

Original Paper

ASIAN GIANTS: Institutional Outcomes

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Received: July 15, 2022

Accepted: July 31, 2022

Online Published: August 10, 2022

doi:10.22158/jrph.v5n3p63

URL: <http://dx.doi.org/10.22158/jrph.v5n3p63>

Abstract

Swedish sociologist and Nobel laureate Gunnar Myrdal focused on Asian poverty in his major work *An Asian Drama* (Myrdal, 1969). Now after fifty years of rapid economic development it is time to inquire into institutional performance and well-ordered societies. The measuring rod -rule of law- has no basis in mainstream Asian philosophies: neither Hinduism or Buddhism nor Confucianism or Shintoism.

Keywords

Instructional philosophy, Well- and ill-ordered nations, institutional legacy, law

1. Introduction

The three Asian giants have different institutions, reflecting various institutional philosophies. China adhered to Leninism, India took over British majority rule and American federalism, while Japan had a constitution designed by the USA after the unconditional surrender of 1945. How have these institutional novelties fared over time?

2. Concept of an Institution

The meaning and reference of the word “institution” is not clear. One may separate between the atomistic and the holistic definition:

- 1) Atomistic approach; in rational choice or social choice “institution” refers to a rule like the rules of chess or the voting rules of Parliament. The idea is to test fit *path dependency* which entails that different rules give different outcomes when the same preferences are aggregated according to various rules (Nurmi, 1987). Sonar voting give different outcomes from the same preferences when various rules of aggregation are used. Institutions matter!
- 2) The holistic approach: Frankly speaking, it is not an easy task to determine what “institution” refers to here. The problem is simply that so many things are called “institution”:
 - a) Public organisations

- b) Private organisations
- c) Rules
- d) Law
- e) Famous people (Mandela)
- f) Market
- g) Hierarchy
- h) Tradition

Instead of trying to find a common core among these, I will suggest a stipulated definition:

An institution is a rule or set of rules that meet with a high probability of enforcement.

Thus, marriage is an institution as well as democracy, or the market economy is a set of institutions. Institutions as rules restrain the behaviour of people and organizations. They call for a legal order of public and private law as well as the legal machinery. One can always ask about institutions as rules of behaviour: are they observed or enforced?

3. Normativity: Ideal Institutions and Real Ones

There are two different kinds of *normativity* that are often confused. Take the example of constitutional rule in Russia.

Putin has bypassed the Russian constitution from 1993 and introduced an authoritarian regime. One normativity was replaced by another and entirely different. Normativity is in place when its norms are observed or enforced. This is the logic of appropriateness that March and Olsen speak much about (March & Olsen, 1984).

Normativity is in every society enforced by law or custom. It may be rejected in the search for new rules. Institutional change is the process in which new rules replace old ones. To mention one example: the rules of justice.

In one of the most discussed books after World War 2—A Theory of Justice (1970)—Rawls proposed ideal normativity consisting of 3 rules:

- I) Freedom
- II) Impartiality
- III) Maximin

The set of liberties is wide, impartiality applies mainly to public offices and maximin calls for warfare state spending (Rawls, 2005).

Institutional realities deviate from these ideals. Liberties can be restricted—compare the case of Assange. Partiality is easily spoken of—compare the conflict at the USP in Fiji. Maximin is not achieved even in Nordic welfare states.

Looking at real institutions, one finds discrepancies compared with the ideal ones in Western political tradition where rule of law is mentioned as an ideal set of institutions. How far are real set of instructions from these benchmarks?

4. Ideal Institutions: Rule of Law

In a well-ordered country there are rule of law institutions. Their role for justice is necessary even when not sufficient. The German *rechtsstaat* is mentioned by Kant as integral to justice although not an ultimate value. In English legal thinking it has a most prominent place.

Speaking generally, rule of law is a set of rules that a just state must have.

5. Real Institutions

Let us try to get some insights into how rule of law institutions occur in the state. Firstly, there is the norm of accountability. State decisions and actions must be recorded systematically with the possibility of complaint with an oversight capacity. Secondly, we have the norm of open government. Openness is promoted by competitive at all levels of government in the state. Thirdly, there is just law. This encompasses both private and public law. Roman Law defined just law as living honestly, speak the truth and give to everyone his/her due. What the last requirement implies is the conundrums of legal and political theory today. Fourthly, we have impartiality.

I have here followed the World Justice Project (WJP) that makes a yearly survey of the rule of law in as many countries as they can find expert opinions.

WJP ranks some 140 countries in a nominal scale from 0 to 1, allowing for a comparison of more or less rule of law. No country is placed at 1 or 0, but some glaring differences may be noted. How about the 3 Asian giants?

6. Rule of Law in Asia

Below the WJP's scores for the major Asian Countries will be stated. It must be emphasized that Asia had no prior experience of rule of law before 1945.

6.1 China

The overall score on being well-ordered or having the characteristics of *Rechtsstaat* is low—see Table 1.

Table 1. China

WJP Rule of Law Index: Overall Score	0,47
Factor 1: Constraints on Government Powers	0,31
Factor 2: Absence of Corruption	0,53
Factor 3: Open Government	0,38
Factor 4: Fundamental Rights	0,27
Factor 5: Order and Security	0,81
Factor 6: Regulatory Enforcement	0,49
Factor 7: Civil Justice	0,52
Factor 8: Criminal Justice	0,45

The weak scoring for China reflects its Leninist legacy that is now fulfilled in a centralised one party state. Looking at the components of rule of law China performs very low on limitations upon government, low on justice reflecting the judges' dependence on government, and high only upon order.

6.2 India

When we come to India we reach at least .5 on an average—the Nordic countries score at .9. The Indian problematic is entirely different from China's. India scores well on restrictions on government and openness of society—see Table 2.

Table 2. India

WJP Rule of Law Index: Overall Score	0,50
Factor 1: Constraints on Government Powers	0,59
Factor 2: Absence of Corruption	0,40
Factor 3: Open Government	0,60
Factor 4: Fundamental Rights	0,49
Factor 5: Order and Security	0,60
Factor 6: Regulatory Enforcement	0,48
Factor 7: Civil Justice	0,44
Factor 8: Criminal Justice	0,39

In India corruption has entered the judiciary and fundamental rights are not well protected for example *visavi* Muslims and the poor.

6.3 Japan

Finally, we arrive at an Asian country scoring better than the US. Japan certainly did not choose the rule of law system, as it was imposed by the US. However, It is well implemented—see Table 3.

Table 3. Japan

WJP Rule of Law Index: Overall Score	0,79
Factor 1: Constraints on Government Powers	0,72
Factor 2: Absence of Corruption	0,82
Factor 3: Open Government	0,70
Factor 4: Fundamental Rights	0,78
Factor 5: Order and Security	0,92
Factor 6: Regulatory Enforcement	0,79
Factor 7: Civil Justice	0,77
Factor 8: Criminal Justice	0,77

It is remarkable that Japan scores well on all 8 dimensions of a rechtstaat, especially low corruption as well as high regulation enforcement.

7. Conclusion

The WJP shoes that rule of law has decreased since 2015. For the US it is a clear downward spiral, especially with the Trump presidency.

One is amazed that Trump can draw support from various groups as a demagogue. He promises much but delivers little of positive outcomes. The real negatives of a Trump re-election would be:

Danger 1: Damage to *rule of law*. We have long believed that American constitutionalism foolproof. A president who treats the office with complete opportunism with guile would not survive US checks and balances. Not so. Trump not only lies strategically but is surrounded by mafia and family. US democracy today is hardly impressive

Danger 2: *War*. Given his capriciousness and aggression Trump may start WW3. His national zest brings USA into collision everywhere. How would the EU react to a war in the Chinese Seas or an attack on Iran?

Danger 3: *Strongman* model reinforced. We see so-called strongman appear ominously in Communist or post-Communist countries and Brazil.

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