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ASSESSING THE CONVERGENCE THESIS OF LEGAL REFORMS IN EMERGING MARKET ECONOMIES

1. INTRODUCTION

This chapter argues that the post-Cold War era global phenomenon of proliferating transitional market economies are characterized by institutional diversity, rather than by neo-liberal convergence. The contention of diversity presents a direct challenge to the apparent ambition of the international community to engineer institutionally a neo-liberal economic world order, as reflected in the Good Governance development model orthodoxy. Two principal claims are made to argue why development scholars and practitioners should remain sceptical that institutional convergence is occurring or is likely to occur around the prescribed governance reforms. First, empirical evidence cannot confirm the view that these neo-liberal institutions are being progressively implemented by the fastest-growing emerging market economies. Second, and more theoretically, a set of faulty assumptions surrounding the neo-liberal conceptualization of state power and the state's role in institutional change can be linked to a paradox, or unintended consequence, which undermines the neo-liberal ambitions for institutional convergence.

The argument is elicited in the following sections. The first section defines 'good governance' and provides some brief points about its recent evolution and ascendancy since the mid-1990s. The argument is clarified in the second section, followed in the third section's assessment of the weak empirical evidence and the section four's elicitation of neo-liberal development policy's assumptions and one paradox of state power. The conclusion summarizes the challenges to the near-term attainment of the neo-liberal vision of institutional convergence and proffers a prediction for the long term.

The current neo-liberal development policy orthodoxy falls under the general rubric of the 'Good Governance' development model. Essentially, this development model stipulates that certain institutions prescribed by the neo-liberal development policy constitute the preconditions for market- and private-sector oriented growth and human development. Specifically, the wide-ranging set of

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governance institutions (laws, policies, statutes, practices, norms, beliefs) of the Good Governance include reforms to formal economic laws, the legal system, and the rule of law generally, to bring these institutions more in line with those found in the western, liberal advanced democracies. These micro-level institutions are also expected to increase the governance capacity of states to implement the more traditionally emphasized neo-liberal macroeconomic policy prescriptions, namely, liberalization, privatization, deregulation and other forms of state retrenchment from the economy. While there is no singly accepted definition of 'governance' in academic literature or among development practitioners, a suitable working definition provided by the World Bank's *Governance Matters* defines 'governance' as 'the traditions and institutions by which authority in a country is exercised' (Kaufmann, Kraay, and Zoido-Lobaton, 1999: 1). Due to the vagueness of the term 'governance', it is helpful to understand the essence of the Good Governance development model by reference to the main institutions it prescribes. These include, first, a politically independent judiciary and stable legal system supporting the rule of law; second, the economic laws widely considered foundational to well-functioning market economies, including well-defined and state-guaranteed private property rights, contract, company, bankruptcy, and competition laws (EBRD, 1994: 69–77; Waelde and Gunderson, 1994: 355); and, third, improved public sector management, with reduced functions and size, increased accountability, transparency and participatory economic policy making, and reduced corruption. In contrast to the term 'governance', the normative concept of 'good' governance is much easier to define, since in the policy literature it is equated to the policies prescribed by the neo-liberal development policy orthodoxy.

The central argument in this chapter holds that the generalized and generic contemporary trend toward the establishment of market economies cannot be assumed to signify an emerging homogenization of market economy systems. The homogeneity, or convergence, of market economies appears to be occurring by virtue of the power of the prevailing development orthodoxy, the Good Governance development model. This development model is empowered by a widespread consensus on the part of most powerful actors in the global economy. The key to challenging the inflated confidence in the eventuality of a neo-liberal economic world order is to first establish that this ambition does, in fact, exist. While nowhere in the development agencies' governance-related publications or promulgations is it expressly stated, the existence of an underlying ambition to attain institutional convergence can be inferred from the global consensus surrounding the Good Governance agenda. The Good Governance development model finds overt support in the international development community, from multilateral development agencies such as the World Bank and the International Monetary Fund, western governments, their bilateral development agencies and their mouthpiece, the Organization for Economic Development and Cooperation's Development Assistance Committee. Support has also emanated from a myriad of non-governmental organizations, as well as other global governance institutions more peripherally involved in development issues, such as the World Trade