

***Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* Edited by Randall Peerenboom. London & New York: RoutledgeCurzon, 2004. Softcover: 479pp.**

The rule of law rhetoric has spread to many parts of the world and more importantly is used vigorously in social, economic and particularly, political theories more than ever before. The conventional belief is that the rule of law engenders political austerity, economic development and social cohesion in a given community. Max Weber attributed the success of capitalism in Europe to the practice of liberal democracy characterized by state accountability and the existence of rational law that induces “calculability” and “predictability”. However, his theory has never been systematically tested.

The United States and most Western developed countries embrace the liberal democratic orientation of the rule of law, and in the past decades, particularly in the post-World War II era, there have been serious attempts by these countries to instil this political ideology in the developing world. The reason: there is a preconceived notion that the polities of developing countries are dictatorial and therefore individual civil and political rights are stifled. Many critics argue that cognizance of differences in culture, tradition and legal history is rarely taken into consideration, or is simply ignored by the developed countries. Consequently, the behaviour of Western advocates of the rule of law has been labelled as “ethnocentric” and “imperialistic”. International economic organizations like the World Bank and International Monetary Fund have also been named as guilty parties. This situation has caused friction and continues to strain international relations between the developed and developing countries.

In Asia, arguably politics tends to make law subservient. This was witnessed during the eras of Sukarno and Suharto in Indonesia, Marcos in the Philippines and the coup d'états in Thailand. The paternalistic bent of Asian governments has been well documented. To this end, political elites in several ASEAN countries believe that to augment economic development and social cohesion, civil and political rights should reflect more the interests of the collective than the individual. Hence, individual civil and political rights have been seemingly restricted, if not withheld. This has been frequently subsumed as “Asian values embedded in the rule of law”, which many Western critics consider as propaganda in support of political incumbency.

The liberal perspective on the rule of law on the other hand, advocates well-entrenched individual rights and proper checks and

balances on state–society relations. Hence, today, there are competing versions of the rule of law. That said, there is a general consensus nevertheless over the “thin version” of the rule of law, which assumes that laws must be promulgated in a constitutionally prescribed manner and applied justly and fairly to underscore political and moral legitimacy. Still, there is much divergence of views with regard to the philosophical and substantive content of laws, i.e. the “thick version”. Invariably, rule of law thinking per se has been fraught with conceptual and practical difficulties, which in turn restricts its analytical function.

At present, available literature on the topic is theoretically laden but without much focus on systematic qualitative work that includes credible empirical surveys. Moreover, most such work has not come from Asia (except India); the rule of law thinking has not caught on in the academic, let alone policy circles. Hence, there is a need for more credible research to appreciate and understand the nuances of rule of law discourses in the developed and developing countries with a view to building common space, minimizing misapprehensions, and ensuring the greater good of all.

This edited volume by Peerenboom takes a holistic approach towards the rule of law and empirically surveys 14 countries. The volume is the initial component of an ongoing extensive project on the subject, which envisages addressing various substantive laws via conferences and publications. Hence, the volume depicts the general framework for the rule of law in 14 countries in the context of more specific studies to come. On the whole, the papers are laboriously researched as well as judiciously analysed by country experts.

At the outset, Peerenboom (chapter 1) conscientiously avoids taking a narrow version of rule of law. To this end, he introduces a template along the line of thin and thick (against the political systems of liberal democracy, state socialism, soft authoritarianism and communitarianism) concepts of rule of law. Other writers also adopt the pattern and hence giving focus and meaning to the volume. More importantly, he treads through all the chapters meticulously and provides overarching observations and findings on the rule of law.

Tamanaha (chapter 2) looks at the rule of law discourse in the United States against the background of liberal democracy that squarely underpins four themes of liberty: legal, political, private and institutional. But he also considers the practical limitations of absolute liberalism and the inherent mischief it tends to produce. However, too much emphasis has been given to scholarly thinking and not much to empirical data. Pech (chapter 3) provides an excellent historical perspective of *état de droit* (rule of law) in France and he notes that constitutional review of substantive laws especially ex post in France is not entirely

satisfactory but he juxtaposes this dilemma with the implications for international law — specifically for the European Economic Community. Hence, looking ahead, if ASEAN transforms into a formal supranational organization, France's experience on the rule of law would be instructive. In general, the discussions about the rule of law in the United States and France (liberal democracies) stand starkly in comparison to other chapters (4–15) that address Asian countries (non-liberal democracies). Here, the convergence, and more importantly the divergence, of rule of law discourses, particularly the thick version, between the two groups of countries become apparent.

Peerenboom (chapter 4) brings the reader through a historical perspective of the rule of law in China, to the present context. Since the 1980s, China has indeed put in place a thin rule of law and although elements of the thick liberal version have been introduced, particularly in the economic sphere, the state socialist ideology is strongly intact. Similarly, Gillespie (chapter 5) recognizes the progress Vietnam has made in introducing liberal economic rights, yet the ardent socialist stance seems impenetrable as far as political rights are concerned. Interestingly, several surveys consistently suggest that the general populace in China, Vietnam and other ASEAN countries are more concerned about economic development and communal cohesion than individual political and civil rights.

This demonstrates that the rule of law should not be narrowly interpreted, as western liberal democracies tend to do. In Asia, save Japan, most countries are in the developing stage, and hence entrenchment of rational economic rights is the immediate urgency together with thin rule of law considerations that accord importance to effective institutional capacity. To this end, there is a need for an efficient judiciary; a clean and professional bureaucracy; and coherent checks and balances on the political elites and the state administrative machinery. Even in Japan, as Haley and Taylor (chapter 15) note, despite the existence of a relatively modern legal framework, the liberal thinking paradigm has not permeated fully in state–society relations. Although in the recent years the legal system has been beefed up, yet it remains to be seen if Japan would embrace the rule of law in the liberal sense.

In contrast, Chen and Cheung (chapter 8) and Cooney (chapter 14), discuss the presence of intensely liberal “thick rule of law”, particularly in regard to political and civil rights in Hong Kong and Taiwan, respectively. The former narrates incidents concerning the right of abode, freedom of religion and press, among others, in Hong Kong that tend to detract from socialist dogma. It would be worthwhile observing whether strong socialist ideology would infiltrate into the rather liberal

norms in Hong Kong, in the future. Interestingly, South Korea as Chaihark (chapter 13) explains has been having a great time experimenting with liberal democratic rule of law since the late 1980s. One cannot help feeling that the impetus for adopting liberal democratic rule of law in Taiwan, Hong Kong and South Korea is in most part due to regional geopolitics than any other compelling reason. Even thin rule of law is well established with particular importance to constitutional justice.

Thio (chapter 6) provides an excellent account of both thin and thick rule of law in Singapore emphasizing the “communitarian” orientation of the ruling elites. Economic rights are more entrenched than individual civil and political rights: the present government believes that sustainable economic development affords sufficient proof of moral and political legitimacy. However, the legalistic approach to containing political dissidence is overwhelming. Lee (chapter 7) furnishes an investigatory account of the constitutional elements in Malaysia and its past and present interface with the judiciary as well as the executive.

Lindsey (chapter 9) and Muntarbhorn (chapter 11) analyse Indonesia and Thailand respectively from post-World War II dictatorial regimes to the present democratized (but by no means liberal) version of rule of law. Interestingly, they also make observations of the prevailing political and social ethos that tend to hinder democratization. Similarly, in the Philippines as Pangalangan (chapter 12) notes, populist democracy and the activism of the judiciary in upholding social justice has made rule of law development unwieldy.

On the other end of the spectrum, India, as Baxi (chapter 10) argues, in spite of endorsing a relatively liberal thick rule of law, is not synchronized with a satisfactory thin rule of law. This notwithstanding, the judiciary tends to be proactive in regard to constitutional matters.

Overall, the edited volume is certainly a valuable contribution to the current limited rule of law literature, particularly in the Asian context. Western liberal thinking per se is going through a process of reorientation in the light of a renewed debate in many Western developed countries over the extent of permissible freedoms, sparked in part by the terrorist attacks of September 11, 2001. The study of rule of law on a comparative basis serves as a building block for peace and harmony, both domestically and internationally. Undoubtedly, academics, policy-makers and tertiary students in and outside Asia should find the book thought-provoking.

RAJENTHRAN ARUMUGAM
Institute of Southeast Asian Studies
Singapore