turning to an analysis of the role of Westernized law under colonialism, however, it may be helpful to take a quick overview of Western thinking about national development.

As we suggested, the initial Western reaction to the non-Western world was the belief that the essential prerequisite for transforming traditional societies into nation-states was the establishment of codified legal systems. The demand for extraterritorial rights in such countries as China, Japan, and Ottoman Turkey reflected this belief that the critical difference between the modern state and traditional systems of authority was the existence of a universalistic legal system. Presumably, once it was possible to give up the necessity of extraterritoriality in a country, that government could be welcomed into the family of nations as a modern state possessing the full attributes of sovereignty.

Gradually, however, the Westerner learned that in order to change a traditional order into a modern state more than just a legal system was needed. If social and economic intercourse were to be conducted in an orderly fashion, if life was to be made more predictable, and if disputes were to be more effectively managed—that is, if the beneficial effects of a rule of law were to be realized—it would be necessary to supplement legal systems with the powers and authority of rational administration. Law requires order, and a legal system needs the backing of a civil administrative system.

Thus from this insistence that local Asian and African potentates and rulers introduce formal legal processes evolved patterns of indirect rule under which Westerners sought to provide traditional authorities with the benefits of modern bureaucracies. Indeed, throughout the colonial period modernization, progress, and the building of nations was conceived of mostly in terms of the development of two prerequisites—law and administration. Whether champions of the White Man's Burden, hardheaded traders, missionaries, or liberal idealists, all agreed that social and political advancement were substantially wrapped up in the development of law and public administration.

During the colonial period the Western mind made a powerful and enduring commitment to the concept that these two processes or systems are fundamental to nation building. Gradually the West had to recognize also a political aspect which involved popular participation and the creation of new loyalties to national symbols. In the face of this emerging nationalism the West has, however, preserved the belief that before expression should be given to popular politics a people should have legal and administrative development. The tenacity with which the West has clung to its historic concept of the proper staging of the nation-building process is to be seen in the

overriding importance given by American foreign aid to the development of administrative effectiveness in the new countries. Almost no American aid goes to the direct development of political roles or the machinery for popular politics. The overwhelming bulk of our aid is directed to facilitating one or another administratively-supported service or activity.

We have proceeded far enough with this general view of the developmental processes for the moment, and must put off any further analysis of the interrelationships among these three elements of the developmental process: law, administration, and popular politics. Let us take instead a more penetrating look at the effects of law on social development during the colonial period.

As we have suggested, the Western mind was groping for a *modus vivendi* to carry on day-to-day relations with what it considered to be exotic and bizarre cultures. The need was for some means of achieving order and predictability in relations which seemed to be dangerously tenuous; instinctively the realm of law seemed to provide a practical solution. Above all, when disputes arose the Westerners felt a desperate need for institutions of mediation and adjudication which could be trusted to adhere to universalistic principles (or at least principles that the European felt to be universalistic according to his cultural bias). Although there were other considerations, such as sentiments about justice and morality, the practical concern about uncertainty and the problem of managing disputes was a fundamental factor in the Westerner's quest to establish his sense of law and order in the non-Western world.

Leaving aside any questions of propriety, it is worth considering whether the West was acting in a rational manner in relating ends to means. Given the goal of conquering uncertainty and minimizing the consequences of disputes, was the introduction of Westernized legal systems an effective instrument? Historically, did the increased establishment of Westernized legal codes and processes in fact reduce uncertainty and disputes in the societies of Asia and Africa?

In any particular country the story was of course exceedingly complex and, as in all massive historical processes, full of many contradictory occurrences. Yet a survey of this period suggests to me that Westerners were on the wrong track, that their approach tended to intensify the very problems they sought to resolve. It is, of course, a commonplace to observe that man in solving one problem often creates many others; but here is one of history's monumental examples of man's determined capacity to stick to a single solution, and the more it was pressed the more it aggravated the very problem it purported to solve.

I put the matter squarely to you: the more the Europeans insisted upon Westernized legal systems the more uncertainty there was in human relations and the more disputes there were which could not be readily managed. In large measure Europeans could cling to their singleminded approach by reassuring themselves that Asians and Africans simply could not grasp the concept of Western law, and hence needed more of it over a longer period of time. The dream was that some day all would harmoniously abide together under a reign of law and order; but in the meantime it was fortunate that the police were a jolly fine lot who seemed to know how to handle trouble-makers.

In spite of a widespread belief that Asians and Africans had difficulties in adjusting to Westernized legal systems, I believe one could develop quite a convincing case that in many, if not most, non-Western societies the people responded quite readily to the introduction to Westernized legal concepts and procedures. Indeed, in some cultures the alacrity and enthusiasm of the response was nearly enough to trample under foot the new legal system. For example, when the British East India Company first established a system of courts in Calcutta the exuberance of the Bengali reaction was so great as to make one wonder if this was not a people with some deep, innate affinity for the legalistic mind and spirit! The romance seems to have continued to this day as the Bengali still seems capable of responding with thrill and delight to the practices of the law. I assure you that this is not just my subjective judgment, for the facts are that by 1900 one Bengali out of every seventy-four was engaged in some form of litigation.[1] There are few cultures in history that have asked so much of their courts.

The pattern was much the same elsewhere in the colonial world. In the case of Java after the Western impact it appears that the rate of litigation not only kept pace with but indeed exceeded the rate of population growth. Economic growth, education, and all the other indices of modernization could not keep up with the rise of Javanese population which in time made the island one of the most densely peopled places in the world. But strangely enough, the rate of litigation did keep pace, with the result that by the end of World War I the island possibly had as dense a rate of litigation as anywhere else in the world.

In Rangoon before World War II interest in the working of the law took on a sporting quality. Asian business houses customarily set aside each year surplus funds which were invested in energetic searches for profitable lawsuits. Young solicitors were employed to

1. ZINKIN, ASIA AND THE WEST 82 (1951).

rack their brains and dream up ingenious suits, and older rogues with scheming minds would, for a customary commission, assist in spotting likely targets for such suits.

As another example of the way in which Westernized legal systems produced effects precisely contrary to those intended, we could turn to the area of property rights and the regulation of land titles. One of the prime purposes of introducing codified legal concepts was to ensure greater stability and order in social and economic relations. To the European mind this meant that just as any society had to fall under a single political jurisdiction so did each tract of land need to have its own definite owner. To the European the prevalent Asian and African practice of not defining precisely who owned what land was bound to create confusion and instability in human relations. Yet a strange thing happened: once colonial governments insisted, for both stability and tax purposes, that clear titles be established for all cultivated lands, extremely stable communities quickly broke down and, instead of continuity and orderliness in the holding of property, land began to change hands in a most chaotic and erratic fashion.

In traditional Burma, for example, families and villages had long worked the land with little sense of precisely who owned it, and with even less feeling that it might be possible to buy and sell real property and to alienate in any sense the ancestral land. Under British rule, however, these same people, once they learned that the holding of land was no more secure than the possession of papers of title, rapidly developed a most casual feeling about having and holding real property. Exposed to the excitingly novel world of buying, selling, and mortgaging property, and more particularly to the prospect that one could fill his pockets with cash by merely putting up the title of family lands as collateral, the Burmese soon lost their old and stable habits and became so impersonally attached to their lands that they readily allowed their plots to change hands two or three times a season in the hopes of making some slight marginal profit. The result was often such a confusion of transactions that the land record officers could hardly keep pace. In short, instead of the law's encouraging predictability and stable relations there was disorderly but extremely vigorous change and transformation.

We could spend much time dwelling on the remarkably lively and darkly ingenious ways in which Asians and Africans have demonstrated their interest in Western law. Unfortunately we must rush right on to the moral of the story, which is that a process and a method which had been introduced to help manage disputes seemed to bring to life such a host of disputes that they soon became un-

manageable.[2] In many cases the demands placed upon the courts were impossibly heavy, procedures were consequently often compromised, and in time petty forms of corruption became the only method left for keeping the system together.

In short, until they were presented with Westernized methods of adjudication, Asian societies had no idea of their potential for disputation. Communities and peoples who had lived side by side for generations suddenly seemed to discover within their relations all kinds of issues calling for legal judgments. This increase in disputes stemmed in part from the tensions produced by the Western impact itself. A variety of social and economic changes—including, of course, the introduction of a Westernized legal system—disrupted the adjustment mechanism in these traditional societies, thus causing the people to become increasingly dependent upon one of the causes of their distress, the novel legal system.

Needless to say, European authorities were perplexed by such developments, and, reasoning that life had probably been more tranquil under the rule of custom, colonial officials began in the first years of this century to press for the revival and inclusion of customary law in the handling of disputes. Once again I regret that our time is limited, for it would be a pleasure to dwell upon the extraordinary things which occurred when the Western mind sought to codify Asian and African traditions. Probably the Dutch went furthest down this road when, out of a strange mixture of a diffuse and uncontrollable paternalism on the one hand and a rigidly precise and orderly outlook on the other, they compulsively sought to record systematically and make painfully explicit in numerous volumes the extremely subtle and delicate nuances of traditional Indonesian Adat law. Having done very little to make the Indonesians into Westerners, the Dutch amazingly enough were still capable of worrying about whether their charges understood their own traditions. The British were less orderly, less systematic, but the pattern was not too dissimilar in their colonies. The fact that bewigged Englishmen could sit enrobed in a tropical climate and, with all earnestness and patience, seek to explain to natives the essence of their own ancestral or tribal rules must have contributed in some degree to the universal reputation that British culture was singularly lacking in a sense of humor. According to British colonial procedures, officials were expected to respect traditional customs and practices except when they "violated universal canons of reason and propriety." These limits, which were explicitly included in the legal codes of most colonial territories, seem in the main to have been

2. For an excellent discussion of the way introduction of Western law encouraged and channelized disputes in India, see Cohn, *The Initial British Impact on India: A Case Study of the Benares Region*, 19 J. OF ASIAN STUDIES 418-31 (1960).

unnecessary, for by the time young British District Officers had finished translating in their own minds the ancient traditions of indigenous cultures they always emerged in a form which was consonant with English logic and English tastes.

If we put aside a fascination with anachronisms and return to our main theme, we observe that European efforts to codify and make explicit traditional legal principles inevitably stimulated disputes by destroying the essential ingredients necessary for handling disputes in most traditional systems. To greatly oversimplify the story, traditional cultures generally depended for the adjudication of disputes upon the wit of the wise and judicious man who, in mediating and in seeking compromise, needed the magic of ambiguous and even contradictory saws and principles. The Western approach, of course, was to minimize reliance upon the cleverness of individual adjudicators and mediators and to maximize the workings of a standardized and impersonal process of decision making. The underlying assumption of the Westernized and codified legal system was that all possible problems could be classified according to categories, that the examination of the data would reveal which category was appropriate to the particular case or issue, and that, once category and data were so clarified, a standardized process of reasoning and interpretation would bring anyone versed in the ways of the law to the proper judgment. The illusion here, of course, was that all possible categories of problems could be initially defined to prevent the need for any *ex post facto* judgments, and that the data or facts could "speak for themselves" in the sense that once brought to light they would somehow automatically inform all under what category of the law they should be properly classified.

The fallacies in these Western assumptions about the process of adjudication were readily manifest once codified legal systems were introduced into Asian and African societies. Clearly there was always so much room for argument over the interpretation of both data and categories that there could be little certainty about the probable outcome of disputes. At the same time disputes, instead of being snipped out by wise men of authority at any early stage, were channelized by the legal processes and in a sense brought out into the open.

III. The Enduring Consequences of the Introduction of Westernized Legal Systems

We cannot here go into a detailed analysis of the wide range of social, economic, and political consequences of the introduction of Westernized legal systems into the traditional societies of Asia and Africa. We must, however, note a few of these as we shift our attention

from how Westernized law failed in its purpose of reducing uncertainty, managing disputes, and providing stability in social relations during the colonial period, to the second part of our analysis which deals with how, in the post-colonial period when the main interest has been rapid changes, Westernized law has become a major stabilizing factor inhibiting desired development.

The significance of the introduction of Western legal systems is best attested to by the fact that in most Asian and African societies the most important new class to emerge under the colonial system was that of the lawyers. In many colonies the whole concept of education was tied to the aspiration of eventually receiving legal training. And in almost all colonies the law was seen as the queen of professions. It would be quite appropriate on this occasion when we are dedicating a new building for legal training for me to elaborate in some detail on what legal education meant to young Asians and Africans who were becoming excited by the prospect of joining the modern world. There is hardly a great man in those parts of the world who did not either obtain a legal education or aspire to one.

It might seem rather impolitic of me to point out that most critics of colonial practices have felt that the overproduction of lawyers in many of these countries has been a long-run liability for national development. Certainly the existence of large numbers of unemployed lawyers, full of unquenchable ambitions and with time on their hands, free only to nurse their fantasies and to engage in scheming, has not usually contributed to orderly and stable political life.

I do not intend it in any way to be an effort at humoring what I assume to be the predisposition of my audience, when I suggest that if there had to be an overproduction of any professional class it may well have been best that it was lawyers. I will not take up your time attempting to characterize the meritorious qualities of a legal education; I assume you know these better than I do. I only want to make two points. First, of all the possible ways in which Asians and Africans could have been introduced to the world of explicit and systematic reasoning in relation to empirical fact—which is the essence of Western science and philosophy—the avenue of legal training may have been heuristically the most effective. Second, with respect to the dangers of unemployed intellectuals, it seems to me that lawyers are the least likely to be destructively radical in their frustrations, for, after all, what is a lawyer without an orderly legal system? As revolutionary in spirit as many Asian and African unemployed lawyers have been, their craving for change has almost always stopped short of anything which might compromise the continuing operation of systems essential for the performance of the profession for which they were trained.

The emergence of lawyers as the new elite in many Asian and African countries meant that the diffusion of political awareness was closely associated with a spreading interest in the workings of the formal law. It would be hard to overstate the many ways in which citizens in these colonial countries became knowledgeable in, and even fascinated with, the workings of the law. Research would undoubtedly reveal that these people have many very interesting ways of comprehending and understanding the nature of Westernized law.

For our purposes it is important only to note that this approach to understanding government through an acquaintanceship with some legal principles caused a profound confusion over the relationship of form and substance in public affairs. Anxious to impress their colonial subjects with the impersonal nature of justice and the firmness and predictability of Westernized legal systems, the colonial authorities stressed increasingly the majesty of the law, and the need for everything relating to the law to be carried out in the proper prescribed fashion. Asians and Africans learned quickly that even if the slightest error occurred in the procedures it could compromise the integrity of the entire system. A single misplaced comma or an erased word could alter the entire outcome of a case. In the light of this anxious and apparently compulsive concern of Westerners for matters of form and procedure it is not surprising that many Asians and Africans came to believe that the power of the law lay in its rituals. We exaggerate only slightly when we suggest that for significant numbers the almost magical potency of the white man's laws lay entirely in carrying out the right incantations. The sum effect was that in time deference to law became associated with resisting all novel and unprecedented decisions.

Similarly, the colonial experience instilled in many Asians and Africans a belief that the law should be autonomous and subject to the wishes of no man no matter how powerful. Colonial officials constantly argued that they themselves were powerless before the law, and all people were impressed by the fact that corruption occurred whenever the law was bent to the desires of any individual. (Widespread corruption often existed, and in no small measure precisely because of this very attitude about the rigidity of law.) The difficulty was that in the colonial setting there was no formal legislative process which could serve as a balance to the judicial process. With no redress through the possibility of legislative initiation, the people and even the important officials were helpless before the universal requirement of adherence to the impersonal dictates of the law.

The result was that there was no sense of a need to connect the operations of the judiciary with the needs of public policy. The law

seemed to have an independent existence, and no one learned how it might be balanced with a legislative process which could open the way to orderly change and innovation.

IV. THE BALANCE BETWEEN LAW, ADMINISTRATION, AND POLITICS

Time does not permit us to elaborate further on how the developing feelings about the ritualistic character and the autonomous nature of the law resulted in those Asians and Africans most committed to their Westernized legal system becoming deterrents to rapid changes in the post-colonial setting. One might be led to draw the conclusion from this analysis that the great irony in these pages of history is that only since the European left the scene have his concepts about the potential influence of the law had their intended effects. Now what was to have been one of the greatest benefits of Western man is often seen as a curse to efficient and vigorous development.

I hope that this conclusion may give us some amusement, but I also believe that there is a more important lesson to be derived from this exercise in history. Have we not been observing that the heart of the problem of change and stability in political societies is the interrelationship between law, administration, and popular participation? During the colonial period we observed the limitations of the legal system in either guiding change or maintaining stability. In the post-colonial era we noted that the efforts to preserve the autonomy of the law put the system out of touch with the popular aspirations of the people in their search for change and development.

Indeed, there is considerable danger that with the rise of popular nationalism in many parts of Asia and Africa the principles of an orderly legal system will become unduly identified with a past and partly-hated period of colonial rule. Thus in time many of these countries may turn against their heritage of Westernized laws. Whenever such extreme reactions do occur, we can expect further setbacks in the process of developing a modern polity. The evidence from the historic process through which Asia and Africa have been traveling suggests that modernization and political development require a delicate but firm and stable balancing of the three aspects of government which we have singled out in this analysis. Law by itself has been inadequate in making modern nations, and even when law has been reinforced by a system of administration, national development has not automatically followed. The development of popular politics, through which a people can give expression to their aspirations and values, is the third essential ingredient of nation-building. However, if popular politics should destroy the other two—law and administra-

tion—then in another way the building of a modern polity will be crippled if not destroyed.

The capstone of the process of modernization and political development thus seems to be an inescapable need for leadership which is wise and tolerant but firm, and which, while appreciating the constructive potentialities and respecting the integrity of each of the three ingredients, can also bring the three together in harmonious actions.

Does this conclusion not possibly have some bearing on the problems of our highly advanced society? Are we too not always in need of that kind of responsible leadership which is capable of respecting the separate requirements for maintaining the vitality of the law, of governmental administration, and of the political process, while at the same time bridging the gap between them so that they may all three work in harness for the public good?