

## Book Review

*The Development of the Rule of Law in ASEAN: The State and Regional Integration*, by Imelda Deinla. Cambridge: Cambridge University Press, 2017. Pp. 236. ISBN 9781107193604.

Melissa Loja

This book takes on a formidable task. It addresses the question of whether the structures and processes of the Association of Southeast Asian Nations (ASEAN) integration facilitate the development of the rule of the law within ASEAN itself and within each member state. It does so just when the familiar models of integration and rule of law have been eroded. Brexit in 2016 and the dissolution of the Southern African Development Community Tribunal in 2012 have forced a re-examination of the formation of the rule of law in these regional entities and in others that are still in the making, such as the ASEAN.

Does the rule of law originate from the cultures and traditions of individual societies that make up the regional community, or is it formed by the structures and processes of the regional community? On the first question, rule of law precedes integration. Rule of law is already organic in individual societies, and its constitutionalization into a regional instrument is the next logical progression. Constitutionalization through interpretation by jurists homogenizes individual legal cultures, turning them into a community law that is transmittable from one society to another, as though no territorial borders divide them. Some scholars on European Union law believed this to be true of the European community. On the second question, rule of law is not inherent in, or perhaps of uneven development, in the individual societies that form the regional community. However, rule of law can be grafted and grown into the national polities through the mechanism of regional integration. Globalization operates according to

rational preferences that are mediated by well-defined rules. Regional entities supply the institutional framework within which these rules could be formed and administered. Through socialization, member states subscribe to the rule of law. In other words, rule of law evolves from integration as a matter of rational choice. It is this emancipatory functionalist approach that the author applies to ASEAN.

The uneven development of a culture of the rule of law within each ASEAN member state is almost always taken for granted. The author, however, takes pains to detail decolonization, democratization, and constitutionalization as stages in the process of state-building in Southeast Asia. This process saw the rise of hyper-presidents who, deriving legitimacy from either their membership in the elite or their election by a populist vote, unfettered themselves from any form of restraint or rule of law. Even ASEAN was instrumental to the process, for it deflected threats to state-building by mediating interstate disputes and security concerns. In the beginning, therefore, for ASEAN, rule of law was not imperative, as the members governed themselves through informal negotiations and functioned according to the momentary consensus. Like most scholars on ASEAN, the author refers to this normative practice as the “ASEAN Way,” without providing details of its actual operation.

Even without empirical data on the ASEAN Way as a point of reference, the author finds that the region has progressed toward normativity, with the adoption of the ASEAN Charter. Financial crises and externalities of globalization compel this shift in the ASEAN. The question is whether ASEAN normativity approximates the rule of law, and more importantly, whether the ASEAN normative framework is fulfilling its function of engendering the conditions for the development of the rule of law within its member states.

On the basis of a case study of the ASEAN political-security, economic, and socio-cultural communities, the author finds that the regional entity is “building its own legal regime [but] not as yet a rule of law regime” (p.126). It is a legal regime characterized by (1) the formulation of soft regulations with the involvement of no-state actors such as business groups and civil society; (2) the creation of institutions that regularly monitor voluntary compliance with these soft regulations; and (3) the introduction of dispute settlement mechanisms. One particular instance involving the ASEAN Harmonized Cosmetic Regulatory Scheme saw the speedy transposition of its key directive into national legislations.

What has constrained the full development of a regime on the rule of law in ASEAN is the very fact that integration remains unfinished. Competition for foreign direct investment, rather than inter-regional trade and cooperation, drives integration. Institutions generally are ad-hoc and lack the autonomy necessary to impose restraints on the sovereignty of member states. States remain zealous of their sovereign prerogatives. In other words, the lack of a culture on the rule of law within the member states stalls ASEAN integration, and stalled integration prevents the rule of law from taking root in these member states.

---

**Melissa Loja** is a Ph.D. student at the Faculty of Law, University of Hong Kong, and is a researcher at the Centre for International Law, National University of Singapore.