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UCLA Pacific Basin Law Journal

Title

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Journal

UCLA Pacific Basin Law Journal, 13(1)

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Publication Date

1994

DOI

10.5070/P8131022067

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HARMONIZATION: MYTH AND CEREMONY? A COMMENT

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I have two general comments to offer about Mr. Yu's informative article on China, *Protection of Intellectual Property in the P.R.C: Progress, Problems, and Proposals*, thoughts which also apply to many of the other national case studies presented at this conference. The first comment is actually a question about what is really going on in the processes Mr. Yu and others describe as "progress toward harmonization." What does all of this institution-building and rule-making represent? Here is a process of formal law-making and building of formal structures of regulation which mimics those processes existing abroad. What strikes me about these processes is how clearly these activities exemplify the arguments of one popular perspective on the cultural and political aspects of organizations and nation-states.

This perspective, usually referred to as "new institutionalism,"¹ highlights the uniformity of organizational structures in a wide variety of organizational environments. The central insight of new institutionalism is that organizations and nation-states often adopt new organizational forms and regulations, such as cost accounting practices, professional licensing, modern patent law, and other administrative practices, not as a response to genuine internal organizational problems, but as ceremonies and myths used to gain legitimacy in the eyes of important or powerful actors in the political environment.

There are many examples of this phenomenon, and they are not limited to the international scene. Domestically, studies reveal public school systems that adopt cost accounting practices or teacher training programs, not in response to genuinely perceived problems within the school system, but in order to fend off potential moves in legislatures to cut their budgets and challenge

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1. This is not to be confused with the movement in institutional economics that has had such a big impact upon legal scholarship.

new budgetary requests. Other domestic examples include the use of systems analysts or other efficiency experts on government arms procurement projects, not simply to cut costs, but also to fend off congressional scrutiny and to justify budgetary requests and cost statements.

Internationally, examples include lesser developed countries which establish population control programs or a statistical office in order to qualify for international aid. Or, a country with a transitional economy, like Russia, will seek rapidly to privatize government assets and freeze credit in order to receive foreign loans and credits. There is also the case of human rights demands by foreign powers as a criterion for certifying potential trading partners for valued trade concessions. The target government will, at the opportune moment, engage in the obvious ceremony of releasing a handful of well-known political prisoners to foster the myth that conditions are improving in response to foreign pressures. This myth, in turn, can be used as evidence by those who argue within the foreign power for the continuation of trade deficits.

In published research that employs this perspective, there are two ways in which the process of organizational myth-making takes place. The first is through imitation. Practices are adopted voluntarily in order to attract anticipated concessions or advantages, or simply because it is understood that this is what an organization or nation-state must do to be modern. The second is through coercion. Practices are adopted under pressure to avoid being deprived of valuable resources, such as market access.

In China, and in other case studies presented at this conference, I can see evidence of a mixture of the imitative and coercive dimensions. Many within China argue for the adoption of modern practices—that is, Western practices—because they believe that that is how a nation becomes strong and wealthy. However, many other changes are made under coercion because clearly specified concessions, such as GATT membership, are tied to them. Political conservatives in China are among those who openly criticize the coercive elements of this process.

It therefore occurs to me that the process of change is being driven forward by outside pressures, not by pressures from citizens and business enterprises within China. Consequently, a process of legal and organizational evolution which took several generations in the United States is being brought in rapidly from the outside in a process of imitation which is, to a considerable degree, coerced. When I read in Mr. Yu's paper of all the new laws and regulations being promulgated in China, and when I read his carefully balanced judgment that real progress is being made, I cannot help but ask myself how we should understand

the term "progress." Is it progress to satisfy foreign trade partners and international organizations who give valued concessions? Is it progress to convince foreign powers that they should not push too much further in these areas—that China is doing the best that it can? Is the entire process, as some sociologists might suggest, fundamentally one of ceremony and myth-making for the purposes of international legitimacy?

I ask these questions not because I think the answers are obvious, but because I cannot tell in reading these papers. I see some evidence of new laws and courts that are having a real effect on business behavior. I also see some evidence of an indigenous demand growing for regulation and legal protection which might push this process beyond its initial ceremonial and mythic dimensions. But I cannot make out a clear pattern in the portrayal of change in Mr. Yu's article. In raising these rather cynical questions, I hope to acquire evidence to the contrary which will satisfy my curiosity.

Having just raised questions about the motivations of China's central government in promulgating legal reform—and questioning whether foreign expectations are realistic—and having stressed also the essential similarity of the processes in China with those elsewhere, my second comment is in a different direction. Assume, for the moment, that the central government in China is completely committed to a thorough alignment of its intellectual property codes and norms with international standards. There are two ways in which China is different from Korea, Japan, and Taiwan, and both make the process of implementation problematic. The first is that China's economic reforms are weakening its central control over regional and local governments. These economic reforms have reduced the central government's leverage over the behavior of regional and local governments. The second is that many of the main interested parties in legal disputes over intellectual property, trademark disputes, or any other economic matter are likely to be the very same regional and local governments which have gained so much autonomy in the reforms of the past decade-and-a-half. These government jurisdictions are the owners of the vast bulk of enterprises in China which are likely to be violators of these regulations, and thus have a direct economic interest in the income accruing from such violations. Both differences greatly complicate the enforcement of the laws on the books, a matter already complicated enough, as Mr. Yu makes clear. This weakening of the central government and this deeply entrenched conflict of interest, in a country where public enterprise still predominates, are two elements making China different from other countries in the region.