

# Appendix

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**CALE**





## “Law and Development”

*Past, Present and Future*

by  
David M. Trubek

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## Law and Development as applied knowledge

- Law and Development (L&D) doctrine is designed to guide practical activities
- Orients assistance for legal reform in developing and “transition” countries
- Serves as a handmaiden to the overall development aid process

2

## Emergence of L&D

- Initial alliance: foreign aid lawyers, foundations, and law school academics
- Lawyers thought law was important to development
- Foundations thought the rule of law was essential to freedom and modernity
- Academics saw possibility for a new field

3

## Sources of L&D doctrine

- Theories were related to prevailing ideas about economic development
- Filtered through the legal consciousness of the period
- Based on idealized notions of the US legal system
- Influenced by practices of development agencies

4

## Role of US universities

- 1960s: universities were main site for production of L&D doctrine
- 1970s: university activity declined
- 1980s: specialized units in development agencies appeared
- 1990s: consulting firms and think-tanks entered the field
- Today: universities no longer the primary source for L&D doctrine

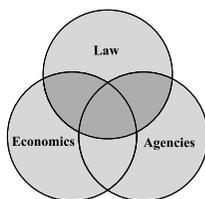
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## Ideas are drawn from three primary sources

- Development Economics
- Legal Theory
- Practices of Agencies

6

L&D doctrine as the intersection of three spheres



7

## Co-rotation of the spheres

- Each of the spheres has changed over time
- These changes unsettle prevailing L&D doctrine
- In time, a new doctrine or mainstream orthodoxy develops

8

### Three “moments” of L&D

- First Moment: Law and the Developmental State
- Second Moment: Law and The Neo-Liberal Market
- Third Moment: An Emerging Paradigm

9

### The Developmental State

- Import substitution in internal market is the engine of growth
- Scarce savings must be directed to key investment areas
- “Traditional sectors” will resist change
- Private sector too weak to provide “take-off” to self-sustaining growth
- Foreign capital scarce and possibly exploitative
- The national state creates plans, reallocates surplus, combats resistance, invests and manages key sectors, controls foreign capital

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### Law in the Developmental State

*Vision: law as a tool to remove “traditional” barriers and change economic behavior*

- Create legal structure for macro-economic control
- Translate policy goals into laws that channel economic behavior in accordance with national plans
- Create legal framework for state bureaucracy and public sector corporations
- Manage complex exchange controls and import regulations

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### First Moment assistance: modernize regulation and the legal profession

- Emphasize public law
- Transplant regulatory laws from advanced states
- Strengthen legal capacity of state agencies & state corporations
- Modernize the legal profession by encouraging pragmatic, policy-oriented lawyering
- Reform legal education

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### Two: The Neo-Liberal Market

- Focus on developing markets
- Get prices right
- Remove distortions created by state intervention
- Encourage foreign investment
- Foster export-led growth

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### Law in the Neo-Liberal Market

*Vision: law as a way to foster private transactions*

- Put emphasis on private law
- Protect property and facilitate contractual exchange
- Place strict limits on state intervention
- Ensure equal treatment for foreign capital
- Rely on judiciary as the primary actor to restrain state and facilitate markets

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### Second Moment assistance: reform private law and the judiciary

- Strengthen property rights
- Modernize contract law
- Create independent judiciary
- Encourage formalism
- One-size fits all—markets are markets, laws are laws

15

### Shifting spheres: reactions to the Second Moment

- Markets do not create themselves
- Unrestricted markets do not solve all problems
- Transplanted laws may not take
- Formalism may lead to the wrong results
- Development involves more than economic growth

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### Three: An emerging paradigm?

- Development as freedom
- Comprehensive Development Framework
- Incorporation of the “social”
- Transaction costs and market failures justify limited intervention
- Sensitivity to diversity

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### Law in the Third Moment

- Continue the private law project
- Allow limited use of regulatory law
- Continue strengthening judiciaries
- Encourage consequentialist thought
- Pay attention to access to justice
- Emphasize human rights
- Adapt to local contexts

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### Conclusion: Three Questions

- Will the Third Moment lead to chastened neo-liberalism or to a new departure?
- Will we see a re-engagement of the universities?
- Will the intellectual project become an international endeavor?

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### Developing Legal Education in Vietnam

The Project:  
Strengthening Legal Education in Vietnam

Funded by the Swedish Government  
-  
Sida

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### Developing Legal Education in Vietnam

Introduction

- ❖ Started in 1998
- ❖ Encompasses the Two Major Law Universities in Vietnam
  - ❖ Hanoi Law University
  - ❖ The Law University in Ho Chi Minh City
- ❖ Swedish Partner The Law Faculty Lund University

2

### Developing Legal Education in Vietnam

Project phases

- ❖ First phase 1998 – 2001
  - ❖ Budget: 14 million SEK (1.4 Million US\$)
- ❖ Second phase 2001 – 2005
  - ❖ Budget: 24 million SEK (app. 3.2 million US\$)
- ❖ Third phase 2005 – 2009
  - ❖ Budget: 72 million SEK (app. 10 million \$ US)
- ❖ Fourth phase 2009 – 2011 (?)

3

### Developing Legal Education in Vietnam

Hanoi Law University

- ❖ 240 Academic teachers
  - ❖ 47 PhD; 131 LLM
- ❖ 240 Staff members
- ❖ 5000 full time students (7000 part time)
- ❖ Yearly intake of students full time 900 – 1.500 (2004: 1.300 students)

4

### Developing Legal Education in Vietnam

The Law University of Ho Chi Minh City

- ❖ Academic Teachers 148:
  - ❖ 22 PhD; 66 LLM
- ❖ 62 Staff members
- ❖ 5000 full time students (3500 part time)
- ❖ Yearly intake of students full time 900 – 1.500 (2004: 1.000 students)

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### Developing Legal Education in Vietnam

The Over-all Objective

- To achieve an accomplished curriculum development and teaching methodology for bachelor, master and doctor degrees, which fit the principles of a state based on rule of law and the needs of the "Doi Moi" policy, strengthening legal education capability by improving gender equal lecturers qualification, strengthening libraries information system and widening international cooperation.

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### Developing Legal Education in Vietnam

Three Main Sub-Objectives

- Developing Gender Equal Lecturers Force
- Developing and Modernizing the Law Libraries
- Strengthening the Education and Project Management Competence and Widening the International Cooperation

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### Developing Legal Education in Vietnam

Developing Gender Equal Lecturers Force

- ❖ Teaching Methodology Training
- ❖ English for Lawyers
- ❖ Seminars and International Conferences
- ❖ Master and Doctorate Training

8

### Developing Legal Education in Vietnam

- Developing and Modernizing the Law Libraries
- ❖ Training Librarians
- ❖ Access to International Database
- ❖ Literature on International and Comparative Law

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### Developing Legal Education in Vietnam

- What kind of lawyers does Vietnam need for the future?
- How do we train the next generation of lawyers to reach this goal?
- How do we develop modern teaching methods to reach this goal?

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### Developing Legal Education in Vietnam

- Available University Training for Lawyers
- ❖ Hanoi Law University
- ❖ The Law University of Ho Chi Minh City
- ❖ National University in Hanoi (Faculty of Law)
- ❖ University of Da Lat (Faculty of Law)
- ❖ University of Can Tho (Faculty of Law)
- ❖ University of Hue (Faculty of Law)

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### Developing Legal Education in Vietnam

- Present situation in some of the poorest provinces
- ❖ Provincial Level 202 legal officers
  - ❖ 120 LLB, 2 LLM, 32 university degree other than law and 17 college degree
- ❖ District Level 440 legal officers
  - ❖ 189 LLB, 0 LLM, 39 university degree other than law and 29 college degree
- ❖ Commune Level 181 legal officers
  - ❖ 0 LLB, 42 College level and 141 passed different short professional training courses

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### Developing Legal Education in Vietnam

- Basic qualifications of a new generation of lawyers
- ❖ understand the concept of rule of law
- ❖ perspective of human rights
- ❖ understand "Good Governance" in administrative law
- ❖ ability to analyze legal texts and court cases

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### Developing Legal Education in Vietnam

- Obstacles to a modern way of teaching
- ❖ Teachers
- ❖ Students
- ❖ Text books
- ❖ Libraries
- ❖ Teaching facilities

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### Developing Legal Education in Vietnam

The way to the development of legal education

# Patience

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### Developing Legal Education in Vietnam

- Change the lecturers attitude to the learning process
- Develop lecture material to support active learning
- Support the constant development of courses, material and examination by introducing an AQAC

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## Developing Legal Education in Vietnam

### Effective Lectures

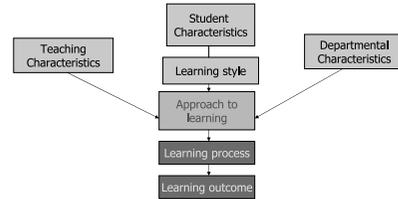
#### Student lecture reception

- ❖ The students have distinctive approaches to learning
- ❖ The approach determines the learning process and affects the quality of the learning outcome
- ❖ Three phases of approaches are visible: the surface approach, the deep approach and the strategic approach

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## Developing Legal Education in Vietnam

### Student lecture reception



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## Developing Legal Education in Vietnam

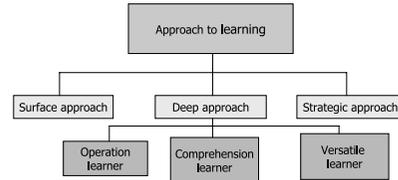
### Students Characteristics

- ❖ Teaching methods used by teachers in Secondary School, Gymnasium or College
- ❖ Teaching methods used by teachers in earlier courses at the University

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## Developing Legal Education in Vietnam

### Student lecture reception



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## Developing Legal Education in Vietnam

### Teaching (Teacher) Characteristics

- ❖ Teachers Own Background
- ❖ Subject Orientated Teaching
- ❖ Student Orientated Teaching

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## Developing Legal Education in Vietnam

### Relation Teach and Learn

	Simple	Developed
Subject Orientation	The Transfer Theory Knowledge as commodity to be transferred as from a ship to another	The Travelling Theory The subject is treated as a terrain to be explored, with the teacher as traveling expert guide
Student Orientation	The Shaping Theory Teaching treated as a process of shaping or moulding students to a predetermined pattern	The Growing Theory Focus in this theory is more on the attention on the intellectual and emotional development of the learner

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## Developing Legal Education in Vietnam

### Departmental Characteristics

- ❖ Administration
- ❖ Library
  - ❖ Library Development Strategy
  - ❖ Sources of Information
  - ❖ Student Union
- ❖ Student Facilities

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## Developing Legal Education in Vietnam

### Key word is Active Learning

- Active Learning means:
  - Participation in the learning process
  - Individual or group activity in solving problems
- Be aware of:
  - Ways of Starting the Discussion
  - Barriers to Discussion
  - Student Problem – non participation

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## Developing Legal Education in Vietnam

### The Seven Steps in PBL

1. Clarify terms and concepts not readily comprehensible
2. Define the problem
3. Analyze the problem
4. Do a systematic inventory of explanations
5. Formulate learning goals
6. Collect additional information outside of the group
7. Synthesize and test the acquired information

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## Developing Legal Education in Vietnam

### PBL - Teachers Role

- Different approach to traditional teaching
- The role is to listen without interrupting
- Prepared to catch mistakes made by students presentation
- Correct and summarize at the end of the each presentation

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## Removing Impediments to the Mobilization of Local Resources

Symposium on the Role of Law in Development --  
Past, Present and Future  
October 22 - 23, 2004  
Nagoya, Japan  
By Charles R. Irish, Director  
East Asian Legal Studies Center  
Volkman-Bascom Professor of Law  
University of Wisconsin  
Madison, USA

1

## Introduction

- Who has the money?
- Who has the capital?
- Legal impediments to the mobilization of local Resources



2

## Legal Obstacles to Local Resource Mobilization

- Laws and institutions that provide inadequate protection of property rights
- Burdensome regulations that limit the ability to start and carry on businesses
- The RESULT: potentially productive physical and human capital sits idle, or alternatively is driven into the informal economy beyond the reach of the government

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## Deficiencies in Legal System Example One

In 2003, Grace Roseau bought undeveloped land from John Hamilton. The land sits on a hill overlooking the harbor, is on the outskirts of a major city, and has easy access to a sandy beach. Because of very substantial stamp duties and corruption in the land registration office, the cost of formally registering the change in land ownership would equal about 25 percent of the total purchase price so Grace and John did what is common in the community - they informally transferred the land and did not register the transfer with the government.

In 2004, when Grace tries to build a tourist hotel on the land, however, she discovers that she cannot use the land as collateral for a loan because she is not formally acknowledged as the owner.

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## Deficiencies in Legal System Example Two

Luke Mwanakatwe wants to expand his profitable equipment leasing business, but to do so, he needs additional financing.

Luke's only tangible assets are the business equipment and his accounts receivable, but because there is no reliable credit registry in the country and national law does not recognize accounts receivable as collateral, Luke cannot obtain the financing necessary to expand his business.

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## Deficiencies in Legal System Example Three

In 2003, Wang Microsystems sold stock to a small group of investors, including Mao Shih Ming. In assessing the risk of the investment, Mao considered the financial statements of Wang Microsystems and gave special weight to the certification by the outside auditors, Chen and Partners.

In 2004, after Wang Microsystems declared bankruptcy, it appeared that the certified financial statements were very misleading and may have been fraudulent. When Mao filed a law suit against Chen and Partners for knowingly or negligently certifying the false financial statements, the case was dismissed because Mao had no formal relationship with Chen and Partners. Privily was lacking, the judge said. The judge also concluded (i) that only Wang Microsystems had standing to bring a suit against Chen and Partners for the improper certification and (ii) that Wang Microsystems' recovery might be limited to the professional fee paid to Chen and Partners.

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## Burdensome Regulation Example Four

Suharnoko wants to start his own business services company. Suharnoko's education and his previous work experience make him a good candidate for success in this venture. He also has done marketing research that indicates his business will fill a gap in the business services industry.

The problem is that the government imposes very significant costs and long time delays to start-up a new business. In order to satisfy the government regulators, Suharnoko must go through 19 different procedures which will take on average about 150 days and the total official cost of getting the business started is expected to be over US\$1,000, which is many times Suharnoko's annual earnings. In addition, it is widely understood that the time delays and large number of different procedures give rise to pressures to bribe government officials to speed up the process, so the actual cost often is much greater than the official costs. In frustration, Suharnoko gives up the plan to start the new business and continues in his job as a relatively low level employee.

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## Burdensome Regulation Example Five

Chartran, Inc, is a company engaged in manufacturing oil and natural gas pipeline equipment. The company's sales and profits are growing and Chartran want to expand its operations. Doing so, however, would require hiring new staff. The government mandates a minimum wage of US\$200 per month, night and weekend work are prohibited, women can only work a maximum of 8 hours per day, and firing workers requires the approval of the Minister of Labor and payment of 12 months salary as severance pay.

To avoid the rigidity of the labor regulations, Chartran enters into informal employment contracts with five new workers. The informal contracts provide no health care, educational or pension benefits, they are not subject to any of the safeguards in the labor regulations, and in the case of employer abuses the contracts cannot be reviewed by the courts since the labor is not documented. Chartran also pays bribes to key personnel in the Labor Ministry to look the other way with regard to the contracts.

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### World Bank's Doing Business in 2005 Analysis of Burdensome Regulations

- The 20 countries with the most burdensome business regulations and the least protection of property rights are all poor and many are among the poorest in the world.
- The 20 countries with the least burdensome business regulations:
 

1. New Zealand	11. Switzerland
2. United States	12. Denmark
3. Singapore	13. Netherlands
4. Hong Kong	14. Finland
5. Australia	15. Ireland
6. Norway	16. Belgium
7. United Kingdom	17. Lithuania
8. Canada	18. Slovakia
9. Sweden	19. Botswana
10. Japan	20. Thailand

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### Analysis of Burdensome Regulation

- Being in the top 20 on the ease of doing business does not mean zero regulation.
- All of the top countries regulate, but they do so in less costly and burdensome ways.
- And they focus their efforts more on protecting property rights than governments in other countries.

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### Conclusions of World Bank's Analysis of Burdensome Regulation

- Businesses in poor countries face much greater regulatory burdens than those in rich countries.
- Heavy regulation and weak property rights exclude the poor from doing business.
- The payoffs from reform appear large. A hypothetical improvement to the top quartile of countries on the ease of doing business is associated with up to 2 percentage points more annual economic growth.

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### Why the Benefits of Reform Are So Great?

- The government bureaucracy overseeing the regulation of business will require less of the government's resources.
- On the business side, more efficient regulations will require less time and resources for compliance, which will allow the businesses to spend more time on their productive activities.

12

### Benefits (Continued)

- Stimulate new business development
- Businesses operating in the informal economy will be encouraged to shift to the formal sector.
- The growth of the formal economy through the establishment of new businesses and shrinkage of the informal economy will expand the government's tax base.
  - Note the important implication here -- that rationalization of business regulation includes tax reform, with tax rates reduced to international norms and tax compliance penalties stepped up to increase the risks associated with operating in the informal economy.

13

### Benefits (Continued)

- Regulations will have a broader impact. This will have its greatest effect on those groups most at risk in the labor markets. Women and children now will be protected by the government regulatory process rather than being left unprotected in the informal economy.
- More attractive to foreign investors. As local barriers to doing business fall and respect for property rights grows, not only will local capital be drawn into the economy, but also foreign direct and portfolio investment will be drawn to the market.

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### Benefits (Continued)

- Greater protections for property rights will bring dormant capital into productive use.
- The emergence of local resources to finance economic activities will reduce the reliance on foreign assistance and build up national self-sufficiency.

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### Barriers to Reform are Substantial

- Regulatory reforms are taking place more in the high and middle income countries and in recent years the reform process has been driven principally by the need to compete within the newly expanded European Union.
- Unfortunately, the lowest level of reform is occurring in the poorest countries, which are most in need of reform and have the most to gain from such reform.

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### Theories of Government Regulation

- **Public interest theory of regulation:** assumes that unregulated markets experience frequent failures and that governments regulate to counter those failures and to make the markets safer and more efficient.
- **Public choice theory of regulation:** regulated industries capture the regulators and are able to turn the regulatory process to the advantage of the regulated. Under this theory, stricter regulations are in the interest of the existing operators because the regulations limit entry into the marketplace and enable the existing operators to earn monopoly rents.

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### Theories of Government Regulation (Continued)

- **Tollbooth theory of regulation:** government regulations exist to give politicians and bureaucrats the opportunity to create artificial scarcities and then extract the rents from such scarcities through bribes, campaign contributions, and employment opportunities for friends and family members.
- **Legal inheritance or legal transplantation theory of regulation:** The less developed countries may have inherited obsolete or counterproductive regulations from their former colonial masters and inertia or a lack of skilled personnel may have insulated the regulations from reform.

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### Implications for Legal Assistance Programs for Less Developed Countries

- The initial phase of legal assistances program should be a catalogue of the business regulations.
- Who are the most suitable technical advisors -- local professionals or foreign experts?
- The reforms must be implemented and then sustained to be effective.

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## Improving Legal Transparency

Integrating Statutory Translation and Statutory Drafting Tools

Yoshiharu MATSUURA,  
School of Law, Nagoya University

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## Demand of the Day: Continuing Translation of Japanese Laws into Foreign Languages

- Education of Overseas Students
- Need for global sharing of information of laws of various nations
- Globalization of Economic Activity
  - Availability of critical information for those who do business in Japan
  - Transparency of Japanese society
- Protection of Rights of Foreign Residents in Japan
  - Easy access to information on rights and duties under the Japanese law

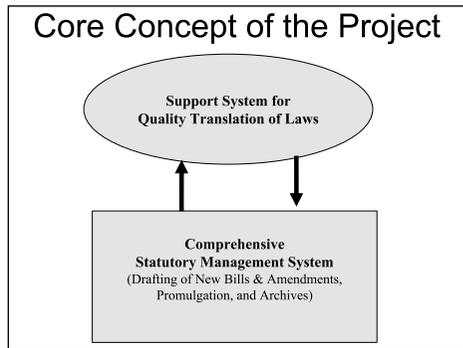
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## Project Outline

### Two Essential Sub-projects

- Development of a Support Environment for Computer Aided Translation of Laws
  - a system to produce a continuous, quality flow of translated statutory text
- Development of a Comprehensive Statutory Drafting and Archiving Environment
  - a system for drafting, amending, and disseminating statutory law

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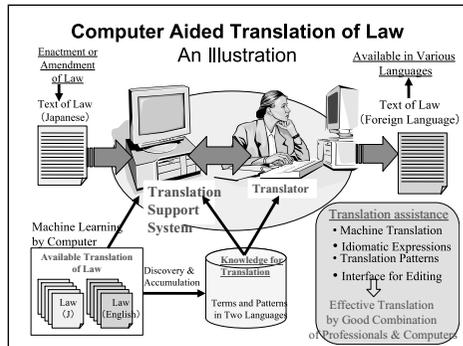


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## How the translation will be shared? An Image

The image shows a screenshot of a legal translation software interface. The top part displays a list of regulations in Japanese. Below that, a detailed view shows the Japanese text on the left and its corresponding English translation on the right. The interface includes various toolbars and a search function, demonstrating how the translated text is presented to users.

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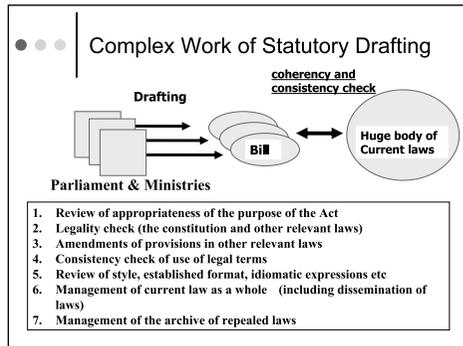
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## Development of the Comprehensive Management of Statutory Information

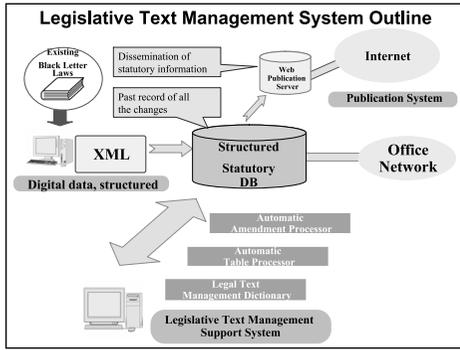
### Essential Base for Continuing Translation of Law

- Need for information management of many laws continuously drafted & amended
- Need to add meta-data to legal texts for effective translation
- Professional drafters of law are in short supply

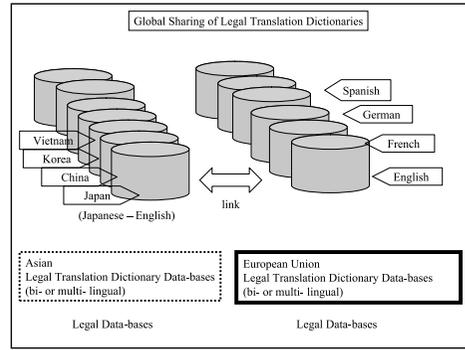
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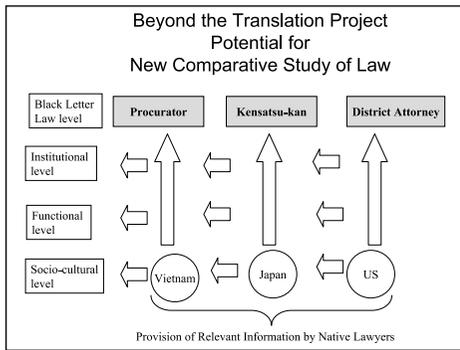
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## ANNOUNCEMENT OF AN INTERNATIONAL SYMPOSIUM

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*The Theme of the Symposium:* The Role of Law in Development – Past, Present and Future

*Date:* October 22-23, 2004

*Venue:* KKR Hotel Nagoya

(1-5-1 Sannomaru, Naka-ku, 460-0001, Nagoya, Japan)

### Speakers:

- Session 1**     **Prof. David Trubek**, University of Wisconsin Law School  
**Prof. Emeritus Akio Morishima**, School of Law, Nagoya University
- Session 2**     **Prof. Cliff Thompson**, University of Wisconsin Law School  
**Prof. Lars-Göran Malmberg**, Faculty of Law, Lund University
- Session 3**     **Prof. Katsuya Ichihashi**, Graduate School of Law, Nagoya University
- Session 4**     **Prof. Charles Irish**, University of Wisconsin Law School  
**Prof. Hiroshi Matsuo**, Keio University Law School
- Session 5**     **Prof. Masanori Aikyo**, Center for Asian Legal Exchange, Nagoya University  
**Prof. Maki Nishiumi**, School of Law, Chuo University
- Extra Session** **Prof. Yoshiharu Matsuura**, Graduate School of Law, Nagoya University  
**Prof. Thomas Bruce** (*Commentator*), Cornell Law School

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## PROGRAMME

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**October 22**

**8:15–**      **Registration**

**9:00**        **Opening Session**

*Opening Address:* **Saburi Haruo**, *Dean of Graduate School of Law, Nagoya University*

*Addresses:* **Shinichi Hirano**, *President, Nagoya University*

**Masayuki Inoue**, *Ministry of Education, Culture, Sports, Science  
and Technology*

**Keiichi Aizawa**, *Ministry of Justice, Research and Training Institute*

**9:30–12:00** **Session 1: Overview of the Past Efforts and Observations for the Future**

**9:30–10:00** **Prof. David Trubek:** The “Rule of Law” in Development Assistance:

Past, Present, and Future

**10:00–10:30** **Prof. Akio Morishima:** The Japanese Approach Toward Legal Development  
Assistance (Law and Development)

**10:30–10:50** *Coffee Break*

**10:50–12:00** **Discussion**

**12:00–13:00** *Lunch*

**13:00–15:20** **Session 2: What Sort of Lawyer will be most effective in the Context of Legal  
Reform of Developing Countries?**

**13:00–13:30** **Prof. Cliff Thompson** (*ex Dean of UW Law School*):

Legal Education for Developing Countries: A Personal Case Study from  
Indonesia

**13:30–14:00** **Prof. Lars-Göran Malmberg** (*Faculty of Law, Lund University*)

The Project: Developing legal education in Vietnam

**14:00–15:10** **Discussion**

**15:10–15:30** *Coffee Break*

**15:30–18:30** **Session 3: The Role of Law in the Developing Countries**

**15:30–16:00** **Prof. Katsuya Ichihashi** (*Graduate School of Law, Nagoya University*)

Law and Legal Assistance in Uzbekistan

**16:00–17:00** **Discussion**

**17:00–**      **Steering Committee**

**Members:** Charles Irish, David Trubek, Christian Hathen, Lars-Göran  
Mamlberg, Thomas Bruce, Masanori Aikyo, Yoshiharu Matsuura,  
Haruo Saburi, Masanori Kawano

**18:30–20:30** **Reception**

## October 23

### **9:00–12:00** *Session 4: The Rule of Law and Economic Development*

9:00– 9:30 **Prof. Charles Irish** (*UW Law School*)

Removing Impediments to the Mobilization of Local Resources A Paper for the Symposium on the Role of Law in Development – Past, Present and Future

9:30–10:00 **Prof. Hiroshi Matsuo** (*Keio University Law School*)

The Rule of Law and Economic Development: a Cause or a Result?

10:00–10:20 *Coffee Break*

10:20–11:30 **Discussion**

**11:30–13:00** *Lunch*

### **13:00–16:00** *Session 5: The Rule of Law and “Democracy”*

13:00–13:30 **Prof. Masanori Aikyo** (*Center for Asian Legal Exchange, Nagoya University*)

Human Rights and Democracy in Vietnam — Some thoughts on the philosophy of Legal Assistance

13:30–14:00 **Prof. Maki Nishiumi** (*School of Law, Chuo University*)

Development and Democracy — from a Viewpoint of International Law

14:00–14:20 *Break*

14:20–15:40 **Discussion**

**15:40–16:00** *Coffee Break*

### **16:00–16:45** *Extra Session*

16:00–16:30 **Presentation: Prof. Yoshiharu Matsuura** (*Graduate School of Law, Nagoya University*)

A Nagoya Project: Translation Project of the Japanese Law — Its Implication for Statutory Drafting and Management of the Statute Data Base

16:30–16:45 **Comment: Prof. Thomas Bruce** (*Cornell Law School*)

Comments on Nagoya project

**16:45–17:00** **Closing Remarks**