Asian Legal Systems : Law in Social Context

by Poh-Ling Tan (ed)., *Asian Legal Systems : Law, Society and Pluralism in East Asia*, Butterworths, Sydney, 1997, xiv pp, 406 pp, index 407–425 pp. Price : soft cover $54.00.

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Lawyers in Australia are faced with an ever-increasing realisation that our country's location in this particular region directs the focus of our learning towards Asia, its laws and its cultures. Despite the recent decline in economic strength of the Asian tigers, the area remains exceedingly important for Australia, in both economic and strategic terms.

Until recently, the response to a quest for information about Asian laws would be answered either by a lack of resources, or, alternatively, by a highly detailed description of a particular area of law in an Asian country. Understandably, this void created a demand for a comprehensive introductory text about the legal systems of a number of Asian countries — Poh-Ling Tan's *Asian Legal Systems: Law, Society and Pluralism in East Asia* is one of the new textbooks to fill that demand.

Tan's choice of which countries to include was motivated by the countries' economic and political importance. She chose Japan, China, Hong Kong, Republic of Korea, Singapore, Taiwan, Indonesia, Malaysia and Vietnam. One of the strengths of the text is that the study of these countries' legal systems is conducted within the framework of Asia, rather than viewed from the perspective of the countries' strategic importance. This means that the book is comprehensive and coherent without having to go outside Asia and deal with complicated issues of international relations.

In contrast with previous books which dealt with either a specific country or a specific legal institution compared in a number of countries, *Asian Legal Systems* has a more causal approach, explaining, in a holistic way, *why* a legal system developed in the way it did, rather than simply describing the status quo. Thus it helps to foster an understanding, rather than a knowledge, of the legal systems of our Asian neighbours.

> The principal objective of this book is to provide an introduction for those who wish to gain an overview of the legal systems of East Asia in their social context.[1]

Asian Legal Systems does this by linking the study of a particular country's legal system to its politics, society, culture and history. It aims to show how people feel about law and its institutions, and what factors have led them to this opinion.

This book is divided into ten chapters which include an introduction and a conclusion designed to indicate the issues of focus, and a chapter on each country, with Hong Kong discussed in the chapter on China.

In the introductory chapter, aims are stated and methodology is described. Significantly, Tan also outlines the tools of the comparative lawyer when she sets out the legal families which have been adopted in the study of legal systems and outlines the factors which have been recognised as 'crucial for the style of a legal system',[2] including 'its historical background and development, its predominant and characteristic mode of thought in legal matters'[3] and 'its ideology'.[4] Moreover, Tan explains the sociological approach to the study

1 Poh-Ling Tan (ed)., *Asian Legal Systems: Law, Society and Pluralism in East Asia*, Butterworths, Sydney, 1997 at 2.
2 Note 1 at 4.
3 Note 1 at 4.
4 Note 1 at 4.

of law (which 'emphasises the importance of placing law in its social context'[5]), elucidates the concept of legal pluralism and points out some of the non-Western concepts which are useful in the examination of Asian legal systems. If the reader has no experience with comparative law, some of the terms used may be unfamiliar and it may be useful to refer to a comparative law text, but Tan's outline is sufficient for a basic understanding.

The chapters on individual countries follow the Introduction. Most provide a brief outline of the country's geographical location and any particular features which influenced the development of laws in that country. This is particularly relevant where a country's geographical location or features have had an effect on its socio-economic development. For example, Singapore's strategic location and small area have affected its development, laws and composition of population. By contrast, Indonesia's numerous, more or less isolated islands explain the diversity in its religions, languages and cultures, and, hence, its policy of 'Unity in Diversity' in its laws. A more extensive summary of the history of each country follows, concentrating on the features which proved to be of the greatest importance in the shaping of the legal system. Thus colonisation, political systems, the adoption of foreign laws as well as religion and philosophy are all discussed as features of the legal history of the countries.

A consistent thread woven throughout the collection, which gives the book a unifying, consolidating attribute, is the focus on the pluralism of the legal systems, caused by the intervention of external non-Asian, colonising forces as well as the interaction between the Asian cultures themselves. Often legal pluralism arises out of the contrast between the official laws of the state, and the unofficial practices of the people, rooted in their history and culture. This is re-iterated in the conclusion, where it is pointed out that this dichotomy is politically sensitive, which perhaps explains why this is not usually discussed. This feature helps the reader reflect on the larger picture behind each legal system — the complex interaction between legal influences within each state and also amongst the different countries. Moreover, the description of these complex varying factors helps to dispel the Western myth that Asia is homogenous.

Asian Legal Systems provides a springboard for further research into the legal system of a given Asian country. Following each chapter is a substantial bibliography of sources to which the reader may refer in her investigation for further information. Yet it serves as more than just an introduction to the legal systems of Asia. In providing an outline of the cultures of those countries, it is a richer, more personal prologue to what could otherwise be perceived as a dry discipline. In providing an explanation of the historical causes for the development of the legal system in a country, it equips its readers with a unique perspective of the legal institutions in a given country.

Asian Legal Systems could be criticised by some for not supplying its readers with sufficient detail about specific legal institutions. Lawyers, accustomed to delving into the minutiae of legal argument in case law or statute might find it strange to rely on the accuracy of a single chapter to describe an entire legal system, as well as the cultural and political background of the country. This unavoidably leads to simplifications and summaries. Nevertheless, it is precisely the book's ability to distance itself from individual legal norms and institutions which is one of its greatest strengths. It does not purport to provide its reader with a comprehensive outline of the legal rules of a state. It serves, rather, as an overture to the complexity of the systems for the novice who knows little about Asia, its many peoples and their cultures. The book's cultural emphasis distinguishes it from others in this field of introductory literature about Asian countries' laws, and makes it a more enjoyable reading experience. Looking at the social context of laws, at the people whose values ground a legal system and its principles is a legitimate starting point for

5 Note 1 at 4.

learning about a legal system as a whole. This book's emphasis is firmly placed within a social and cultural context.

Any other criticisms have to be aimed at particular chapters rather than to the book as a whole. For example, Charles Himawan's chapter on Indonesia is at times difficult to understand. One of the ways for Indonesian academics to express their dissent and criticism of the government is by using cryptic references to mythology and legend in their writing.[6] Unfortunately, to a reader without knowledge of the existence of this writing style, of the meaning of particular Indonesian legends, or possibly even of current events in Indonesia, the chapter appears overly one-sided and even propagandist. The criticism of the regime is 'too veiled' for readers seeking an introduction to the culture and legal system of Asian countries.

There are two main ways in which this text is valuable. First, as has been discussed above, it provides comprehensive introductory material about Asian legal systems, viewed from an historical, cultural and social context. It recognises the importance of culture and history in the formation of legal systems and proceeds from that as its starting point. Secondly, stemming from knowledge and understanding of legal systems different from ours, the text can serve as a basis for the re-evaluation of the attitudes and approaches of Western legal systems.

For instance, one can consider the co-existence of seemingly inconsistent and opposing legal and attitudinal systems within the one country — general law, Islamic law and *adat* (customary law) in Malaysia — as a possible approach to resolving any conflict between official law and indigenous custom in Australia.

Again, maybe Western legal systems could benefit by looking to the approaches to mediation and alternative dispute resolution based on the Confucian principles transplanted into Japan from China and utilised there today. These principles, which are based on the importance of maintaining good relations with people in one's community, have contributed to the development and strong adherence to the alternative dispute resolution methods. Even if one were to decide that our societies are too individualistic for such a change in approach to occur, an improved understanding could contribute to our relations with our Asian neighbours.

It is clear that our culture, our beliefs and the philosophy predominant in our society are factors which shape our legal system. *Asian Legal Systems* provides its readers with an insight into these fundamental building blocks of legal systems in Asia and allows them to contemplate the commonalities and differences between our legal system and that of particular Asian countries. It is only when we understand the basis of the legal system as a whole that we can appreciate the purpose of its individual components. In the words of Justice Kirby:[7]

> The traffic in ideas now runs in both directions. The era of colonial superiority has passed. Australasian lawyers have begun to understand the great challenge which is presented to them. This book is to be welcomed because it evidences a new attitude — one fitting for the coming millennium.

6 See generally Anderson, Benedict, 'The Languages of Indonesian Politics' (1966) 1 *Indonesia*, 89–116; Van Langenberg, Michael, 'Analysing Indonesia's New Order State: A Keywords Approach' (1986) 20(2) *Review of Indonesian and Malaysian Affairs*, 1–47.

7 Note 1 at xvi.

Law in the Information Age

by Richard Susskind, *The Future of Law*, Clarendon Press, Oxford, 1996, xvi pp, 292 pp, index 293–309 pp. Price: soft cover $ 64.00.

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Undergraduate Law students are now able to access both primary sources and lecture material at their fingertips without setting foot in a lecture theatre or a library.[1] This great leap forward can be viewed as a response to rapid developments which are taking place in the education curriculum, the legal profession, the wider business community and society in general. The implications of such changes for the delivery of legal service and the administration of justice have been identified, discussed and analysed by Richard Susskind in *The Future of Law*, which is subtitled *Facing the Challenges of Information Technology*. In the opening acknowledgements, Susskind emphatically claims that '(T)he future of law is digital, I have no doubt.'[2]

Richard Susskind has largely based this book on his own practical experiences as an in-house adviser and management board member of the English international law firm Masons, which is committed to investment in Information Technology (IT).

His central argument is that the way in which legal services and advice are provided ought to change. IT is the key to accomplishing such change, because it can be used to overcome many difficulties currently plaguing lawyers. Susskind is convinced that radical change will occur, resulting in a shift in the nature of legal work from an advisory to an information service. This argument is developed in a structured and cohesive manner. Although the book is divided into four parts and eight chapters, the key concepts and ideas are repeatedly reinforced, so that the separate chapters are interrelated.

Part One is 'The Theory'. Practically-minded readers should not be too perturbed by this heading, because the content is not particularly theoretical. This section is concerned with the interaction between IT, the law and society in general.

Chapter 1 identifies the social and moral problems which need to be overcome. It is argued that law and its central institutions are taken for granted and that there is room for improvement. Our society is described as 'hyperregulated', because the law is too vast, diverse and complicated for the current methods to manage. Information about changes to the law needs to be more effectively communicated to the public. IT could be used to support promulgation and a policy of free distribution of public information.

Legal service is presently reactive and should become more proactive. This is likened to a doctor giving preventative medicine, instead of curing a disease. Legal service should be engaged before, not after, disputes arise. Susskind has coined the term 'latent legal market' to describe this potential area of exploitation. IT can make access to legal advice less expensive and more practical.

Chapter 2 assesses the impact which the use of IT will have on commerce and society. Firms benefit from IT because it can lower costs, increase productivity, increase profits and help them differentiate themselves from competitors. The social advantages of IT are wider access to information and greater communication possibilities. Susskind predicts that computers will become more portable, versatile, able to store more information and '... it will be common for us to speak to our computers and for them to talk back and the keyboard is likely to diminish in importance'.[3]

1 See for example: <http://www.austlii.edu.au>.
2 R Susskind, *The Future of Law*, Clarendon Press, Oxford, 1996 at vii.
3 Note 2 at 64.