

THE MANY MEANINGS OF THE RULE OF LAW

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Introduction

As with all concepts, the rule of law has a history and one of the features of that history is the manner in which the concept has been re-interpreted over time (Mason 1995; Shapiro 1994; Shklar 1987). The expression refers to a doctrine - some would say, an ideology - about how the governments should act, and has been used as a synonym for constitutional government and sometimes, though as we shall see these terms are not coeval, to mean democratic government. In intellectual discussions there are various versions of the term and this short essay will assay some of these meanings and then deal with the relationship between the doctrine and legal institutions and also the relationship between the doctrine and the idea of rule by law.

While the idea is western in origin, there are Asian scholars who maintain that some of the issues have arisen in ancient debates in the East (De Bary 1995; Turner 1992; Wu 1932). In any case all states in the region have written constitutions and all are committed to ruling according to the announced intentions of the constitution. This does not mean that all constitutions are the same, either textually or in terms of the political functions and expectations of the constituting document. 1 A fundamental point to be borne in mind is that the history, economic and political systems of all states shape as well as are shaped by their constitutions.

Historical emergence: from rule by man to the rule of law

Doctrine

In the west, beginning with the Ancient Greeks the question was posed as to what would be the best form of government: rule by man, meaning the best men such as Plato's Philosopher King, or rule by law, which was initially regarded as a second best option (Plato 1995: 293b-305d; Plato 1941: 427a; Klosko 1986; Bobbio 1987),² though it later came to be recognised as perhaps the most realistic option by Aristotle, who conducted an examination of numerous Greek constitutions before coming to this conclusion. The emphasis in all of these debates was on how to produce virtuous citizens in a virtuous society, that is, law was seen as a means by which to rule, rather than a constraint on the King, though in *The Laws* Plato made clear that the law should be the master of the government to restrain potential despots (Plato 1988: 715d). The law was seen as a constraint on judges who were to be left very little discretion in making their decisions (Aristotle 1954: 1345a; Aristotle 1948: 1282b, 1287a).³ In political practice these debates did not mean much, though all ancient civilisations had legal codes, some of prodigious length and complexity, yet the view took hold in the late Roman period that the Prince was above the law, (Wallace-Hadrill 1982: 39; Post 1968: 520) though by the Christian era he might be subordinate to God, but not to other men. In other words, laws existed to order and regulate human affairs and to allow citizens to make choices or face punishments for transgressions. There was little indication until the medieval period that kings should be subordinate to the law, and even when this was suggested, there was little said about what institutional arrangements might be appropriate to achieve this (N ederman 1984). In fact, the impulse to obey the law was said to come only from the monarch's sense of moral obligation; for no man, and certainly no judge, could enforce this (Nederman 1984: 63). In short, despite doctrinal assertions that the king was subject to the law⁴ and the argument that no Prince should rule without laws (Berman 1983: 292-4; Marsilius of Padua 1967), the translation of this idea into an institutional arrangement whereby it might actually be enforceable took several centuries, during which there were notable reverses of course, and also powerful voices opposed to limiting a sovereign, particularly a monarch, by law (Hobbes 1968: 232).

Constitutional practice

Though the common law legal systems of England and America pride themselves on having devised the rule of law, in fact it came into being slowly; it was the product of a prolonged political struggle, and in any case was riddled with reverses and exceptions. The west, it should not be forgotten, went through a long period of modern is at ion, plagued by civil wars, violence, and revolutions. This process was not planned; nor was its success pre-ordained. Nor, it should be said, was the process the same everywhere either in terms of timing

or in institutional details (Kriegel 1995; Barnum *et al.* 1992; Downing 1989).

What is clear is that the process owes much to emerging practices of government, rather than deliberate planning and that the idea that not only should the government rule by law, but should also abide by the rules and even be limited by the rules was an idea that took a long time to be actually established. Much of the debate took place in a pre-capitalist economic environment, where political participation was strictly limited to a very small portion of the population. In England, at least, the rule of law, both as an idea and as a constitutional practice pre-dated the industrial revolution and the emergence of democratic politics.

In sixteenth-century England, despite the view that the monarch was an absolute prince, meaning that no man or institution on earth was superior to the monarch, in practice kings relied upon legislation to make major changes in their law and policy (Dunham 1964). The roaring Niagara of Tudor statutes, as one historian put it (Elton 1972), created an expectation that Parliaments would be regularly called, that major policy initiatives would be put into legal form, introduced to the legislature and debated, and these initiatives included spending and taxation measures. Following a political and legal struggle in the seventeenth century which included a civil war, the execution of one monarch and the overthrow and exile of another, the English at last settled on a constitutional order that, amongst other things, asserted rights over the king. Under the Bill of Rights Act 1689, kings could no longer suspend or dispense with the laws, were obliged to acknowledge the privileges of Parliament and to seek legislative approval to raise revenue (Edie 1977). Despite the laudatory tone accompanying these innovations the king remained very powerful and many aspects of the legal system were underdeveloped. Judges only acquired security of tenure in 1701; juries were still under their thumb into the eighteenth century; political participation did not begin to widen until 1831 and was not completed until 1928. The political system in the eighteenth century was corrupt and the civil service was appointed on the basis of patronage and connections until the nineteenth century. None of this should detract from the historic achievement, but it should serve to warn readers that the emergence of the rule of law has a history bound up with a prolonged political struggle and that it took a long time to be established, and in the history of government it is a recent and a rare accomplishment. Even when the British took the common law to the various parts of their empire there was often a huge gap between the rhetoric of the common law and colonial practice. In Australia, for example, there was a system of military rule between 1788 and 1823, and even after the civilianisation of the legal system, trial by civilian juries and a representative legislature took time to be put in place (Neal 1991: chapter 3; Windeyer 1958-63).

If one had to hazard a generalisation about this process it would be that the political and legal culture that gives rise to, and sustains the rule of law involved the considerable cultural shift in Europe from feudalism to modernity, and that therefore cultures are not static; nor can they be simply manufactured or contrived at the demand of the government. Even the American case suggests that there is both a considerable background to a constitutional document and also that there is often a long period of evolution after the constitution is made before the full emergence of constitutional government takes hold in the society at large.

Formal theories

The modern view of the rule of law seems to have emerged as a doctrine of that name, in the late nineteenth century. Despite the association between the phrase and the English lawyer Albert Venn Dicey (Dicey 1959) who seems to have taken some of his ideas from Professor W.E. Hearn, a Professor of Law at the University of Melbourne (Arndt 1957), Dicey's view proved to be both influential and enduring especially with judges and practising lawyers.⁵ In essence he argued that the rule of law in England involved the following institutional arrangements:

- that no person is punishable except for a breach of law established in the ordinary manner before the ordinary courts of the land; this is in contrast to arbitrary power and excludes wide discretionary authority;
- that no man is above the law; that every person, whatever be his rank and condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals, or equality before the law and this excludes exemptions of officials or others from a duty to obey the law which governs citizens;
- that general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.

It has to be said that much of his doctrine was based on a disdain for continental models of government,

though he was familiar with them. Dicey has been attacked and defended. One of the problems with his formulation is that it is narrowly English and less likely to travel well since it is not conceived in terms of abstract criteria that a variety of legal systems might meet, though their institutional details will vary. In particular, Dicey assumed that the laws were relatively clear and fixed, whereas in fact even in England great congeries of discretionary power have existed since the sixteenth century and were rapidly expanding during his lifetime.⁶

The nineteenth-century jurists seemed to assume that judges merely discovered the law, whereas in fact they interpreted it, and actually thereby made law. Since Dicey's death the administrative apparatus of the state has expanded dramatically and the struggle within administrative law has been to extend established principles to these new concentrations of power and to find new techniques such as Ombudsmen, Freedom of Information, and merit review to control the administrative system (Bensel 1980).

Later versions of the doctrine stressed the formal rather than the substantive aspects of the law, and eschewed all connections with human rights or a Bill of Rights, or in fact, with a democratic political order of the western type (Oakeshott 1983; Raz 1977; Hayek 1944). In other words, the rules are facultative, not substantive, and are not intended to be either instrumental or conducive towards the accomplishment of particular substantive goods (Oakeshott 1983). The argument for a formal theory was partly political, that is, it was more likely to be seen as neutral and compatible with a variety of substantive laws actually found in western systems, ranging from more market oriented economies to the welfare state. Despite the differences of substance, it has been argued that a spare formal theory would likely attract greater support across ideological lines (Summers 1993: 136).

The laws themselves must meet various formal criteria: i.e., they are promulgated to the public, and not secret; are generally prospective not retrospective; are not impossible to comply with; are clear, coherent with each other, and stable; that lawmaking is guided by the law; that persons who make and administer laws are accountable, and actually do administer the law consistently in accordance with the law (Allan 1993; Allars 1990: 15; Finnis 1980: 270-1; Rawls 1971: 235-43). More recent writing has extended the list of formal requirements to include institutional arrangements such as a judiciary independent of government interference in individual cases, an independent legal profession, access to the courts, the application of the principles of natural justice (i.e., that the decision-makers are not biased in a legal sense and that parties are given a fair hearing), and impartial and honest law enforcement (Walker 1988).

Purely procedural models have also emerged in which the stress is upon due process,⁷ i.e., being given a hearing, by independent judicial or administrative officers, leading to reasoned decisions articulated in terms of the governing rules (Jones 1958: 145-6). In practice, the term in some states merely means that parties before a court are entitled to be treated in accordance with the rules in existence at the time the case is heard.⁸ Such a positivist approach excluded an overarching doctrine by which such rules might themselves be judged, though in the United States there is such a critical approach to this doctrine, and even signs of it in Australia. As with all formal theories, there was no way these positivist criteria could be used to distinguish between regimes that are democratic or humane and those that deny human rights, impoverish the people and practise racial segregation and religious persecution. As long as the regime, whatever its character, abides by the formal criteria of the law, the rule of law can be said to exist (Radin 1989: 786).⁹

The problem with this view is that while it proved a way of distinguishing between arbitrary government, i.e., government where there are either no rules, or rules of a certain type, and the rule of law in the formal sense, this model was compatible with a range of political regimes including apartheid South Africa and even Nazi Germany, both of which had rules and laws. The problem was that the laws were unjust, and in both cases deliberately discriminatory. Such a political and legal order was not compatible with equality, nor - given its racial basis - was it compatible with universalistic criteria of the modern world such as civic equality irrespective of one's background. Various regimes quickly discovered that control over the legislative process gave them the capacity to construct oppressive laws to preserve the regime in power and to thwart demands for accountability.

Given the abuses of human rights in the twentieth century - a century which has seen more humans die at the hands of governments than any other in human history - it is hardly surprising that the United Nations has since 1948 run a campaign to insist on the adoption of certain substantive arrangements, political and civil, and then economic, social, and cultural, said to be universal and to apply in all states. Thus these conditions

gave a new substantive twist to the rule of law by saying something about the content of the rules themselves (Swede 1995: 371-2). One argument for this approach is that unless there are such standards, governments will continue to treat their citizens, or some of their citizens, according to whim or even deliberate policies that entail abuses of human rights. This argument necessarily implies that national borders were permeable, and that governments did not have absolute sovereignty to do whatever they liked. As a normative ideal, these standards should not be confused with a description of legal and political realities for international standards which have often been abused, and much remains to be done to achieve these standards.

From rule of law to democratic institutions

As we have seen, while the rule of law pre-dated democratic regimes, in modern times the rule of law has also been used either as a synonym for democratic government, or at least linked to it,¹⁰ the argument being that pluralistic or multiparty democratic politics will be more likely to keep a government within bounds than would regimes that are not subject to these disciplines. While this is generally true, two qualifications must be made. The first is that even democratic regimes can abuse the rights of minorities by passing oppressive laws, as indigenous Australians and Asian Australians well know. Second, even systems that have humane and non-discriminatory laws experience abuses of power, usually by individuals, although systematic abuses are not unknown. Yet, that said, the empirical surveys of human rights compliance show that developed democratic regimes have the best human rights records, and military dictatorships, and one party states have the worst records in this regard. | | Similarly, amongst developing states, those that are well advanced economically are generally the least oppressive, while those that are the most backward have real problems. But again, this is not a simple correspondence but merely a general tendency. What emerges from this is that modern systems are not simply based upon the law, but that there are other arrangements - particularly, political institutions and practices - that also vie for pride of place as central principles in the system. In parliamentary systems, for example, even where there is a written constitution, there is sometimes said to be a conflict between the rule of law and parliamentary sovereignty (Griffith 1994). The argument is that the law insists upon stability, while parliamentary sovereignty allows for one branch of government to override all others. Whether this is so need not be discussed here, but the point for our purposes is that legal orders are embedded in political systems.

Role as an ideology

While most proponents of the rule of law have written about the subject from a liberal perspective, a number of writers, on the left in particular, have criticised the concept as an ideological mask which in effect uses the rhetoric of equality before the law and impartiality to mask an underlying reality of inequalities and exploitation (Jones 1994: 204; Unger 1976: 52-7, 66-76, 166-81, 192-216, 238-42). Within this tradition of writing, there are important variants. E.P. Thompson's account, for example, based on a careful examination of eighteenth-century Britain, notes these points, but concluded that within a system the ruling class occasionally had to accept the application of the rules to themselves or else risk the wholesale loss of legitimacy (Thompson 1975: 258-69). In other words, the risk to political rulers of using the rhetoric of legal rule and legal equality is that these terms will be deployed to press for real political accountability by political rulers. At first these developments may be merely an attempt by the political leadership to bring their own subordinates into line and to eliminate the arbitrariness and uncertainty that goes with systems without rules. But these campaigns have a habit of creating demands to extend the rules even higher to encompass the behaviour of the ruling class (Jenner 1994: 144). On the other hand, it should not be thought that there is anything inevitable about these processes, and legal orders have existed for a very long time where the law was seen as an instrument for the control of the populace, while the ruling elite remained largely exempt (De Tocqueville 1955).

Underlying assumptions

There are instances where a modern legal order has either been imposed upon, or adopted by, a society that operates at variance with the assumptions of the rule of law. The rule of law is actually based on an assumption that: political leaders make mistakes, therefore, they are not infallible; that since they are expected to rule in the interests of the public good and not merely their own personal interests, they should be held accountable for what they do. In systems where real power is in the hands of an absolute monarch as in Tonga, for example, or in the hands of a political leadership that sees its existence as essential to the nation

and imagines that their interests are the same as those of the nation, this idea will prove to be a real problem. For it may be assumed that, to critics, the political leadership necessarily entails an attack on the political order and is therefore necessarily subversive. In the late eighteenth century, Britain's mild mannered calls for a wider franchise, for example, were simply labelled as treasonable, and such groups were subject to trials for sedition. Where there is no recognition of the legitimacy of a legal and loyal opposition, i.e., no space between lawful advocacy of political change and revolutionary overthrow, calls for change are necessarily seen as a threat. In such cases, especially where the apparatus of control is strong the only prospect for change is usually change from above by a reforming leadership.

In practice, most rule of law systems recognise that large congeries of power are potentially dangerous and have sought to either divide power or at least balance off the various branches of government, and have also recognised that the executive in particular, ought to be accountable for what it does. There are, however, systems such as those in China that assume that divided power means governmental weakness, and that this weakness will lead to societal breakdown and chaos.

In practice, the operation of a rule of law state assumes that public officials are aware of the legal limits on their power, and will for the most part accept these limits. The evidence shows that this is not always so and that even in established legal orders the executive will sometimes manipulate the law to get round judicial rulings, though this is normally not so widespread or blatant as to undermine the legitimacy of the legal system as a whole, but its corrosive effects on public sentiment towards the legal system ought not to be underestimated (Pearce 1991).

Another assumption is that legitimacy comes from obeying the law, and in democratic systems by having attained power by free and fair elections; and also that the state recognises a relatively autonomous civil society consisting of voluntary organisations, e.g., clubs, societies, professional associations, political parties, trade unions and churches which the state does not directly control and in operations of which it does not interfere.

East Asia: rule by law

In a number of East Asian states, such as China, there has been a recognition that rule by a single man is dangerous. The experience of the Cultural Revolution (1966-76) was said to bear this out. On the other hand, rule by law, that is, rule according to known rules rather than arbitrary dictates, is also recognised as essential, both politically and also in order to create a sort of predictability upon which to base economic modernisation.¹² (See Jayasuriya, 'Introduction', this volume.)

The argument here is that the government should rule 'by known laws rather than by mere fiat or personal rule. Rules are here seen as a more rational and perhaps more efficient means of guiding or steering the society (Minxin rei 1994: 101-2; Lo 1992; Zhongguo Fazhi Bao 1985; Von Senger 1985: 200). Nevertheless, despite these points, there is less interest in holding senior political leaders accountable; in fact, in some places they are effectively exempt from the law, unless there is a purge or minor officials are caught in an anti-corruption campaign. One of the contradictions in the use of an instrumentalist view of the law is that the relationship between one-party rule and rule by law remains problematic. On the one hand, the party should adhere to the law; but on the other hand, the party is obliged to guide the state, i.e., the law. While officially there is said to be no such contradiction (Li Buyun 1982), in reality, as critics have pointed out, the party, especially its senior leadership, is effectively above the law, (Lee 1996; Yichou 1986; Heuser 1986; Ma 1981). Chinese writing on the subject seems to veer between assertions that the party must obey the law to claims that the party must provide leadership for the organs of state power. ¹³

Several of the underlying assumptions of this view of the world are at odds with the views taken in the west, though whether these opinions represent merely the ruling elites in these societies or are actually subscribed to by the populations remains an open question. These assumptions are: first, that society is not really plural, even if there is evidence of this such as ethnic diversity, religious and regional pluralism, but rather society is a corporate whole where the emphasis is on unity rather than on diversity; second, that the political leadership should prescribe a ruling ideology, e.g., Indonesia's Pancasila, Singapore's national ideology, the four principles in China, and this principle should govern the legal order; third, that the stress should be on collective responsibilities rather than on the assertion of individual rights¹⁴ with the political leadership acting as the

guardian of these collective responsibilities and having the duty to prescribe them in the interests of the nation; fourth, that criticism of the political leadership is tantamount to criticism of the nation and its overriding interests, and that this is necessarily a threat to social order, which in some versions is so precariously poised that anything might upset it and cause disaster (Chew 1994). It follows from this that the state and its organs should suppress what the west calls dissent, but which in accordance with the view of Asian values is really an unacceptable threat to social and political stability. The emergence of these differences occurred early around the independence period (ICJ 1966; Heuston 1964: 56-7) and presents a number of Asian states with a contradiction between their relatively liberal legal systems, at least on paper, and the authoritarian demands of their political and social systems. Fifth, it follows from this that the law and its institutions are a weapon to control society and in particular to nip societal threats in the bud (Seow 1994).

East Asia: practice

The difficulty with talking about East and Southeast Asia is that, in fact, there are territories in this region ranging from Japan at one extreme to Burma and North Korea at the other, with all other states somewhere between in terms of regime type, the sophistication of the legal order, and levels of economic development (Case 1996; Alagappa 1995). It should be noted that institutions, economies and political systems do not always coincide. Thus the Philippines has a democratic political system, a free press, a modern constitution (1986), but a backward economy which is also in some areas based on semi-feudal land holding practices. Much the same could be said of India, while Pakistan has a weak democracy, a semi-feudal economy, and along with Bangladesh, chronic political instability and endemic corruption. Singapore, on the other hand, is clean in terms of corruption, has an efficient modern bureaucracy, a high standard of living but operates as a virtual one party state with a leadership that is paranoid about opposition (Haas 1989). While Malaysia shares some of these characteristics, the greater diversity of the country allows for a greater measure of political freedom and a more independent minded judiciary than its neighbour. Taiwan has undergone the early stages of legal as well as political modernisation in the past decade and this has been attributed to cultural renaissance as well as re-interpretation of Chinese culture (Winn and Yeh 1995; Lee Teng-hui 1995; Cheng 1989; Winckler 1984) as has South Korea (Yang 1993). Indonesia has a political order still dominated by the military but yet human rights debates occur (Kokott 1995; Nasution 1994; Lubis 1993; Wanandi 1993) within the context of what has been called soft authoritarianism. These various characterisations should warn the unwary against the notion that there is either one path to developed status or that there is something inevitable about it.

Nevertheless the rise of a law based political system requires certain institutional supports to both implement the idea of the rule of law as well as to support it. Minimally, this involves a reference in the constitution to either the principle itself, or more usually, to the idea that the constitution is the highest form of law, which will prevail over all lower forms of law and over policy. By itself, this is rarely sufficient unless all that is sought is a symbolic representation of the concept in a constitutional instrument. Normally, the idea is further supported by the existence of an independent judiciary and by laws regulating the political and electoral process. The necessary implication of this arrangement is that the Supreme Court, having jurisdiction over the law, is in a position to entertain applications concerning legal irregularities in the electoral process, and possibly the legislative process as well. Of course, such challenges might lie unused until the political circumstances arise to invoke these laws. In addition to the minimal institutional requirements of a supreme law and judicial review by an independent judiciary, some states have made provision for other forms of legal accountability, such as an Ombudsman, an anti-corruption agency, and a system of administrative tribunals. If used, and if effective in use, these institutions will both extend the range of matters subject to external review and deepen the institutional grip of the law on the political-administrative process.

Whether these institutions exist, and more importantly, whether they are actually deployed in an effective manner depends upon political as well as institutional arrangements. Some states with these arrangements simply witness their formal existence because citizens are unwilling to use them. Another factor in the use of accountability mechanisms is the character of the personnel who staff these agencies and courts, and in particular, whether they are prepared to entertain applications from citizens and pursue them vigorously if the circumstances merit this. It would seem that citizens of regimes that are more advanced along the road to democratic accountability are more likely to resort to institutional uses of accountability mechanisms. In this volume, the chapters on Korea and Taiwan detailing their experience support this tendency. Other regimes

that are less well developed politically, but in which tentative steps have been taken to institutionalise citizen complaint handling, such as Indonesia, are at the early stages of institutionalising the rule of law. While the impetus towards institutional change is likely to be fed by domestic pressures, it also seems, given the economic experience of 1997-8, that external pressures for change may add to domestic tendencies and induce greater institutional reform. The rise of the rule of law in Europe was partly a response to the requirement to provide a predictable and stable legal order on which to base economic and political development. It is unlikely, whatever local variants emerge, that the states of East and Southeast Asia will be able to stand aside from the pressures towards rule-based administration.

Even within systems where individual rights are not traditionally prized it has been recognised that administrative review is desirable; hence its emergence in a number of East Asian states recently (Hills 1994; Levin 1995; Fa and Leng 1991). As most of these laws are very recent, no detailed assessment of their effects is at this stage possible. Potentially, these developments might lead to greater public accountability or they may be constrained by the overall political culture and have little impact outside the cases involved (Hall 1990-S; Hickling and Wishart (1988-9). The open question is whether the emergence of legal institutionalisation documented in the chapters in this volume will produce similar effects as in the west or whether there really is some distinctive Asian way towards economically developed societies without an accompanying political and social liberalisation.

Notes

1 For a classification of constitutions that emphasise their form and functions see Elazar (1985) where he lists the following five models: 1 as frame of government and protector of rights; 2 as code; 3 as revolutionary manifesto; 4 as a tempered political ideal; 5 as a modern adaptation of an ancient traditional constitution.

2 While Plato thought that rule by the best men, the philosopher king, was superior to rule by law in the Republic 427a where it was said that detailed laws would not be needed, in *The Statesman* (Plato 1995 trans.) he had begun to shift ground and indicated that rule by law might be necessary despite its disadvantages, notably its inflexibility and generality. In his last work (Plato 1988 trans) he had come round to the idea of a comprehensive code of laws. For a discussion of Plato's Rule of Law in his later work see Klosko (1986: 225-34).

3 See also Aristotle (trans) (1948: 1287a, 1282b) where the same argument is applied to rulers.

4 For a review of these doctrines see Weston (1960).

5 See for example, Mason (1996); Toohey (1993); McLachlin (1992); and Menzies (1971).

6 For criticisms see Harvey (1961: 492-3); Jennings (1952: 53-78, 289-301); Barker (1914).

7 The term was first used in legislation as long ago as 1351 and 1354. See Rand (1961: 177).

8 *Adler v. District Court of New South Wales* (1990) 19 NSWLR 317 (CA).

9 See Franz Neumann (1986) where the formal theory is said to be consistent with a German style *Rechtstaat*; see also Von Caenegam (1995).

10 *Re Buchanan* (1964) 65 SR(NSW) 9. 10 'Every truly democratic system of government rests upon the rule of law, and no system is truly democratic if it does not'.

11. There are many of these. See Humana (1992) and Sing Ming (1996: 352 table 9).

12 This is a constant theme in Chinese writing on the subject. See Ne Zhengmou (1987).

13 Compare Liu Q}ngcai (1984) with Lin Yicui (1983).

14 Tay (1996) calls this *agemeinschaft* model of society and law.

15 There is now a vast literature on this. For views see Moody (1996); Emmerson (1995); Ghai (1994); and Kausikan (1993).

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