TOWARD A NEW GENERATION OF COMPARATIVE LAW: A FRAMEWORK FOR BILATERAL COLLABORATION IN LAW & DEVELOPMENT PROJECTS IN ASIA

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I. INTRODUCTION

In the current context of technical assistance for developing and post-socialist countries, law is highly valued as one of the most promising tools for economic development. Leading donors such as the World Bank and the Asian Development Bank have emphasized the importance of a fair and reliable judiciary for a sound national economy and good social governance. This policy goal is often represented by the phrase "the Rule of Law."[1] Though it might be too simple-minded to assume without any reservations that there is real and direct causation between law and economic development, the dominant chorus heard in both donor and recipient countries repeats "the Rule of Law!"[2] Given the Japanese experience since the Meiji Restoration in 1868, there appears to be some correlation between law and economic development. It is important to notice that the whole project of legal reform assistance is based upon this assumption and belief, which needs to be examined as the project proceeds.

The underlying policy considerations are diverse. The primary consideration is, of course, the goal of poverty reduction. The conventional wisdom holds that economic development will reduce and hopefully eliminate world poverty. Law is now consciously included in this reasoning of economic development.

The second consideration is the need to provide the world with the new legal framework for the global economy. There is a

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[1] *See* David M. Trubek, *The "Rule of Law" in Development Assistance: Past, Present, and Future, in* HABEN WIR WIRKLICH RECHT? (Michael Bauerle et al. eds., 2004).

[2] The German legal sociologist Max Weber once argued to the effect that highly formalized legal rules are the essential key to the creation of the modern capitalist society, where predictability generated by formal law endorsed functioning economic markets. But the British society did not seem to have had the highly predictable legal system when it lead the world since the Industrial Revolution. In Japan, this is often referred to by academics as "the English Puzzle." *See* DAVID SUGARMAN, IN SPIRIT OF WEBER: LAW, MODERNITY, AND "THE PECULIARITIES OF THE ENGLISH" 4 (Institute for Legal Studies, Working Paper Series No. 2, 1987).

perception at least, shared by the many promoters of legal reform assistance, that national and regional economies cannot operate independently and must operate under the umbrella of the global economy. From this perspective, both developed and developing countries must adjust their economies to the rapid globalization of the economy. It is quite symbolic that the elites of developing and post-socialist countries frequently mention the magic phrase: "the World Trade Organization (WTO)." They use this phrase as a positive symbol of economic development and participation in the world economy.

As they adapt to the global economy, post-socialist countries need to transform their planned economies to market economies. Economic system changes are often accompanied by new principles of social management. Popular expressions heard in recipient countries are "democracy," "the civil society," "independent judiciary," "good governance," and "human rights," all of which they associate with a vision of new social management. Though it is not always clear how these notions are coherently integrated in their minds, they seem to believe that law is instrumental in implementing these notions in society.

There is a separate policy reason for including law in technical assistance. Law could function as a built-in unit to leave the enduring influence of a donor country in the recipient country;[3] as such, law could become part of the national interest of the donor country. In this manner, Japan's Official Development Assistance Charter is the basic policy statement of the Japanese government. For example, in 2003, Japan's newly modified Official Development Assistance Charter said that "[t]he objectives of Japan's ODA are to contribute to the peace and development of the international community, and thereby to help ensure Japan's own security and prosperity."[4] This Charter guides legal reform assistance projects that the Japanese ODA provides.

Japan consciously chose East Asia as its target area and started to provide the technical assistance for legal reform since 1992. From an early stage in the assistance, Nagoya University

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[3] Academic lawyers in Japan routinely read German, French, British, and American discussions about law, mainly because some parts of the Japanese legal system were modeled after the legal systems of these countries.

[4] Japan's Official Development Assistance Charter (Draft), *at* http://www.mofa.go.jp/policy/oda/reform/revision0308.pdf. Japan was the second largest donor after the United States, and its contribution in 2003 was US $9,283 million and occupied 15.9% of the total amount. Official Development Assistance (ODA), *available at* http://www.mofa.go.jp/policy/other/bluebook/2004/chap3-d.pdf

Law School worked with the Japanese government. This collaboration continues to date.[5] Based upon the institutional experience of the technical assistance, it gradually becomes clear that we do not have enough information and data to make the assistance feasible. For example, we do not know within what sort of environment the proposed civil code works in a recipient country. What is missing is a framework or a system that could effectively integrate the relevant information from the donor, the recipient, and other sources. This would create a more effective environment for comparative legal and social analysis.

This paper attempts to identify the pressing need for a new generation of comparative law, where professionals of both donor and recipient countries collaborate bilaterally, and suggests a rough design of the new generation comparative law.

II. Japan as a Donor of "Legal Reform Assistance" Services

Though the technical assistance of Japan in the sector of legal reform actually started in 1992, when the Minister of Justice of Vietnam officially requested the assistance to the Japanese Minister of Justice, the policy focus of the Japanese government had already been expanded to cover the assistance for social reform and human resources development in the 1980s. The target of Japan's Official Development Assistance (ODA) was traditionally to create economic infrastructure of recipient countries. The Japanese ODA constructed dams, roads, bridges, water supply systems, and public buildings. Beginning in 1978, Japan diversified its assistance to include basic human needs and the development of human resources.[6]

Symbolic of this change was a policy announcement in the 1980s by the Japanese government under Prime Minister Yasuhiro Nakasone. In the early 1980s, the Nakasone government disseminated the expression "Internationalization of Japan," which might sound a bit strange to the ears of native English speakers, but was very popular among Japanese intellectuals as well as the general public. The government was advocating a radical increase in the number of overseas visitors to Japan.

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[5] The author joined the Nagoya faculty in 2000.

[6] For a brief history of the Japanese ODA, see ODA Summary 1994, History of Official Development Assistance, *at* http://www.mofa.go.jp/policy/oda/summary/1994/1.html.

In this context, the government announced in 1980 that it would increase the number of foreign students enrolled in Japanese institutions for higher education by more than ten times within twenty years. To be more specific, the government said that it would increase the number of foreign students from 8,116 in 1982 to 100,000 in 2000. With the introduction of generous fellowships provided by the government, the number of foreign students in fact jumped to 22,154 in 1987, to 48,561 in 1992, and to 64,011 in 2000. The policy target was achieved in 2003, when the number reached 109,506.[7]

Along with this general move, the Japanese government introduced programs to invite legal professionals and law students from the recipient countries. Against this background, the Japanese technical assistance to legal reform in developing countries started for Vietnam in 1992, Cambodia and Mongolia in 1994, Lao People's Democratic Republic (PDR) in 1996, China in 1996, Indonesia in 1998, and Uzbekistan in 2000. Major contributors were the Ministry of Justice, the Japan Bar Association and a few universities, including Nagoya University. They worked with the Japan International Cooperation Agency (JICA).

Prosecutors, judges, ministry officers, attorneys, and law students of recipient countries visited Japan to attend professional seminars and L.L.M. programs, largely by utilizing the Japanese ODA fund and other sources. For policy reasons, the Ministry of Education allocated a certain number of fellowships to some universities[8] to promote legal reform assistance.

In August 2003, the Amended Charter of Japan's ODA made specific reference to legal reform assistance. Many people in the legal reform assistance business took this as an official recognition of the value of legal reform projects. The relevant part of the Amended Charter reads:

> The most important philosophy of Japan's ODA is to support the self-help efforts of developing countries based on good governance, by extending cooperation for their human resource development, institution building *including development of legal systems*, and economic and social

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[7] Wagakuni Ryugakusei Seido no Gaiyo [The Ministry of Education Annual Report on Student Exchange Scheme] 7, *at* http://www.mext.go.jp/b_menu/houdou/16/05/04071201/005.htm.

[8] The universities that receive these fellowships are the Universities of Nagoya, Kyushu, and Niigata. Nagoya University accepts students from Vietnam, Cambodia, Laos, Uzbekistan, and Mongolia.

infrastructure building, which constitute the basis for these countries' development.[9]

III. Japan and "Legal Reform Assistance" Projects in Asia

Japan provided "Legal Reform Assistance" projects for a decade. The major focus was set upon two countries, Vietnam and Cambodia. Projects conducted in these countries might highlight the Japanese approach.

Professor Akio Morishima of Nagoya University was instrumental in initiating these programs.[10] He emphasized the importance of the "Joint Research Approach," in which professionals of both donor and recipient countries work together to develop reform proposals so that the end product should be well adapted to the recipient country. From this perspective, Morishima organized a Japanese working group of professionals to work with the Vietnamese counterpart. A similar approach was also used in Cambodia.

Major activities done by Japan clustered around codification of the Civil Code and the Code of Civil Procedure. Approaches to codification differed in Cambodia and Vietnam. The choice of the approach was jointly decided through the assistance project design discussion. Though there were diverse reasons, it seemed that Cambodia was not ready to draft the whole code, and Vietnam preferred Japan be the expert advisor. In Cambodia, the Japanese taskforce was created for the Civil Code in 1998 and the Code of Civil Procedure in 1999. The Civil Code taskforce was headed by Professor Morishima and the Code of Civil Procedure taskforce by Professor Morio Takeshita. It was arranged that the Japanese taskforce would prepare the drafts of two codes and that seminars and discussion sessions with the Cambodian taskforce would follow after the drafts of these codes were submitted to Cambodia. This joint research activity continues to date and the Japanese taskforce in principle meets once in a month.

In the case of Vietnam, the drafts of the two codes were prepared by the hand of the Vietnamese taskforce and were handed to the Japanese taskforce. They requested professional comments

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[9] Revision of Japan's Official Development Assistance Charter, at 2, *at* http://www.mofa.go.jp/policy/oda/reform/revision0308.pdf (emphasis added by author).

[10] *See* Ako Morishima, *Betonamu ni okeru Hou Seibi to Wagakuni no Houseibi Sien* [*Law Reform in Vietnam and Japanese Legal Reform Assistance*] 19 Jiyu to Seigi [Liberty and Justice] 47–49 (1996).

and suggestions from the Japanese taskforce, and the Japanese taskforce met to prepare the responses. The joint research approach was extensively used at this stage.

The Japanese conventional approach to new legislation, including codification of major laws, almost always adopted comparative law analysis. This dates back to the 1870s when Japan drafted her Imperial Constitution and other major codes, and this practice has been consistently followed since then. The taskforce first collects the current information of major legal systems. For example, the texts of similar provisions on a particular topic are collected from seven or more countries and a comparative table of these provisions is prepared for further examination. Annotations and comments in other jurisdictions are also collected. The Japanese taskforces for Cambodia and Vietnam prepared their responses and comments based upon a similar approach.

IV. High Expectations of the Recipient Countries and Four Academic Challenges

The Japanese lawyers and academics involved in the projects soon realized that leading figures of the recipient country had high expectations of Japanese assistance. In most cases expectations of the recipient country were not revealed but the Japanese professionals, including the author, guessed at them. Though not easy to demonstrate empirically, these are fairly common assumptions among Japanese professionals involved in the comparative research for new legislation. They researched "leading countries" in a particular legal topic such as product liability, with the expectation of discovering the key to a better solution. The author often calls this "the Blue Bird syndrome." In addition, graduate students from the recipient countries often use part of the Japanese legal system in academic discussions as "successful examples."

We can identify four expectations and their underlying suppositions. The first is that Japan has achieved economic success and must know the secret to planning this success, and Japan must be able to communicate basic know-how. For many Japanese professionals this, if expressed, must have sounded odd and extravagant, given the Japanese economy in the past decade. At the same time, they would not deny that since the 1960s, Japan enjoyed considerable economic gains. Once the Japanese professionals begin to think about how they can explain the economic

success of Japan, they realize that this is a really tough question to answer with clear-cut reasoning. This is the first puzzle and no doubt an academic challenge.

The second expectation is that Japan must know the critical relevance of law to economic development and, in turn, to democracy. It should be able to disclose the basic theory of law for economic growth. At least Japan can tell how it has successfully used law to promote economic prosperity. Having noticed this expectation and academic challenge, the eyes of professionals turned to the history and society, not of Cambodia or Vietnam, but of Japan.

The projects of law reform assistance implicitly assume that law is essential to effective social management. The focus is not limited to economic development. The third expectation of recipient countries asks the Japanese professionals to disclose how Japan could effectively use law to run the society. It is true that Japan used law in many ways at least since the Meiji Restoration in 1868.[11] However, the recipient countries wish to know the "best" approach to achieve good social governance through law.

The fourth expectation is that Japan could tell how to transform a developing county into a modern nation state in a short period. Since developing countries are striving to create new nations, they are anxious to know how the graduates of Japan's elite universities were engaged in nation building since 1868.

It seems quite natural for the elites of recipient countries to have these four expectations. If so, they are looking for a sort of theory package to shape a new nation. The package will include the theories of the state with market economy, law, bureaucracy, business, social theory and so forth.

The Japanese professionals in the "Legal Reform Assistance" projects soon realized that these four expectations and the call for a feasible theory package were nothing but real academic challenges. For one thing, these expectations required Japanese professionals to explain why Japan "succeeded" and to list all the necessary conditions for its success. In other words, they were asking for the instructions for sure steps to success.

As soon as the Japanese professionals recognized these academic challenges, they felt the heavy pressure to talk about Japan and their professional practice, not to talk about recipient countries such as Cambodia or Vietnam. In fact, it is rather difficult

[11] For a report on how Japan used law in postwar Japan, see FRANK K. UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN (1987).

for the Japanese experts to discuss the issues in Cambodia and Vietnam, for there are many barriers, including language. It is relatively easier for the Japanese experts to provide a fair description of Japanese experience which will include explanation of legal rules, institutional settings, legal and political history and even her culture. At least it makes a good starting point.[12] Many felt that this challenge was formidable and, at the same time, realized how little they have studied the relevant issues about Japan!

V. "Legal Reform Assistance" and Painting a Self-portrait of Japan

Now it gradually becomes clear that the first step of legal reform assistance is to talk about the past practice and attempts of a donor country, i.e. Japan herself. Comparison and advice to the recipient country should follow the painstaking effort of story telling of the donor's past. This story telling needs to be done with relatively deep explication and ample illustrations.

In fact, even to the elites of Cambodia and Vietnam, Japan is still a country seen through a thick veil. The image of Japan remains rather obscure.[13] Therefore, it seems to be a legitimate strategy to prepare a rough sketch, or "self-portrait" of the donor country. It would amount to a crisp presentation of what Japan was and what it did to take off economically with the help of law. One of the academic skills is to summarize a complicated whole and to make it ready for critical examination. Without showing a "Japanese model," discussion would not work. In addition, as a practical judgment, Cambodia and Vietnam cannot afford to spend the time to develop a fine-tuned Japanese model.

Even if a ready-made self-portrait of Japan is useful, it does not mean that some good candidates for her self-portrait are readily available. The author's preliminary research on this showed that there were some potential candidates, but that they

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[12] Lindblom's discussion seems to start from a similar perspective. *See* Charles E. Lindblom, *Democracy and Economic Structure in* Democracy and Market System 26 (1988).

[13] The author has conducted interviews with college students of developing countries in Asia as part of selection process of L.L.M. candidates. Many applicants characterized Japan as a "highly developed and prosperous country," but only a few of them have actually done a preliminary study on Japan. They have not attempted to visit Japanese government websites that provide information in English. Their perception of Japan seems to have been derived mainly from second-hand information and TV programs.

were not painted by Japanese hands. In the context of law and development self-portraits of Japan done by Japanese professionals are surprisingly sparse.

One popular portrait of the Japanese legal culture was done by a Japanese law professor, Takeyoshi Kawashima. He characterized the Japanese people as litigation-averse for cultural reasons,[14] but he neither discussed the relevance of law to economic development nor examined the function of law in shaping Japanese society.[15]

"The Rule of Law" once became a focus of heated academic discussion in postwar Japan. Given the fear of the revival of the totalitarian regime during World War II, Japanese intellectuals took the notion of the rule of law very seriously. It would make Japan more democratic. One of the leading figures was Professor Jiro Tanaka, who was a prominent administrative law professor and later an Associate Justice of the Japanese Supreme Court. He published a book titled *Houritsu ni yoru Gyousei no Genri [The Principle of Administration in Compliance with Law]*[16] in which he advocated the importance of the rule of law to protect the rights of citizens and to control abuse of power by the government. In the book we can easily notice Professor Tanaka's great interest in "democratization" of postwar Japan but he did not seem to be interested in the relevance of the rule of law to economic recovery. It is true that academic and practicing lawyers expressed and still pay much respect to the notion of the rule of law (or the German notion of *Rechtsstaat*) in the context of democracy. But it is not easy to find academic work that examined and established how this sincere discussion actually contributed to the improvement of Japanese administration for the protection of private rights.

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[14] *See* Takeyoshi Kawashima, *The Legal Consciousness of Contract in Japan*, 7 LAW IN JAPAN 1 (1974). The well accepted criticism of Kawashima's work was by John Haley. *See* John Owen Haley, *The Myth of the Reluctant Litigant*, 4 J. JAPANESE STUD. 359 (1978).

[15] This might be an overstatement. Kawashima published a book SHOYU-KEN HO NO RIRON [A THEORY OF PROPERTY LAW] where he discussed how the modern notion of property was created. His discussion is highly abstract and theoretical. Though his discussion may have some relevance to the topic of law and economic development, it is not a self-portrait of Japan. *See* TAKAYOSHI KAWASHIMA, SHOYU-KEN HO NO RIRON [A THEORY OF PROPERTY LAW] (1949).

[16] JIRO TANAKA, HOURITSU NI YORU GYOUSEI NO GENRI [THE PRINCIPLE OF ADMINISTRATION IN COMPLIANCE WITH LAW] (1954).

Though some might call Japan "inscrutable," overseas observers, unlike Japanese academics, presented much more diverse and vivid portraits of Japan and her legal system. For example, at one time the expression "Japan, Inc." was very fashionable, meaning that whole social system of Japan is managed by the national bureaucracy like a company.[17] Professor John Haley argued that Japanese society is run by the law but the coercive element of the law is kept to the minimum through the efforts of consensus-making.[18] Thus, he characterized the Japanese legal system as "authority without power." Professor Frank Upham claimed that Japanese law is a huge mechanism for diverting major social issues from the judiciary to the process of the governmental administration.[19]

These portraits painted by the hands of overseas scholars are in fact popular and often referred to when discussing Japanese law and society. In the context of legal reform assistance, however, reference to them was curiously rare. It is not easy to explain why this was so. The author's speculation is that the Japanese professionals working in the assistance projects are simply not ready to commit themselves to these portraits done overseas. They might not feel confident to identify the social context these portraits paint. This suggests that there remains uncultivated land for academic research. The result of the research will be utilized not only in the study of Japanese law but also in the context of legal reform assistance.

VI. Academic Products Already on the Market

More serious study of Japanese law and her experience is strongly needed, because Japan has already provided some drafts of major codes, such as the Civil Code and the Code of Civil Procedure.[20] Japan had also provided the Laotian taskforce with related assistance, such as a professional judgment drafting manual and a prosecution manual.

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[17] For a recent discussion concerning this theme, see Akiyoshi Horiuchi, et al., Implications of Recent Japanese Legal Reforms (Australia-Japan Research Centre, Pacific Economic Papers No. 302, 2000).

[18] *See* John Owen Haley, Authority without Power 166 (1991).

[19] *See* Upham, *supra* note 11.

[20] The drafts of the Civil Code and the Code of Civil Procedure were completed and submitted to the Cambodian taskforce in 2002. The joint research on the Code of Civil Procedure in Vietnam was completed in 2004. The work on the Civil Code still continues.

At this moment it is important to notice that the codes of law are not complete in themselves. The author does not mean that the codes developed by the Japanese lawyers for recipient countries necessarily have flaws, but that the codes are the very small tip of the iceberg. For a provision of law to work, many conditions must be satisfied. These conditions are not always mentioned because we regard some of these conditions as obvious assumptions, including the common sense knowledge of one's own country. In Japan, for example, when we talk about real property, we assume that the residential land and the house standing on it will be subject to separate transactions and so addressed by different laws.

In other words, black letter law printed on the pages of codes makes sense only when it is supplemented with these unmentioned assumptions. Academically, it will boil down to identifying the favorable environment in which a new code can grow comfortably. It is professional lawyers of the donor country who could identify the common sense assumptions of law not shared by the professionals of the recipient country. The same applies to the law of the recipient country. This is why the author calls the draft of a code an "academic product." Circulating printed codes without further instruction might be analogous to putting a "defective" product in the market.

If the implicit expectation of the recipient countries is to develop a workable legal framework, both the donor and the recipient should consider how to integrate the information provided by both sides. The framework of information integration should cover not only black letter law but also other relevant information. It might resemble an encyclopedia of comparative law that collects text of the law, social and economic information, current discussion on the issue, academic comments and history and so forth. But, in this case, the encyclopedia will not exist in a book form, but instead in an ever-growing web site reflecting the current information in response to the demand of the ongoing projects. Here, it becomes necessary to identify what sort of information is needed and how we can provide it.

VII. Creation of Multi-layered Channels for Comparative Legal Studies

This Article will roughly sketch a framework for "the new generation of comparative law" with some reference to the author's involvement in a Laotian project on the Commentaries on

the Business Law of 1994. The challenges of how to integrate diverse information about both Japanese and Laotian law into new legislation suggest the outline of the framework for information sharing.

The Business Law of 1994 is the basic business law Laos. Its large-scale amendment is under way, and a Japanese taskforce was organized to assist in the preparation of commentaries on the current law. When completed, it is expected that the commentaries will serve as a basic document for new legislation and also as a professional textbook. In addition the taskforce is attempting to transfer the basic knowledge and skills concerning how to develop a draft of new legislation.

The Laotian taskforce wanted to use a comparative analysis to understand better the world trends of business law legislation. In particular, they were interested in the Japanese business law that is currently a part of the commercial code.

During the collaborative research with the Laotian taskforce, the Japanese taskforce noticed some obstacles to the work. The list of these obstacles seems to suggest the need to create some standing channels for sharing the information critical to producing a feasible new legislation.

A. Lack of Translation of Japanese Law

Whenever a Japanese taskforce is engaged in a comparative study with the taskforce of other country, it faces the fact that most Japanese laws are not translated into other languages. Even if the translation is available, it is often the case that the original Japanese law has been amended and the translation has not been updated. The translation may reflect the current law, but the related by-laws, regulations, guidelines and other supplemental rules have not been translated. As a result, the information about the current Japanese law almost always remains imperfect.

Under the contemporary translation scheme, the biggest weakness is the lack of the framework to keep the translation of the Code continuously updated. Therefore, even though an updated translation of the Japanese Commercial Code is available today, there is no guarantee that the translation of the Code will be updated tomorrow. It frequently happened that the Japanese taskforce could not produce an English language version of the information of the current Japanese law. Most court cases are available only in Japanese. The situation is not so different in Laos. The English translation of the Business Law is available

but other relevant information is not readily available. The framework to translate systematically the law of Laos does not exist.

There is an obvious need to create a channel to share the information of black letter law in some common language. The Japanese government decided in 2004 to promote the translation project of Japanese law. The project is still at the early stage, and it is not clear what will be finally produced. However, the project attempts to create the translation environment where a reliable dictionary for translation of law and some tools to assist translators will be provided through the Internet.

Some countries of the world have already developed the translation environment.[21] The European Union, for example, operates an impressive system to translate its directives and other rules into the languages of its member countries. It would be quite valuable if we could "connect" these already developed translation dictionaries to the Japanese dictionary in the near future.

If Japan can develop the translation dictionary between Japanese and English and if, at least in theory, Laos can do the same, then it is possible for Japan and Laos to share the translation dictionary of law which covers Japanese, Laotian and English law. If Vietnam could join, the dictionary would cover four legal systems. Of course, there are many technical problems, including setting the standard format for basic data, but such a dictionary might be a first step towards a world multi-lingual translation dictionary of law.

B. Lack of Basic Statistics

Basic data of each country is important information in the context of legal reform assistance. The United Nations, the CIA and national governments offer this data in various ways. It is fairly easy to compare the population and the economic conditions of Japan and Laos. But if the basic data of the judiciary and other legal institutions is not readily available, the institutional details of the law enforcement may not be available, and even the accurate number of judges, prosecutors and attorneys may not be known.

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[21] According to our research, EU, Canada, France, Switzerland, China and Korea have some scheme of continuing translation of their laws.

Given this situation, the effort of the World Bank to produce basic legal information is noteworthy. The World Bank provides this information under the name of "Legal and Judicial Sector at a Glance."[22] These statistics are an effort to cover as many developing countries as possible. Curiously enough, what is missing from this project is the statistical information about developed countries, including the United States. If the first step of legal reform assistance is the story describing the donor's legal system, the lack of the statistical data is a real weakness.

The World Bank database includes such items as judges' salaries and the budget allocated to the judiciary. These numbers are important, but inaccurate in many ways. At present, we are not sure how we can utilize these statistical data. Still the statistics are valuable. If we wish to make our suggestions to the recipient country more effective, we need more information about the developed countries and a theory as to which statistical information is relevant for legal reform.

C. Lack of Real Time Information of the Local Judicial Environment

As already mentioned, black letter law is an empty shell unless it is filled with the detailed information about the cultural and historical soil where the law grows. The service of the notice of litigation, for example, makes sense in Japan, with the assumption that there is a reliable postal system. If the reliable postal system is missing, this legal concept must be understood in a totally different context. In Laos, for example, the reliably functioning postal service is not always the case.

Talking in abstract about legal terms used in the draft of a code runs the risk of overlooking the regionally shared common sense. Legal reform assistance work takes place in real time. Therefore, though the need for the local information about the recipient and the donor countries is obvious, the focus of discussion here will be the information directly relevant to a proposed code. The following four channels of information seem to be very important.

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[22] Legal and Judicial Sector at a Glance, *available at* http://www4.worldbank.org/legal/database/Justice/jMainRight.htm. The Center for Asian Legal Exchange of Nagoya University has been a partner of this project. It has reported the detailed statistical information about the Japanese judicial sector which is on the web of the World Bank mentioned above. The Center also conducts the research on some foreign countries.

(1) Information about the Policy of the Code

Here, the "policy" means not only the large-scale policy of the whole code, such as economic development, but also the policy of each provision of the code. To notice the value of the information channel to policy, it is convenient to look at the policy of one provision. Section 4 of the Laotian Business Law of 1994 recognizes four forms of companies: commercial companies, state-owned companies, collectively owned companies, and joint-venture companies. The obvious question from the Japanese taskforce was why the law had recognized these four types.

This is the search request for the legislative intent and history of Section 4. Unfortunately, the official documents were not readily available, and the Lao taskforce had to collect relevant pieces of information from various sources. The Lao taskforce made every effort to do this, and the policy behind Section 4 gradually became clear to the Japanese taskforce.

At this stage it also became necessary for the Japanese taskforce to explain the forms of companies Japanese law recognizes. In addition, the Lao taskforce requested the policy reasons for the Japanese choice. This information does not appear in the language of the code, for the code does not include historical context. The Japanese taskforce needed to go back to the legislative history, authoritative commentaries, and articles and so forth to come up with good explanation.

This will be a standard style of collaboration in the new generation of comparative law. The conventional approach used by Japanese specialists of comparative law seems to be one where a highly talented scholar attempts painstaking work to cover several legal systems and make comparative analyses. It was quite rare to adopt the research style of keeping an information channel open jointly for a substantial length of time so that professionals of two countries could share by contributing information concerning their own laws. Though the value of the traditional research is great, research might become more sustainable in the following fashion: a specialist lawyer of one country, in response to a request, shares information regarding his or her own legal system, and then the counterpart specialist may do the same, thus improving the quality of law in the recipient country through exchange.

(2) Information about Key Terms of Law

While engaging in legal reform assistance, Japanese professionals noticed that in post-socialist countries "prosecutor" denoted a professional figure radically different from the Japanese prosecutor. The prosecutor in post-socialist countries is not merely a party to the criminal proceedings but functions more like a paternalistic figure who is expected to take care of the whole legal system. As soon as we realized this difference, we realized we were operating in two radically different worlds.

This observation applies to many legal terms used in codes. A term in a code, however, does not fully explain a term. The legal dictionary provides imperfect information about a term, often giving only a short explication of the term. Therefore, any term of law should be understood on the basis of its institutional framework. Without understanding the relevant institutions of law, a term of law remains elusive. This is what any law student learns at the early stage of legal training. In theory, it is necessary to understand all the relevant institutions to grasp what a term, such as the prosecutor for example, really means. The implication of this fact is that a translation of a statute or a code only scratches the surface of the legal system.

The legal reform assistance for drafting codes must be supplemented with the project to clarify the meaning of legal terms used by the taskforce of the donor and the recipient countries. This has been the task of comparative legal study. Each taskforce occupies the best position to explain the terms of its own system to the other side. This bilateral collaboration seems to be a promising way to share the critically important information about two different legal systems. If we could integrate the result of academic research to black letter law via the Internet, the value of black letter law would be greatly enhanced.

(3) Law in Books and Law in Action

We all concede that the law in books is rarely practiced literally. The information a lawyer always wants to obtain is to what extent real and living law differs from the law in books. Even when we try to limit our focus on a particular provision in our own statute, it is not easy to describe in accurate terms how a particular provision is practiced. Further, even if we can identify the real practice, it is often hard to explain to foreign lawyers why the law in action is what it is.

The difficulty is far greater in case of a provision in a foreign statute. The Japanese taskforce experienced this many times during the legal reform assistance process in Laos and other countries. But the information is critical to designing a workable code. This task is formidable, and many busy professionals would prefer to avoid this kind of work, if possible. The best we could do is to create a scheme to encourage bilateral exchange of this important information. The system of "Request for Explanation" might work.

Given a channel of information, taskforces of the donor and the recipient countries could send to their counterpart the "Request for Explanation" asking why they practice law in a particular way. When the request arrives, the taskforce, perhaps the Japanese taskforce for example, would prepare the response. It might often be the case that ready-made answers are not available. This might be fortunate. These queries seem to contain potential targets for serious academic research. Since academic lawyers always look for promising topics of research, a "Request for Explanation" may trigger a new academic interest.

(4) Chats, Jokes, and Casual Conversation

The discussion of a particular provision of a code tends to be inclusive rather than exclusive. To assess the function of a particular provision, the taskforces examine the social, economic and political conditions, the culture, the people, religion and so forth. However, taskforces operate under hopelessly imperfect information. Nevertheless, over a certain length of time, members of the taskforces develop a "general sense of the situation." When an opinion is stated, they often evaluate whether it makes sense or not without firm evidence.

This sense of situation is fragile, but it is still a good means to locate the issues and potential solutions. In order to develop the sense of situation, it seems to be quite meaningful to share the occasions where members of the taskforces can chat, make jokes, and enjoy casual conversation. In fact, a recipient country's assumptions of the legal system have often become clear through casual conversation.

Japan's legal reform assistance projects have been implemented by sending a Japanese taskforce to the recipient country for a brief time. This method is supplemented by the scheme of inviting the taskforce of the recipient country and sending Japanese professionals for one or two years. Though the exchange of

information through email is quite frequent, the environment of continuing casual conversation seems to be lacking. The videoconference system through the Internet appears to be promising, though there remain technical difficulties. A videoconference with foreign countries tends to be seen as a "big event" in Japan. It is necessary to change this perception. If the contact through the videoconference system becomes one of several daily events, it might transform the academic environment of comparative law.

VIII. Conclusion

Japan has only engaged in legal reform assistance projects for ten years. Many academic lawyers are still more interested in the developments of Europe and North America. But law and development in Asia will be the new frontier of comparative study of law. It will be conducted through multi-layered channels, utilizing the new information technology, and will be more sustainable as a result.