

STATE ENTERPRISE IN SINGAPORE: LEGAL IMPORTATION AND DEVELOPMENT. By PHILIP N. PILLAI. [Singapore: Singapore University Press. 1983. S\$30.00 (paperback), xxiv+223 pp.]

READERS familiar with Dr. Pillai's other writings, notably in the fields of company law and securities regulation, may be surprised to learn that this is the *magnum opus* he had always been wanting to write. This then, it may be revealed, has been his labour of love. Perhaps that is why it is not at all as intimidating as some of the author's previous massive works have been to an erstwhile reader. Here is a convenient volume in paperback, based on the author's earlier doctoral thesis.

In this study of state enterprise, the author blends political, socio-economic and legal issues into an intricate public and corporate law web. As he says (at p. xxi), "the central approach of this study is to look to the field of state enterprise law and its processes in Singapore and to investigate the theories, policy formulations, law and experience," with the expectation that the study "will highlight the key elements involved and identify the relationship of law, legal infrastructure and institutional capacity to the successful utilization of state enterprise in Singapore." Nor is this a study for its own sake; for the author has

his own particular motive: he uses state enterprise law as a "slice of the legal universe" with which to argue that the process of legal "importation" of legal systems in post-colonial situations is "an organic one in which the shape and closeness of the reality behind the legal facade is the result of the legal culture and infrastructure of the society" (p. xix). The central hypothesis of this study is that "law is culture bound and [sic] nevertheless amenable to the process of importation" (p. 1). In short, the author seeks to identify the strain or strains of legal development in Singapore.

He identifies three major strains of post-colonial legal development. The first is that of formal rejection of the received system. The second represents formal continuity of the colonial legal system and rules but its latent rejection in reality of operation. Singapore's experience, he concludes, indicates the third strain, viz., the continuation of the received legal system (British legal forms and models) and its assimilation (with *ad hoc* adaptations) through the impact of a different legal culture and infrastructure. This trend is likely to continue if Singapore's economy, political system and leadership continue to emphasize the same elements as before. These "elements" may include, *inter alia*, a shared political morality abhorring the face of corruption, a political "will" manifested in a dominant party and executive, a low-profiled Parliament, and an undynamic judicial process owing to an unwillingness to litigate.

Whether the author has obtained the answers to all the questions inevitably raised, remains in doubt. He himself admits there are a few unanswered questions — such as the precise relationships between modernization, modern law and infrastructure; and the behaviour of the actors in the judicial process. Further studies would certainly be needed; and the author certainly has to employ certain assumptions in the course of his arguments and may well be criticised for having made too many, however the author has made a useful study and has identified several valuable precepts in Singapore's political and legal culture.

The book contains, besides a short introduction, five chapters. The first deals with certain theoretical questions and doctrinal matter and explains the author's hypotheses and methodology. It is here that he makes observations about Singapore's "legal culture". The second, entitled "The Process of Legal Importation", discusses the development of the Singapore legal system through five periods. In the third, he expands on the role of state enterprise in the economy, the legal framework and the structure of control of state enterprises. In the fourth he does case-studies of three individual state enterprises, each exemplifying a type of enterprise: the Economic Development Board, a statutory corporation, the Development Bank of Singapore Limited, a mixed enterprise, and the Singapore Bus Service Limited, a listed commercial company with public management.

The term "state enterprise", according to the author, is used to refer to "the activity of the state which goes beyond the traditional functions of government — law making and enforcement, defence and external relations" and "encompasses each and every legal form by which the state tranverses [sic] beyond its traditional functions and progressively enters the market place" (pp. 3-4). Thus, he includes the government department, the public corporation, the private sector

company in its many variations as public or private, the joint venture, and the private sector company with government management services.

In his inclusion of the “department” form, he departs from the usual understanding of a “state enterprise”. It is strange to think of departments as “entering the marketplace” or as commercial in nature merely because they also have accounts to keep and collect revenues. The author does not define a “public corporation” except to say that it is incorporated by statute and endowed with corporate personality (p. 80). This definition could fit a “statutory board” which is not defined (although referred to at p. 56) but which all public corporations would clearly be although not all statutory boards can be intended by the author to be “public corporations” for his purposes as some have very specific purposes and do not operate in the “marketplace”. Examples would be the tertiary-level educational institutions like the Institute of Southeast Asian Studies, purely professional bodies, like the Board of Legal Education or Board of Architects, and social or religious bodies, like the Singapore Sports Council or the Hindu Advisory Board. It would have been useful if Dr. Pillai had informed the reader why other statutory boards should not be regarded as “public corporations” within the purview of his book. For the third category of “state enterprise”, the author uses the term “the commercial company” but is unfortunately not able to sub-divide them into more meaningful categories than by referring to them as “mixed” in some way or other. Perhaps he could not describe them better, but a provision of his own terms and definitions would have made for more consistency in the use of terminology and this can only be for the reader’s benefit.

A recurrent theme in the book is the recognition of the dominant political party and of the role played by the political leadership in Singapore. (It would have been preferable, however, if the author had not used the terms “first generation” (p. 123) and “second generation” (p. 28) when referring to Singapore’s political leaders; for this is not readily comprehensible to the outside reader who may imagine some kind of dynastic succession). This leads him to make some (not, however, disprovable) observations that in Singapore public accountability of state enterprise is secured less by Parliament or judicial intervention and more by the responsibility of the leadership by direct access to the electorate through the explanation of policies in keynote speeches reproduced in the media. Additionally, he points out, accountability is secured through the Auditor-General and the Parliamentary Public Accounts Committee. Since the book was prepared, it may be observed that a phenomenon has recently emerged which is another avenue of executive accountability to the electorate: the ministerial “walkabout” on a constituency basis, accompanied by a minister’s explanation of hard-headed policies and the fielding of questions and grievances.

Occasionally, however, the author makes generalisations which invite challenge. In writing about the legal culture, he says that:

[Singapore] has a predominantly Chinese population which traditionally values law observance but avoids formal litigation. The legal cultural attitudes towards law and authority reflect a commonality with the East Asian cultures of China, Japan and Korea. It can be said to be an expression of Confucian hierarchical family structures by which the government controls and rules people on an extended family basis, (pp. 7-8)

A law-suit consequently symbolises “disruption of the natural harmony” thought to exist in human affairs. Surely to say this is to go too far? The attitude towards law and authority and the avoidance of formal litigation may be attributed not to Confucian values (for the universal appreciation of which there is no evidence) but to the dominant party and leadership itself — which is the consequence of a series of events in Singapore’s unique political history. The author may be nearer the mark when he says (at p. 210) that the absence of legal challenge in court may be construed as a bypass of the litigation process to settle disputes with government or state enterprise, the bypass being explainable “by the low propensity to litigation by the population, or the feeling that such litigation would be futile, as any possible favourable position could be removed by legislation passed subsequently to correct the position.”

At p. 40, the author speaks of “an absence of administrative law and the existence only of unsystematic judicial review.” This bears some explanation or elucidation. A body of Administrative Law is surely present! The author must mean (i) that disputes are settled outside the courts in alternative venues, such as “Meet the People Sessions”, in Parliament or through letters to the press channeled to the relevant Ministries; and (ii) that judicial remedies are almost never invoked to aid or challenge state enterprise activity, possibly due to the legal profession’s own acquiescence to doubtful administrative practices. He says as much in other contexts, and this must be what he means in this context. Alternatively, the author may have had in mind a developed system of administrative law with separate administrative courts, on the French model.

All in all, the author has made a valuable contribution to our understanding of Singapore’s legal system and its political and legal culture in the context of state enterprise. Parallels can be drawn with other areas of the legal system, certainly those involving a public law element or state regulation.

The observations made will be very relevant to the inevitable future growth of regulatory activity and the growth (or non-growth) of administrative law. The author has provided a launching pad. It is for others to attempt empirical research to verify or confirm some of his assumptions and observations.