

## Book review

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*East Asian Regionalism from a Legal Perspective: Current Features and a Vision for the Future*, edited by Tamio Nakamura. London: Routledge, 2009, 286 pp., \$135.00 (ISBN 978-0-415-48857-5)

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East Asian regionalism is a topic on which there has been a good deal of scholarly attention, but relatively little concrete development. The process of institutional integration—which Japan has played some role in promoting since the era of Prime Minister Ohira Masayoshi in 1980—has been an incremental one, in which economic and even cultural integration has far outpaced political or legal integration. This may be beginning to change, with the emergence of more frequent proposals for various regional architectures. The volume under review, resulting from a multi-year collaborative research project at the University of Tokyo, seeks to consider the possibility that law might play a greater role in promoting regional integration. The volume is well organized, describing the pattern of integration in East Asia to date, while also including a variety of comparative perspectives by considering the integration experiences of other regions. The last third of the volume goes beyond academic analysis to introduce a draft Charter for an East Asian Community. Altogether it is an important contribution, though perhaps an overly optimistic one.

The volume includes useful surveys of particular forms of regional cooperation, including a technical paper on currency cooperation by Ogawa Eiji and Kawasaki Kentaro, Dukgeun Ahn's study of remedies in the emerging 'spaghetti bowl' of bilateral free trade agreements, which have occupied the space of what might otherwise have been a coordinated multilateral approach, and Lawan Thanadsillapakul's study of The Association of Southeast Asian Nations (ASEAN) as a model for open regionalism, among others. The comparative experiences of Europe and Latin America are covered in two thorough chapters. The final part of the book consists of four chapters on the draft Charter (by editor Nakamura and three other leading scholars), as well as a proposed text. This is an ambitious effort by academics to present governments with a framework to pursue further integration. The effort is designed both to fit with current regional structures and dynamics, as analyzed earlier in the volume, while pushing toward greater institutionalization.

Ideas surely matter, and there are several examples in international relations of academic efforts that have laid the groundwork for governments to follow when conditions were ripe. The question for East Asian regionalism is when, if ever, those conditions might obtain. Certainly, reading Barbara Stallings' excellent contribution on the history of Latin American regionalism, which she identifies as the longest history in any region of the world, one gets the sense that good will and political desire are not sufficient. Latin American integration attempts have been led by governments but have not sufficiently engaged the private sector, as evidenced by relatively low levels of intraregional trade and investment. Rather, she identifies structural features that have prevented integration from working there. Many of these structural conditions seem to be present in East Asia as well: 'political

relations among East Asian countries are even more problematic than those found in Latin America' (p. 78). On the other hand, East Asian integration is already proceeding at the level of the private sector, and governments are playing somewhat of a facilitative role, though not leading.

Similarly, Hirashima Kenji's review of the history of European integration suggests that there may be more needed for the project to succeed. Hirashima recognizes the role of domestic preferences in the key decisions setting up the European Union, and emphasizes the geopolitical. Domestic preferences in East Asia do not seem to be pushing toward full-fledged integration, and geopolitics are not a source of pressure here. In particular, cold war Europe enjoyed a profound external threat that led politicians to be willing to put sovereignty to the side. Asia lacks even the prospect of such an external threat that would force, for example, China and Japan to common cause. The major security threats in Asia are intra-regional rather than extra-regional.

The editor and the authors of the various chapters are not at all naïve regarding these constraints. The question, then, is whether under these conditions law can play any *independent* role in advancing the cause of integration. Or is law simply the reflection of underlying preferences on the part of states?

The implicit model for integration through law is the European Community, in which early cooperation in coal and steel production led to a series of sequentially more ambitious agreements producing an 'ever-closer union'. In the course of these developments, Europe moved from an international organization toward a constitutional federalism, in which courts could hear cases brought directly by individuals against their own governments on the basis of regional law, and in which qualified majority voting has replaced the unanimity rule of inter-state cooperation as the default mode of decision making for vast portions of governance. The European Court of Justice (ECJ) was at the very center of this transformation, prodding states toward greater integration through a series of landmark decisions, especially during periods when the governments were unable to agree on further steps. These decisions included finding that the European law had direct effect in the national sphere, that member states had to allow the sale of products lawfully produced in other markets, that member states could be liable for damages for failure to implement European law and many others. Although there has been a debate in European studies as to whether the ECJ was acting as an independent agent in deepening integration, the consensus position is now that it was in fact crucial, and that it was not simply reflecting the position of the Member States.

No one believes that such developments are likely in East Asia anytime soon. This is not only because of the lack of any regional architecture of comparable ambition and development but also because there is little in the international relations of the region that augurs for such an expansive role for law. Consider first the concept of law and its role. Europe enjoyed many centuries of something called the *jus commune*, a regional common law grounded in principles of Roman law that was applied all over medieval Europe. Europe also enjoyed a Judeo-Christian tradition of a universal natural law that represented higher principles than the state. But there is no region-wide notion of law as a superior regulatory device in East Asia. Instead law is, and has been for millennia, conceived of as fundamentally an instrument of national state power, rather than as a set of universal constraints on the state. Law is what the state says it is. Nor are courts particularly prominent in the historical tradition of the region (though they have become much more important in recent years). Asia remains the only major region of the world without a region-wide human rights court, and ASEAN's recently created Human Rights Commission is very much an instrument of governments. This means that law and courts are unlikely to be delegated major roles in monitoring and deepening integration.

Second, there is an apparent reluctance in the region to cede authority to an international organization. In international relations, East Asian countries emphasize sovereignty and non-interference as the basic principles of interaction. This itself can be considered a kind of innovation, and was an

understandable theme for post-colonial countries who had been victimized by European notions of international law. It is in East Asia, not Western Europe, that Westphalian notions of national sovereignty are found at their most vital. But the residue is that there is relatively little instinctive trust of any form of transnational law that reaches down into the national sphere. These are formidable barriers for integration through law.

The East Asian Charter proposed here is very much an international organization, in which the primary decision-making criterion is unanimity. This structure obviously respects national sovereignty, in that each state can choose the rules that will apply to it, and can be described as in some sense a regionalization of ASEAN. The institutional architecture includes an East Asian Council, a Council of Ministers, a Secretariat, and committees of National Parliamentarians and former senior officials known as 'Eminent Persons'. (This last is an interesting feature that one might characterize as particularly Asian, as it has been used to great effect within ASEAN.) Notably, the proposal does not include an analogue to the European Court of Justice, though Article 35(5) provides that the Member states will study the establishment of such an institution. Penalties for serious breaches of the Charter result in suspension from the organization. The overall flavor is one of consultation and negotiation, very much an extension of the ASEAN Way.

This is a sensible institutional structure given the conditions as they currently obtain. But it suggests that law will play a secondary role in moving things forward. A supra-national regional court that can spur states to move forward on integration seems unlikely. To be sure, there is increasing use of transnational dispute resolution in the trade and investment contexts in Asia. These schemes of trade and investment arbitration at the heart of the legal integration project are typically *ad hoc* and not permanent. This means they are unlikely to develop into permanent power centers that states need to consider in ordering their affairs. Law will play a role, but not a prominent one in the sense of transforming state preferences or ruling against the interests of the states qua states.

*East Asian Regionalism from a Legal Perspective* is a useful and thought-provoking volume that does an admirable job of thinking through the possibilities of integration through law in Asia. At the end of the thought experiment, one concludes that integration will proceed in its own way, with the European model only vaguely a touchstone. Law will be present, as it must be in a world of increasing transborder interaction, but its role is likely to remain a secondary one, subject ultimately to constraints imposed by national political leaders.