

Ghosts, Machines, and Asian Law: Some Comments

Lawrence M. FRIEDMAN

Marion Rice Kirkwood Professor, Stanford Law School, Stanford, California, USA

Abstract

This paper asks how globalization relates to legal culture. It argues that there exists, at least in the developed world, a general global culture; it follows, then, that there must be a global legal culture as well. Not everyone in modern societies is completely drawn into the global legal culture, however, as the research of the David and Jaruwan Engel in Thailand suggests. In general, however, the legal cultures of modern, developed societies are strongly convergent. In particular, there is emerging a global and convergent culture of human rights. Some Asian scholars and political figures have argued that conceptions of fundamental human rights are culturally Western, and may not suit the cultures of the East. The paper argues, however, that the human rights culture is not “Western” so much as modern; it arose in the West, but it is no more unsuitable to Asian societies than the automobile and the computer, which also arose first in the West.

Keywords: legal culture, legal consciousness, convergence, human rights, globalization, modernity

David and Jaruwan Engel have spent many years in Thailand, investigating the relationship between law and society in that country. In a recent and important book, the Engels raise a question about the way in which globalization has affected that country.¹ The book begins by telling the story of a young man they call Inta. Inta left his small town in Northern Thailand to work in a factory in Chiangmai, one of the largest cities in Thailand. In the factory, he ran a stamping machine that made cardboard boxes. This was “dangerous work”; one day, the brake on the machine malfunctioned; Inta’s hand was “caught in the machine and mangled beyond repair.” But Inta, when he talks about the accident, does not blame the company, or the manufacturer of the machine, or any of his fellow workers. In Inta’s view, the accident was caused by a ghost, which pushed his fingers into the machine. Inta had been in the habit of riding his motorcycle past a place where a terrible accident had taken place; a man was killed, and the spot where the accident took place was haunted. A spirit medium, who spoke to Inta’s mother, told them that this ghost was responsible for Inta’s injury. Inta had failed to perform any ceremony to propitiate the soul of the dead man. Inta’s accident, in short, “was his own fault”; if Inta were to demand payment for the accident, this

1. Engel & Engel (2010).

“could only worsen Inta’s karmic imbalance and lead to greater misfortune.” Accordingly, Inta never sued anyone, made any complaint, or used any legal tools and procedures in a search for compensation.

The Engels tell this story—and others like it—to argue against what they see as a standard idea about the results of globalization. This is the notion that globalization “transforms the consciousness of ordinary people and creates new expectations about the place of law, legal norms, and legal institutions in their lives.” Opposed to this is the view that globalization can produce a “backlash,” which leads to disaffection, and a “rejection of legal liberalism in favor of other ideologies, such as religious fundamentalism”; or lead people to “embrace traditional religious rules, procedures, and institutions rather than secular legality.” The Engels do not subscribe to either of these two views, but stand somewhere in the middle. But their study of personal injury stories in Chiangmai does suggest scepticism about what globalization does to “consciousness” in Thailand. The men and women they interviewed showed no great desire to make use of “law” in the conventional sense. The people of Chiangmai had left their villages behind—villages which had their own traditional systems of dispute-resolution, rooted in “sacred centers.” In the big city, however, many ex-villagers remained committed to their traditional and Buddhist beliefs. These beliefs “seemed ... to require that injury victims recognize the karmic roots of their misfortune and respond with meritorious acts rather than an aggressive insistence on a remedy.”² In the big city, accidents happened more frequently; but tort litigation, somewhat surprisingly, fell rather than rose, in the period between the time the Engels began their research and the time they did their latest research. Old ways to resolve disputes were dead; but no new ones had arisen.

In this paper, I want to comment on the issue the Engels raised: globalization and legal consciousness, in the Asian context. But first I want to refer to another scholarly source: a chapter in a book on globalization by Arjun Appadurai. The chapter is a long, erudite, and insightful discussion of how and why cricket, that quintessentially English game, became “indigenized” in India, indeed, how it became an “emblem of Indian nationhood.”³ Cricket, according to Appadurai, is almost a craze in India; vast audiences read magazines about cricket, consume cricket games on television, and root for Indian teams in cricket matches; star cricketers are national heroes.

The term “globalization” is frequent in the literature; but it is worth asking exactly what we mean by it. Both of these accounts, of course, are about aspects of globalization; the move to urban, industrial life in one, the spread of an English game to India in the other. And both of them at least hint at an answer to the question: globalization is primarily a cultural phenomenon; indeed, this is the subtitle of Appadurai’s book. In the Engels’s book, we learn about the conflict between global culture, and local or traditional culture. That their subjects reject some aspects of global culture, or fail to adopt it, does not derogate from the fact that a global culture does exist—that is, a culture that is not rooted in any single country or region, but which has made a home for itself all over the world. The Engels want to warn us that the results of the process are not always what we expect. But perhaps what Inta rejects is not as surprising as what the cricket fans of India accept.

2. Engel & Engel (2010), p. 154.

3. Appadurai (1996), p. 12.

In this brief paper I want to ask, first: Exactly what does global culture consist of? Second: How did it spread? Third: Is there such a thing as a global legal culture? And last: What does the global culture imply for the legal order? The emphasis here is on Asia, because certain ideas about global culture, and global legal culture, have been particularly identified with Asia; I will take issue with some of these ideas.

1. WHAT IS GLOBAL CULTURE?

There is no single, simple answer to this question. Cricket is enormously popular in India; but it is probably unknown in many other countries. American baseball is popular in Japan, though not in many other countries. Yet both of these sports are “global” in the sense that they travelled great distances from their original homeland. There are other features of global culture which are more general, less provincial: Zubin Mehta, from India, and Seiji Ozawa, from Japan, have been extremely prominent conductors of (Western) classical music; and young Chinese and Koreans swell the ranks of brilliant young pianists and violinists. Beethoven seems perfectly at home in Tokyo. The same is true of rock and roll.

To many people, “global culture” looks suspiciously Western; something imported from Europe and North America. An alien intrusion, perhaps. The “Western origin of human rights” is a “plain historical fact.”⁴ But what conclusion should we draw from this “plain historical fact?” The essence of global culture is not whether people like cricket or baseball or soccer, or even prefer these to whatever native sports tradition they might have, and certainly not whether cricket or baseball or soccer began somewhere else and came only lately to India or Japan. The essence is the breakdown of the notion that culture (high and low) must be specific to its country or society of origin; and that anywhere else, it is somehow out of place. People simply no longer accept this idea—at least implicitly.

Foods—cuisine, eating habits—provide a fairly clear and trenchant example of the way global culture plays out in our world. Traditionally, food was part of a person’s cultural inheritance; people stuck to their own cuisines. Chinese ate Chinese food; Americans ate American food (unfortunately); Italians ate Italian food. Period. In the late nineteenth century, when the Chinese were a hated and oppressed minority in California, Americans found the very idea of Chinese food disgusting. The Chinese, for their part, probably reciprocated. No doubt the thought of eating a kind of hardened dairy fat—which had an awful smell as well (I am referring to cheese)—disgusted the Chinese. These tastes have now turned around rather dramatically. Today, for example, Chinese food is popular all over the world—helped along, of course, by the Chinese diaspora. More recently, millions of people have developed a taste for sushi. A fairly short time ago the idea of eating raw fish wrapped in seaweed would have struck most Americans as little short of insane. Today there are sushi restaurants in Caracas, in Budapest, in Moscow—and in Hong Kong. Hong Kong, of course, is famous for its (Chinese) cuisine. But according to websites, you can eat quite globally in Hong Kong: there are restaurants that specialize in more than a dozen other cuisines, including Mexican, Scandinavian, Korean, Vietnamese, French, and Italian. And McDonald’s, the mother church of the cheeseburger, is extremely popular in Chinese cities, along with its rival, Kentucky Fried Chicken.

4. Goodhart (2003), p. 943.

Those people who are part of global culture—the middle classes of rich, developed countries; and the elites of almost all countries—are more international than was ever true in the past. They feel free to experiment, to shift their habits; they are not necessarily bound by the dictates of local habits and traditions. With regard to food, they are extremely eclectic. Their world is a riot of cuisines. They can try French food one night, Chinese food the next. In other regards, globalization has almost the opposite effect: a kind of international sameness. This is true, for example, of architecture. Tall office buildings are much the same in all large cities. People in the global world all more or less dress the same way. “Native” costumes have mostly gone out of fashion. If they are used at all, it is only for ritual and ceremonial purposes, perhaps for weddings or holidays. In his daily life, the Japanese *sarariman* (salaried man) wears a suit and tie; his kids wear blue jeans.

Blue jeans, indeed, are as global as Chinese food. It was not always that way. Blue jeans came out of the far west of the US. The headquarters of Levi Strauss & Co., the originator of blue jeans, was in San Francisco. Jeans were riveted trousers originally made from denim for miners in California; later on, farmers wore them. Somehow, they burst out of this framework, and became wildly popular all over the world. In essence, they are no more indigenous to New York than they are to Shanghai.

Some aspects of global culture, in short, are truly global; that is, they are found everywhere, and perhaps are pretty much the same wherever they occur. Others, like cricket or baseball, have spread in more idiosyncratic ways. Each country, each society, has its own mix of the elements of global culture. But what unites them all is the breakdown of the firewalls that separated one culture from another. Cricket has been “indigenized” in India; curry has been “indigenized” in England; and pizza has been “indigenized” everywhere. Californians regularly eat with chopsticks. Some of the best bread and pastry I have ever eaten came from a bakery in Tokyo. With regard to food, sports, and other items, there is a kind of global sampler; people in each country take from this sampler, they choose from the menu; but the menu itself is global in scope.

The Engels’s book (among other things) teaches a valuable lesson: people in many countries participate, to be sure, in global culture; but they do so in different ways. They do not become global consumers overnight; nor do they go all the way. Globalization, on the individual level, is a process. It takes time. It may take generations. Inta, the man the Engels wrote about, still kept his traditional beliefs in ghosts and spirits. But he was injured riding a motorcycle—hardly a traditional way of getting around. And he worked in a factory, and no doubt kept factory hours and factory habits, so that his sense of time, his sense of the rhythm of the days, was probably radically different from the rhythm of rural life. The Engels describe his life and thoughts as a partial refutation of conventional ideas about globalization. Perhaps. More likely, he represents a kind of intermediate stage, between traditional life and full-blown life in the global society. No doubt many of the rabid fans of Indian cricket fall into the same category.

2. HOW DOES GLOBAL CULTURE SPREAD?

The basic answer here is simple. Jules Verne wrote a famous book in the nineteenth century, *Around the World in 80 Days*. At that time, getting from point A back to point A in only 80 days seemed to be almost impossible. A traveller today can go around the world—if she wants to—in less than 24 hours. And a message, as opposed to a body, can travel around the

world in seconds. Television flashes images around the world seemingly at the speed of light. The power of the Internet, Facebook, blogs, and mobile phones is obvious. Millions of tourists travel from country to country. They see other ways of life; they learn from other cultures.

But these are only the means for global culture to spread; they do not tell us why it spreads. There has to be receptivity. And the influence does seem to go mostly in one direction. A Korean woman who visits Africa, and sees native people dancing in grass skirts, is unlikely to go home and copy this behaviour. We have to ask, not only how, but why Chinese and Thai cuisines are popular outside Asia, why everybody likes pizza and Coca-Cola, why the whole world wears blue jeans, why rich Asians buy oil paintings by Van Gogh. There is no easy answer; and it is not easy to explain particular tastes. Why is Coca-Cola so popular, while another American drink, root beer, is totally rejected by almost all foreigners who try it? These, however, are details. The essence of the global culture is the sense of choice: people's notions that they are free to choose sushi instead of hamburgers, if they wish; or vice versa. Preferring sushi may be arbitrary; preferring automobiles to dogcarts is not; nor is the desire to have mobile phones and television. For whatever reason, the tools of modernity are seductive; wherever people come in contact with these tools and gadgets, they evoke a wish to have these for oneself.

3. IS THERE A GLOBAL LEGAL CULTURE?

The short answer to this question is “yes.” Or, to be more precise, there is a modern legal culture, that is, a legal culture specific to wealthy, developed countries (and perhaps to the elite segments of other countries as well). In a prior paper on modern legal culture,⁵ I listed what I considered to be some traits of modern legal culture. For our purposes, I want to mention only a few, which I think are relevant to the subject of this paper. One is a commitment to something called “the rule of law.” Another is a commitment to human rights, about which more later.

The rule of law is a phrase which has been understood in different ways by different scholars. Randall Peerenboom has made a useful distinction between a “thin” and a “thick” conception of the rule of law. Supremacy of law is the basic idea for both thick and thin. The thin conception “stresses the formal or instrumental aspects of rule of law”; whether the government is democratic or not, the rule of law prevails when the laws that exist are public, accessible, knowable, and are also “relatively clear, consistent on the whole, relatively stable, and generally prospective rather than retroactive.”⁶ This is the kind of rule of law that businessmen like—and they are not alone—compared to random, arbitrary, corrupt systems which are all too common in some parts of the world. When the Chinese government talks about the rule of law, it has this thin conception in mind. The thin idea of the rule of law is neutral, is simply a tool, like a knife, which, as Brian Tamanaha has pointed out, “can be used to slice vegetables or to kill people.”⁷ By way of contrast, a “thick” conception of the rule of law overlays the thin conception with substantive considerations. These, in our times, usually mean a commitment to fundamental human rights. All modern countries, including Asian countries, are at least committed to the thin conception of the rule of law; and some of them,

5. Friedman (1994).

6. Peerenboom (2004), pp. 1, 2.

7. Tamanaha (2006), p. 130.

including Japan, South Korea, and Taiwan, are committed to a thicker conception, which includes a basic menu of human rights. This commitment is formal (embodied in constitutions, laws, bills of rights), but it is also part of the general legal culture of the public.

4. GLOBALIZATION OF LAW

Those who study law as a social phenomenon—law and society scholars—whatever their differences, tend to agree on a few general principles. One of them is that law is not autonomous, or at least not wholly autonomous. In other words, the social context—economic, political, and cultural forces—shape law. As society changes, so does the legal system. It follows from this, logically, that if cultures are converging, if world cultures are becoming more and more alike, legal systems must also be converging.

First: Are cultures converging? Of course, to a tourist from the US, or from Germany, arriving in Tokyo, many aspects of Japan seem quite foreign, even strange. Our tourist might decide that Japan was very different from her home country. Many Japanese themselves would agree; Japan is special—fundamentally different; unique. Any similarities to Germany, say, are superficial; a veneer. Underneath this veneer is the true Japan, a strong, distinctive essence; a cultural tradition, which moulds and defines the Japanese people in a special way. If you ignore the computers, the automobiles, the trains, the office buildings with their lifts, you can peel away the layers, and find something eternal, in the very flesh and bones of the Japanese people, which changes slowly, if at all. If so, then it makes no sense to say that Japanese and German societies are somehow converging.

Of course, the Japanese (and Chinese) are not the only peoples who consider themselves unique; we hear a lot in my country, for example, about “American exceptionalism,” which is the same sort of idea. I am sure the French and the Germans and the Italians have similar thoughts about their societies. And, to be sure, each society really is unique—in some ways. But the question is: Are the similarities between Japan and Germany greater than the differences? I think the answer is “yes.” If we look at the rhythm of life, at the way business is organized, if we walk the streets and look at the shops, if we peek inside drugstores, supermarkets, and department stores, if we ride in a taxi or a train, if we watch young people and see how they dress, what music they listen to, what their interests are, if we look at the style of the buildings, the architecture of major office and government buildings—indeed, anywhere we look, we see the paraphernalia of modernity; we see things that are not truly different from “the West,” but very much the same. And if we ask the question if life in Japan today is more like ordinary life in Europe (or, for that matter, South Korea), than it is like life in the age of the samurai, or Lady Murasaki, the answer seems obvious to me. The same is true, I believe, for a resident of Hong Kong or Shanghai: more like life in Vancouver, than in the China of Confucius, or perhaps even the China of the Empress Dowager.

We might hark back to the “indigenization” of cricket. Yes, cricket has come to India, and curry has taken over in England. The sociology of sport and the sociology of food are two good examples of the triumph of globalization. The sport example is a bit more one-sided than the food example: sumo wrestling does not seem to travel well. Sushi does. So does pizza.

I take it then that convergence is a fact. Some scholars, to be sure, disagree. Shmuel Eisenstadt, for example, argued for what he called “multiple modernities,” fundamentally different from each other. In addition to the Western form of modernity, he mentions a Chinese or Confucian form, and a Hindu form.⁸ My problem with this point of view is that it plays on two quite different meanings of the word “modern.” Some of Eisenstadt’s modernities are modern only in the sense that they exist in the world today. But they are not modern in the sense that computers and jets are modern. In the modern segment of the world—modern in the second sense—the evidence for convergence is quite powerful. And it has been brought about, as we mentioned, through communication and transport; and through the free movement of people.

We assume, too, that if cultures converge, legal systems will also converge. On the other hand, we know that there are very different legal traditions; and the differences between them do not seem to be disappearing. Common law is common law; civil law is civil law, and they remain quite distinct. The common law, historically, was the indigenous legal system of England; and England brought it to its empire. The common law has a strong footprint in Asia—in Australia and New Zealand; but also in India, in Singapore, and in Hong Kong. China, Japan, and Korea, on the other hand, are firmly in the civil law camp. The civil law, of course, is hardly indigenous; but it was adopted in Asia, starting with Japan, in the mid nineteenth century, during the so-called Meiji restoration, as part of the project of modernization.

Undeniably, the systems differ in forms of legal education, in the role of judges and lawyers, in procedures, and (perhaps) in habits of thought. Moreover, besides the gap between common and civil law, there are the gaps between countries, even within the same historical camp. Nonetheless, I believe there is a strong case for legal convergence. For one thing, all modern, developed countries face a range of similar legal problems: copyright issues, land use issues, airport traffic control, corporate governance, regulation of stock exchanges, and so on. They all face issues that arise out of the rapid and dramatic growth of cities (this is a problem not confined to the developed world).⁹ Different legal systems may address these issues in different ways—but they have to address them; and the solutions will not be that dissimilar, especially if the economic, social, and political backgrounds are fairly similar. Moreover, some highly technical aspects of modern law transfer easily from country to country—aspects of commercial law, or corporation law, or securities regulation. In addition, there is the growing importance of international law, international business, and international trade; domestic law must take these into account, along with the law of such organs as the World Trade Organization (WTO).

One can imagine, say, a Japanese lawyer and an Australian lawyer having an earnest conversation about issues of corporate law. They might ask each other how their system handles mergers, what are the procedures, whether there are any rules that apply if mergers seem to impair competition, and so on. The answers might be somewhat different, but they would both understand the question, and they could discuss it on common ground, so to speak. If an English lawyer from the time of Henry VIII came back to life, and talked to the Australian lawyer, I think they would have almost no chance of understanding each other—even though they both belong to the common-law tradition, and speak the same language.

8. Eisenstadt (2002).

9. For a particularly interesting study of law in action in China, in the context of massive growth of the cities, see He (2005).

But even if one argues that, yes, commercial law has this element of convergence, this is certainly not true of family law, say, which is deeply rooted in local custom and habits. But here, too, I believe, there has been a great deal of convergence. Family law, no less than commercial law or corporation law, has been utterly transformed over the last century or so. Men and women choose spouses more freely; arranged marriages are less common. Older methods are still powerful—in India, for example—but are under great pressure. Wives have gained power relative to husbands, although Asia (from a European or American standpoint) still looks like a bastion of patriarchy. Marriage and divorce law have been thoroughly modernized in many countries. One small but telling example of change: in Taiwan, traditionally, fathers had preference in custody disputes, but thanks to a constitutional provision about gender equality, and a high court decision, father preference is no longer the rule. Now courts must determine what is in the “best interests of the child”—the rule which prevails, for example, in the US—and mothers gain custody more often, particularly in urban centres.¹⁰

As is well known, during the Meiji period, the Japanese “indigenized” (if I may use that term) Western codes of law. Civil-law codes were also adopted in other countries—in Thailand, for example, during the reign of Rama V. Hence Asian legal history contains a number of sharp, even revolutionary breaks. But suppose—just suppose—that the rulers of Japan had decided not to translate and adopt the civil codes of Europe; had decided to retain their indigenous system. What would Japanese law be like today? Of course, it would look somewhat different; it would lack the basic codes; but how different would it be in practice? My guess is that Japanese law and legal institutions would have evolved, indeed, would have been radically changed, over the years. The indigenous system would have adapted to changes in society; it would have become a functioning, modern system of law; a system which confronted all the problems and needs of a developed society. If this seems implausible, consider a kind of natural experiment, which suggests exactly the kind of development I have suggested. The common law is that natural experiment. Nobody revolutionized common law in the nineteenth century. Nobody set out deliberately to modernize it. No modern codes were translated into English. There was no sharp, revolutionary break. Modernization simply happened. The common law, which once served a feudal society, and fitted that society like a glove fits the hand, evolved and changed, over the years, as the economy, the polity, the culture of common-law countries changed. The same might have happened in Japan—indeed, probably would have happened.

I want to return now to the book by the Engels, on personal injury victims in Changmai. There are many lessons to be learned from this book. The men and women they interviewed, insofar as they were obsessed with ghosts, spirits, and karma, give that portion of Thai society a look that seems radically different from Japanese society. But this in itself is not surprising. Thailand has changed greatly in the last decades, but it is by no means as economically advanced as Japan—by no means as modernized. Hence, it is no surprise that old ways of thinking persist; that village law survives in the villages, with its sacred centres, its traditional ways of handling disputes; nor is it surprising that village ways of thought still follow most people who move to the cities, and persist there, at least for a time. It is no surprise, in other words, that civil law is less “indigenized” in Thailand than it is in Japan. It would be interesting to know how long it took for the civil law to be “indigenized” in Japan itself.

10. Hung-en (2002).

4.1 Human Rights

Human rights are an interesting, and important, example of legal convergence. Concepts of human rights have, in many ways, a long history. At least many people think so; writers on the history of human rights often refer to Immanuel Kant, to the French and American revolutions, and even, at times, to older traditions, both East and West. I am sceptical about the actual influence of these older sources. But even if you grant them some importance, it is crystal clear that there has been a tremendous surge of interest in human rights in the period since World War II. In 1941, most of Europe was under the heel of a group of murderous tyrants—Hitler, Mussolini, Stalin, Franco. Japan was a military dictatorship; and an aggressive one, which had swallowed up Korea and Manchuria, and was wreaking havoc in China. Most of Africa was ruled by colonial powers—the British, the French, the Portuguese. The Indian subcontinent was part of the British Raj; and Indonesia, Vietnam, Cambodia, Laos, and the Philippines were colonies of Europe or the US.

In the years since the end of the war, the colonial empires have almost totally collapsed; the last to go was what we might call the Soviet empire. What replaced dictatorships and colonial rule was often (though by no means always) constitutional government. A constitution was basically forced down the throat of the Japanese while Japan was under American occupation.¹¹ But dozens of countries, without any kind of coercion, moved in the same direction; they changed forms of government, adopted codes of basic rights, and empowered the courts to enforce these rights. This trend has had a powerful impact on Europe, Latin America, and Africa—and Asia as well. It says something about modern legal culture that Mongolia, a poor, landlocked, sparsely populated country, with absolutely no tradition to fall back on, adopted a constitution in the 1990s which includes a constitutional court, judicial review, and a strong statement of fundamental rights. Of course, not all countries have gone along with this trend—China and Vietnam, very notably, have chosen a different path.¹² Nonetheless, there is no question that a strong human rights culture has developed in our times.¹³ And that culture is a global culture. To be sure, each country has its own particular history; but here too there is a central storyline, and that is a story of convergence. That there are structural similarities (at least on the formal level) between countries so different, and so far apart, as Estonia and Mongolia is certainly worthy of note.

There is also a striking trend towards the creation of transnational or international tribunals. Some are regional: the European Court of Human Rights, for example. There are somewhat similar bodies in Latin America, and in Africa. Curiously enough, there is nothing exactly equivalent in Asia; but perhaps this will change over time, out of the ASEAN community, perhaps. One might mention here, too, the new International Criminal Court, which came into existence with a treaty drafted in 1998. The Court has begun its operations; it has a docket; it sits in The Hague, and has conducted a number of noteworthy trials.

Underlying the human rights movement is the notion that there are basic, fundamental rights, and that these rights are universal and inherent. In other words, millions and millions

11. For the story, see Dower (1999).

12. Indeed, according to a press report, a memo called “Document No. 9” was circulating in China in August 2013, addressed to party cadres, warning about “seven perils” to the regime. The first one listed was “Western constitutional democracy,” clearly labelled a kind of heresy to be avoided by the cadres; see Buckley (2013), p. 1.

13. Friedman (2011).

of people believe that they possess, or at least should possess, these rights, simply because they are human beings, which entitles them to enjoy these rights.¹⁴ They believe, too, that governments and individuals who violate fundamental rights ought to suffer consequences. Hence the creation of tribunals, truth commissions, and the like, in country after country—two Asian examples come out of Cambodia and East Timor—which investigate and sometimes prosecute crimes “against humanity,” even though very often these were not crimes when they were committed, and by whom they were committed.

Of course, ideas about which rights are “fundamental” differ from place to place; even in developed countries, there is certainly no such thing as consensus about which rights are fundamental, and how they are to be interpreted. There is, however, a good deal of agreement at least about some sort of common core. There also seems to be a single fundamental premise: the concept of equality—that is, equal rights for everyone in society, women as well as men, all races, all religions, all ethnic groups. To be sure, hardly any country lives up to this ideal; but the ideal has had an impact on law and society in country after country.

The human rights culture is, I believe, a social fact. Most of the literature on human rights is normative and doctrinal; but the bedrock fact is that concepts of rights are firmly rooted in the minds and hearts of millions of citizens in the world. The human rights culture is what gave rise to the human rights movement. This movement has not gone without criticism. Autocratic countries simply ignore or suppress the movement; they usually give it lip service, however. There are also ideological criticisms. A Kenyan scholar, Makau Mutua, for example, decries the “relentless campaign to universalize” human rights; this campaign, he feels, is nothing but another kind of Western imperialism, completely “Eurocentric,” repudiating and even “demonizing” anything non-European.¹⁵ A version of this critique in Asia (though politically quite different), insists that Asian traditions are profoundly different from Western traditions; the human rights movement, which stresses choice and individualism, conflicts with this Asian tradition, which is centred not on the individual but on the collective. Kawashima, writing in 1968, thought Japanese culture did not put any weight on individualism. The worldview of the Japanese left “no place for the concept of ‘human rights’.”¹⁶ This “Asian values” notion was supposedly enshrined in the Bangkok Declaration of 1993;¹⁷ the basic idea is that “Asians shared distinct values which were incompatible with values shared by Westerners.”¹⁸ Lee Kuan Yew, the dominant political figure in Singapore, also espoused this notion.¹⁹

Kawashima’s ideas are not likely to find much echo in contemporary Japanese sociology. They are probably less likely to be heard these days even in Singapore.²⁰ And it is hard to argue that the concept of human rights is foreign to, say, Japanese culture in any realistic sense,

14. Of course, not everyone who believes in a concept of human rights believes in it in exactly the same way. See, for example, Dembrou (2010); see also Goodhart (2003).

15. Mutua (2002), p. 15.

16. Kawashima (1968), p. 431.

17. This has frequently been asserted. The casual reader of the text of the Declaration, it seems to me, would have trouble finding in it a strong statement of the “Asian values” idea. To be sure, there are clauses talking about honouring local culture and local traditions; but there are also clauses which assert that human rights are “universal,” and the Declaration has many passages which would not be out of place in any European constitution.

18. Lindsey (2004), p. 286. But according to Lindsey, within five years of the signing of the Declaration, Asian values “discourse was gone from Indonesian public life.”

19. Thio (2004), p. 183.

20. See Engelhart (2000).

in the Japan of the twenty-first century. Indeed, human rights—freedom of speech, freedom of religion, freedom to travel—seem firmly embedded in Japanese society, and it is difficult to imagine a scenario in which these would be questioned in any serious way. That human rights are a form of Western imperialism seems exceedingly dubious to me, as dubious as the idea that there are some distinctive “Asian values” which are inconsistent with (say) freedom of speech. It is certainly true that the human rights culture, or parts of it, began and developed in the West, and that it was, then, in a sense “exported” to Asia. But that does not make these values culturally and inherently “Western”; women’s rights, for example, are an essential pillar of the human rights movement; but women did not vote and hold office or enjoy equality throughout the long centuries of Western history; women’s rights are comparatively recent. Gender equality is not so much a “Western” as a modern idea. There was a time, too, not many centuries ago, when heretics were burnt at the stake, political dissidents were beheaded, and torture was a feature of criminal procedure in Europe. Moreover, the telephone, the computer, the automobile are also “Western,” in the sense that they began in the West; but it would be absurd to say that they are somehow unsuited to Asian culture. As many scholars have pointed out, the argument in favour of “Asian values” seemed to come chiefly from leaders of authoritarian societies.

Modern technology, modern science, modern medicine got their head start in the West; but they flourish now in Japan, China, South Korea, India, Hong Kong, and Singapore, among other places. Science and medicine, like human rights, are thought to be universal; astrophysics is astrophysics in China as well as in Switzerland. There were (and are) indigenous systems of medicine, and many of them still have adherents; but countless millions have abandoned these systems, in favour of antibiotics, anaesthetics, laser surgery, and so on. Modern technological devices are not just better ways to do what people have always done. A car is not just a way to get around faster than riding a horse. What a car does, what a computer does, what antibiotics do, are different in kind, not just in degree, from what came before. They change the world in which people live. They revolutionize life in Tokyo or Singapore or Shanghai as much as they revolutionize life in London or New York. They change the rhythm of the day, the way people think of time and place, the kind of work they do, their very personalities. And this happens in the East as well as in the West. If modern life creates a human rights culture in France, it does the same in Japan.

Asia is a big continent; and a very varied one. Japan is Asian; but so is Laos, so is North Korea; and so are India, Indonesia, Malaysia, and Afghanistan. The countries vary along many dimensions. Surely one of the dimensions is how far the process of globalization and modernization has gone; and how deep these processes have penetrated into society. It has probably gone furthest in such countries as Japan and South Korea. It has gone least far in (say) Afghanistan; or perhaps in Laos. Countries like Malaysia and Thailand seem to be somewhere in the middle; and Inta, the man who was injured in his factory in Thailand, is a good example of a person who is squarely in the middle, poised between the old ways and the new. Inta believes strongly in ghosts and spirits and karma; in this regard he is probably quite different from the typical Japanese factory worker, or the office worker in Singapore or Seoul or Taipei. But Inta was injured riding his motorcycle, hardly a traditional way of getting from place to place; he had left his village and moved to a big city; and he worked in a factory where, almost certainly, he had to keep track of time and, indeed, to think of time in ways that might have been quite foreign to his village. Inta is most definitely a man in between. In a later chapter of the Engels’s book, we meet a young man, Ming, 22 years old, a

power line repairman, who also (like the others who the Engels interviewed) was the victim of an accident. Ming, unlike Inta, is sceptical about ghosts and spirits—though not entirely.²¹ He has obviously edged at least somewhat closer to the global norm. Perhaps he has already reached the global norm. There are, after all, plenty of men and women in the West who believe in ghosts, miracles, and spirits. But their behaviour on the whole, like Ming's, reflects modernity, is at peace with modern technology, modern thought, and modern culture. And they also, for the most part, believe in litigation.

REFERENCES

- Appadurai, Arjun (1996) *Modernity at Large: Cultural Dimensions of Globalization*, Minneapolis: University of Minnesota Press.
- Buckley, Chris (2013) "China Takes Aim at Western Ideas," *New York Times*, 30 August.
- Dembrou, Marie-Benedicte (2010) "What Are Human Rights? Four Schools of Thought." 32 *Human Rights Quarterly* 1–20.
- Dower, John W. (1999) *Embracing Defeat: Japan in the Wake of World War II*, New York: W. W. Norton & Company.
- Eisenstadt, Shmuel N. (2002) "Multiple Modernities," in Shmuel N. Eisenstadt, ed., *Multiple Modernities*, New Brunswick: Transaction Publishers.
- Engel, David, & Jaruwat S. Engel (2010) *Tort, Custom, and Karma: Globalization and Legal Consciousness in Thailand*, Stanford: Stanford University Press.
- Engelhart, Neil A. (2000) "Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore." 22 *Human Rights Quarterly* 548–68.
- Friedman, Lawrence M. (1994) "Is There a Modern Legal Culture?" 7 *Ratio Juris* 117–31.
- Friedman, Lawrence M. (2011) *The Human Rights Culture: A Study in History and Context*, New Orleans: Quid Pro Books, LLC.
- Goodhart, Michael (2003) "Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization." 25 *Human Rights Quarterly* 935–64.
- He, Xin (2005) "Why Do They Not Comply with the Law: Illegality and Semi-Legality Among Rural-Urban Migrant Entrepreneurs in Beijing." 39 *Law & Society Review* 527–62.
- Hung-en, Liu (2002) "Custody Decisions in Social and Cultural Contexts—The Best Interests of the Child Standard and Judges' Custody Decisions in Taiwan." JSD diss., Stanford University School of Law.
- Kawashima, Takeyoshi (1968) "The Status of the Individual in the Notion of Law, Right, and Social Order in Japan," in Charles A. Morore, ed., *The Status of the Individual in East and West*, Honolulu: University of Hawaii Press, 262–87.
- Lindsey, Tim (2004) "Indonesia: Devaluing Asian Values, Rewriting Rule of Law," in Randall Peerenboom, ed., *Asian Discourses of Rule of Law*, New York: Routledge, 429–48.
- Mutua, Makau (2002) *Human Rights: A Political and Cultural Critique*, Philadelphia: University of Pennsylvania Press.
- Peerenboom, Randall (2004) "Varieties of Rule of Law," in Randall Peerenboom, ed., *Asian Discourses of Rule of Law*, New York: Routledge, 1–55.
- Tamanaha, Brian Z. (2006) *Law as a Means to an End: Threat to the Rule of Law*, Cambridge: Cambridge University Press.
- Thio, Li-ann (2004) "Rule of Law Within a Non-Liberal 'Communitarian' Democracy: The Singapore Experience," in Randall Peerenboom, ed., *Asian Discourses of Rule of Law*, New York: Routledge, 183–224.

21. Ming "acknowledges a supernatural vision," which came to him when he was unconscious on an electrical pole, above a shrine; later, he "participates in a ritual of apology to the spirit medium." But he also says he does not care about spirits; and he does not "especially believe in karma. I'm not interested in it ... I think accidents come mostly from ourselves." Engel & Engel (2010), pp. 146, 149.

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