

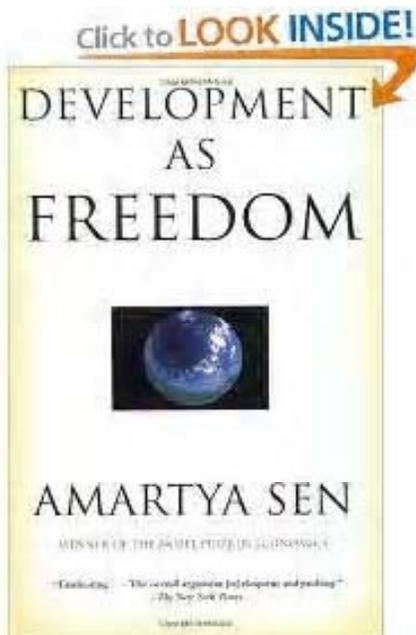


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Civil Society Formation and The Rule of Law

A. Individuals and Private Enterprises of Economy

Though governments should facilitate “economic sufficiency”, this should not be incorrectly interpreted to mean that the government should assume all economic power and regulate the economy of the entire society. In myriad cases, the government has usurped power and aggrandized its role more than necessary while eschewing its aforementioned obligations. History has already shown how the Soviet Union collapsed mainly because the ruling regime usurped both political and economic power simultaneously to exercise rigid centralization, rejected political checks and balances, and ignored the promotion of economic sufficiency for people. The government became reactionary, abusive, and corrupt, leading to a forfeiture of transparency and accountability.



People who are hungry and live from hand-to-mouth may not be able to pay heed to societal issues and their causes and effects. As a result, the population functions under “survival mode” where the only thing that matters is meeting the basic needs of food and shelter at any cost. A government is obligated to address the economic problems encountered by its people as a component of society. In addition to other factors taking place in national and international arenas that may negatively affect an economy, rigid centralization of the government results in extreme circumscription of people’s freedoms and brings about poverty, particularly in developing countries. Prof. Amartya Sen, Nobel Laureate of Economics, asserts that poverty is inevitable for people who lack

freedom.¹ Poverty results in a lack of knowledge and security, denying a decent life for people.



A properly operating market economy system requires good governance. Good governance means an efficient, independent, accountable, and open government without corruption that is dedicated to the public good and focused on four main areas: accountability, accessibility of information, transparency, and a legal framework for development. In terms of economic planning, regulation without rigidity is most beneficial. The economy must be regulated enough to provide jobs domestically, but flexible enough to adapt and adjust to international market forces. Whereas the government itself is required to exercise good governance, civil society organizations are obliged to observe the factors that influence the livelihoods of people and take indispensable action, along with the target communities, to promote it.

B. State Institutions Supporting Good Governance

Though the judiciary is commonly included in the first sector under government institutions, its specific importance will be pointed out as an individual sector in this paper. The judiciary plays a pivotal role in balancing the power of the government and should have the ability to exercise judicial review, which checks that the functions of government are in line with the constitution of the respective state and other organic laws. Courts have exhibited growing boldness and activism in challenging the constitutionality of executive actions, which only benefits society as a whole by exemplifying that no person or entity is above the law.

The idea of limited government, or constitutionalism, is in conflict with the idea of parliamentary sovereignty, as constitutionalism is safeguarded through judicial review. Because electoral democracies have, at times, failed in protecting civil and political liberties, the demand for judicial protection of fundamental rights has arisen. The concept of expanded judicial power has even crept surreptitiously into the international system as to whether the United Nations Security Council's findings are reviewable by the International Court of Justice. The judicial system is increasing in importance as a mode of justice for citizens, as well as a regulator of the chief executive and parliament.

Reciprocity and personalism remain central in many descriptions of East and Southeast Asian politics and economies. According to numerous scholars, Asian culture exudes a preference of order over freedom, hierarchy over equality, and harmony over conflict. The status quo, however, is incompatible with international law standards that prioritize the rights of the individual in protection against the collective. It is time to progress toward a society in which freedom is protected while maintaining order, equality is practiced while hierarchy is respected, and conflict is resolved peacefully through the judiciary, which encourages a genuine instead of superficial harmony.



There are a number of conflicts that cannot be resolved through public argument using ‘dialectic’, as elucidated by Socrates. When these arise, the judiciary should provide a viable recourse to resolve the underlying conflicts of society peacefully, removing the need to resort to violence. Peaceful conflict resolution can become a reality only with the existence of an impartial, independent, and efficient judiciary. When citizens know that they have access to justice, this will diminish the need to extreme action. Additionally, a functioning court system acts as a deterrent to those who would infringe upon the rights of others.



If the government is the perpetrator in denying rights, judicial review in democracies checks majority power by upholding laws in accordance with the constitution. If a constitution is created on behalf of the people, constitutional adjudication should address the need to monitor political agents and prevent them from renegeing on the founding bargain with citizens. Courts gain credibility for being impartial and holding all responsible lawbreakers to the same standard.

There can be no genuine civil society without the rule of law, and there can be no rule of law without an independent judiciary. The judiciary must be independent enough to review government laws and actions; without a strong judiciary, independent organizations cannot rely on judicial protection from arbitrary government interference. Currently, the judiciary in Burma is completely exploited by the military regime. Their actions, in fact, could make them complicit in the crimes of the regime. For the first time in decades, however, lawyers and democracy activists have been publicly fighting for the right to fair trial, justice,



and equal application of the law in courtrooms. Several have been arrested and others are threatened with contempt of court or worse. However, their efforts are an excellent example of the slowly emerging civil society. It is absolutely essential that systemic reform be applied to the Burmese judiciary in order to encourage and protect the development of civil society.

In today's world, in addition to the judiciary, the emergence of other state institutions that uphold good governance can be found. Examples include Human Rights Commissions, National Counter Corruption Commissions, Commissions for Gender Equality, etc. These state institutions may be set up by the government, but must be independent enough to honestly assess the situation in the country. The organizations that are categorized as civil society organizations inside and outside of Burma must—at minimum—exert efforts for the reformation of the incumbent judiciary in Burma to be independent, impartial, and efficient. Additionally, such organizations should highlight and denounce the intervention of executive power in the judiciary, which results in the denial of strong rights protection mechanisms, and impedes the emergence of civil society.

C. INDEPENDENT ORGANIZATIONS AND MEDIA

Civil society forms organically to fill a gap unmet by the government. In the contemporary world, civil society addresses political, religious, and physical needs among other needs. According to the London School of Economics Centre for Civil Society, civil society may be defined as ...the arena of *uncoerced* collective action around *shared interests, purposes and values*. ...Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups (emphasis added).

Civil society is a dense network of associations working openly in a democratic society with the ability to affect decision-makers in order to influence events. Civil society consists of various forms of associations that will freely interact and communicate with each other in a spirit of civility and tolerance for the sake of the entire population. Societal pluralism (i.e. the ability of all groups to work freely, openly, and equally without violating the rights of others) is one of the underlying concepts of civil society. Here, it is important to note that a civil society, which extols the idea of democracy, does not allow one group to act selfishly for its own goals without regard to the others. Additionally, any group that is fraudulently created by the military junta, such as the Union Solidarity and Development Association (USDA), cannot be considered a civil society organization even if it is not technically part of the government.



In many countries including Burma, the following organizations are normally regarded as civil society organizations:

- * Rights Based Associations
 - Human rights, workers' rights, farmers' rights, ethnic rights, etc.
- * People's Organizations or Interest Groups
 - Trade unions, teachers' associations, lawyers' councils, women's organizations, etc.
- * Academic Institutions
 - Universities, research groups, think tanks, etc.
- * Issue Oriented Organizations
 - NGOs and community-based organizations
- * Development Organizations and Foundations
 - Health, education, agriculture, etc.
- * Racial, Religious and Cultural Institutions
- * Social Welfare Assistance Groups
 - Funeral help, orphanages, homes for the poor and elderly, clean water associations, nursery schools, humanitarian relief, etc.

To protect and further their own interests, these groups must often adopt a political stance. For instance, in implementing a development project, development organizations may provide training to farmers, teach them how to grow plants, distribute seeds, assist in providing farming equipment, etc. They can contribute to improving farmers' lives. In spite of that, these organizations' actions are futile if they do not challenge blatant government infringement of rights and policies. For example, ignoring people's rights to own land, illegal land confiscation by local authorities, prohibition on freedom to choose which crops to grow, restrictions on free trade of farming products, all undermine the purpose of the organization. As of now, no development organization, formally operating under ruling military regime, in Burma has publicly challenged the policies of government as to whether they infringe upon the basic rights of people.

Even the existence of religious institutions, whether they are Buddhist, Christian, Hindu, Muslim or some other religion, have been increasingly aligned to a specific political stance. Although their main purpose is to gather for worship, focus on learning and teaching their own religious doctrine, and practice their respective religious rituals, they are inadvertently pulled into politics because they are influential and often concerned with the well being of their practitioners, which the government's policies affect.

For example, in the September 2007 Burmese monk-led uprising, the monks peacefully gathered not to practice regular rituals but to pressure the regime to seek a negotiated settlement in order to transform the society into a peaceful, free, and developed one. Their actions demonstrated and spurred the role of



civil society. However, the regime brutally cracked down on their peaceful gatherings, imprisoned many monks without trial, and continues to persecute innocent religious figures. The Buddhist Religious Institution, formally created by the ruling regime inside Burma, has not yet shown any indication of encouraging civil society, and is unduly influenced.

Whenever society is damaged, alleviation of suffering is an essential response, regardless of whether the damage is attributed to natural disasters, man-made actions, or government mismanagement. The assistance of social welfare organizations to the affected people—national and international alike—greatly contribute to society and help survivors re-establish their lives. Civil society organizations, however, cannot single-handedly resolve all public problems nor represent their members' interests well without taking a role in political life.

MEDIA

Independent media is vital to developing a transparent society and bringing about the exchange of viewpoints necessary for civil society to emerge. In developing countries, where access to education may not be widespread, media plays a large role in shaping the opinions of the public. It is an important source of information, and greatly encourages civil society because it offers well-researched and unbiased news for the population. Inhibiting freedom of the press is a dangerous practice because of all the other sectors that are invariably affected. In Burma, registration of the media and prior “government approval” (thinly veiled censorship) for publications render genuine civil society impossible as it creates a coercive environment.

It is reasonable for governments to register organizations, or require that organizations pay taxes on income, but unacceptable for the government to use the registration process as a method to weed out associations it does not approve of, or outlaw organizations that object to government policies. With the exception of organizations intent on violating the rights of other civilians (such as terrorist organizations), people must be free to organize and disseminate information as they wish.

These four sectors serve to check and balance the power of one another. The non-government sectors must be strong enough to formally challenge the government but, overall, power should be evenly dispersed throughout. Generally, academicians and the UN have focused too much on the fourth sector as the only check on government. Actors inside of Burma as well as outside of the country need to highlight all sectors equally to be truly effective.

(Endnotes)

1 Amartya Sen, *Development as Freedom* (Anchor Books, New York 1999).

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