

DISCUSSION

The discussion of Yogendra Singh's paper began with a general agreement that greater focus is needed in the analysis of the linkages between law and social change. The suggestion was made that a more fundamental question must be addressed that is, "What is the definition of law?" One panel member indicated that not enough emphasis is placed on the role of customary law. He cited the work of Harvard Professor Sally Falk Moore in her book, *Law as Process*, where she separates the notions of law and regulation. "There are no structural universals in law," the questioner commented, "thus cultural specificity becomes a critical aspect in analysis." In law as in economic and political science, comparable social statistics lose their meaning when they are taken out of their cultural context. "No legal map exists which will help us understand legal culture," the participant said.

In further discussion, a panelist questioned Professor Singh's concept of the reconciliation model in Indian society. He thought that when considering the impact of traditional customary practices in India, some attention ought to be given to the questions of "lawlessness." It was also suggested that some meaningful comparisons could perhaps be made between India and other countries with regard to the law in their Constitutions and its role in promoting social change. He argued that every Constitution has a normative role and is, therefore, a powerful instrument of economic interests. In some instances, these economic interests use the constitution to postpone the underclasses' bids for basic human needs.

Another participant asked why the discussion had only focused on examining the macro-structural or cultural questions. He suggested that the participants take a look at the micro questions. "We must ask: 'culture' for whom and for what? What is reconciliation about and what is it for?" he queried. Dualism is a problem which exists wherever you try to impose universal norms. The dualism of the Indian experience was the result of the British attempts to impose a symmetrical system of norms upon an asymmetrical society. The concept of linkages was again addressed. "What kind of linkages are we looking for?" the speaker asked. From his perspective, the micro theory of action, linkages must be viewed in terms of ideology and the state; these linkages must be understood before one can understand the system.

Another participant told the group that he believes that the British had recast Indian society in certain ways so that foreign business interests could use it to their advantage. Certain factors beyond this paradigm such as the genocide sector are redundant and dysfunctional to the development process, he pointed out.

The next issue raised was the need to consider the diverse conditions under which legal systems function and the different functions served by law in various social settings. "We cannot say that all legal systems across the board have the same effect," he said, "that would be a woeful error." He stressed that it is important to recognize the prominent or outstanding functions and effects of law which exist in all legal systems—albeit minimally and in some instances only as potential. Two such similarities are the use of formal law by elites for purposes of domination and the use of the law to moderate elite domination by providing avenues of participation for the disadvantaged. He added that the Indian experience might be viewed as a conflict resulting from a search for a balance between these two functions.

Again, the definition of the term "law" was brought into question. One participant postulated that once law was viewed as an instrument of power, its effectiveness in controlling abuses of power by elites must be questioned. The elites are able, in some instances, to control the law and thereby manipulate egalitarian objectives so as to forestall any real social change.

A discussion of models then began. Two types—models 'of' and models 'for' were isolated. One participant suggested that one model puts forth a vision and the other represents the law in practice. The contradictions in any Constitution which are represented by these models also represent the contradictions within the law.

It was argued that law cannot be viewed as anything concrete unless it can be translated into reality. "A legislature can create thousands of laws, but it means nothing unless they can be implemented." The existence of this duality in every society, it was suggested, is a result of the failure of the masses to understand their legal rights, the restricted access of the masses to the legal system in terms of time and/or financial constraints, or the established customary rules which society in general viewed as leading to results more desirable than legal regulation. Enforcement problems were also mentioned.

Reiterating his earlier comments, a discussant objected to the focus of the debate. He recommended that the conference address the issue of law and social change as it relates to the more fundamental issues of the state and ideology. "In India, we should ask what it is that supports the state." Finally, a participant emphasized the necessity of analysis from all relevant standpoints. "The purpose of analysis of the law in a given society...is (to) explore both the nature of the limits and what exists within the limits," he said.

