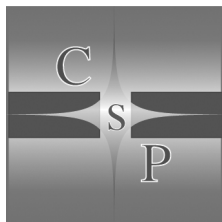


The Future of Post-Human Law

The Future of
Post-Human Law
A Preface to a New Theory
of Necessity, Contingency, and Justice

By
Peter Baofu



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To Those in the Future World Beyond Justice

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FOREWORD

Dr. Peter Baofu's continuing quest to investigate the status of thinking and future outcomes of human institutions has brought him to examine the Rule of Law. It comes at an appropriate time, when there are serious intellectual disagreements in the literature on the Rule of Law.

Dr. Baofu traces the development of the Rule of Law with the major thinkers who brought it to its current place. However, he also acknowledges the shortcomings that beset its theoretical construction and practical application, and posits a provocative yet original line of thinking, as an incentive for other researchers to consider.

The glove has been thrown down in this volume. Who is ready to accept the challenge?

Sylvan Von Burg
School of Business
George Washington University

ACKNOWLEDGMENTS

As is true for my numerous previous books, this one is written to challenge politically incorrect views, this time about law here, and to offer a new theory to understand its future.

Because of this political incorrectness, this book receives no external funding nor help from any formal organization or institution, as this is something that I often stressed in my previous books.

My only reward is that joyful feeling to work through some ideas which have not been thought of before in history.

Lest I forget, I greatly appreciate the foreword by Sylvan von Burg at George Washington University School of Business.

In any event, and as always, I bear the sole responsibility for the ideas presented in this book.

ABBREVIATIONS

- ALD = Peter Baofu. 2007. *The Rise of Authoritarian Liberal Democracy: A Preface to a New Theory of Comparative Political Systems*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- BCIV = Peter Baofu. 2006. *Beyond Civilization to Post-Civilization: Conceiving a Better Model of Life Settlement to Supersede Civilization*. NY: Peter Lang Publishing, Inc.
- BCPC = Peter Baofu. 2005. *Beyond Capitalism to Post-Capitalism: Conceiving a Better Model of Wealth Acquisition to Supersede Capitalism*. NY: The Edwin Mellen Press.
- BDPD1 = Peter Baofu. 2004. Volume 1. *Beyond Democracy to Post-Democracy: Conceiving a Better Model of Governance to Supersede Democracy*. NY: The Edwin Mellen Press.
- BDPD2 = Peter Baofu. 2004. Volume 2. *Beyond Democracy to Post-Democracy: Conceiving a Better Model of Governance to Supersede Democracy*. NY: The Edwin Mellen Press.
- BNN = Peter Baofu. 2006. *Beyond Nature and Nurture: Conceiving a Better Way to Understand Genes and Memes*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- BWT = Peter Baofu. 2007. *Beyond the World of Titans, and the Renaking of World Order: A Preface to a New Logic of Empire-Building*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FAE = Peter Baofu. 2007. *The Future of Aesthetic Experience: Conceiving a Better Way to Understand Beauty, Ugliness and the Rest*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FC = Peter Baofu. 2007. *The Future of Complexity: Conceiving a Better Way to Understand Order and Chaos*. London, United Kingdom: World Scientific Publishing Co.
- FCD = Peter Baofu. 2002. *The Future of Capitalism and Democracy*. MD: The University Press of America.

- FHC1 = Peter Baofu. 2000. Volume 1. *The Future of Human Civilization*. NY: The Edwin Mellen Press.
- FHC2 = Peter Baofu. 2000. Volume 2. *The Future of Human Civilization*. NY: The Edwin Mellen Press.
- FIA = Peter Baofu. 2008. *The Future of Information Architecture: Conceiving a Better Way to Understand Taxonomy, Network, and Intelligence*. Oxford, England: Chandos Publishing (Oxford) Limited.
- FPHC = Peter Baofu. 2004. *The Future of Post-Human Consciousness*. NY: The Edwin Mellen Press.
- FPHCT = Peter Baofu. 2009. *The Future of Post-Human Creative Thinking: A Preface to a New Theory of Invention and Innovation*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHE = Peter Baofu. 2009. *The Future of Post-Human Engineering: A Preface to a New Theory of Technology*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHG = Peter Baofu. 2009. *The Future of Post-Human Geometry: A Preface to a New Theory of Infinity, Symmetry, and Dimensionality*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHK = Peter Baofu. 2008. *The Future of Post-Human Knowledge: A Preface to a New Theory of Methodology and Ontology*. Oxford, England: Chandos Publishing (Oxford) Limited.
- FPHL = Peter Baofu. 2009. *The Future of Post-Human Language: A Preface to a New Theory of Structure, Context, and Learning*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHLAW = Peter Baofu. 2010. *The Future of Post-Human Law: A Preface to a New Theory of Necessity, Contingency, and Justice*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHMA = Peter Baofu. 2009. *The Future of Post-Human Martial Arts: A Preface to a New Theory of the Body and Spirit of Warriors*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHML = Peter Baofu. 2008. *The Future of Post-Human Mathematical Logic: A Preface to a New Theory of Rationality*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHMM = Peter Baofu. 2009. *The Future of Post-Human Mass Media: A Preface to a New Theory of Technology*. Cambridge, England: Cambridge Scholars Publishing, Ltd.

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- FPHO = Peter Baofu. 2009. *The Future of Post-Human Organization: A Preface to a New Theory of Communication, Decision-Making, and Leadership*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHS = Peter Baofu. 2010. *The Future of Post-Human Sexuality: A Preface to a New Theory of the Body and Spirit of Love-Makers*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHST = Peter Baofu. 2006. *The Future of Post-Human Space-Time: Conceiving a Better Way to Understand Space and Time*. New York: Peter Lang Publishing, Inc.
- FPHU = Peter Baofu. 2008. *The Future of Post-Human Unconsciousness: A Preface to a New Theory of Anomalous Experience*. Cambridge, England: Cambridge Scholars Publishing, Ltd.
- FPHUP = Peter Baofu. 2009. *The Future of Post-Human Urban Planning: A Preface to a New Theory of Density, Void, and Sustainability*. Cambridge, England: Cambridge Scholars Publishing, Ltd.

• PART ONE •

Introduction

CHAPTER 1

INTRODUCTION—THE RULE OF LAW

The rule of law is better than the rule of any individual.
—Aristotle (WK 2009)

The Convenience of a Conventional Wisdom

What makes the rule of law so special that it is to conscientiously punish the “bad” doers and reward the “good” ones—such that, where there is the rule of law, peace and order (for justice) are to be expected, so that “the rule of law is better than the rule of any individual”?

Take the case of international law, as an illustration. While different international courts have been busy going after a small number of the killers of innocent victims in Rwanda and Liberia, they have turned a blind eye to the major powers which have killed—on a much larger and more brutal scale, by comparison—innocent civilians in Iraq and Afghanistan, just to cite two current examples.

The case of Iraq is most illustrative, as Tom Engelhardt (2009) thus reminded us: “Iraq...has been devastated. The American invasion and the occupation that followed acted like whirlwinds of destruction, unraveling a land already bursting with problems and potential animosities.”

The reason is that, since the American invasion, “possibly a million or more Iraqis have died....Saddam's killing fields have been dwarfed by a fierce set of destructive American military operations as well as insurgencies...; major cities have been largely or partially destroyed, or ethnically cleansed; millions of Iraqis have been forced from their homes, becoming internal refugees or going into exile; untold numbers of Iraqis have been imprisoned, assassinated, tortured or abused; and the country's cultural heritage has been ransacked. Basic services—electricity, water, food—were terribly impaired and the economy, in the process of being privatized by the neocon overseers of the occupation, was simply wrecked.

Health services were crippled...,” and the list can go on. (T. Engelhardt 2009)

In other words, the American invasion and occupation of Iraq has simply devastated the country and its people on an enormous scale, and yet the international courts have turned a blinded eye to this most heartbreaking inhumanity. International law thus leads to the travesty of justice.

Contrary to the conventional wisdom conveniently held by many in human history, the rule of law has its other side which has not yet been systematically understood, such that the rule of law is neither possible nor desirable to the extent that the defenders of legal institutions in human history would like us to believe.

Lest any misunderstanding hastily occurs, this is not to imply that the rule of law is absolutely useless, or that the literature in jurisprudence (and other related fields like political philosophy, ethics, law and economics, and the sociology of law) should be dismissed because of their scholarly irrelevance. Of course, neither of these two extreme views is reasonable either.

Instead, this book is to provide an alternative (better) way to understand the nature of law, in relation to its necessity and contingency in the context of justice—while learning from different approaches in the literature but without favoring any one of them (nor integrating them, since they are not necessarily compatible with each other).

In the process, this book offers a new theory to transcend the existing approaches in the literature in a new direction—in that, in the end, there is no justice without injustice and that it will be transcended too.

This seminal project, if successful, will fundamentally change the way that we think about the nature of law, from the combined perspectives of the mind, nature, society, and culture, with enormous implications for the human future and what I originally called its “post-human” fate.

Public Law and Private Law

To start, the term “law” is from “Old English *lagu*, of Scandinavian origin,” “akin to Old Norse *lǫg*,” and “Old English *licgan*”—and means “to lie,” “to stay at rest,” or “something laid down or fixed,” as the adjective “legal” derives “from Latin *legalis*, from *lex*” (meaning: “statute”). (MWD 2009 & 2009a; WK 2009)

Over time, the term “law” has come to mean “a binding custom or practice of a community,” “a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority,” or

simply “a system of rules, usually enforced through a set of institutions.” (MWD 2009; WK 2009)

This set of legal institutions often consists of the “legislature,” the “executive,” and the “judiciary” in a society, together with the “military,” the “police,” the “bureaucracy,” the “legal profession,” and even the “civil society.” (WK 2009)

In the literature of legal studies, law can be classified in terms of two major categories, namely, (a) “public law” and (b) “private law”—to be summarized hereafter (in the next two sub-sections), respectively (and also in *Table 1.1*).

Lest any confusion occurs, there are two clarifications here about this classification of law into public law and private law.

Firstly, the classification of law into public law and private law is important not only at the national level but also at the international level. For instance, nowadays, there is international law, which can be likewise classified into “public international law” and “private international law.”

On the one hand, “public international law” has to do with the legal relationships “between sovereign nations” based on “custom, practice and treaties between sovereign nations, such as the Geneva Conventions. Public international law can be formed by international organisations, such as the United Nations..., the International Labour Organisation, the World Trade Organisation, or the International Monetary Fund.” (WK 2009)

On the other hand, “private international law” (also known as “conflict of laws...in civil law countries”) concerns “which jurisdiction a legal dispute between private parties should be heard in and which jurisdiction's law should be applied. Today, businesses are increasingly capable of shifting capital and labour supply chains across borders, as well as trading with overseas businesses. Increasing numbers of businesses opt for commercial arbitration under the New York Convention of 1958.” (WK 2009; A. Redfem 2004)

And secondly, the distinction between public law and private law still holds, even though “many scholars argue that 'the boundaries between public and private law are becoming blurred,' and that this distinction has become mere 'folklore’”—as will be clear shortly. (L. Bergkamp 2001)

Public Law

With these two clarifications in mind—in “public law,” the concern here is about the kind of laws which are “related closely to the state,” or about “the relationship between individuals (citizens, companies) and the

state,” and good examples are “constitutional law,” “administrative law,” and “criminal law.” (WK 2009 & 2009a)

This distinction holds, even though there is a conceptual dispute concerning whether or not different examples of public law (afore-cited) can overlap. For instance, for some scholars, “all law” is “to be specifically enabled, and thereby sub-divisions, of a Constitution”—and therefore “administrative law” and “criminal law” are parts of the Constitution (or the “constitutional law”). (WK 2009a)

Constitutional Law

This conceptual dispute aside—the first example of public law is “constitutional law,” which “deals with the relationship between the state and individual, and the relationships between different branches of the state, such as the executive, the legislative and the judiciary.” (WK 2009a)

Different countries have different traditions about their own constitutions. For example, in the United States, there is the “written constitutional document” for its own constitution, that is, “the U.S. Constitution.” (WK 2009a)

But this is not true in other countries; for instance, “in the United Kingdom of Great Britain and Northern Ireland (U.K.), due to historical and political reasons there does not exist one supreme, entrenched written document. The U.K. has an unwritten constitution—the constitution of this state is usually found in statutes, such as the Magna Carta, the Petition of Right, the Bill of Rights, the Act of Settlement 1700, the Parliament Act 1911, and the Parliament Act 1949.” (WK 2009a)

Yet, “in reality, much of the constitution [or the constitutional dispute] is a political phenomenon, rather than a legal one.” (WK 2009a)

Administrative Law

The second example of public law concerns “administrative law,” which “refers to the body of law which regulates bureaucratic managerial procedures and defines the powers of administrative agencies.” (WK 2009a)

Administrative law is often “enforced by the executive branch of a government rather than the judicial or legislative branches (if they are different in that particular jurisdiction).” (WK 2009a)

And “this body of law regulates international trade, manufacturing, pollution, taxation, and the like. This is sometimes seen as a subcategory of Civil law and sometimes seen as public law as it deals with regulation and public institutions.” (WK 2009a)