Reflections on Reform: Considering Legal Foundations for Peace and Prosperity in the Middle East

Hiram E. Chodosh

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SYMPOSIUM RETROSPECTIVE

REFLECTIONS ON REFORM:
CONSIDERING LEGAL FOUNDATIONS FOR PEACE AND PROSPERITY IN THE MIDDLE EAST*

Hiram E. Chodosh**

I. THE SYMPOSIUM ................................................................. 428

II. SYMPOSIUM CONTRIBUTIONS .................................................. 429

A. Professor Bisharat: Human Rights ......................................... 430
B. Professor Fidler: Foreign Investment Law ............................... 431
C. Professor Wing: Constitutionalism ........................................ 433
D. Professor Quigley: International Law ...................................... 434
E. Common Points and Questions ............................................. 435

III. THE PROCESS OF REFORM ................................................ 438

* This article was the basis of a presentation delivered by Professor Chodosh as part of a discontinuous symposium entitled, The Legal Foundations for Peace and Prosperity in the Middle East, sponsored by the Case Western Reserve Journal of International Law and the Frederick K. Cox International Law Center. Professor Chodosh delivered this presentation at the Case Western Reserve University School of Law on April 14, 1999.

** Professor of Law; Director, Frederick K. Cox International Law Center, Case Western Reserve University, School of Law; J.D., Yale Law School (1990); B.A., Wesleyan University (1985). I would like to thank Professor Lewis Katz and Professor Edward Mearns for suggesting that we focus a symposium on the Middle East. I would also like to thank Dean Gerald Korngold for his enthusiastic support, as well as Adria Sankovic, the Administrator of the Frederick K. Cox International Law Center, for all of her invaluable help and hard work. Also, I would like to acknowledge the invaluable contribution of my colleague Stephen A. Mayo, Executive Director of the Institute for the Study and of Development of Legal Systems, with whom I have worked on legal reform initiatives in the Middle East for the last six years. Finally, I dedicate this Retrospective to the members of the 1998-99 editorial board of the Journal, who have demonstrated that committed and hard working students can inspire their community and the world beyond. Specifically, Ted Theofrastous, the Editor in Chief, has provided thoughtful, creative, and tireless leadership in striving for excellence, and Joanne Dickow, the Topic Development/Symposium Editor and an Executive Articles Editor, has infected all of us with her boundless energy and selfless commitment to creating a forum for this important discourse.
What does the Case Western Reserve University Law School in Cleveland, Ohio have to do with the situation in the Middle East? Anything at all? Beyond the substantial number of our foreign LL.M. students who come to us from the region, we may remember our travels: a few days, weeks, or months here or there. We may bring to mind our relatives: those who fled repression in Europe to seek refuge there, many who suffered oppression there and fled here, or friends who play one role or another in the conflict or its resolution. We may look in the mirror and see their muted reflections in ourselves: the Jordanian law professor, the Egyptian law student, the Israeli mediator, or the Palestinian prosecutor.

Nonetheless, our emotional and intellectual connections to the region remain attenuated by the physical distance that separates us. Most of us experience the Middle East through the popular media in one form or another. We enjoy our falafels at local restaurants without fear of a sudden explosion. We sleep restfully in the suburbs without fear of forced eviction. We travel from one side of town to the other without security checks and walk to school without dodging rubber bullets or fist-size
stones. When we get on a public bus or train, our greatest concern is usually delay, not death.

This distance between the Midwest and the Middle East poses a formidable obstacle to developing an adequate appreciation of the current situation, the critical problems and needs, and equally manageable and effective solutions. It skews our ability to see things as they are from a local point of view, to evaluate the problems of greatest significance to people in the region, and limits our effectiveness in evaluating corrective measures that will produce more good than harm.

Yet the distance also gives us the leisure of reflection. By definition, reflection carries the risk of saying more about oneself than anyone else. However, if properly aimed, reflection can also shed light from distant corners, past dark shadows, across closed borders, around ominous signs that appear to say, "No Exit." Even where stubborn realities test the patience of our aspirations, reflections of hope, if not optimism, might continue to fuel our persistence in overcoming seemingly insuperable obstacles.

Concluding the Symposium in this spirit, I want to take this opportunity to reflect on what, if anything, we have learned or accomplished, and what we might do better as we peer into the future. First, I review and synthesize the considerable achievements by the Symposium contributors (as both commentators and advisers), who have worked tirelessly to establish the legal foundations for peace and prosperity in the Middle East. Second, I attempt to complement their efforts by drawing brief attention to two frequently neglected subjects: the legal process of reform, and the reform of legal process. Finally, I conclude with a personal perspective on the significance of the Symposium.

II. SYMPOSIUM CONTRIBUTIONS

Last summer, the Case Western Reserve Journal of International Law and the Frederick K. Cox International Law Center of Case Western Reserve University School of Law posed a fundamental question: What are the legal foundations for peace and prosperity in the Middle East? Specifically, we were interested in the challenges of law reform under the Oslo framework. The Journal then solicited responses to this question from leading scholars who have been engaged in providing assistance on a number of legal issues and reform initiatives. This Symposium issue records the public lectures and writings of Professors George Bisharat,¹

David Fidler,2 Adrien Wing,3 and John Quigley.4 In a future issue, the Journal hopes to publish Symposium commentaries, responding to these articles.5

A. Professor Bisharat: Human Rights

A leading writer on Palestinian law, human rights, and criminal justice, Professor George Bisharat6 emphasizes the imperative of law reform and human rights in the peace process. He stresses the need for the protection of human and civil rights and the role of an independent judiciary in the development of a new democracy. Professor Bisharat argues that a democratic Palestinian government will be a more "reliable peace partner for Israel,"7 and that the international community should increase its focus and investment in Palestinian legal reform. He stresses critical problems in the administration of justice: differences between the West Bank and Gaza, confused and antiquated bodies of law, a weak and impoverished judiciary, and a fragmented, demoralized, and poorly trained legal profession.

In the wake of early waves of optimism, and despite some considerable achievements, Professor Bisharat's assessment is mostly critical. He reports that mutual distrust of the Gazan and West Bank communities has stalled unification efforts. Substantive and procedural laws have become more confused. Judicial institutions appear to be even worse off than before. The legal profession is taking significant steps forward, but much work lies ahead. Most disturbingly, Professor Bisharat identifies human

5 For example, the Journal will publish a comment by Professor Shimon Shetreet responding to Professor Quigley's article. Shimon Shetreet, Negotiations and Agreements are Better than Legal Resolutions: A Response to Professor John Quigley, 32 CASE W. RES. J. INT'L L. (forthcoming Jan., 2000).
6 Professor Bisharat has assisted the Palestinian Legislative Council (the parliament of the Palestinian Authority) in drafting a law on the independence of the judiciary and in reforming the laws of criminal procedure. Professor Bisharat's publications on the region include: Land, Law and Legitimacy in Israel and The Occupied Territories, 43 AM. U. L. REV. 467 (1994); Courting Justice? Legitimation in Lawyering Under Israeli Occupation, 20 L. & SOC. INQUIRY 399-402 (1995); PALESTINIAN LAWYERS AND ISRAELI RULE: LAW AND DISORDER IN THE WEST BANK (1989).
7 Bisharat, supra note 1, at 254
rights abuses by autonomous and unaccountable security forces, including illegal and arbitrary arrests and detentions, torture and physical abuse of detainees, unfair trials, and violations of freedom of the press and public expression. As a reflection of Professor Bisharat’s deep empathy for the Palestinian people, he illuminates the direct social and psychological impacts of these abuses. He strenuously concludes that the emphasis on security at the expense of human rights will undermine, rather than undergird, the process of peace.

In examining the correctives to the depressing situation he describes, he does not take aim at the efficacy of technical assistance to the Palestinian Authority. Instead, he points a critical finger at the “tolerance, if not actual encouragement,” of abuses and “indifference to the glacial pace of legal reform efforts.” Professor Bisharat argues that the U.S. government should act to assure the enforcement of human rights, even when the Palestinian Authority is cracking down on terrorist activity aimed at Israel. He also recommends more funding as well as recognition at policy-making levels of the immediacy and significance of successful law reform as a necessary pillar of peace. Specifically, he recommends that the United States nurture the development of an indigenous infrastructure that can ensure the basic rights of Palestinians and provide a constraining check on executive power. He advocates the abolition of the security courts, pressure on President Arafat to sign the Basic Law, and the passage of a comprehensive judiciary law that would establish adequate indicia of independence for the judiciary.

B. Professor Fidler: Foreign Investment Law

In contrast to Professor Bisharat’s emphasis on human rights, Professor David Fidler, turns our critical attention to the importance of the

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8 Id. at 287.
9 Id.
economy. An expert in international law, Professor Fidler outlines the legal framework for promoting economic development in the Palestinian Territories and discusses his role in advising on a new Foreign Investment Law. Professor Fidler relates the "importance of Palestinian economic development to the peace process." As Fidler points out, "[t]he continued economic problems and suffering of the Palestinian people . . . constitute a threat to building a stable relationship between the Palestinians and Israel." Regarding the Palestinian National Authority (PNA), Professor Fidler documents a "comprehensive" "breakdown" of the economic development strategy, including the deterioration of the PNA-donor relationship, blocked access to Israeli markets, corruption, public monopolies, the insufficiencies of the foreign investment law, and resulting low levels of private domestic and foreign investment in the Palestinian economy.

Professor Fidler evaluates a revised investment law promulgated in April 1998, following the previous law adopted three years earlier. In reviewing the PNA attempt to improve upon the 1995 law, one in which he was involved as a foreign adviser, Professor Fidler expresses deep disappointment. He even goes so far as to characterize the 1998 law as "in some respects worse" than the 1995 original. From the perspective of the foreign investors, he applies standards derived from World Bank guidelines and the proposed Multilateral Agreement on Investment negotiated under the OECD. Professor Fidler concludes that the new law is insufficient to attract foreign investment and promote development in the Palestinian Territories. He criticizes: its ambiguous scope; its lack of transparency; its inadequate non-discrimination, expropriation, and contract termination protections; its limits on access to arbitration and repatriation of profits; its weak system of checks and balances on the regulatory powers allocated to the Palestine Investment Promotion Agency; the impracticality of tax and customs exemptions and incentives; and its insufficiently improved dispute settlement provisions.

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12 In this piece, Professor Fidler analyzes the Revised Palestinian Investment Law. LAW ON THE ENCOURAGEMENT OF INVESTMENT IN PALESTINE, No. 28 (1998) (Palestine), translated by the Palestinian National Authority Ministry of Economy and Trade. The text of the Revised Investment Law is reprinted in the Appendix to this issue of the Case Western Reserve Journal of International Law. 31 CASE W. RES. J. INT’L. 521 (1999).

13 Fidler, supra note 2, at 295.

14 Id.

15 Id. at 301.

16 Id. at 343.
In reflecting on his own criticisms, Professor Fidler explores two different perspectives (one harsh and philosophical, the other more lenient and pragmatic) of what he sees as a failure of Palestinian law reform. Under the first view, the shortcomings of the investment law are seen as a rejection of liberal economic thinking. In the second perspective, rule of law reforms face challenges that need to be better appreciated. Fidler does not reconcile these views or take sides; however, his assessment tends to be more critical than expressive of relative understanding. Regardless of the chosen perspective, he points out that political factors, rather than any provisions in the foreign investment law, will determine the state of the economy. He argues that the “bitter condition of politics” both on the international and domestic Palestinian levels is “the biggest obstacle to Palestinian economic development.”

C. Professor Wing: Constitutionalism

Complementing both Professor Bisharat and Professor Fidler’s contributions, Professor Wing takes the discussion to a constitutional level. Drawing on her extensive experience as a comparative constitutional law scholar and adviser, Professor Adrien Wing turns our attention to the need for a constitutional structure capable of both allocating and limiting state governmental powers in the Palestinian Authority. However, she is careful not to divorce constitutional concerns from a variety of societal factors that will affect the constitutional process in the near to distant future. Professor Wing identifies seven variables that affect constitutionalism and evaluates the process and provisions of the Basic Law as an interim or embryonic form of a Palestinian Constitution. As she points out, the Basic Law remains unsigned by President Arafat, who continues

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17 Id. at 348.

18 Professor Wing has been a consultant to the United Nations and served as an advisor to the Palestinian Legislative Council on Palestine’s future constitutional options. She was the only non-Palestinian to serve on the drafting committee for the Palestinian Basic Law. Professor Wing’s comparisons of the Basic Law to the South African Constitution draw from her experience in that region, where, for several years she served as a constitutional advisor to the African National Congress, organized an election-observer delegation to South Africa, and taught at the University of Western Cape. Professor Wing’s publications on the region include: DEMOCRACY, CONSTITUTIONALISM AND THE FUTURE STATE OF PALESTINE (1994), A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women, 60 ALBANY L. REV. 943 (1997); Custom, Religion and Rights: The Future Legal Status of Palestinian Women, 35 HARV. INT’L L. J. 149, 190 (1994); and Legal Decision-Making During the Palestinian Intifada: Embryonic Self-rule, 18 YALE J. INT’L L. 95 (1993).

19 See BASIC LAW, supra note 10.
to govern in a "constitutional vacuum."\textsuperscript{20} Nonetheless, Professor Wing argues that the Basic Law will serve an important function in the future as the basis for creating a Palestinian constitution.

Specifically, Professor Wing evaluates each of seven variables as a potential asset \textit{and} impediment to democratization.\textsuperscript{21} These include what she calls the unipolar world order; the national economy; education; political pluralization; communitarian/hierarchical society; distrust of authority; and a multi-layered legal regime. Drawing on the example of South African constitutionalism, she outlines the Palestinian constitutional process in terms of the drafts produced and the failure of President Arafat to sign the Basic Law. She stresses the diversity of constituencies consulted but sadly notes the common prognosis that the Basic Law will never be signed. Then, Professor Wing evaluates the provisions of the Basic Law. Additionally, she discusses a case study of women's rights in Palestinian society to illustrate one area that presents very considerable challenges for constitutionalism. Finally, she concludes that despite the variables negatively influencing constitutionalism and the current status of the unsigned law, the Basic Law provides an embryonic expression of constitutionalism for a newly independent Palestinian state. We look forward to Professor Wing's continued study of this preliminary constitutional process and its effect on the emerging state of Palestine.

D. Professor Quigley: International Law

Whereas Bisharat, Fidler, and Wing only touch on the international level, with commentary on the role of the United States and international

\textsuperscript{20} Wing, \textit{supra} note 3, at 385.

\textsuperscript{21} For example, Professor Wing sees U.S. hegemony as greatly limiting the constitutional options available to the Palestinian society. Professor Wing stresses the dependence of the economy on that of Israel and takes cognizance of the financial constraints in building a new Palestinian state. She views high levels of education among Palestinians as a positive factor in building constitutionalism; however, she also notes the large pockets of the undereducated poor as a potentially negative influence. Political pluralism, too, she sees as both an advantage and a disadvantage. Pluralism provides a wide range of philosophies upon which to draw; yet, it also poses a threat to President Arafat's hold on power. Professor Wing also views the communitarian and hierarchical nature of Palestinian society as an asset by stressing group norms and a liability if political leaders tolerate or endorse corruption or anti-democratic actions. Distrust of authority cuts both ways as well, in her view, because distrust of authority is one of the pillars upon which to limit governmental authority; however, when taken too far, distrust of any authority will produce irresponsibility and anarchy. Finally, she articulates the advantages and disadvantages of a multi-layered legal regime of custom (urf), Islamic law (shari'a), Ottoman, British, Israeli, Jordanian (West Bank), Egyptian (Gaza), intifada practices, and new law promulgated by the Palestinian Authority. See Wing, \textit{supra} note 3, at 395-402.
organizations in the peace process, Professor John Quigley evaluates the international legal foundations upon which the Israeli-Palestinian negotiations have been based. An expert in international law as it applies to the Middle East, Professor Quigley argues that the peace process will not succeed if negotiations are based on deviations from international norms. He argues further that the peace process has all but ignored the legal rights of Palestinians. Professor Quigley propagates the thesis that, without accurate recognition of such rights, any negotiated settlement will be subject to rejection because conflicting normative claims will remain unresolved. He explores four issues: the establishment of borders, the expansion of Israeli settlements, the status of displaced Palestinians, and control of Jerusalem.

Professor Quigley argues that in each issue area a law-based approach favors Palestinians, whereas one in which the law plays a limited role favors Israeli interests. He envisions a much stronger role for the United Nations, Europe, and other countries to intervene and opposes U.S.-backed bilateralism. He rejects the view that the different legal positions of the parties cannot be reconciled by reference to universal international norms. In this respect, Professor Quigley presupposes both an adjudicatory function in a process based primarily on interest-based negotiation and the existence of pre-established universal laws about which the parties deeply disagree.

E. Common Points and Questions

What do these proposals have in common? Where do they fall short, and what should we do about it?

Each expert emphasizes an important role for law itself in bringing peace and prosperity to the region. These commentators each call for a law that is in some way new and different from what is already in place, not just any law, but one that respects human rights, creates an independent judiciary, fosters cross-border commerce, establishes constitutional rights and responsibilities, and accurately recognizes the rights of the contesting communities.

Bisharat focuses on the attempt to satisfy human rights norms while cracking down on terror. Fidler’s project is to develop the legal framework for a prosperous economy in the midst of border shutdowns. Wing addresses the attempt to build democracy out of an exile government. Quigley presses for the recognition of international legal principles about which there is so much disagreement the contesting parties have had to all but ignore them. These inspired, forceful, and well-documented contributions reflect a common focus on the Palestinian Territories, substantive legal reform as the primary means to achieve positive change, and legal reform as a critical component in the peace process.

In response to these experts, I would like to raise three questions. First, are the problems identified in the Palestinian Territories unique among the jurisdictions of the Middle East? I think not. I believe each of these experts would agree with me that throughout the region, albeit with some qualifications, human rights remain underenforced, economic development and regional integration are slow, democratic institutions remain weak, and cross-border disputes fester over territory, labor, oil, and water. Furthermore, a primary focus on the Palestinian Territories, whose status as a sovereign is still in transition, if not doubt, deflects our attention from the youth of the region as a body of autonomous states roughly half a century old. Many jurisdictions in the Middle East are confronting reform challenges not altogether different from those in the Palestinian Territories, even if under much less unstable and constraining political and economic conditions. In focusing on the importance of the Palestinian Territories, we should not needlessly increase the depth of our disappointments by holding that newly emerging society to a higher standard, while ignoring the considerable and related law reform challenges throughout the entire region.

23 Many of my observations about the reform efforts in the Palestinian Territories reflect similar findings in surrounding countries.

24 The limited scope of this Retrospective does not permit me to re-document such challenges, which are discussed throughout prior publications, see, e.g., Hiram E. Chodosh & Stephen A. Mayo, The Palestinian Legal Study: Consensus and Assessment of the New Palestinian Legal System, 38 HARV. INT’L L. J. 375 (1997) [hereinafter PLS]; Hiram E. Chodosh, Stephen A. Mayo, Fathi Naguib, & Ali El Sadek, Egyptian Civil Jus-
This leads me to a second question, which I will discuss below in greater detail. If legal reform is so important to the peace process, are we confident that the process through which such reforms are designed and implemented is effectively tailored to meet our ambitious objectives? The contributions to this Symposium tend to focus more on what the reforms should be than they do on the process of designing them. On this score, I think the contributors will agree with me that we have much hard thinking to do. Within the confines of this Retrospective, I will outline in Section III some important considerations in the process of reform. Specifically, we need to grasp contemporary lessons in order to improve our work in future initiatives. Political and economic factors beyond the control of the reformers themselves will significantly affect the outcome of these efforts, but that does not relieve us from the responsibility to consider the limits of our current expertise and methods.

Finally, even if we are satisfied with currently available methods of law reform, are changes in substantive law sufficient to achieve the political and economic objectives of reform initiatives? Here again, I think not, and I believe on this point too, each of the contributors will agree with me that without effective legal processes to implement satisfactory changes in substantive law, reformers working under the promise of positive change are likely to encounter disappointment and disillusionment in the outcomes. I believe that contemporaneous with substantive reforms greater attention must be paid to the weakness of processes through which legal aspirations are to be realized. Below, in Section IV, I will briefly point out broadly shared problems in civil and criminal justice process and outline some potentially adaptable strategies for solving them.

25 A similar point has been raised in the context of tax legislative reform by my colleague, Visiting Distinguished Professor Richard K. Gordon, and Victor Thuronyi. See Richard K. Gordon & Victor Thuronyi, Tax Legislative Process, in TAX LAW DESIGN AND DRAFTING 1 (VICTOR THURONYI ed., 1996):

An enormous amount has been written on the ideal structure of tax laws or on specific technical problems in their design. Far less attention has been paid, both in the academic literature and in technical assistance, to the process of designing and drafting tax legislation in developing and transition countries.

Id.
These comments are meant to complement, rather than detract from, the significant contributions of the authors in this Symposium. First, we should see the challenges of law reform in the Palestinian Territories in a regional and global context. Second, we should pose and begin to answer some fundamental questions about the process of reform itself. Finally, we should focus at least equivalent attention on the reform of legal processes through which substantive law is to be implemented. These last two subjects require a renewed intellectual investment of our collective efforts. In the following two sections, I will highlight critical questions and make preliminary suggestions for future initiatives.

II. THE PROCESS OF REFORM

A. Optimists and Pessimists

Reform is an equally broad and timely topic at both national and international levels. In the last decade alone we have witnessed sweeping commitments to legal reform. Authoritarian political systems have attempted to become more democratic. Command economies have endeavored to liberate markets by encouraging private transactions. Communities engaged in war and terror have engaged in a process of peace and reconciliation. Both stable countries and nations engulfed in financial crises have undertaken to strengthen the legal framework for doing business both within and across borders. The international community appears to have turned declarations of human rights into intervening deeds (e.g., the Permanent International Criminal Court, the Pinochet extradition, or the NATO intervention in Kosovo). Global markets permeate national borders with unprecedented flows of capital and trade.

Even in the face of this good news, we should remember the Russian saying that admonishes us not to be too hasty in our optimism. "There are two kinds of people in the world:" posits the Russian proverb, "optimists and pessimists. But actually everyone is an optimist; pessimists just have more information."

26 My colleague Steve Mayo and I have worked with leading judges and lawyers in the Middle East to facilitate joint studies of the legal process, its problems and needs, and potentially adaptable solutions. We have also worked to develop a process for conducting such studies. These studies and their supporting methodology are thoroughly documented elsewhere. See, e.g., PLS, supra note 24, at 383-401; Egypt, supra note 24, at 879-94. For an application of this methodology in an Asian common law system, see Hiram E. Chodosh, Stephen A. Mayo, A.M. Ahmadi & Abhishek Singhvi, Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process, 30 N.Y.U. Int'l L. & Pol'y. 1, 12-22 (1998).
This additional information tells us that for each grand promise of reform, there is at least one significant disappointment. Elections alone have not established an accountable and transparent government. Corruption, organized crime, and currency speculators riddle the law-based operation of markets. Repeated acts of terror interrupt the process of peace. Legal reform is slow: either proposed legislation gathers dust, or massive amounts of new law remain badly underenforced. New campaigns of ethnic cleansing, genocide, and crackdowns on private terror undermine human rights norms. Free capital transfers siphon money out just as quickly as it funnels in.

My concern is not so much with the characterization of the glass as being half-full or half-empty, but rather with the process and perspectives we apply to increase the water-to-air ratio of concrete action-to-congratulatory puffing. Should we not pause to take stock of how well or how poorly we are doing in these efforts, and what, if anything, we have learned? Within the confines of this Retrospective, I can only express a few critical observations and make preliminary suggestions.

For starters, it is necessary to underline what we would prefer to overlook. Each of the proposed legal reform initiatives discussed by the Symposium experts has failed. The Basic Law is in a state of perpetual limbo. A comprehensive law establishing an independent judiciary remains a proposal, and even an unsatisfactory judiciary law is not likely to be enacted. Human rights protections are weak and unenforced, especially under international pressures on the Palestinian Authority to crack down on terrorism. The foreign investment law remains inadequate to attract foreign investors. And the international legal issues dividing the Israelis and Palestinians both between and within their communities appear to be at best indefinitely deferred for a future day and at worst ultimately irreconcilable.

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27 I encountered an example of this while teaching in St. Petersburg, Russia during the summer of 1996. The day after President Yeltzin defeated Zyuganov in the run-off election in July of that year, skeptics of the election results generated a telling anecdote, in which Yeltsin gets a call from his top adviser, who tells him he has good news and bad news. Yeltsin asks first for the bad news. “Zyuganov received 52% of the vote.” Yeltsin asks: “So what could be the good news?” The response: “You received 62%.” See also Philip Terzian, Love it or Lebed, PROVIDENCE SUNDAY J., Jul. 7, 1996 at D9.

28 See generally Wing, supra note 3.

29 See generally Bisharat, supra note 1.

30 Id.

31 See generally Fidler, supra note 2.

32 See generally Quigley, supra note 4.
In sum, can one point to any significant success in the efforts to construct a legal foundation for peace and prosperity? If not, does that mean that these proposals and the commentaries that focus attention on them are entirely worthless?

The answer depends heavily on our expectations, including the applicable time frame and standard for measuring success. My sense is that our view tends to be excessively short-term and our thresholds for expressing conclusions of disappointment equally flimsy. For example, as Professor Fidler notes, shortly following the Wye Memorandum, there were two murders (one of an Israeli and another of an Arab) and a failed suicide bombing of an Israeli school bus. Such violence was interpreted as an indication of a failure of Wye to bring peace to the Israeli-Palestinian relationship. It is hard for us to appreciate the emotions of those living within the region, but from a distance I wonder whether we have fallen victim to the height of our own expectations. We endeavor to achieve peace (and prosperity) with such an immediacy that any setback appears altogether dispositive of eventual failure. Unfortunately, the time frame by which we measure success is not the only problem.

In some cases, we impose equally absolute standards on the satisfaction of paradoxical or contradictory policies. We live in an age when we want to fight wars — for instance, in the Gulf or the Balkans — without casualties or loss of equipment. In the Middle East, we charge the parties with zero toleration for terrorism, but simultaneously expect them to enforce absolute human rights norms. We should not be surprised when the Wye Memorandum's provisions for anti-terrorism and human rights protections are likely to be interpreted in favor of security. If the only violence we recognize is that perpetrated by one community against another and if we ignore the actions of loosely controlled security mechanisms, human rights will be overlooked.

When events shatter our optimism, we must learn at least two lessons. First, we should temper our expectations, but not lose our sight of our goals. Second, we should learn as much as we can from our collective failure to overcome the challenges of reform. In this regard, I believe it would be useful to reconceptualize, evaluate, and if possible, improve the processes employed to achieve legal reform.

33 See Fidler, supra note 2, at n. 4.
34 But see generally, Jordon Says Premature to Judge Success of Wye River Agreement, DEUTSCHE PRESSE-AGENTUR, Nov. 2, 1998, available in WESTLAW, ALLNEWS-PLUS Database.
B. The Reformer as Architect

In contemplating such challenges, it may be useful to think of the legal reformer as a kind of architect. Similar to the architect, the reformer thinks of design in terms of structures, systems, forms, and functions. Like some architects, reformers in the Palestinian Territories have created blueprints short of construction. As noted above in Section II, the advisory work of Professors Bisharat, Fidler, Wing, and Quigley amount to unrealized plans for positive legal change. What can we say about the role of the reformer in this state of affairs?

More specifically, I would like to pose and address four related questions. First, is the architect wholly responsible for failed construction? Second, if there is no construction to date, is the architect entirely blameless? Third, at which point in time do the blueprints become worthless and the construction hopeless? Fourth, which architectural concerns demand greater attention, and what should we do in response?

1. Neither Wholly Responsible

First, the architect is not entirely responsible for failed construction, particularly when the conditions for construction leave much to be desired. How does one break ground in newly cleared and continually shifting political sands? How does one support the weight of change on political foundations that appear to crack even before the concrete is fully dry? How does one hope to complete the project with little hope of money to buy necessary materials or pay skilled laborers? How does one place the building site when there is so much underlying disagreement over rights to the land, the water supply, safe passage, security, and an acceptable allocation of shared public and protected private space in this new condominium of peace? The architect of reform is not to blame if formidable obstacles block the path to construction.

2. Nor Entirely Blameless

Notwithstanding these limitations, architects of unrealized plans are not necessarily blameless. Within their own limitations, they should be expected to take account of these factors. They should not be encouraged...
to design in the abstract and the leave the pragmatics to others. They must modify their ambitious designs to take account of the desired structures, internal systems, coherence of forms, anticipated functions, the physical limits of available resources, the effects of political changes in the weather, the skills of laborers, and the available money to pay for it all.

3. Non-Dispositive Failures

Regardless of responsibility and blame for the lack of concrete achievements, even these failures should not be deemed final. Those who continue to overestimate the ability to create radically effective change overnight might throw these papers into the historical dustbin of failed reform proposals. However, this perspective reflects a lack of patience and awareness of how difficult it is to achieve effective reform even in the best of political and economic conditions. This view also fails to realize that even failed reforms may become part of an ongoing process of deliberation and legal change. If one were to take a snapshot of the beginning of the race between the tortoise and the hare, he would be likely to predict a false result. People patient enough to reserve final judgment and those persistent enough to sidestep creeping resignation and hopelessness, may find much value in these pages. Is the judiciary act better than no act at all? Is the Wye Memorandum commitment to human rights better than no such declaration? Is the foreign investment law really so much worse than the original or counterparts in the region, when much of the criticism is based on ambiguous provisions without the benefit of interpretive pronouncements over time? Is the Basic Law in limbo superior to no draft whatsoever – especially when many legal actors have started to make normative reference to its terms? Even unrealized plans and proposals provide an interpretive parameter against which to contrast the status quo.

4. Architectural Concerns

Regardless of our look back at what we have achieved, the reformer as architect should be responsible for posing and addressing some basic

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37 The shock therapists of reform like to warn us that graduated change is not workable. If a country alters its driving patterns from the left to the right side of the road, they cannot affect the change gradually because such an approach would lead to endless head-on collisions. Even if we accept the analogy as applicable to modern challenges of legal reform, no country enacting this change has done so without months of deliberation, preparation, planning, education, and adjustment.

38 Indeed, Arafat’s refusal to sign the law may reflect an internalized belief that the Basic Law would actually provide an important check on his many powers.
questions about the process of reform: the who, what, where, when, how, and with whose funds? Who will decide and/or implement the method and content of reform? What are the positive and negative receptivity factors in achieving legal change? Which designs are suitable to reconcile local and international objectives? What are the underlying policy choices at stake? When and where will change take place, and how will midstream adjustments be identified as necessary and then implemented? Who will be responsible for implementing change, and are they sufficiently committed, prepared, and supported to undertake these responsibilities? And who will finance the effort?

Do the reform processes discussed in the Symposium take adequate account of these questions? In reviewing these extensive efforts to build new legal frameworks in the Palestinian Territories, I am struck by the overriding inattention to pragmatics. Those of us who have the high privilege of working on these initiatives and the deep responsibility of providing effective assistance as foreign advisers still have much to learn. For present purposes, I would like to stress four critical concerns that appear to be currently undervalued and that future reform initiatives should seek to address: alignment, adaptation, scope and timing, and the impacts of implementation.

a. Alignment

Reformers must align (to the extent possible) the views of variant constituencies, decision-makers, and funding sources. Without local political support for change, decisions will not have sufficient legitimacy. Without taking account of the political constraints on decision-makers, local constituencies are likely to develop still-born (rather than embryonic) reforms. Finally, without funding to support those changes that require new investments in personnel and institutions, even well-supported and courageous reform decisions are likely to fail in early stages of implementation. Top-down approaches will fail unless they are supported by bottom-up deliberation and consensus. Bottom-up approaches that fail to effectively integrate public authorities in the process may never reach the surface of decision-making powers.

Each of the reform initiatives discussed by the Symposium participants reflects a lack of constituent/decision-maker alignment. The international pressures on security contradict the internal social demand for human rights protections. The World Bank’s standards for foreign investment remain inconsistent with those of Palestinian experts responsible for finalizing the new law. The Basic Law reflects the views of every constituency, except the most important one: President Arafat is dead set against signing it. Israel and the United States, both critical players in the peace process, deeply disagree with the Palestinian and majority U.N.
views on the rights of Palestinians under international law. Future reform initiatives should draw on processes of deliberation that minimize these misalignments.

b. Adaptation

Reformers who are asked to assist in a foreign reform effort must be thoughtful about the tendency to impose features of their own system on the host they are advising. Absence of a respectable comparative theory, the lack of familiarity with the host legal culture, absentee accountability for the impact of legal change, and a tendency to project and impose views that are inappropriate to the task at hand are each common problems in rendering foreign advice. Reformers must endeavor to mitigate the limitations of their expertise and accountability to foreign decision-makers and local constituencies. Undoubtedly most are experts in specialized issue-areas within their own countries. Many have some prior comparative expertise in foreign legal systems in the same issue-area. Yet fewer have prior experience in the host country's legal system. And very few indeed have much prior experience in advising and facilitating foreign governments and constituencies in effective legal reform. Academic or comparative expertise in the law of human rights or foreign investment does not necessarily include experience in facilitating legal change. These tendencies and gaps are evident to the extent that designed reforms have not been sufficiently adapted to the host environment.

The Symposium contributions do not dedicate much attention to these problems. They are less than explicit on the factors in need of adaptation: the indicia of judicial independence suitable to the Palestinian systems, investment law provisions reflecting local as well as international interests, constitutional principles and structures capable of realization in practice, and international legal rights as applicable to the special aspects of the Israeli-Palestinian conflict. I believe these reform efforts can be strengthened through continual testing of theories against the variant realities of foreign legal systems. This can be done by drawing primarily on local and regional legal experts who are more familiar with the reforming system and accountable for the impacts of their proposals, and by viewing one's role as outside facilitator in domestic adaptation and internal adviser on foreign models. Cultivated expertise in the facilitation of reform is likely to be extremely helpful to internal decision-


40 For an example of an adapted reform, see Egypt, supra note 24, at 900-14 (discussing Egyptian civil prosecution reform as adaptation of U.S. case management).
mangers and constituencies who are often entirely unfamiliar with the
process of design and implementation of reform itself.

c. Scope and Timing

Reformers must be creative about the scope and timing of reform. Reform need not be immediately implemented on a national scale. Gradualism is not always warranted or practical; however, it has the advantage of preventing the system from becoming quickly overwhelmed by unforeseen change. The scope of reform can be limited to special zones or pilot projects, which can be studied and evaluated over time according to circumscribed benchmarks, allowing for mid-stream adjustments prior to investments in community-wide reforms. Modest success can build necessary confidence in the process of reform itself. Even a well-aligned political commitment to reform by all participants may not necessarily lead to immediate and positive change. Even seemingly simple reforms, such as changing the flow of motor vehicle traffic from the left side to the right side of the street, necessitate large investments of time, effort, and money – both to conduct the reform and, as importantly, to prepare society for a smooth transition from one regime to the other.

If one looks at the legal reform initiatives discussed in the Symposium, they do not appear to employ notions of qualified scope or temporal staging from declaration to enactment to implementation. They assume immediate, universal change. Steve Mayo and I have argued elsewhere that the immediate emphasis on unification of the Gazan and West Bank systems is misplaced and puts unnecessary pressure on eliminating differences between the legal cultures in those two communities. Limitations of scope and time potentially strengthen the parts before unifying the whole, test limited reforms prior to community-wide implementation, and enable mid-stream adjustments in response to unforeseen consequences (including budgetary impacts).

d. Impacts of Implementation

Reformers also need to think through the impact of changes in substantive law on the institutions and personnel responsible for its practical implementation. If reforms in substantive law create private remedies for state violations of new limitations on official powers or for violations of new forms of private obligation, reformers should be able to evaluate the legal system’s capacity for enforcing such rights. Unfortunately, compared to the public attention paid to new commercial and human

\[^{41}\text{See PLS, supra note 24, at 378-79.}\]

\[^{42}\text{See infra section IV.}\]
rights legislation, judicial reform, legal process, and dispute resolution are considered dry, even boring subjects. The reform initiatives discussed in this Symposium emphasize changes in substantive human rights, commercial, constitutional, and international law; however, much less attention is dedicated to the processes through which such law is to be implemented. Judicial reform requires more than adjustments of the pen in national legislation; it presupposes changes in the functions performed by each actor in the legal process, and (political, financial, and technical) support for such actors sufficient to ensure their adequate performance of such functional responsibility. Furthermore, reformers often undervalue the potential for interstitial administrative approaches that can positively affect judicial behavior in the shorter term before the slower process of political approval.

The foregoing comments provide but a glimpse of critical concerns to which architects of reform should increasingly attend. Without persistently greater attention to these points, I believe that many reform efforts within the Palestinian Territories, the Middle East, and beyond will continue to falter. We will become increasingly bitter about the disappointments of our contributions and soured on the idea of legal change. Without greater attention to the alignment, adaptation, scope and timing, and implementation factors that differentiate effective from ineffective reform, we will remain unable to chart a future course capable of leading us from the departure point of our convictions to a desired end of our efforts.

IV. THE REFORM OF PROCESS

A. Uneven Trends of Substantive and Procedural Reform

Based on my previous work in court systems of the region and elsewhere, I believe that most reformers have not paid adequate attention to the subject of legal process. By focusing almost exclusively on substantive legal reform, we have put a proverbial (non-automated) cart of rules before the horse of legal process. Moreover, we have loaded the cart with right-generating rules of such quantity and weight that the poorly nourished and ailing institutional horse (even when properly put before the cart) cannot manage to pull it along.

As noted above, in the last decade we have witnessed an enormous increase in national commitments to democracy and human rights and to free markets and economic development. These twin political and economic objectives have spurred an enormous amount of substantive law reform. Constitutions and civil rights legislation establish rights to vote, assemble, express opinions, equal protection, and freedom from torture.
Trade agreements and commercial legislation establish legal frameworks for privatization and the growth of domestic and transnational commerce. As cross-national interaction intensifies on the eve of the next century, the establishment of uniform commercial and human rights standards has become increasingly important for each national community and its role within the greater civilization.

The reform of judicial systems has not kept pace with these substantive commitments. Many judicial systems suffer from a lack of institutional resources and updated procedures. Judges require greater training, compensation, and protection from improper influence from other branches of government, as well as organized crime. Chronic and excessive delays in civil justice process eviscerate commercial and civil rights and obligations. The unavailability of legal representation for the accused, particularly the indigent, at critical stages in the criminal justice process denies basic rights of counsel and public trial. Without greater attention to legal process reform, many nations will not be able to ensure the sustainability of economic development and the evolution of accountable and democratic governments capable of enforcing human rights. In sum, the legal foundations for peace and prosperity will remain infirm.

In the wake of speedy substantive reform and slow judicial reform, we must not expect the law on the books to be self-enforcing. New laws found in constitutions, civil or criminal codes, and judicial opinions often are necessary but insufficient to realize their stated political, social, and economic goals. We will jeopardize shared objectives if we continue to place a disproportionate emphasis on substantive law and neglect the legal process responsible for its implementation. Without effective and fair legal processes, changes in the substantive law, even when satisfactory, will render disappointing outcomes.

B. Common Problems in Civil and Criminal Justice Process

How well prepared are the court systems of the Middle East and elsewhere to implement new substantive legal commitments? I believe they are poorly prepared to address contemporary challenges in the administration of both civil and criminal justice.

Such challenges confronting the Palestinian legal systems in the early stages of the peace process were particularly overwhelming. As the Palestinian Legal Study reported, “the most recent period of Israeli occupation and the resulting social unrest of the Intifada devastated the functional operation of the courts by divesting the Palestinians of institutional resources, preventing the development of professional expertise, and
halting the development of modern civil and criminal justice processes." These problems are not unique to the Palestinian Territories. Many neighboring jurisdictions in the Middle East and beyond also require larger investments in legal institutions, legal education, and civil and criminal process reform. In this sense, the situation in the Palestinian Territories is an extreme case of a chronic regional and world-wide condition.

1. Problems in Civil Justice Process

On the civil justice side, I want to talk about three common and related problems and how these problems undermine the very goals of the systems' design: too many disputes produced by low compliance with the law; poor management of such disputes; and unavailable alternatives to full trial.

First, with widespread substantive law reform, increasingly democratic and market-based systems generate too many disputes for the courts to handle. The sheer number of lawsuits in a complex society clogs the courts and stalls proceedings in a procedural bottleneck. The widespread delays leave the law underenforced. An underenforced law leads to poor compliance. Poor compliance in turn generates more legally cognizable disputes, creating a vicious cycle of delay and non-compliance with the law.

Second, most contemporary systems have difficulty managing their contemporary caseloads. In the adversarial British systems, judges do too little to manage the progress of the case, lawyers have been able to delay the proceedings with impunity, and judges have not been able to exercise the discipline necessary to enforce the procedural rules themselves. In most of the judicially controlled, Continental European-style processes, we see the other side of the same coin because the judges have too much control. The judges have so much to do that the legal process becomes party-controlled not by design but by default. In both systems, the judicial system has difficulty ensuring effective service of process, taking evidence, interpreting new law, handling appeals, and enforcing judgments and arbitral awards.

Third, with the exception of arbitration, most systems do not provide and integrate meaningful alternatives to a full (and lengthy) trial. Disputing parties either lump it — that is, suffer the harm without recourse to a remedy that would make them whole — or they pursue self-help or illegal strategies in retaliation. Without the pressure of imminent judgment,
Incentives to negotiate directly remain weak, and the rules authorizing mediation and conciliation remain empty gestures to processes poorly understood and rarely practiced.

These problems undermine the achievement of commonly accepted rule of law standards. The inability to serve legal process or execute final judgments blocks effective access to justice. Discontinuous evidence-taking by different judges responsible for the same case and unfamiliarity with new substantive law risk inaccuracy and inconsistency in judicial decision making. Delays undermine equality by shifting the power to those in whose interest it is to suspend the proceedings. Low public confidence in the courts, incentives in favor of extra-legal remedies, and the unavailability of law-based alternatives to trial have a negative impact on both public and private compliance with the law.

2. Problems in Criminal Justice Process

On the criminal justice side, judicial systems have not adjusted sufficiently to realize legal commitments to human rights. Principles of limited government coupled with the related recognition of minimum human rights standards necessitate reform. In addition to backlog and delay, the effective representation of criminal defendants, particularly the indigent, is one of the most common procedural problems in the administration of criminal justice. The potential for abuse of public investigative powers in the early phase of criminal proceedings derives from a variety of functional and systemic weaknesses in a wide range of national criminal justice systems.

Many systems do not provide effective representation to those accused of crimes for various reasons. Given the poorly financed infrastructure for criminal investigation, including the lack of forensic technology and labs, many criminal justice systems rely heavily on confessions. The incentive to compel confessions, especially early in the process of criminal investigation, makes the accused particularly vulnerable in processes that lack effective checks on state power. First, defense counsels play a procedurally restricted role, especially in the critical interrogation stage of the criminal process during which the fundamental factual issues of a case are determined. Second, many criminal defendants do not have effective representation for three reasons. They cannot afford defense counsel. Many of those who face significant terms of incarceration do not have the legal right to court-appointed counsel. Even when available, court-appointed defense counsel administered through a public defender system (or some functional equivalent) are inadequately trained and lack sufficient resources (e.g., compensation or the means to investigate). Finally, failure to require an early hearing before an impartial judicial officer leaves criminal justice systems without a mechanism
to ensure that these rights have been actually protected in practice. These weaknesses in the criminal justice process leave defendants vulnerable to violations of basic human rights, including effective representation, public trial, and freedom from torture.\textsuperscript{45}

C. Process Reform Strategies

1. Civil Justice Process Reform

In response to these common problems on the civil justice side, countries are increasingly beginning to adapt three or more combined strategies: prevention, management, and diversion. First, they are trying to prevent litigations by creating barriers to frivolous litigation and trying to increase the incentives for direct negotiation and settlement among the parties. Second, they are trying to strengthen the processes for managing and streamlining the preparation of disputes for trial. This involves court management, procedural streamlining, and case management or "civil prosecution," as it is known in Egypt.\textsuperscript{46} Third, they are advancing the variety and sophistication of consensual alternatives to trial beyond arbitration to include judicial settlement and mediation.

The advancement of civil justice reform will require that civil justice systems develop complementary models of dispute resolution that are conducted by a wider variety of judicial and non-judicial personnel (retired judges, arbitrators, conciliators, mediators, evaluators). Such neutrals need to be more actively engaged in managing (streamlining and facilitating) the process through less formal and participatory means of communication in a more collaborative and less contentious proceeding. This would help to level the playing field for those who have fewer resources. In addition, such neutrals would diversify the means of dispute resolution by focusing on interest-based as well as position-based negotiation, expanding non-binding and consensual alternatives to trial, and encouraging calibrated in addition to binary win-lose remedies. If the formal models of adjudication can be complemented and supported by the introduction and adaptation of innovative procedural alternatives, such as managerial interventions and consensual alternatives to trial, the courts will have a greater capacity for adjudicating disputes of greatest public concern.

\textsuperscript{45} See PLS, supra note 24, at 389-90.

\textsuperscript{46} See Egypt, supra note 24, at n. 57.
2. Criminal Justice Process Reform

On the criminal justice side, modern international trends in criminal justice reform are beginning to respond to these problems. The formal and informal pressures to observe human rights standards have begun to create a qualified convergence among criminal justice systems. First, some systems have begun to ensure an early, public appearance before a judicial officer. Second, criminal justice processes increasingly require that the accused be informed of both a right to counsel and the availability of state-appointed counsel for those who cannot afford an attorney. Third, some systems have moved forward in subsidizing the availability of state-appointed counsel through legal aid or public defender frameworks. Finally, a number of systems provide a broader role for such counsel.

The advancement of criminal justice reform will require that contemporary systems adapt a number of supplementary and potentially complementary reform strategies. These include: processes involving public interventions by the judiciary in the early stages of the criminal justice process to ensure the enforcement of procedural rights; support from either a publicly or privately financed bar of public defenders more actively engaged in representation of the accused in order to level the playing field for those who have fewer resources; reduction in criminal liability for minor infractions; the use of fines instead of incarceration to reduce delays and the public cost incurred by the prison system; and the creation of alternatives to full trial, such as summary proceedings in exchange for a reduction in applicable sentences.

3. Successful Process Reform Features

In my opinion, successful process reform approaches will be distinguished by three characteristics. First, the more successful reforms will be event-driven and do more than merely reflect a change in the rules. Civil justice managerial interventions can be effective by forcing the judge, the parties, and their legal representatives to face the issues candidly at an early stage in the proceeding. Likewise, the enforcement of rights to appointed counsel is frequently dependent on an early public hearing before a judicial official.

Second, successful reforms need to be well-integrated. Alternatives to civil trial are not likely to be effective unless they take place under the

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shadow of imminent adjudication. Early rights to counsel are not likely to be effective unless there is a strong administrative system for making such appointments readily available.

Third, successful reforms offer processes available to the public that are adequately varied and thus adaptable to the dispute at hand. This creates the likelihood that more disputes will find a fitting process for resolution. Where public interests conflict with private concerns, states may limit the use of alternatives to trial. Thus, on the civil justice side, some disputes will require litigation; others will be better resolved by arbitrators with technical expertise; still more will be effectively mediated. On the criminal justice side, decriminalization of smaller offenses, the sanction of fines instead of incarceration, and the use of summary proceedings in exchange for a sentence reduction, are all adaptable and potentially effective options.

V. Conclusion

This Retrospective has summarized the contributions of Symposium participants on the question of legal foundations for peace and prosperity in the Middle East. I have raised questions about the efficacy of contemplated reforms and made some suggestions. I hope that these comments provide some limited assistance in making future reformers more pragmatic in their attention to both the legal process of reform and the reform of legal process.

Before I conclude, I want to convey a personal perspective. This Symposium caused me to remember a childhood experience. When I was five or six years old, a friend of my parents, a doctor, visited us for a few days. I grew extremely fond of him. He was a chain smoker, and this worried me very much. When no one was looking I swiped three packs of his cigarettes and threw them in the fire. Upon hearing my explanation for the missing cigarettes, my parents half-heartedly scolded me for having stolen and disposed of his personal property. Months later they told me with some restrained pride that the doctor had been so moved by this well-intended mischief, after that day he never smoked another cigarette. Three years later, he died from lung cancer.

I ask myself why the Symposium brought this buried memory to the surface. I think the story came to mind because both the doctor and the legal systems in which I have worked have neglected themselves, badly compromising their ability to serve the greater society. Is the battle to achieve effective legal reform after generations of inattention analogous to the fight against disease after years of neglect? With our well-intended interventions, we try to reverse the cycle of injustice. We carry a naive hope that we might be able to curb a destructive process whose origins predate our intervention by many years, even generations. Even in fail-
ure, we struggle against the corrosive nature of sadness and despair. And we strive to learn from our mistakes, improve the methods and timing of our involvement, adjust the height of our expectations, and maintain the depth of our commitments. Throughout the process we struggle to remain hopeful for a better way, a better scenario, one in which the doctor survives and continues to treat others who are ill, one in which legal systems at war can adjust to help people live in peace and prosperity.

As a child, I think I realized that the theft and destruction of three packs of cigarettes posed no sure cure for my elder friend. Here too, I realize that the pages that fill the *Case Western Reserve Journal of International Law* this spring represent a mere exchange of words, thoughts, criticisms, and suggestions, themselves no forceful solution for the problems of the Middle East. Nonetheless, I remain proud of my seemingly futile attempt to help the doctor. Likewise, I think the *Journal* and the talented contributors attracted to this forum should be proud, too. Despite much information taken as cause for pessimism, and despite the greater need for pragmatism, perhaps our collective attempt to throw injustices into the fire can help to sustain a weakly flickering flame of hope. I believe that a civilization capable of creating irrigated fields in a dry desert can satisfy its thirst for change. I also believe that a civilization capable of building the pyramids is capable of creating a legal foundation for peace and prosperity.

At this point, if ever, we cannot know whether our efforts or those of others will forge promising new paths, but we can recall the words of Lu Hsun, who wrote during the dark and tumultuous post-dynastic and pre-revolutionary period in modern Chinese history: "[Hope] is just like a road across the earth. For actually the earth had no roads to begin with, but when many [people] pass one way a road is made."48

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