

wamy refrains from merely reporting ‘heroic’ cases and summarizing the arguments of the Judges. Taking a remarkably distanced stance, he offers generalizing abstractions and critical reflections that enable him to identify unfit conceptions and weak justifications.

As it repeatedly confirms, the book argues solely on the basis of the constitutional texts and case-law in India. Making a contribution to a general theory of basic structure review or engaging with comparative constitutionalism would go beyond its intention. And yet, such statements underrate the eminent theoretical potential of the study. This book will deepen the readers’ understanding of the distinction between legislative, amending and constituent powers, and their respective correlations with a constitutional court’s power of judicial review. In particular the sections with the infelicitous denomination ‘moral legitimacy’ (p. 189–221) provide very interesting thoughts of constitutional theory. They avoid the empty scholasticism and the decisionist bias that characterize so many contributions to the German discussion on the people’s constituent power. It is a pity that Krishnaswamy was so hesitant to further develop his theoretical observations, perhaps in order not to ‘damage or destroy’ the educational and doctrinal value of the book.

What can we learn from the confrontation with the Indian legal discourse to which Krishnaswamy has opened us a window of access? Maybe it is first of all the significance of the question raised by the title of his book which is hardly ever asked in the German context: How can democracy and constitutionalism be reconciled in view of a justiciable basic structure doctrine? In the eyes of the present reviewer, a key insight is that basic structure review serves the purpose of guarding the deliberative integrity of a process that could result in an ‘overall modification’ of the constitution (in German ‘Gesamtänderung’, a term developed in Austrian jurisprudence). However, a constitutional jurisprudence that obstructs any legal paths to such overall constitutional change would undermine the very legitimacy on which basic structure review rests.

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Muthucumaraswamy Sornarajah / Jiangyu Wang (eds.)

China, India and the International Economic Order

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Even though the ongoing changes in the international economy and the dawn of an “Asian century” are often associated with the economic and political rise of China, India’s rapid development has equally been calling for attention for some time. Indeed, the integration of both India and China into the world economy is not only improving the living standards of more than two billion people, but is also shifting to some extent the global balance of powers from West to East. Hence, the two giants are likely to increasingly shape global order by the approaches they adopt towards economic development and international law.

At the same time, the two countries are often regarded as displaying widely diverging internal characteristics, with India being seen as a democracy founded on the rule of law and China as a politically illiberal, yet economically successful, form of government. In these circumstances, comparing the Indian and Chinese approaches towards international economic law and domestic legal reform seems tempting. Comparisons between the two nations not only promise a glimpse at what our future global legal and economic order might look like. They might also hint at potentially successful strategies for economic development in general.

The volume under review here successfully attempts to provide such insights by comparing the approaches of India and China in three major legal arenas: World trade law, regional economic integration in Asia, and domestic “law and development” issues within both countries. The comparisons cover a wide range of topics, including trade and development, WTO law and dispute settlement, regional free trade agreements, foreign investment law and outsourcing, corporate governance and competition law, as well as “law and development” in general. The book brings together a group of 21 established or emerging legal scholars from Australia, China, India, Malaysia, Singapore and the US, the majority of whom are based outside the two countries under investigation. The latter is also true for the two editors, *Muthucumaraswamy Sornarajah* and *Jiangyu Wang*, who are both professors at the National University of Singapore, where the volume originated in an international symposium in June 2006.

In their introductory paper, the two editors outline the main research questions guiding the numerous contributions and provide a helpful summary of the contents of the individual papers. In particular, *Sornarajah* and *Wang* raise the question whether the adoption of different domestic approaches impacts on India’s and China’s attitude towards international norms and institutions. They posit the overarching thesis that “the various contributors demonstrate [that], though the domestic approaches of China and India to economic issues diverge, they adopt rather similar stances at the international level, recapturing images which existed during the immediate post-colonial era” (p. 12). The editors argue that cooperation between India and China can provide leadership in the struggle for economic development in many other developing countries, as the influence of Western nations, and namely the US, is declining and the “neo-liberal” economic model, and its expression in the “Washington Consensus”, are losing their appeal. Conversely, competing models have been instituted with success in Asia, and “China and India have emerged with new visions to offer” (p. 13).

The 16 contributions following the introduction are organized in three parts: The first and largest part, comprising nine papers, focuses on the role of India and China in the WTO system, notably in the Doha Development Round and in the dispute settlement system. Part II, consisting of four contributions, discusses the role of India and China in the regional economic integration of Asia, with special attention given to regional trade agreements signed by the two nations in recent years. The three last papers in Part III touch on

selected domestic legal issues in the economic development of India and China, which may be of particular interest to readers interested in “law and development” issues.

While a thorough discussion of all contributions is beyond the scope of this review, some spotlights can be shed on selected papers: Part I opens with a comprehensive contribution on “The WTO and development policy in China and India” by *Joel Trachtman*, Professor of International Law at the Fletcher School of Law and Diplomacy. *Trachtman* examines the constraints WTO law imposes on a pro-active industrial and regulatory policy towards development in India and China. He stresses that India’s growth story was initiated already in the 1980s with more market-oriented domestic policies, even before international trade liberalization under the WTO regime set in with full force. Editor *Sornarajah* somewhat echoes this finding in his own knowledgeable contribution on “India, China and Foreign Investment”. He shows that both countries adopted a gradualist approach and liberalized their foreign investment laws long before lowering barriers to trade. India was moving slower in this respect as its democratic processes involved contestation on the part of interest groups averse of more competition. Ironically, greater liberalization is found in communist-ruled states of India such as Kerala and West Bengal, which successfully combined moves to attract foreign investment with the provision of basic amenities to the poor. *Sornarajah* concludes that it is wrong to credit international liberalization alone for the two countries’ economic growth and that a combination of sound domestic industrial policies and endogenous entrepreneurship was equally crucial. Similarly, he advises both nations to stay clear of international dispute settlement mechanisms and rather make their domestic judiciaries more efficient.

Slightly different nuances can be found in other contributions to the volume. For example, *Jianfu Chen* of La Trobe University Melbourne recommends a more pro-active strategy for both countries in current WTO negotiations, which should combine further liberalization with more direct economic and trade capacity building measures. Offering yet another strategy, *Chen An* and *Chen Huiping* of Xiamen University study the historical and currently renewed cooperation between “Chindia” and advocate more reliance on such forms of South-South cooperation to create a more balanced global economic order. *Julia Ya Quin* of Wayne State Law School (USA) examines the respective contributions of China and India to WTO law, finding that India has played a more significant role than China in both WTO rule-making and adjudicatory processes. Interestingly, she relates these divergences to the respective national legal cultures: China’s WTO practices bear the imprint of its elite-oriented decision-making culture undervaluing domestic legal process, whereas India, as a democracy founded on the rule of law, has been able to take politically stronger and legally more principled positions in the WTO. In the only contribution to the volume from an Indian author actually based in India, *Bhupinder Chimni* of West Bengal University in Kolkata thoughtfully analyses the interpretative difficulties India and other developing nations have faced when litigating their claims in the WTO Dispute Settlement Body. In his view, these countries have so far underestimated the importance of a coherent interpretative strategy in WTO law. As a consequence, the combination of textual and “activist”

interpretations currently prevailing in the case law has generally favored developed countries. Part I concludes with further observations on the respective approaches to international economic dispute settlement mechanisms and to outsourcing of services under the General Agreement on Trade in Services (GATS).

Part II focuses on the roles of India and China in regional economic integration in Asia, where regional trade agreements are currently proliferating at a pace that is, according to the editors, “nothing but daunting” (p. 8) and where India and China are among the most committed actors. Co-editor *Jiangyu Wang* sets the scene with his paper on “The role of China and India in Asian regionalism”, in which he broadly discusses possible legal options such as bilateralism, a pan-Asian free trade area, and sub-regional integration. The following three papers focus on India’s and China’s relationships to the Association of Southeast Asian Nations (ASEAN) and on Asian economic integration in the financial sector.

The third and last part of the volume is entitled “Law and Development in China and India: Domestic issues”. It thus places the three following contributions in the context of the original “Law and Development” movement and its current renaissance under the banner of “rule of law” and “good governance”. Indeed, as an opening paper the editors secured a contribution from renowned Asian law and “law and development” scholar *Randall Peerenboom*, Professor of Law at La Trobe University Melbourne and Editor-in-Chief of the new Hague Journal on Rule of Law. *Peerenboom* provides a broad overview over “law and development” in India and China and argues that the experiences of both countries confirm that legal policies and institutions matter in their economic development. This may be less surprising with regard to India than China. However, even though India seems to have better judicial independence and property rights protection than China, *Peerenboom* recalls that Indian courts might in practice be more dependent and inhibited by corruption and long delays. Conversely, China’s courts may be more efficient in handling commercial disputes. China as a whole may perform even better if the concept of rule of law is extended beyond the judiciary to include the quality of legal regulation in the economic sector. Somewhat dissatisfied, *Peerenboom* concludes that, even though comparisons are inevitable, India and China display considerable differences internally, between each other and with regard to other developing countries, so that generalizations on the role of law in development are notoriously difficult and normative conclusions should be drawn with care.

Indeed, rather than attempting to draw general conclusions on the relationship between law and development, the following two contributions in the volume each assess specific areas of legal reform. *Nicholas Howson* and *Vikramaditya Khanna* of Michigan University thoroughly explore the historic development and current state of corporate law in India and China, also inquiring into the reasons why both countries have tended to adopt the Anglo-American model. They find that the “legal origins” thesis, based on the historical influences of common law or civil law, has less explanatory force than a politics account, according to which specific constellations of political forces in place in India and China at specific

moments have shaped the configuration of corporate governance structures. Finally, *Zhang Xian-Chu* of the University of Hong Kong compares the competition law regimes in India and China, finding that both have recognized the importance of an anti-monopoly regime but face capacity constraints to build and sustain an efficient competition regime. Again, India is found to be more active multilaterally, notably in the WTO negotiations on competition policy, and China is recommended to follow India's example in terms of the independence of its judiciary and its competition authority.

In sum, the book presents one of the most comprehensive comparative studies of India's and China's approaches towards international economic law and domestic legal reform to date. It consolidates existing scholarship in the area and offers some new insights. The book is thus a valuable resource in particular for readers interested in the role of the two emerging powers in international trade law and their approaches to domestic economic law. The editors' introduction provides a valuable summary of the contributions even for readers with little time at their hands.

At the same time, the book might have benefitted from an even more analytical and comprehensive framing paper, elaborating more overarching themes and integrating the numerous articles into an even more coherent theoretical framework. The one general argument that is made in the introduction, i.e. that India and China adopt similar stances on the global level despite internal differences, points into that direction. This thesis would have been even more convincing if it had been argumentatively developed at the outset. Instead, it is mainly left to the reader to find supporting evidence in the individual chapters, which is not self-evident in every case.

As regards the global leadership potential of a prospective Indo-Chinese axis which the editors envisage in their introduction, the realization of this potential will depend, *inter alia*, on whether the two neighboring countries overcome their continuing border disputes and related security concerns. As is duly acknowledged by the editors, the Indian establishment remains only too aware of the historical experience that war broke out between the two countries after a period of complacent relationship promoted by early Indian governments. Concerning the Indian perspective in the volume in general, only one local voice directly from the subcontinent might be considered slightly feeble, even though this is to some extent remedied by the excellent contributions from non-resident scholars.

Finally, some skepticism seems warranted with regard to the editors' argument that India and China offer "new visions" of economic development to other developing countries, at least if the claim is understood in the sense that they present a coherent and truly alternative development model which is realistically available to these other, necessarily smaller, nations. While it is true that both India and China have been comparatively adept in sequencing reforms and in calibrating their exposure to the world market, such a course of action may simply not be available as a practical matter to less resourceful and less influential developing countries. Moreover, in particular Indian attempts to balance government regulation and free market are not entirely new. They rather display, at least in their finality, traits of state-regulated market economies characteristic of some Western,

notably continental European, nations, which never fully subscribed to the “Washington Consensus”.

In spite of these caveats, the volume certainly has the great merit of bringing together an impressive collection of detailed accounts on the legal strategies underlying India’s and China’s rapid economic development. It is a valuable tool for keeping abreast of legal developments in both emerging powers – a requirement which seems to become more and more important for legal scholars in East and West, as our international legal order is increasingly shaped by these two Asian giants.

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