

# **Review of Globalisation and Resistance: Law Reform in Asia Since the Crisis**

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Edited by Christoph Antons and Volkmar Gessner. Oxford: Hart Publishing. 2007. x, 316 pp.

Globalization, a survey of recent titles reveals, has its enemies, defenders, cultures, servants, and discontents. This book focuses on some of its resisters. At the center of this collection is the legalization process by which Asian nations have moved in recent years toward more formalized, less autonomous, legal structures. Derived from a 2003 workshop at the International Institute for the Sociology of Law in Oñati, Spain, the ten essays in Globalisation and Resistance: Law Reform in Asia Since the Crisis employ perspectives including modernization theory, institutional economics, and Weberian rationalization theory, to explore how globalization has played out in nations such as India, Indonesia, Malaysia, South Korea, Thailand, and China.

Editors Christoph Antons and Volkmar Gessner locate this collection at the intersection of empirical methodology and Asian geography, where a relative gap exists in law and development literature. In the theory-oriented field of globalization studies, they argue, it is through empiricism that one avoids formalist “rule of law optimism” and the attendant problems of implementation blindness and cultural tone-deafness. Case studies and institutional analysis are presented as ways to acquire indispensable local knowledge. Thematically, the varied chapters are organized around the tension between forces of globalization and oppositional local practices in the wake of two major events – the Asian Financial Crisis of 1997 and the 9/11 terrorist attacks. Serially, they attest to the multiplicity of relations among national, transnational, global, and local forces in legal reform.

Jianfu Chen’s essay, “Role/Rule of Law in China Reconsidered,” directly confronts the disparity in China between textual scholarship and institutional practice. In Chen’s analysis, the gap between legal texts and implementation has allowed the Chinese tradition of rule *by* law to continue under the cover of rule *of* law rhetoric. As long as actors such as the WTO and the IMF assume that economic development depends on the rule of law, China’s rapid rate of development alone will be proof of progress in legal reform, leaving no impetus to encourage governments such as China to reform practices as well as statutes (179).

Andrew Harding's study of Thailand and Malaysia presents two inverse accounts of the effects of putting political or economic reform first, in order to stimulate development: in Thailand, the elevation of political reform as a precondition of economic reform, following a history of corruption and military coups; in Malaysia, by contrast, little substantive change or signs of much to come, largely for political reasons. Finding Thai development an encouraging manifestation of a "new Asian constitutionalism" evident in the region since the 1980s, Harding concludes that overall, the experience of Asian nations has "grated against the all-pervading wisdom of the international agencies and the globalization gurus" (137, 152).

In his chapter, "Politics, Ideology and Legal System Reform in Northeast Asia," John Ohnesorge adapts "eclectic critique," originally a tool for tempering over-optimism about legal transplantation, to instead explore criticisms of the motivations and successes of groups guided respectively by Neoliberal and "Populist/Progressive" ideologies. Reforms in both shareholder derivative litigation and administrative law in Japan, South Korea, and Taiwan, Ohnesorge observes, attempt to shift power from government or corporate hierarchies to private interests and represent not only legalization, but the narrower process of judicialization, in which court-adjudicated law in particular is increasing its hold over social and political life (106).

Rather than tension between reform and status quo, Franz and Keebet Von Benda-Beckmann present a case in which reform has set back into motion the complex interplay of previously coexisting and largely stable indigenous legal systems. Their longitudinal study of West Sumatra focuses on "big-bang" decentralization in post-Suharto Indonesia, finding a reconfiguration, in response to the presence of international institutions, of the Indonesian state, *adat* (traditional village law), and *Sharia* (Islamic law). Reform in Indonesia, Antons also observes, confronts not a nation lacking a functioning legal system, but rather one where history has left too many.

In their study of post-crisis reform of corporate insolvency law in Indonesia, Korea, and China, Terrence C. Halliday and Bruce G. Carruthers trace how nations in varying levels of distress employ a range of resistance strategies to channel and stymie the reformist interventions of outside actors, such as the IMF, based on the leverage they possess. Even when extreme asymmetries of power exist, they conclude, a transplant strategy may fail to take for a variety of complex reasons only legible through a detailed study of local practices and institutions.

Oliver Mendelsohn focuses most directly on the effects of the post-9/11 emphasis on security in line with the American-led Global War

on Terror. In Mendelsohn's account of the Indian legal response to terrorism, India's alliance with the US has enabled opportunistic political violence against Muslims and a general increase in authoritarianism. (158-59). As the same time, while the post-September 11 contraction of due process in India is a cause for potential concern, some balance is provided by the shifting political scene, where the rise of the Indian National Congress party in 2004 has led to a new embrace of civil liberties.

But globalization, as the Von Benda-Beckmanns emphasize, is a multidirectional discourse. Even as pressure for legal reform moves from West to East or North to South, for example, private legal cultures are among the things that migrants carry to developed nations. The apparent inevitability of globalization, Ohnesorge notes, is undermined by foreign observers' skepticism in response to, for example, the American crisis in corporate governance embodied by Enron, though he concedes they are unlikely to reverse the overall trend. Transnational institutions may still subscribe to the "self-congratulatory story of Western liberal legality" while self-servingly imposing Neoliberal ideology on Asian nations and calling it the rule of law (105). But at the same time, Halliday and Carruthers observe, the "invocation of cultural exceptionalism" provides a convenient mechanism with which a developing nation may repel outside recommendations as incompatible with existing culture (288). With this culturalist defense, foreign advisors can be held off, with some irony, by their own disciplinary key words. Meanwhile, the adoption of explanatory discourses like law and anthropology to stall or reject reform evidences a willingness to adopt Euro-American thought by developing nations where it is most useful to them. Surveying the limits of this strategy, Chen remarks that, "a completely new 'Asian' or 'Chinese' conception that is so alien as to render any comparison and assessment meaningless is not a helpful solution" (198).

For filling in the gaps of law and development, the Von Benda-Beckmanns argue, the advances made by law and anthropology are needed; it was first on the scene and has already developed frameworks for thinking about the transnational movement and implementation of legal culture (54). Still, the foregrounding of culture inevitably leads to blind spots of its own. For example, this culture-minded volume sidesteps the cultural and political meaning of "Asia" by limiting usage to geography, and brackets at the outset the arguments of skeptics who assert that the extent to which culture matters has been greatly overstated, and that legal regimes are, in fact, transferable with little significant interference from culture (5). The empirical turn proposed by Antons and Gessner also raises the question of how these collected globalization

inquiries differ from or relate to area studies, which has been critiqued as an apt instrument for the Cold War world order but undertheorized as an intellectual framework, especially for contemporary purposes. But whatever tradeoffs case-study-oriented volumes like this leave for calculation, Antons and Gessmer have amassed a revealing empirical landscape where description is thick, knowledge is local, the subaltern can speak like a cultural theorist, and developing nations employ, with varying degrees of success, adapted structures, indigenous conventions, and invented traditions to manage the rationalizing forces of global capital.