

**Rule of Law and Legal Culture
Seminar Series**

**Do HKers embrace
Democratic Values**

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Issues

- What is the relationship between democratic values and the rule of law?
- What is rule of law?
- What is democracy?
- What is the relationship between rule of law and democracy?
- What is the relationship between institution and culture?

What is Rule of Law?

**Government officials and
citizens are both bound by
and abide by the law.**

Brian Z. Tamanaha, “The History and Elements of the Rule of Law,” *Singapore Journal of Legal Studies* (2012): 232–47, at 233

What is Democracy?

**Five standards of democratic process:
Effective participation
Voting equality
Enlightened understanding
Control of the agenda
Inclusion of adults**

Robert Dahl, *On Democracy*, Yale University Press, 1998, p. 37-38.

What is the relationship between Rule of Law & Democracy?

Rule of Law and democratic accountability are, after all, alternative means of constraining power, and in practice are often mutually supportive.

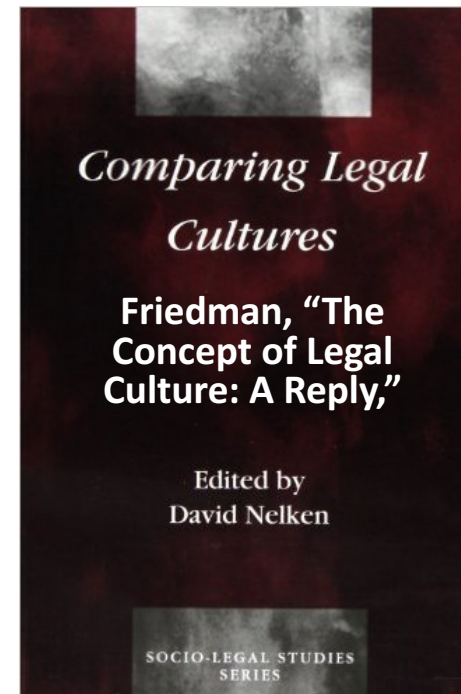
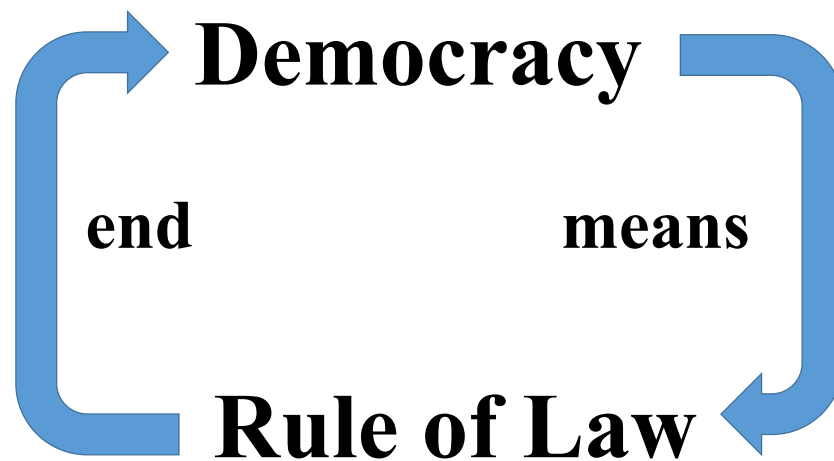
Francis Fukuyama, *Political Order and Political Decay*, 2015, p. 405.

What is the relationship between Rule of Law & Democracy?

Three conditions of *democratic rule of law*:

1) It upholds the *political rights*, freedoms, and guarantees of a democratic regime; 2) it upholds the *civil rights* of the whole population; and 3) it establishes networks of responsibility and *accountability* which entails that all public and private agents, including the highest officials, are subject to appropriate, legally established controls on the lawfulness of their acts.

Guillermo O'Donnell, "Why the rule of law matters," *Journal of Democracy*, Oct 2004: 15, 4, p. 32



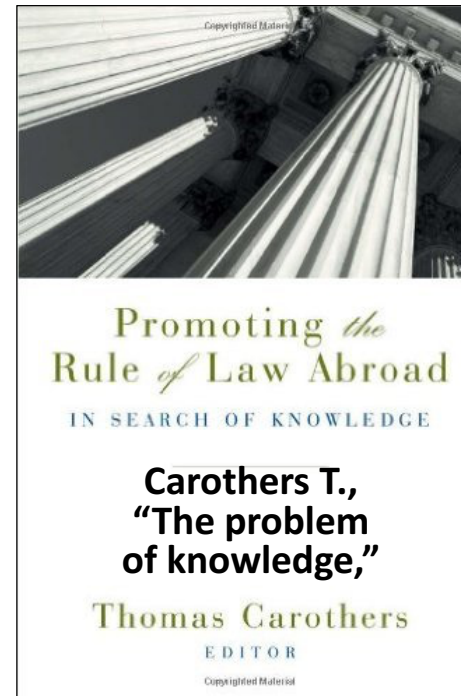
“Legal culture... refers to *ideas, values, expectations and attitudes* towards law and legal institutions, which some public or some part of the public holds.”

Legal Culture

Internal legal culture: the attitude towards law of legal actors such as judges and lawyers

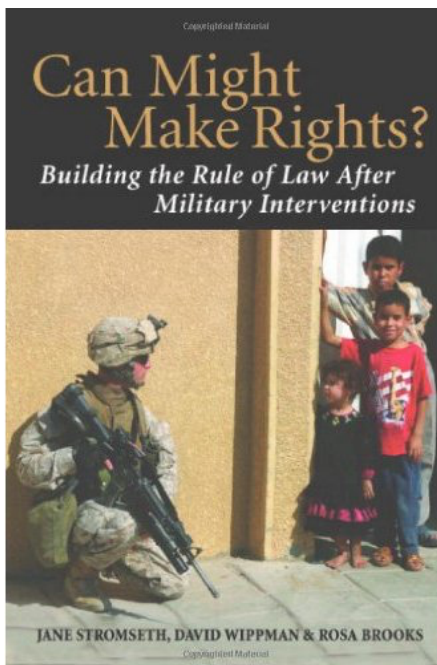
External legal culture: the attitude towards law of the general population.

Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (1975), p. 223.



“...clearly law is not just the sum of courts, legislatures, police, prosecutors, and other formal institutions with some direct connection to the law. Law is also a **normative system** that resides in the **minds of the citizens** of a society.”

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“The rule of law is **as much a culture as a set of institutions**, as much a matter of **habits, commitments, and beliefs** of ordinary people as of legal codes. Institutions and codes are important, but without the cultural and political commitment to **back them up**, they are rarely more than window dressing.”

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Rule of Law Institution and Rule of Law Culture

For the rule of law to exist, people must believe in and be committed to the rule of law. They must take it for granted as a necessary and proper aspect of their society. This attitude is not itself a legal rule. It amounts to **a shared cultural belief**. When this cultural belief is pervasive, the rule of law can be resilient, spanning generations and surviving episodes in which the rule of law had been flouted by government officials.... When this cultural belief is not pervasive, the rule of law will be weak or non-existent....

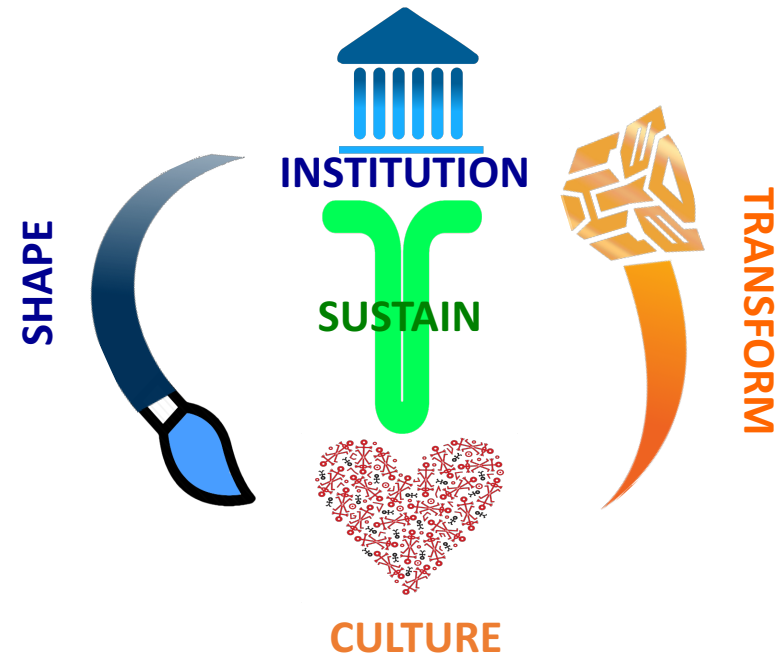
Brian Z. Tamanaha, “The History and Elements of the Rule of Law,” *Singapore Journal of Legal Studies* (2012): 232–47, at 247.

Institution and Culture

Public emotions are a source of stability for good political principles, and of motivation to make them effective.

...people who feel keen sympathy for a particular plight will seek not only to energize the emotions of their fellow citizens, but also to create laws and institutions to give stability to their causes. When laws and institutions already embody the insights of good emotions, they facilitate the experience of those same emotions.

Martha C. Nussbaum, *Political Emotions: Why Love Matters for Justice* (2013), p. 134-135.



Internal Legal Culture

Categories	Distribution within the categories
Judges	1 High Court Judge, 2 Magistrates, 2 Tribunal Masters
LegCo Members	3
Administrative Officers	2 Directorate, 8 Assistant Director/Commissioner, 1 Assistant Secretary, 1 Administration Officer
Officers of Disciplinary Forces	1 Senior Superintendent of Police, 2 Superintendent of Police, 2 Chief Inspector of Police, 1 Senior Inspector of Police, 1 Supplies Supervisor, 2 Principal Officers of Correctional Services Department
Lawyers	3 Solicitors, 3 Barristers
Total	35

External Legal Culture

- 3,500 randomly selected Hong Kong citizens
- asked a wide range of questions concerning the performance of legal institutions and their understanding of the legal culture in Hong Kong

% of favourable assessment	Description
Less than 20%	Very Weak
20 % - 39 %	Weak
40% - 49 %	Unestablished
50% - 59 %	Established
60% - 69%	Well established
70% - 79 %	Strong
80% - 89%	Very strong
90% or more	Entrenched

Assessment

- If one disagrees or strongly disagrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is established.
- The internal legal culture is well established.

政治領袖最重要係才德兼備，點樣揀出嚟並唔重要。

Political leaders are chosen on the basis of their virtue and capability even without election.

External Legal Culture			Internal Legal Culture		
Strongly Agree	11.9	31.8	Strongly Agree	1.2	12.5
Agree	20.0		Agree	11.3	
Undecided	10.4		Undecided	13.7	
Disagree	26.2	52.6	Disagree	36.2	68.8
Strongly Disagree	26.4		Strongly Disagree	32.6	
Don't Know	5.1		Don't Know	5.0	

對社會有顯著貢獻嘅界別，應該喺立法會佔一席位。

Interest groups having significant contribution to the society must have representatives in the Legislature.

External Legal Culture			Internal Legal Culture		
Strongly Agree	22.4	57.3	Strongly Agree	0	11.3
Agree	34.9		Agree	11.3	
Undecided	12.3		Undecided	24.0	
Disagree	14.2	24.3	Disagree	44.4	56.3
Strongly Disagree	10.1		Strongly Disagree	11.9	
Don't Know	6.1		Don't Know	8.3	

Assessment

- If one disagrees or strongly disagrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is weak.
- The internal legal culture is established.

選舉要平等、公開、公正。

Election should to be equal, open and fair.

External Legal Culture			Internal Legal Culture		
Strongly Agree	72.8	97.3	Strongly Agree	82.1	98.8
Agree	24.6		Agree	16.7	
Undecided	1.4		Undecided	1.2	
Disagree	0.35	0.78	Disagree	0	0
Strongly Disagree	0.43		Strongly Disagree	0	
Don't Know	0.5		Don't Know	0	

Assessment

- If one agrees or strongly agrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is entrenched.
- The internal legal culture is entrenched.

社會最重要係有一個有才能嘅領袖去幫助大家解決問題，而唔係有一個好嘅制度。

The most important thing in society is having a great leader instead of a good system.

External Legal Culture			Internal Legal Culture		
Strongly Agree	14.2	29.8	Strongly Agree	1.2	2.4
Agree	15.7		Agree	1.2	
Undecided	18.1		Undecided	12.7	
Disagree	28.8	48.7	Disagree	13.1	84.9
Strongly Disagree	19.9		Strongly Disagree	71.8	
Don't Know	3.4		Don't Know	0	

Assessment

- If one disagrees or strongly disagrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is unestablished.
- The internal legal culture is very strong.

政府高官就好似我哋嘅父母一樣，所以應該由佢哋嚟決定乜嘢對我哋係最好嘅。
Government officials are like parents; it is proper for them to decide what is good for us.

External Legal Culture			Internal Legal Culture		
Strongly Agree	6.7	17.6	Strongly Agree	1.2	3.6
Agree	10.9		Agree	2.4	
Undecided	10.8	69.4	Undecided	12.1	84.3
Disagree	29.9		Disagree	14.9	
Strongly Disagree	39.5		Strongly Disagree	69.4	
Don't Know	2.2		Don't Know	0	

Assessment

- If one disagrees or strongly disagrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is well established.
- The internal legal culture is very strong.

每個市民都有同等嘅權利投票選特首。
Every citizen enjoys equal right to elect the Chief Executive

External Legal Culture			Internal Legal Culture		
Strongly Agree	49.8	78.8	Strongly Agree	46.2	72.6
Agree	29.0		Agree	26.4	
Undecided	4.7	14.8	Undecided	6.0	21.4
Disagree	6.1		Disagree	2.4	
Strongly Disagree	8.7		Strongly Disagree	19.0	
Don't Know	1.7		Don't Know	0	

Assessment

- If one agrees or strongly agrees with the statement, it will be considered as a favourable assessment.
- The external legal culture is strong.
- The internal legal culture is strong.