



Rule of Law

Formally established laws, regulations, and procedures serve as only the “thin” part of rule of law; also required for its full, “thick” realization are institutional capacity, judicial neutrality, informational transparency, and social space for civic engagement. In the context of rapid, large-scale industrialization in China, India, and neighboring countries, rule of law for sustainability is an area in urgent need of further development.

Rule of law is an important but complex and often controversial concept for sustainability in South and East Asia, as elsewhere. It may be defined in the first instance as (environmental) governance on the basis of formal and transparent rules, institutions, and procedures for environmental ends, rather than by individuals and institutions interested in more narrow, short-term (especially economic) gain. How, and by whom, is it determined whether and where a development project—for example a new hydroelectric dam, industrial park, urban development, or waste incinerator—may proceed, and what the anticipated social and environmental impacts and possible long-term consequences are? And after the fact, who will bear, if needed, the associated burdens and expenses of relocation, environmental cleanup, restoration, and compensation to victims of pollution and unbridled resource exploitation, and how will this be determined?

As major players in today’s global markets for goods and services, China, India, and their neighbors increasingly are expected—by local citizens and communities, nongovernmental organizations (NGOs), consumers both domestic and global, foreign governments, and others—to heed growing global social and environmental norms with respect to human rights (e.g., limits on use of child, prison, and slave labor; recognition of indigenous rights) and environmental sustainability (e.g., use of lead-free solder in electronics). Movements in this direction come in many

forms, including green supply-chain management, product certification programs and ecolabels, international environmental directives, environmentally preferred purchasing agreements, environmental and human rights advocacy campaigns, consumer boycotts and “buycotts,” and more.

Though constructed on the basis of diverse traditions and institutions, legal codes and regulatory structures in most South and East Asian nations today (Myanmar [Burma] and North Korea are notable exceptions) incorporate provisions for pollution control, environmental impact assessment, and resource conservation. Some nations in the region recognize traditional resource rights and other rights of indigenous peoples and communities; front-runners in formal recognition of indigenous land rights include the Philippines, India, and, in some respects, Indonesia. Citizens across the region, emboldened by and in some cases subsidized through domestic and international support, have for decades sought legitimate channels to redress environmental and other grievances against public and private sector actors and institutions. In response, governments have strengthened environmental laws, institutions, and procedures for greater legitimacy, if not also improved sustainability. Though not always followed, regulations in many countries in the region now formally require, for example, environmental impact assessments for major new development projects, including infrastructural projects. Even when not utilized for a particular project, such provisions provide a basis for legal challenges and appeals to news media and high officials. Considerable work remains to be done, however.

Western and Eastern Traditions

In Western contexts, rule of law has long been closely associated with liberal democracy; legal principles and practices protecting human rights and individual liberties

were well established, if incomplete and still developing, prior to the rise and institutionalization of contemporary environmental concern. In the United States, the National Environmental Policy Act (1970) established formal procedures for environmental impact assessment; it was followed by the Clean Air Act (1970), Clean Water Act (1972), Endangered Species Act (1973), and other landmark statutes. These acts established legal standing for local citizens, NGOs, and others on environmental matters. Four decades of legal and political struggles, advances, and retreats, have ensued, with rule of law protecting individuals and corporations (as fictitious individuals) alike.

By contrast, in East and Southeast Asia imperial traditions, a hierarchical “rule by man” dominated for centuries, with citizen-subjects having little say or input into environmental or other decision making. Four centuries of European colonization brought various legal traditions to the region, alongside ruthless colonial violence, bloody wars, and rebellions. The twentieth century was nothing short of tumultuous, variously bringing national liberation, democracy, communism, military takeovers, and ultimately marketization. In the newly industrialized East and South Asia of the latter decades of the twentieth century, governments (including those under authoritarian and/or military rule) adopted foundational environmental laws and regulations, with technical assistance from Japan, the United States, Germany, and other nations. Even today, however, many of the governments lack the legal and institutional capacity for effective implementation of environmental regulations. This is perhaps especially true in the region’s most expansive, most populous, and most rapidly developing economies, including China, India, Indonesia, and Bangladesh; however, even wealthier, more advanced countries in the region, such as Singapore and Malaysia, can improve in this area. Procedural innovation has lagged, encumbered by administrative fragmentation, corruption, and other conflicts of interest,

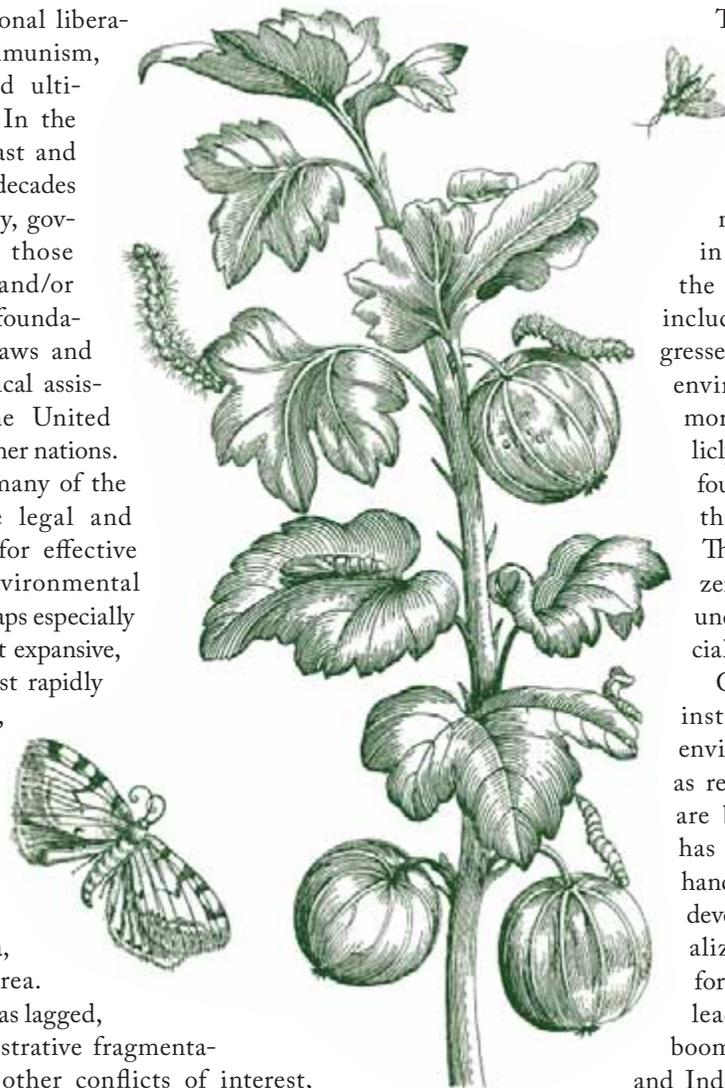
including with state-owned enterprises, lack of political will, and the weak or nonexistent development of civil society and institutions. Such difficulties are arguably most acute in China, Vietnam, and other “transitional” countries that maintain strong, centralized, one-party states functioning in close cooperation with economic elites.

Variations in Sectors

In rapidly developing China, India, and neighboring countries, rule of law today is most clearly established in commercial sectors—a condition of participation in global markets. In the economic sphere, rule of law protects and encourages investors to commit financial, organizational, and other resources in exchange for promises of future revenue. When efforts have been made to extend rule of law in the region to noneconomic spheres, including with respect to the environment and natural resources, results have been mixed.

The early decades of the twenty-first century have seen increasing environmental concern among citizens, news media, government officials, and others in most countries across the region. Some countries, including China, have progressed significantly in making environmental information more transparent and publicly available, an important foundation for rule of law in the environmental arena. This has empowered citizens and raised pressure on underperforming local officials and enterprises.

Gradually, social and institutional capacities in environmental law, as well as regulatory infrastructures, are being established. This has for the most part gone hand in hand with economic development and internationalization, with Singapore, for example, being an early leader, although today’s booming economies—China and India—are rapidly catching



up. Big strides have been taken since the beginning of the new millennium: environmental officials have growing support at the highest levels; more and more environmental lawyers have been trained and are working in the region; environmental NGOs operate in most countries; new information and communication technologies strengthen citizen education and mobilization around environmental issues; and space is opening up for civic action. As just one example of the latter, in China the not-for-profit Center for Legal Assistance to Pollution Victims (CLAPV) has patiently and successfully represented local citizens in pollution and related health compensation claims before administrative and legal officials since 2001.

Obstacles and Issues

Through good economic times and bad, however, economic and political initiatives have largely remained prioritized in the region, to the detriment of long-term environmental sustainability. Sustained, large-scale, and rapid economic growth in China, India, and some of their neighbors brings with it pressing concerns with respect to rule of (environmental) law—domestically, across the region, and globally. In East and South Asia, key stumbling blocks for rule of law in the environmental arena include ambiguous rights to use and exploit natural resources; uncertain rights of citizenship for millions; weak or nonexistent protection of human rights for individuals and communities; lack of independent and impartial judiciaries or arbitration systems; growing inequalities in affluence, power, and access to institutions; and in many cases (though arguably not for India) weakly developed civil societies. Resource rights throughout the region often are claimed, in the first instance, by central governments, even in situations of long-term customary use by local residents.

Millions of people in remote and upland areas, such as in northeast India, Thailand, and Myanmar, lack basic citizenship rights. Being historically migratory and thus crossing district, provincial, and national boundaries, without regular contact with or recognition by central governments, they have few or no legitimate avenues for influencing or participating in decisions involving the natural environments in which they live. National priorities, reflecting elite interests, in many cases hold sway over interests of local residents, communities, and environments. Judges or administrative hearing officers, if there are any, may be closely aligned with authorities against whom complaints have been made. Media platforms and citizens' organizations in support of environmental education, communication, and advocacy may be absent, tightly controlled, or heavily monitored. It may be suggested that today, through widespread diffusion and

adoption of environmental laws and regulations, East and South Asian countries have many aspects of formal (thin) rule of law in the environmental arena, but, for reasons outlined above, for most countries this has yet to develop into a more full and robust (thick) realization of the same.

Alleviating the persistent, acute poverty of hundreds of millions of people, both rural and urban, is perhaps the primary issue that rule of law in East Asia must face. Immediate human conditions threaten political stability as well as environmental sustainability; examples include reports of rural unrest in some regions of China, food and fuel price riots in Indonesia, and the displacement of thousands by flooding in Bangladesh, the Philippines, and elsewhere. A closely related debate in the region and globally is over the extent to which a basic level of economic development is prerequisite for rule of (environmental) law. Yet increasing environmental risks in China, India, and neighboring countries—from acute air and water pollution, energy and resource shortages and competition, desertification, and, not least, effects of global climate change, for example—greatly raise the stakes for all social sectors, including public, private, and civil.

Future Prospects

Further development of rule of law with respect to sustainability in China, India, and neighboring countries—as in many places in the world today—is part of a long-term, multilevel institutionalization of rule of law in general, plus the strengthening of particular provisions with respect to the environment and natural resources. Environmental rules, regulations, and procedures were the first to be established—thin rule of law. Now comes the hard part: building scientific, administrative, and legal capacity; developing independent judicial and arbitration systems; recognizing traditional resource rights; gathering and disseminating environmental information; engaging in environmental education; and strengthening popular participation in environmental decision making—thick rule of law. Pressed by continuing major social and environmental challenges, rule of law for sustainability in East and Southeast Asia will continue to evolve, taking a variety of forms based on the region's richly diverse cultural and legal traditions.

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See also Activism, Judicial; Biodiversity Conservation Legislation (China); Biosafety Legislation (China); Consumerism; Education, Environmental (*several articles*); Indigenous Peoples; Labor; Media Coverage of the

Environment; National Pollution Survey (China); Nongovernmental Organizations (NGOs); Outsourcing and Offshoring; Property Rights (China); Public-Private Partnerships; Water Use and Rights (India)

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