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RESEARCH ARTICLE

Contested Modernities in Asian Law and Society: Editor's Introduction to the Special Issue

David M. Engel

State University of New York, Buffalo, USA
Email: dmengel@buffalo.edu

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Modernity has been the idée fixe of law and society scholarship from the very beginning. It is impossible to imagine our field without its roots in the rather different theories of Weber, Marx, and Durkheim about the defining characteristics of a modern legal system; and their theories still resonate in the work of 21st-century researchers. Moreover, pre-modern law and post-modern law, as their names suggest, are also defined and analysed by law and society scholars in relation to the central concept of modernity. Modernity and its pre- and post-incarnations are the very bedrock of the law and society field.

But it is not only law and society researchers and theorists who are captivated by the concept of modernity. Those whom we study—lawyers, judges, legislators, and ordinary people—have their own ideas about modern law. Very often, these ideas clash with one another as different groups contend for power and position. In Asian societies, with their legacy of colonialism, their rich history of indigenous law, and their striking contemporary pluralism, these contestations have been particularly prominent and consequential. "Modernity" has been not simply an ideal to be striven for but also a discursive tool or even a banner or slogan that is deployed to gain a strategic advantage. In the words of Talal Asad, modernity can usefully be viewed as a *project* rather than an objective fact or stage of development:

> Modernity is a *project* – or rather, a series of interlinked projects – that certain people in power seek to achieve. The project aims at institutionalizing a number of (sometimes conflicting, often evolving) principles: constitutionalism, moral autonomy, democracy, human rights, civil equality, industry, consumerism, freedom of the market – and secularism (Asad, 2003, p. 13).

The authors who have contributed to this special issue were not invited to set forth their own theory of legal modernity. Rather, they were asked to explain how their subjects and interlocutors think about and deploy modernity. Legal modernity did not arrive in Asia in a single package but in a hundred different forms and was advocated in a thousand voices by such disparate actors as colonial authorities, local elites, political activists, and even revolutionary groups. It is the interplay and, in particular, the contestation of these different modernities that is the subject of the five articles that follow. Collectively, they

address the processes of contestation in three different Asian regions and five different Asian countries: Thailand, Malaysia, Sri Lanka, India, and Japan.

Andrew Harding and Rawin Leelapatana's highly original article, "Crown and Development: The Influence of Monarchy on Built Environment in Bangkok and Johor," compares the role of Thai and Malaysian kings in shaping the built environments of the two cities. They argue that developments in both countries demonstrate a form of modernity that challenges assumptions about law and social change first set forth by Max Weber. Whereas most scholars of modernity might have predicted a diminished role for royalty in favour of Weber's legal-rational authority, these two case studies suggest that in these two Asian settings, unlike in Europe, constitutional monarchs have actually attained heightened power and status based on traditional forms of legitimation. In Bangkok, the use of legal-rational instruments of urban development has "symbolically reinforce[ed] the royal political pre-eminence." Similarly, in Johor, the status of the king "is enhanced by the visible rise of a vast area of new development and transport infrastructure." In short, the authors demonstrate that seemingly contradictory concepts of authority can alternate or combine in hybrid forms that challenge European-based theories of legal modernity and tradition.

Sanjayan Rajasingham's affecting essay on the ideology of Buddhist primacy in Sri Lanka, entitled "Nothing But Power?: Buddhism, The State, and Modernity in Sri Lanka," engages with at least three different ways of thinking about legal modernity. The first is the importation to Ceylon of British common law and constitutional principles, with its theories of individual autonomy, secularism, parliamentary democracy, and equality under law. In contestation with the British understanding of modernity, however, Rajasingham examines a powerful rival—the concept of modernity that views the Sinhalese population of Sri Lanka as occupying a unique position in the modern state by virtue of their historic duty to protect Buddhism. While preserving many aspects of the version of modernity that the British left behind, the ideology of Buddhist primacy rejects the view that secularism and religious neutrality are necessary components of a modern state. Rajasingham goes on, in the most provocative aspect of his essay, to place the ideology of Buddhist primacy "in conversation" with yet another version of modernity—that of current post-secular scholars who would no doubt reject Buddhist primacy, as advocated by figures such as Gunadasa Amarasekara, but, as Rajasingham points out, nevertheless share some of his positions—such as the view that a purely secular state in which religion is confined to the private realm is an impossibility. Although these latter two forms of modernity represent polar opposites in some ways, this essay concludes that placing them side by side opens up new possibilities for reconciliation in a society torn by violent conflict.

Suprawee Asanasak's pathbreaking article, "Rape Contested: Female Subjects in the Legal Formation of Rape in Thailand," highlights a form of contestation rooted in pre-modern Thai law that remains unresolved even today. Before Thailand adopted a European-style penal code, sexual violence against women was not adjudicated as a violation of individual rights but as an offence directed against hierarchical relations in which a person of higher status—usually a man—had authority over a woman. Thus, the victim of what we now regard as a rape was not the woman herself but the man with authority over her. Sexual violence disrupted the social hierarchies of traditional society, and the remedy was to repair them rather than to vindicate the female victim. With the arrival of "modern" courts and law codes, however, Thai judges, legislators, and legal pundits struggled with the concept of women as autonomous legal subjects and the seemingly obvious view that they were the true victims of rape. They offered various legal formulations to assimilate the Western concept of "rape" into Thai law, none of which fully recognized the victim's perspective or her interests. Asanasak's article skilfully explores these contested visions of women as modern legal subjects and the lingering effects of pre-modern legal formations that continue to obscure their voice in contemporary Thai law.

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Mayur Suresh's essay, "Between Rule and Prerogative: Petitions by Terror-Accused Individuals and the Imaginings of Indian Law," focuses on two contending notions of modernity in Indian criminal law, with particular attention to prosecutions under India's Unlawful Activities Prevention Act (1967). His analysis is based on petitions that defendants in terror prosecutions filed with judges. One type of petition, drawing on the first version of modernity, is "a dispassionate narrative of the self and an objective appeal based on rules." It implicitly views law as neutral, objective, rational, and impersonal, systematically weighing the rights of the defendant against the legal mandates. The second type of petition is quite different, hearkening back to the traditional *arzdasht* that was deferential, emotional, and intended "to create an affective relationship of intimacy across hierarchy." This type of petition emphasizes the inevitability and, indeed, the necessity of "sovereign prerogative," which infuses the criminal process with considerations of mercy, compassion, and personalized inquiries into the life and character of the accused. The two types of petitions represent contesting versions of legal modernity which, as Mayur concludes, are "intertwined" in India's legal culture and are present in the minds of the judges as well as those of the supplicants.

The fifth and final article, Takanori Kitamura's "Contested Modernities in Masaji Chiba's Legal Pluralism: An Ethnomethodological Re-reading for Micro-Level Analysis," focuses not on social or political actors or on judges and lawyers who contest different versions of legal modernity but on an eminent Asian law and society scholar, Masaji Chiba (1919–2009), who studied and theorized the advent of modernity in Japanese legal culture. Chiba's own fieldwork in post-war Japanese communities led him to the recognition that, despite the enactment of the "modern" Meiji legal system in the late 19th and early 20th centuries, Japanese legal culture had not simply progressed from a pre-modern to a modern stage in its development. In the Japanese society that Chiba observed on the ground, different forms of legality were simultaneously present, and often enough they conflicted with one another and with state law. The process of contestation in pluralistic settings fascinated Chiba and led him to create a distinctive body of work that theorized the push and pull between different views of modernity, not only in Japan or, indeed, in Asia, but as a global phenomenon. Kitamura's insightful description of Chiba's evolving theories demonstrates how his pioneering scholarship shaped law and society views of contested modernities and, as Kitamura points out, how Chiba's work anticipated current research on legal consciousness and ethnomethodology and conversation analysis (EMCA). Kitamura suggests that EMCA can unlock Chiba's intentions and make possible a dynamic and nuanced view of his "three dichotomies"—Official Law versus Unofficial Law, Transplanted Law versus Indigenous Law, and Legal Rules versus Legal Postulates—by showing at the micro-level of social interaction how they come to life in the thoughts, speech, interactions, and decisions of individual subjects.

Taken as a group, these five articles provide a panoramic view of contested modernities in Asia, addressing a variety of cultures, religions, and political systems. The conclusions these authors reach will undoubtedly have implications for countries in other world regions as well. It is no exaggeration to say that the idea of modernity is more hotly contested today than at any time in recent memory. Each of the attributes—some might call them myths (Fitzpatrick, 1992)—we have come to associate with the concept of legal modernity has recently become the site of challenge and conflict. These include the idea that legal systems should be independent and autonomous, politically neutral, rational, and secular, that they should guarantee equality and procedural regularity and fairness, and that they should ensure that all individuals—including government officials—are subject to the rule of law. Today, these core principles of legal modernity can no longer be regarded as settled or stable, if they ever were. Rather, modernity and its constituent elements can be understood only as a site of contestation or as a congeries of such sites. As the articles in this special issue well demonstrate, law and society research can shed

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important light on these conflicts and can contribute unique insights in the debates that currently divide and disrupt societies throughout the world.

References

Asad, T. (2003). *Formations of the secular: Christianity, Islam, modernity*. Stanford: Stanford University Press.
Fitzpatrick, P. (1992). *The mythology of modern law*. London and New York: Routledge.

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