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Review of "Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA"

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This book draws on 14 case studies across Asia, France and the United States to compare human rights theory and practice amongst these countries. In some ways, there has not been a more timely opportunity to review an edited volume that focuses on human rights in Asia. Recent developments in the global economy hold the possibility of geostrategic shifts which may have possible consequences for the discourse on human rights and the future of rights performance in the region. In light of the heterogeneity of regime types in the region, such a comparative study in the issue area of human rights should be inherently interesting. However, with the third-wave transitions in the Philippines, Taiwan, South Korea, Thailand and Indonesia, it would also be interesting to consider to what extent the convergence thesis holds by comparing them with one another, with those of an older vintage in the region and those outside the region in the issue area of human rights. This could well give us another window with which to understand the implicit variations in the development of these democracies since the first euphoric pronouncements of the ‘end of history’.

One merit of this volume of essays lies in the explicit consideration it makes of the historical, social, political, cultural, religious, economic and legal institutional factors that have shaped the substantive understanding of human rights and affected rights performance. In considering a wide range of possible factors across time, this volume of essays acknowledges that human rights has long been an issue area of political contestation, not only because it delineates the rights and interests of individuals against those of the state but because ‘rights [have] increasingly [become] the medium through which different factions struggle for power’ (p. 7). Such an approach has broadened its audience from legal experts to others such as political scientists. Further, bringing extraregional cases into the pool of Asian cases not only strengthens the intra-regional comparison, it also acknowledges the importance of another class of factors so often neglected – external ones. Indeed, the impact of colonialism, the Cold War environment and the human rights policy of the United States on the shape of human rights regimes in these Asian countries are also considered.

The editors and authors demonstrate a sound methodological sensibility by balancing qualitative and quantitative approaches to the study. Although acknowledging that only qualitative case studies can give a nuanced account of rights performance that is useful to policy makers (p. 5), the first chapter also provides substantial quantitative data to give an empirical overview of the region’s rights performance. In so doing, attention is nevertheless called to the inherent uncertainty of using such data, which may be of dubious nature either because of the difficulties of operationalization and measurement or because accurate records of human rights are often not kept (p. 57). Indeed, attention is called to the fact that the data may be inherently problematic because of the subjective nature of data-coding, which in some cases has been ‘politically biased’ (p. 57).

This book does well to remind us of how the political and, for that matter, cultural biases inherent in human rights discourse can and does translate into research. This is important not only because ‘concept stretching’ presents fundamental problems to comparative research but also because these biases have long affected the substantive content of that research by emphasizing political and civil rights at the expense of social and economic rights. Such substantive biases are redressed in this volume by including a discussion of the latter category of rights in each chapter, the inclusion of which also enables us to critique the predominant human

rights paradigm adopted by the principal human rights ‘promoters’ without justifying the illiberal regimes that oppose it. In this respect, this volume does bring to the table a balanced approach that manages to circumscribe the implicit agendas that dog human rights discourse and research.

There is a further merit to this volume that is worth mentioning. While each of the chapters provide sufficient detail and nuance as to appeal to those interested specifically in the rights performance of a particular country, this book excels as a comparative work. Indeed, many edited volumes fall short of their comparative ambitions because of the lack of a unified approach – but this is not the case here. While the particularities of each case are explored through the use of legal cases, the chapters nevertheless hang together through a rather strict thematic discipline that structures each of the chapter.

The principal shortcoming of this volume lies at the conceptual level, and is related to issue of the biases that dog human rights discourse and research. Considering the overall success of maintaining a balanced perspective throughout the book, it seems regrettable that the concluding chapter falls back on the ‘human-rights-as-modernization’ thesis, which carries with it the unfortunate baggage that has beleaguered the modernization theory itself. There is inherent tension in the acknowledgement that the human rights idea was born within the context of particular political struggles in the modern history of the West and the claim that it nevertheless represents a universal mark of advanced civilization. Human rights norms should instead be understood as having been ‘universalized’ at particular world historical moments, consistent with the idea that they continue to be socialized both in the West and beyond under the complex contingencies of time and place, as the case studies suggest.

Although a work by legal scholars primarily for legal scholars, the book might have done well to include a chapter dealing explicitly with the reasons for which human rights norms had remained frozen in international conventions under Cold War conditions, only to be animated from the mid-1970s onward with the Helsinki Accords. The treatment of such important changes in the international normative environment would further contextualize rights performance and help readers reach a richer understanding of exactly what the state in each case was responding to as human rights norms were being institutionalized. Such a chapter could also help clarify what could be contradictory claims in the book that while an ‘aggressive’ US human rights policy was a factor in rights performance (p. 6), the US State Department’s assessments of rights performance were ‘less critical of allies than non-allies’ on the other (p. 57).