CONCLUDING REMARKS

The General Reporter noted at the outset of his concluding remarks that the two colloquia devoted to the rule of law had debated the definitional aspects of the term, some even questioning whether definition was desirable since the term is not incorporated in a legal document calling for interpretation. Yet, others sensed that the term had come to have some moral connotation, and may also have educational value. Therefore, the importance of definition should not be deprecated by colloque members most of whom are educators as well as lawyers.

Toward the definitional goal thus fixed the colloque made substantial progress in the view of the General Reporter. It had been discovered that scholars of various countries had misunderstood each other in the past; and the reasons for the misunderstanding were identified, namely that in some parts of the wold, there is a definition under Dicey's influence in procedural terms, while others, referred to as "the American idealists", read into the concept certain substantive rights, in addition to procedural regularity. In the future those who use the term must say in which sense they use it.

In turning to the Orient, the question arises as to the sense in which the term is used there. It has appeared from the discussion that if the debate between Dicey and the American idealists came before an Oriental court, the Japanese judges would lean toward the United States' view, while the Indians, having been brought up in the Dicey tradition of the British, find it more difficult to discard the procedural definition. Indian court decisions, however, have indicated that they are moving toward the view common in the United Sta-

tes. Even in the United States, "due process" is not an absolute concept, and it is reasonable to ask whether the United States Supreme Court, if it were sitting in India, would have reached decisions different from those of the Indian Supreme Court, given the staggering economic problems of India and the convulsions and violence which accompanied the very birth of that nation.

In seeking a definition, one comes further to the question whether the term rule of law can be applied properly to a dependent country. In the procedural sense, it would seem that the answer could be in the affirmative; but in the substantive sense, those holding the United States' view would require the existence of a government established with the consent of the governed.

The discussions in both colloques on the rule of law proceeded in terms of a distinction between institutions and values. In the Oriental colloque, added difficulties had to be faced, arising not only from the hugeness of the geographical area with which the colloque had to deal, but even more from the fact that two sets of values and of institutions had to be considered: the old and the new, the indigenous and the imported.

In examining the old values, it became apparent that they were more perennial than institutions. It was said that in the sense of traditional values "a great system of law never dies". The older institutions, however, have receded. Their rigidity often prevented their adaptation to changed conditions, and Western institutions were drawn upon to fill the breach, partly because of the Orient's admiration of the technological and material "success" of the West. Western institutions thus came to be adopted and imitated in the Orient, sometimes voluntarily and sometimes as the result of compusion; but whichever way Westernization was brought about the result was the same so far as the older institutions were concerned: they vanished or were greatly impaired, and their place was taken by new Western-style constitutions, courts and codes.

Turning to the new institutions, they may reflect either common-law or civil-law influence, or varying mixtures of both, yet the crucial question raised is always the same: do these legal institutions embodying the rule of law as understood in the West make a signifiacnt and beneficial contribution toward solving the problems of Oriental countries? The fact that the legal machinery is Western, while some of the values may remain traditional and the problems to be solved may have no counterpart in Western experience, might at first blush be thought to create a contradiction; but this need not be so, for institutions can be assimilated, as has been evidenced in Turkey. Also, to the extent that Western institutions are democratic, they embody within themselves the possibility of growth and adaptation. Comparative lawyers can aid in the process of adaptation, as was evidenced in 1956 in the colloque on reception Western law in Turkey. There, the scholars found certain difficulties in adapting Western marriage laws to Turkish conditions, and in the light of their findings it may not be too difficult to make the imported legal institutions more responsive to the recipient country.

The point was raised in connection with the problems of the Middle East that the assimilation of institutions is easier in private law than in public law; but that statement does not seem to be borne out by the experience in India and Japan.

There is an additional reason, connected with the nature of the values themselves, why there is no necessary contradiction between indigenous values and imported institutions. The values which inspired the institutions in the society of their origin, and the relevant indigenous values of the importing countries, may well be similar. Values, moreover, are not immutable. They change less swiftly than institutions, but change they do. The impulses which bring about such change in an Oriental country may be partly indigenous, partly Western, and perhaps due to the independent development of the imported Western institutions themselves. In changing Western and Oriental values dramatically converge. The concept of the welfare state, strongly accented in both colloques, is causing

such convergence. India is determined to establish a welfare state, but equally determined to preserve individual rights. The values behind this determination are not essentially different from those which today underlie the rule of law in the West.

Even where values differ, intercultural comparison of legal rules and principles yield significant results. The borderline between institutions and values is not drawn with the edge of a knife. The legal profession, in particular, while being part of an institution, may perpetuate and generate values of its own. Therefore, and perhaps quite apart from the ultimate values motivating a society as a whole, it becomes a matter of moment if we can find, in legal rules and principles, common denominators linking Western and Oriental countries. Common denominators abound when we talk of law, and especially of those doctrines which constitute the essence of the rule of law, such as: separation or diffusion of power; fundamental rights, both human and civil; subjections to the law of all persons, including those at the political summit; legality and judicial review of administrative acts; fair trial, i.e. fair and objective procedure both in the courts and in the administrative process; an independent judiciary brought up in a tradition of impartiality and objectivity; and judicial or traditional restraints on arbitrary action by a parliamentary majority. These basic elements of the rule of law are common to the Orient and to the West.

Some conclusions arise from the discussion which may be of professional interest to lawyers. First, lawyers are more competent in discussion of institutions than of values. In his own habitat, a lawyer is intuitively familiar with the values behind the legal institutions. When he deals with foreign cultures, however, these values may elude him unless he has the assistance of those who have the requisite knowledge and experience. Meetings of the character of the colloque aid in this process of consultation and mutual education.

Further, it was found in the colloque that professional lawyers both from the Orient and from the West speak the

language of the civil and common law, so that the channels of communication are open. If there are any intellectual or terminological barriers, they do not exist between West and Orient, but rather between various groups of Westerners, i.e., between civil and common law, and between the followers of Dicey and the believers in substantive fundamental rights. The great value of open and well-functioning channels of communication between lawyers of the West and of the Orient was proven by the smooth and responsive flow of arguments and by the absence of misunderstandings in the course of the colloque itself.

Finally, it was found that not only in terminology, theory and concept, but also in the actual contents of the legal principles relevant to the "rule of law", there was a considerable core of agreement between West and Orient. Some of the specific institutions and precepts which are included in this common core, have been mentioned above. The discussions thus gave support to the idea that there are general principles of law recognized by civilized nations and that these principles can be found by comparative study.