

# INTRODUCTION

The Rule of Law is invoked so regularly in discussions of reform agendas in Asia and other regions of the world that it seems no explanation of the concept is needed. All agree, it is assumed, on what the Rule of Law means. To the contrary, there is frequent imprecision and occasional real disagreement on the fundamental elements of the Rule of Law among the scholars and lawyers of the West where the Rule of Law concept arose.

At the same time, there is a degree of suspicion or resistance to the Rule of Law concept among Asian leaders. The Western provenance of the concept may be a sufficient basis for its rejection for some, but for many more there is the reaction of skepticism about the supposedly inevitable benefits of the Rule of Law. Put bluntly, if the Rule of Law is a guarantor of good government and the elimination of such banes as corruption and cronyism, why have those outcomes not been routinely achieved in the West? Finally, there is the view that the Rule of Law is but one path to the goals of democracy, free markets and well-governed societies; there may be others, with alternative landscapes more congenial to the Asian experience.

Despite those reasons for resistance or at least skepticism regarding the Rule of Law, one thing appears certain: policy makers in the West will continue to advocate the Rule of Law as a necessary precondition for both the development of mature democracy and the establishment of sound and sustainable economic growth—goals that are themselves generally embraced by Asian leaders as well as by those from other regions. Adherence to the Rule of Law is firmly entrenched in the mix of policy recommendations which are the catechism of the United States government, international financial institutions and European nations, all of whom offer help and advice on achieving democracy and healthy economies.

That said, the combination of Western push and Eastern resistance to the Rule of Law has the potential for abrading East-West relations. One means of reducing that potential irritant is to foster a candid dialogue which has two features:

First, the precise elements of the Rule of Law on which there is general agreement among Western lawyers and scholars need to be spelled out with specificity. The general slogan of the Rule of Law needs to be parsed to determine precisely what is being recommended by its advocates.

Second, those precise elements should be considered by Asian leaders on a case-by-case basis. If objections are raised, not at the level of dismissing the general the Rule of Law banner, but to one or more specific elements of the Rule of Law, then it becomes fair to press for an equally clear statement of the alternatives Asian leaders would offer to replace those elements. Only when we have this kind of discourse can we join the real debate over which policy proposals are best for specific Asian nations at this point in history, as the pursuit of stable democracies and healthy market economies continues.

This lexicon is intended to provide the first of those two predicates for a candid East-West dialogue on the meaning and appropriateness for Asia of the Western notion of the Rule of Law. Here we attempt to set forth the basic elements of the Rule of Law that are commonly agreed upon. Each one is described both in terms of what practices it requires or entails, what good is said to flow from it, and its legal and historical antecedents.

Success for this lexicon would be to have it used in candid debate between the proponents and skeptics of the Rule of Law. The Mansfield Center for Pacific Affairs, from the United States, and the Global Forum of Japan plan one such forum; others no doubt will be held. They will not be the first and should not be the last. Asian leaders and jurists have held important conferences to discuss the meaning and applicability of the Rule of Law in their region since the 1950s. Some of those discussions are rich in thought and have been relied upon in developing this lexicon.

Further discussion, both candid and precise, about the meaning and potential impact of these Rule of Law concepts will serve the cause of democracy in Asia and improved East-West understanding. Whatever components of the Rule of Law are adopted by Asian nations must be based on Asian decisions, not Western prescription; where components are rejected, it remains fair for Western policy makers to ask Asian leaders what alternatives are being chosen that retain the capacity to advance democracy and sound economies.