

Rule of Law in East and Southeast Asia?

Review >
General

In the wake of the Asian financial meltdown, numerous analysts focused on the lack of regulation and transparency as factors precipitating the 1997 crisis. Partly as a result of pressure from international financial institutions, countries have started to improve the legal frameworks in which businesses operate. Christoph Antons' *Rule of Law in East and Southeast Asia* brings together a variety of perspectives from legal scholars on the reforms now underway. Traditional Asian understandings of law as an instrument of state power notwithstanding, do we see signs of a greater regional importance attached to the rule of law?

By Willem Visser 't Hooft

This highly readable collection of 14 different papers is the result of an IIAS workshop held in January 1998. In examining prospects for legal reform in Asia, the book addresses diverse fields of commercial law: intellectual property law, competition law, and financial market regulation, among others. The book is divided into five parts. In the first theoretical section, the authors focus on perceptions of the role of law in economic development. Of particular note are the articles by Bernard Bishop and John Ohnesorge. Bishop points to economic deregulation in many East Asian countries and the resulting separation of business from government. Governments increasingly focus on policies promoting competition, such as increased enforcement of laws on cartel formation; this will inevitably lead to a stronger emphasis on the rule of law. Ohnesorge, however, questions the necessity for a strong rule of law in all areas of the economy. It is important to develop an understanding of the rule of law, he argues, that can effectively be distinguished from the simple legalization of society or the suppression of government dis-

cretion in economic governance.

Part two focuses on Japan as a model for law and development in East Asia and specifically treats the influence of administrative decision-making on Japanese commercial law. Harald Baum, critical of the simple 'West vs. Asia' mental framework, explores important forces of change at work in Japan. In particular, strong bureaucratic interference is regarded as an impediment to economic growth. He cites the example of the Japanese financial industry and the challenges of globalization, and concludes that courts and lawyers will become more important in ex post monitoring instead of the traditional ex ante monitoring manifested through administrative guidance.

Richard Boyd stresses that, when looking at the significance of law in the management of economic change in Japan, the rule of law and safeguarding of competition appear less significant than legal instrumentality and informality. He points, however, to the increasing influence of the Fair Trade Commission (FTC) which implements the Anti-Monopoly Law, an important institution anticipated by rule of law rhetoric. Boyd is right to focus on

strong bureaucratic sectionalism in Japan, such as the continuous rivalry between the FTC and the Ministry of Economy, Trade and Industry (METI) in issuing laws and guidelines relating to competition policy. Christopher Heath likewise focuses on the rivalry between the FTC and METI in his chapter on industrial property legislation.

Christoph Antons points to a fundamental characteristic which Japan shares with other countries in East Asia. This is the primacy of public over private law. Many countries instrumentalized their imported commercial laws for development purposes, yet never encouraged litigation for individual goals. The classical distinction between private and public law has usually been blurred. The relative shortage of attorneys and judges and a lack of specialized courts in East Asian countries may therefore be no coincidence.

The book could have been improved by placing more emphasis on the question whether the current (commercial) legal reforms will lead to a more autonomous private realm where private citizens can more easily go to court. To what extent will the inevitable increase in private trade disputes lead

to a greater emphasis on the rule of law? The book leaves the question unanswered. The article by Robert Lutz on resolving trade disputes and on Asian dispute resolution fora, however, is interesting. He retains an optimistic outlook on the emerging international dispute resolution culture, although he draws attention to remaining enforcement problems in some countries.

Part three of the book deals with the role of law in China. Chen Jianfu concludes that although in China 'rule by law' is still strong, the strengthening of legal discourse and the involvement of legal experts in lawmaking are important steps in the right direction towards a greater emphasis on the rule of law. Part four deals with Southeast Asia and discusses industrial relations and technology transfer, two issues that have been central to the debate on economic development in Southeast Asia. Concluding the volume, Roman Tomasic discusses some recent examples of socio-legal scholarship on Asian commercial law, and encourages further empirical research in the field.

To sum up, this book is a useful guide for understanding law and development in East Asia and the place of the rule of

law in various East Asian countries. Differences and similarities between countries are examined, as are practices and understandings that can be expected to resist pressures to reform. For example, government bureaucracies responsible for implementing new commercial laws will be hesitant to give up their power to courts and lawyers.

The book's main merit lies in its diversity and its emphasis on factors other than cultural ones. Although cultural factors are not to be neglected, recent socio-legal research points to the fact that institutional and procedural aspects of national legal systems matter and may be resistant to transnational harmonization. ◀

- Antons, Christoph (ed.), *Law and Development in East and Southeast Asia* (IIAS Asian Studies Series), London: RoutledgeCurzon (2003), pp. 387, ISBN 0-7007-1321-2

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