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Judicial Ethical Integrity: Challenges and Solutions

BY MORRIS A. RATNER*

Challenges facing the judiciary and solutions to those challenges were the topics of two afternoon panels at the Professional Ethical Integrity conference hosted by UC Hastings College of the Law. The panels took place against the backdrop of a decades-long conversation in rule of law circles that has produced statements of common principles on judicial ethical integrity by the United Nations, regional international organizations, and other NGOs. But whereas

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general statements of principles are designed to transcend country-specific variables, our conference panelists engaged in a comparative dialogue grounded in their direct experiences. Moreover, while statements of ethical integrity principles have identified dozens of issues of concern, our panelists emphasized three as paramount: competence, independence, and corruption.

The panel on ethical integrity challenges facing judges included Anthony J. Scirica, Senior Judge of the United States Court of Appeals for the Third Circuit and a Senior Fellow at the University of Pennsylvania School of Law; Hualing Fu, Professor of Law at the University of Hong Kong; and Me Mario Joseph, a human rights attorney and co-founder and managing attorney of the Bureau des Avocats Internationaux in Haiti. The panel on solutions to those challenges was moderated by Judge William A. Fletcher of the United States Court of Appeals for the Ninth Circuit and included Judge Evgeni Georgiev, a Bulgarian trial court judge; Judge John R. Tunheim of the United States District Court for the District of Minnesota; and Mirte Postema, then Senior Program Officer for Judicial Independence with the Due Process of Law Foundation. Several of these panelists prepared articles for this symposium.


5. The Author moderated this panel.


7. See, e.g., Professor Fu Hualing — Biography, Faculty of Law The University of Hong Kong, http://www.law.hku.hk/faculty/staff/fu_hualing.php.


section, building upon their conference presentations. This article summarizes and contextualizes the participants’ comments at the conference and puts them in conversation with each other.

I. Judicial Role and Ethical Integrity

Judicial role may be contested or in flux within a single system. In the United States, debates have raged on such foundational matters as both normative and descriptive accounts of appellate court judging and the meaning and proper scope of managerial judging at the trial court level. These debates have shifted over time as conditions and epistemologies have changed.

Given the plurality of views within a single jurisdiction – the United States – on the role of a judge, it is not surprising that some


15. Compare Judith Resnik, Managerial Judges, 96 HARV. L. REV. 376, 380 (1982) (“Managerial judging may be redefining sub silentio our standards of what constitutes rational, fair, and impartial adjudication.”) with E. Donald Elliott, Managerial Judging and the Evolution of Procedure, 53 U. CHI. L. REV. 306, 315-16 (1986) (“Some opponents of managerial judging, led by Professor Resnik, contend that managerial judging is ineffective – or at least, that the effectiveness of managerial judging has not been demonstrated. Here I must respectfully part company with the loyal opposition.... [A]t least some managerial techniques are effective in reducing the amount of time and effort invested in processing a given case.”).

16. See, e.g., Jonathan T. Molot, An Old Judicial Role for a New Litigation Era, 113 YALE L.J. 27, 76 (2003) (“This is not the first time that judges have updated their role in response to new challenges. Nineteenth century trial practice witnessed evolutions in the judicial role just as significant as the evolutions underway today in pretrial practice. Twentieth century administrative law likewise saw changes in the judicial role that are comparable to recent changes in class action practice.”); Abram Chayes, The Role of the Judge in Public Law Litigation, 89 HARV. L. REV. 1281, 1282 (1976) (“We are witnessing the emergence of a new model of civil litigation and, I believe, our traditional conception of adjudication and the assumption upon which it is based provide an increasingly unhelpful, indeed misleading framework for assessing either the workability or legitimacy of the roles of judge and court within this model.”).
disagreement existed across jurisdictions among our panelists.\(^\text{17}\)
Most notably, Judge Scirica and Professor Fu defined judicial role by reference to their own judicial systems’ distinct structures.\(^\text{18}\) Judge Scirica’s understanding of what it means to be a judge was grounded in the notion of separation of powers enshrined in Article III of the United States Constitution and elaborated upon in subsequent statutes and case law.\(^\text{19}\) Professor Fu had a different starting point: “judges” in China are part of a single-party apparatus and thus have a narrower function, i.e., to efficiently resolve disputes, rather than act as a check on the overreaching of coordinate branches.\(^\text{20}\)

Variations in judicial role may produce different understandings of judicial ethics and integrity. Judge Scirica identified independence as the *sine qua non* of judicial ethical integrity. Conversely, Professor Fu opined that Chinese judges, who do not aspire to be *politically* independent, nevertheless can have ethical integrity and a *degree* of independence, at least in private, routine disputes that do not implicate governmental concerns.\(^\text{21}\)

As Professor Fu put it:

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18. For purposes of this article, I refer to Professor Fu’s judicial system as the Chinese judicial system, even though he is a professor of law in Hong Kong, which has its own system. *See generally* JORGE OLIVEIRA & PAULO CARDINAL, EDS., ONE COUNTRY, TWO SYSTEMS, THREE LEGAL ORDERS – PERSPECTIVES OF EVOLUTION: ESSAYS ON MACAU’S AUTONOMY AFTER THE RESUMPTION OF SOVEREIGNTY BY CHINA (2004).


20. Similarly, variations in conceptions of judicial role can be seen across common and civil law systems. *See*, e.g., Posner, *supra* note 14, at 1055 (“The judicial role is also different in a career judiciary – the system in the Continental European countries, Japan, and indeed most countries in the world in which a judge begins his judicial career right after law school and progresses, as in the normal civil service, to more and more responsible judicial positions. In fact, judges in those systems are civil servants. Their advancement depends on their satisfying their superiors’ expectations, and the result is the kind of disciplined, docile, and modest decision making characteristic of civil servants. In our judiciaries, and particularly in the federal court system with its lateral entry into positions that carry lifetime tenure, the role played by the judge is bound to be different and freer, especially given the individualism that is so characteristic of Americans.”); Geoffrey C. Hazard, Jr., *Discovery and the Role of the Judge in Civil Law Jurisdictions*, 73 NOTRE DAME L. REV. 1017, 1019 (1998) (“[A]ll the common law systems begin with a concept of the adversary system, which defines the roles of the judge and the parties’ advocates…. The premise in civil law jurisdictions is entirely different, at least formally so.”).

21. It is not always obvious how to draw the line between routine and politically sensitive cases. For example, what appears to be a routine private dispute – say a traffic
“There are 10 million cases per year [in China]. So there must be some degree of independence, competence and trust, or people would not come to court.”

Despite these differences, and at a certain level of generality, there was apparent consensus regarding the nature of the judicial role and of judicial ethical integrity. No one disagreed with Judge Scirica’s statement that – across systems – the primary function of a judge is to uphold the rule of law. The panelists gave most attention to the same three challenges to that function, discussed in the following section.

II. Ethical Integrity Challenges Facing the Judiciary

Panelists emphasized three challenges to judicial ethical integrity above all others: competence, independence, and corruption.

A. Competence

All panelists recognized the need for a base level of judicial competence twinned with accountability for failure to meet minimum standards. However, panelists differed, depending on country of origin, on the threat lack of competence currently poses to judicial

accident – may end up being politically sensitive because one of the parties involved in the accident is a relative of a party official. Similarly, a commercial dispute between private parties could implicate government regulatory aims. See RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 286-87 (2002) (“Cases may be politically sensitive because they involve a prominent political figure, dissidents, or social organizations such as Falungong. Or they may involve potential conflicts between the judiciary and other state organs ...”).

22. See also Zhu Suli, The Party and the Courts, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION 53 (Randall Peerenboom ed., 2010) (“Visions of judicial independence drawn from distinctly Western experience are not particularly meaningful for modern China, and evaluations and judgments based on these experiences or from their underlying ideology ... have limited academic value and practical use for China.”); Randall Peerenboom, JUDICIAL INDEPENDENCE IN CHINA: COMMON MYTHS AND UNFOUNDED ASSUMPTIONS, IN JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION (Randall Peerenboom ed., 2010), at 70 (“[G]eneral statements about the lack of judicial independence or impossibility of achieving judicial independence in a single-party state fail to capture the complex reality of China or other authoritarian regimes.”). But see Frank K. Upham, Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China, 114 YALE L.J. 1675, 1703-07 (2005) (criticizing a book by Zhu Suli for failing to fully confront the role of politics in the Chinese judicial system, one that is difficult to neatly pin down).
ethical integrity and, to a lesser extent, on the benchmarks for assessing and ensuring competence. Panelists from countries with long-standing procedures for training lawyers and judges, vetting and selecting judicial candidates, and monitoring and disciplining judges who fall below minimum standards placed relatively less emphasis on competence as a key challenge to ethical integrity. For example, Judge Scirica pointed out that the expectation in the United States is that judges will be of above-average competence; however, he recognized that judicial ethical integrity can tolerate judges’ varying degrees of skill. As Judge Scirica put it, “We all don’t need to be Justice Holmes.”

By contrast, panelists from Haiti – where judges are not systematically trained, vetted based on skill and experience, or held accountable for falling below minimum standards – found competence to be a current and pressing challenge to the judiciary’s ethical integrity. Mr. Joseph, a human rights lawyer in Haiti, gave the example of Judge Lamarre Belizaire. According to Mr. Joseph, Judge Belizaire was appointed by President Michel Martelly even though he did not meet Haiti’s formal requirement of five years of experience. Moreover, Judge Belizaire has not been disciplined as a judge for his actions, including his allegedly improper use of his office to pursue political dissidents, even though his actions prompted the Port-au-Prince Bar Association to disbar him for 10 years (commencing on the date he steps down from the bench).23

Other panelists characterized judicial incompetence as a threat their systems had recently confronted with some success. Judge Georgiev identified specific reforms made in Bulgaria in the last decade, including, among others:24 the establishment in 2004 of an


24. Judge Georgiev’s assessment of Bulgaria’s progress was roughly consistent with the American Bar Association Rule of Law Institute’s recent reviews of Bulgaria’s judicial system, though that report is more critical of Bulgaria’s recent efforts to improve judicial competence. See ABA ROLI, Judicial Reform Review for Bulgaria, Volume IV at 15, 17 (2013), available at http://www.bili-bg.org/cdir/bili-bg.org/files/INDEX_FINAL_ENGL
official training center for new judges; the development of a centralized selection process, which, for persons seeking appointment as junior judges, involves a competitive centralized exam; the imposition of a longer and more intensive review process before tenure is granted to new judges; and an increase of judicial salary that has attracted higher caliber candidates. Similarly, Professor Fu praised improvements over the past two decades in the education and training of judges and in the professionalization of the judiciary as evidence of a general trend toward increasing ethical integrity of the judiciary in China.

B. Independence

Threats to independence place pressure on the judge's core function to uphold the law via impartial decision-making. Judge Scirica defined the two key dimensions of judicial independence: decisional and institutional. Decisional independence is the ability
of a judge to render a judgment without political pressure or personal bias; this independence is enshrined by, among other things, the insulation of federal judges from political pressures via life tenure and non-diminution of salary. Institutional independence is the structural autonomy of the judicial branch as a coequal branch, which Judge Scirica characterized as a necessary condition for decisional independence because external regulation of judicial conduct could chill impartiality.29

Every judicial system struggles with independence.30 Even in the United States, judicial independence faces pressures. First, independence in the United States is not absolute. Judges must be accountable, but for what and to whom? Judge Scirica noted that federal judges can be impeached only for high crimes and misdemeanors— not for unpopular or even poorly reasoned decisions.31 Congress creates and regulates the lower federal courts but has granted the courts self-regulatory power, retaining only an oversight role.33 However, in furtherance of its regulatory function, Congress has the ability to overreach, such as via (ultimately failed) bills in Congress for the creation of an inspector general with


subpoena and contempt power to investigate judicial conduct;\textsuperscript{34} this approach conflicts with the current self-regulatory approach. Second, state court judges do not enjoy the insulation from political pressures that is so critical to decisional independence in those state court systems where judges must periodically run for office in elections often funded by campaign contributions from litigants and lawyers who may appear before those same judges.\textsuperscript{35}

The challenges to judicial independence in an established democracy like the United States pale in comparison to the challenges faced in countries where the judiciary is not structurally a separate and properly insulated branch\textsuperscript{36} or where, regardless of the formal structure, coordinate branches influence judicial outcomes. Conference panelists on judicial ethical integrity addressed both kinds of challenges. As noted, China is an example of a country with a judicial system that does not formally, structurally permit an independent judiciary.\textsuperscript{37} Haiti, Bulgaria, and various Latin American countries represent the latter type of challenge to independence, where judges are susceptible to pressures from other political actors despite formal separation of the judiciary.\textsuperscript{38}

\begin{footnotes}

35. See Erwin Chemerinsky, Preserving an Independent Judiciary: The Need for Contribution and Expenditure Limits in Judicial Elections, 74 CHI.-KENT L. REV. 133, 134 (1998) (Expenditures by lawyers and litigants on judicial election campaigns are a "grave threat to judicial independence because they risk both the reality of undue influence and the appearance of impropriety.").

36. To be truly independent, a judiciary that is structurally separate from other branches of government must also enjoy other facets of what Isaiah Berlin characterized as "negative liberty," i.e., freedom from interference of various kinds, including from physical compulsion and pecuniary consequences. See Pamela S. Karlan, Two Concepts of Judicial Independence, 72 S. CAL. L. REV. 535, 537-548 (1999).

37. See Keith E. Henderson, Halfway Home and a Long Way to Go, in Judicial Independence in China: Lessons for Global Rule of Law Promotion (Randall Peerenboom ed., 2010), at 28 ("The legal concept of judicial independence is embedded in China's last three Chinese constitutions (1912, 1954, and 1982). However, a review of twentieth century Chinese history reveals that the full meaning of this concept has long been debated and that conflicting provisions of these constitutions, as well as actual political practice, have meant that judicial independence has usually been interpreted to only apply to the judicial decision-making process related to individual cases — not the institutional independence of the judiciary.").

38. See CATHERINE DUPRE, IMPORTING THE LAW IN POST-COMMUNIST TRANSITIONS 22 (2003) ("The principle of separation of powers is guaranteed by all post-communist constitutions," including Bulgaria's Constitution of 1991); Maria Dakolias, The Judicial
By way of example, Mr. Joseph noted that the Superior Council of Judicial Power created in 2012 to appoint, monitor, and discipline Haitian judges has become politicized and is now "just a tool of the Haitian government." Relatedly, judges, though formally separate from the executive branch, act in a manner that demonstrates its influence. For example, Mr. Joseph offered his perspective on the case of a "corrupt mayor in a small remote town in the South of Haiti" who allegedly ordered the murder of human rights activists. Though a magistrate judge recommended a trial on murder charges, the trial judge refused.

C. Corruption

The boundary between corruption and independence as challenges to the ethical integrity of the judiciary is a fuzzy one. Threats to independence are usually either structural (e.g., a judiciary that is not separate from other organs of government) or take the form of pressure applied to judges, often by other government officials, to influence outcomes (e.g., threats to remove judges or reduce their salaries). Corruption, on the other hand, is commonly thought to involve the seduction of judges, by public or private parties, where a judge actually succumbs for his private gain. An
example of a threat to judicial ethical integrity that straddles the line is the situation of a state trial court judge in the United States who must win an election in order to retain his position and who hears cases involving parties or counsel who contribute to the judge’s election campaign. Some observers categorize that circumstance as a threat to independence, whereas others see it as implicating the threat of corruption.

The extent to which corruption poses a threat to judicial ethical integrity in a particular system depends substantially on two factors: the general pervasiveness of corruption in society and the effectiveness of mechanisms of judicial accountability. Judge Scirica noted that, while corrupt judges may exist in the United States, they are the exception rather than the norm; this is partly due to oversight and accountability mechanisms, especially in the federal system, and to the fact that judges live in a society and are trained in an educational system that values ethical integrity. Professor Fu attributed pervasive corruption in the judiciary in China to the pervasiveness of corruption in Chinese society in general. Mr. Joseph attributed the challenge corruption poses to the Haitian judiciary – including the frequency of bribes paid to judges – to lack of judicial accountability; no institution oversees the judiciary in Haiti and it does not self-regulate.  

Panelists disagreed regarding the role of economic adversity in generating corruption as a threat to the judiciary. It is clear that poverty and corruption are linked and that economic prosperity, or


42. See generally JEAN SENAT FLEURY, CHALLENGES OF JUDICIAL REFORM IN HAITI 19-20 (2007) (“In its operation, the Haitian judicial system allows the worst iniquities of the country’s entire social fabric to proliferate.”).

43. This disagreement mirrored the lack of consensus regarding the relationship in general between rule of law and economic development. See JAMES J. HECKMAN, ROBERT L. NELSON & LEE CABATINGAN, GLOBAL PERSPECTIVES ON THE RULE OF LAW 6-7 (2010) (“[T]here have been active debates ... the direction of causation between economic and legal development. Historical and cross-national comparisons loom large in this literature, as scholars have sought to explain seeming anomalies of nations that have achieved rapid rates of economic growth while not developing all aspects of a rule of law system.”).

44. Office of Democracy and Governance, USAID Program Brief, Reducing Corruption in the Judiciary at 1 (2009) (“The linkages between poverty reduction, economic growth, and democratic governance are firmly established in current development thinking, backed by persuasive research. Equally well established is the recognition by scholars,
the search for it, can inspire judicial reform. But is prosperity a necessary condition of judicial ethical integrity? Judge Scirica asserted that the answer to the question – whatever it is – should not inspire a fatalism regarding or an acceptance of corruption. Mr. Joseph asserted the primacy of lack of accountability rather than economic adversity as the source of corruption in the judiciary. The problems of poverty and corruption are linked, Mr. Joseph argued, but it is wealthy people in Haiti who are often the most corrupt.

II. Solutions to the Ethical Integrity Challenges

Effectively meeting ethical integrity challenges to judicial integrity requires time for the judiciary and the society in which it is embedded to develop a culture of legality and an immediate commitment to create the institutional arrangements and procedures that tend to foster and support judicial integrity.

A. The Long Term Fix: Cultural Transformation

The core ethical integrity challenges conference panelists identified as plaguing judicial systems — including competence, independence, and corruption — are linked to the cultures in which the judiciaries are embedded. Judge William Fletcher relayed the story of Dean Griswold, who, when asked how a country could achieve the level and quality of judicial independence in the United States, reportedly said “start 500 years ago.” Latin American

policy makers, and development practitioners of the central importance of the rule of law and the control of corruption for successfully addressing the related challenges of social, economic, and political development.”).

45. See, e.g., Weixia Gu, Courts in China: Judiciary in the Economic and Societal Transitions, in Asian Courts in Context 488 (Jiunn-Rong Yeh & Wen-Chen Chang eds., 2015) (“The traditional theory of the Chinese judiciary has been that the courts, together with other judicial organs...are ‘weapons’ of the people’s democratic dictatorship. However, as the emphasis on the socialist market economy grew, it was increasingly stressed that the courts’ task is to contribute to economic construction.”).

46. Shimon Shetreet, Creating a Culture of Judicial Independence: The Practical Challenge and the Conceptual and Constitutional Infrastructure, in The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges 17 (Shimon Shetreet & Christopher Forsyth eds., 2012) (“Judicial independence must be supported by the political climate and social consensus. The political leadership and the professional and legal elite must work together to develop a culture of judicial independence.”).
countries provide a useful example of the problem posed by insufficiently deeply rooted democratic traditions. The current legal culture in Latin American countries in general is the product of historical conditions characterized by significant military presences, relatively recent transitions to democracy, and a tradition of judicial submissiveness to political elites. While these conditions have hampered the development of a culture of legality in Latin America, they also point to the solution, i.e., nurturing that same culture, a project that takes not only commitment, but also time.

B. The Short Term Fix: Institutional Arrangements and Processes

As Judge Fletcher exhorted the conference attendees, “There is no time like the present to start.” Even if the conditions for ethical integrity do not yet exist, procedures can be put into place that set a judiciary on a trajectory toward achieving that goal. Identifying those procedures and gaining momentum in favor of their adoption is partly the product of exchanges of the kind the UC Hastings Professional Ethical Integrity conference accomplished. Judge John Tunheim emphasized the importance of building relationships among judges globally as one critical means of advancing that dialogue. Institutional arrangements and procedures can be matched to the components of ethical integrity they are meant to buttress, including competence, independence, and resistance to corruption.


48. Judge Tunheim’s biography provides examples of the efforts he has personally made to advance an exchange of ideas regarding judicial ethical integrity globally. See http://www.hhh.umn.edu/people/johntunheim/pdf/Tunheim.pdf (last visited Apr. 22, 2015).
1. Competence

Panelists proposed a bundle of solutions to the challenge posed by lack of judicial competence, including rigorous training, merit-based selection and promotion processes, equitable allocation of work among judges within a system, compensation sufficient to attract qualified persons to the bench, and the adoption and enforcement of codes of judicial conduct. The central feature of this reform package is a merit-based system that is consistently and transparently applied. Consistency and transparency promote the effort to strike the correct balance between accountability and independence, the fear being that regulation could otherwise be used as a tool to control rather than to increase the capacity of the judiciary.  

2. Independence

Even in countries that lack formal or informal structures to assure judicial independence, procedures that move incrementally in that direction can be adopted. One strategy is to identify pieces of an independent structure that can fly under the radar due to their technical nature. For example, the Due Process of Law Foundation has developed guidelines for the selection of judges that Ms. 

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49. Judge Georgiev cited the use and development of many of these processes as key to the improving competence of the Bulgarian judiciary. Ms. Postema emphasized selection, by way of example, in her remarks summarized in the next section.  


Postema reported have gained traction, in part because they do not create immediate gains or losses for political players. Postema added another dimension to the discussion of independence, which is not only a function of separation, but also of concentration of judicial power. If power is concentrated with one Supreme Court, then it is easier for other governmental actors to control the judiciary by controlling that one court. So a diffusion of power within the judiciary, along with transparent procedures for holding judges accountable within the judiciary, aids what Ms. Postema characterizes as “internal independence” of the judiciary.

3. Corruption

Panelists’ proposed solutions to the problem of judicial corruption overlapped considerably with the proposed solutions to the challenge to ethical integrity posed by competence. Training, merit-based selection and promotion, adoption and enforcement of judicial codes, and higher salaries are all steps that can steel judges against temptation. Judge Tunheim proposed an additional corruption-fighting tool: the spectacle of punishment. He recommended the empowerment of specialized prosecutors to pursue charges of corruption in transparent hearings, resulting in convictions that serve as an example to all judicial officers, combined with the


54. Under some circumstances, there may be tradeoffs between battling corruption and increasing judicial independence, commonly framed as a tension between independence and accountability. See Mark Tushnet, Judicial Accountability in Comparative Perspective, in Accountability in the Contemporary Constitution 74 (Nicholas Bamforth & Peter Leyland eds. 2013) (“The battle between corruption and independence is often thought of as being in opposition to one another, but the key is the maintenance of balance,” available at http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Judiciary_Advocacy_ToolKit.pdf (last visited June 11, 2015).
opening of the judiciary to the glare of media exposure to shine a public light on judicial practices. Judge Tunheim noted that no one reform works as a magic bullet against corruption and that any mix of solutions should be adopted and applied with an understanding of root causes of corruption in each country; to prevent judges from being seduced, it helps to know why they succumb.

C. The Value of External Pressure

The concept of using external (foreign) pressure to reform judicial systems, e.g., as a condition of receiving aid, received a mixed reaction from panelists. As Ms. Postema argued, it is difficult to impose reform from the outside. Reformers exist within every system; the key is to build bridges to and to empower them. External involvement in judicial reform has a greater chance of succeeding when invited into a country. For example, Guatemala reached an agreement with the United Nations to help that country investigate and dismantle organized crime structures, something the country on its own may not have been able to do. Judge Georgiev,

55. See Hiram E. Chodosh, Reforming Judicial Reform Inspired by U.S. Models, 52 DEPAUL L. REV. 351, 360-361 (2002) (“Short of full occupation and micromanagement by a foreign power or international institution, external pressure and assistance are limited in their effect on local behaviors of a judicial system.”).

56. See Kirsti Samuels, Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt 20 (October 2006) (“A key point to emphasize is that law reform in any country requires demand for change. For the changes to be sustainable and implemented there must be a demand among the population, and local champions of the changes to drive the reform, be it citizens, membership organizations, human rights activists, opposition parties, etc.”), available at http://siteresources.worldbank.org/INT CPR/Resources/WP37_web.pdf (last visited Apr. 23, 2015). Ms. Postema’s comments echoed a reaction to rule of law approaches in general, the “legal empowerment” model. See Stephen Golub, Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative (October 2003) (“An alternative, more balanced approach [compared to rule of law approaches] often is preferable: legal empowerment – the use of legal services and related development activities to increase disadvantaged populations’ control over their lives. This alternative paradigm, a manifestation of community-driven and rights-based development, is grounded in grassroots needs and activities but can translate community-level work into impact on national laws and institutions,” bracketed text added, available at http://carnegieendowment.org/files/wp41.pdf (last visited Apr. 23, 2015).

speaking of the Bulgarian experience, adopted a more optimistic view of the role of external pressure to promote judicial reform; conditions for NATO and European Union membership inspired reformers in Bulgaria, suggesting that external pressure had a positive impact on judicial ethical integrity in that country.  

Commitments by countries to adopt international principles on rule of law and civil rights can help to leverage reform efforts. Judge Tunheim found that such covenants could be persuasively cited as a basis for reforms necessary to implement them. One of the more prominent statements, the Bangalore Principles, has received widespread recognition and inspired the development of specific guidelines and benchmarks for their effective implementation.

The road to judicial ethical integrity is unending. Even established democracies must trudge it to manage the challenges to ethical integrity that, though similar at a certain level of abstraction, vary in intensity and expression by system. The Professional Ethical Integrity conference at UC Hastings provided an opportunity for fellow travelers to share their experiences and aspirations, building

58. See Janusz Bugajski, Western Balkans Policy Review 2010: A Report of the CSIS Lavrentis Lavrentiadis Chair in Southeast European Studies 13 (2010) (“There is reason for optimism regarding the EU’s enlargement strategy vis-à-vis the Western Balkans due to its previous record of success in the 10 countries of Entral and Eastern Europe. After decades of Soviet control, these 10 countries – Poland, Hungary, the Czech Republic, Estonia, Latvia, Lithuania, Slovenia, Slovakia, Romania, and Bulgaria – were transformed from authoritarian regimes into multiparty democracies.... Although the accession to the EU of Romania and Bulgaria remains controversial due to their continuing struggle to implement judicial reforms, EU policy has been a remarkable success in supporting the larger European integration project. The driving forces in this extraordinary transformation have been the twin prospects of EU and NATO membership”), available at http://csis.org/files/publication/100917_Bugajski_WesternBalkans_WEB.pdf (last visited Oct. 15, 2015).

59. See supra note 2.


community and connections – nourishment for the journey ahead.