Foreword

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For the range of historical heritages, ideological diversity, rapidity of economic and social change, collisions of political values, and contests over the place and purview of law and legal process, nowhere in the world now is there a region better suited to the comparative study of legal evolution than Southeast Asia. Relatively little has been done to take advantage of it. The conference from which this symposium has been excerpted is especially encouraging, not only for its choice of participants—legal scholars and social scientists in and out of the region—but also for the topics it dealt with and the reach of the discussions it provoked.

Where does one start in what is, essentially, a wide-open field? It is not so much that data are utterly lacking. In Thai, Vietnamese, Indonesian, Malay, English, French, Dutch, and a few other languages, there is a good deal of material on law and legal systems as they have taken form historically. Not all of it is relevant to the questions we now ask, but this deficiency merely prescribes more research. The more basic problem is exactly what to ask, on the basis of what kinds of assumptions about law, about how legal systems do work and ought to work, about the social or political or economic or cultural sources of law and legal values. One significant contribution of the conference in Chiang Mai was to begin to raise questions about questions.

It is not altogether surprising that issues of substantive law—women, family, land, environment—came to a focus relatively quickly and productively at the conference. For here the starting point is outside the law, in society or economy, and the problem areas are fairly clear. There may be disagreements over what to do about them but few, if any, about what they are or how to go about understanding the interests, values, and demands at stake in the debate surrounding them. The essays on each subject area,

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and the discussions of them, are rich in detail and argument, making the connections essential to comparative analysis.

When the starting place is law itself, however, or its cultural sources, or its formal institutions, or the state that sponsors them, suddenly huge doubts arise, confusion spreads, and the effort to analyze, understand, and explain threatens to explode in frustration, albeit sometimes productive frustration of the sort, evident at the conference, that forces new thinking. There may be two sources of difficulty, one quite natural, the other perhaps a figment of our imaginations. The first is that it is hard to get a picture of a moving object; states, legal systems, legal processes, and the uses of law for getting anything done legitimately in Southeast Asian states are all contested and undergoing change—not steady, measurable change but in spurts and starts of political crises, often dramatic turns under domestic and external pressure. With the partial exception of Singapore, no country in the region has avoided the drama of serious constitutional—in the broad sense—confrontation in recent years, set off by economic transformations, social upheaval, ideological battles over the very shape of the state and its relationship to society.

In these circumstances, just about anything one says about law and state in Southeast Asia has, or should have, an air of tentativeness or contingency about it, but for the rest there is extraordinarily rich material for the study of change itself—of the state and the crises of legitimacy that surround it, but also of specific legal institutions on their own terms, of attitudes, values, conflicts, ideologies, and interests as they influence legal process. Yet the other kind of difficulty, more serious methodologically and theoretically, may get in the way of doing such research comfortably. The assumptions we carry around about what law properly is, how legal process properly works, what a real state looks like, and what is required culturally for it all to come together may be getting in the way of the empirical work we need more than anything else.

The problem arises constantly, immediately cued by just about any reference to "West" or "East," setting off something like a conditioned response of standard formulas about the twain that lead away from the more obvious toward the more obscure. Cultural treatments of law have a long history filled with provocative, sophisticated, and enlightening analysis—but also with the stuff of myth, often prejudicial myth at that. Even if we are confident in our interpretation of local cultures anywhere, as perhaps we ought not to be, it is not at all clear that cultural analysis, no matter how compelling and attractive, will help us to understand changes that challenge and move away from tradition. And it may be, too, that even our concepts of "culture" are a bit too vague for precision and too filled with misleading distinctions drawn from an interested history of European expansion. I do

not mean to suggest that we simply forget about "culture" as a source of law, but rather that we break the concept down into more manageable parcels—ideology, for example, should probably be treated independently—that are allowed no priority over other variables that can be identified and examined directly.

There is a special reason for this appeal, one suggested by the discussions in this symposium. Cultural analysis tends either to render law and legal systems *sui generis* or to classify them grandly—"West"/"East"—in ways that obliterate relevant distinctions and similarities within and across the divides. Studies of substantive legal issues demonstrate, often enough, how amenable such issues are to comparative research across cultural boundaries. There is no reason why the same should not be true of procedural questions, of how legal institutions work and legal issues are framed. For good or ill, the modern Southeast Asian state is genetically related to all other states; and courts, prosecutors, advocates, notaries, legislatures, administrative bureaucracies, mediators, fixers are everywhere enough alike to encourage genuine comparative work. If we classify the world's legal systems around a distinction as simple as that, say, between common law and civil law patterns, rather than exclusive cultural orders, and then examine them in appropriate social settings, we probably will have a better chance of fulfilling the promise of comparative law.

To do so, however, we have to keep in check our inclinations to ideological and ideal-typical thinking about what law is and how it works, for what it is and how it works basically depends on local circumstances—no less in Asia than in Europe and elsewhere. In the clear-headed empirical study of these foundations of substantive and procedural law, from the ground up, we can hope that the new perspectives that arise from research in Asian law will feed back into clearer understandings of law and legal process elsewhere, not least perhaps in Europe and North America.