

ASIA-PACIFIC LEGAL DEVELOPMENT EDITED by DOUGLAS JOHNSTON AND GERRY
FERGUSON [Vancouver, Canada: University of British Columbia Press. 1998.
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THIS book is a compilation of eleven essays plus introductory and concluding chapters. It represents a concerted attempt by nearly half of the professors at the Faculty of Law, University of Victoria, BC Canada, to bring an Asia-Pacific focus to their individual areas of expertise. The impetus for developing an Asia-Pacific interest among these academics was the establishment of a Centre for Asia-Pacific Initiatives (CAPI) at the University of Victoria. Almost all the contributors to this work are Canadian-based legal experts as opposed to experts in cultural studies. However, as the bibliographical notes indicate, many of the contributors have developed a fair amount of expertise about other legal cultures and systems through travel, on-site discussions and research collaborations with Asian colleagues, and through interactions on the conference circuit. Additionally, some of the essays were written in collaboration with Asian-based experts. By and large, the contributors have been careful to avoid the dual pitfalls of cultural imperialism and cultural insensitivity which is characteristic of some Western comparative legal scholarship.

The work is conveniently divided into four parts according to the following broadly discrete subject areas – the economic sector, the civic sector, the behavioural sector, and cross-sectorial contexts. Under the economic sector, Mark Gillen and Pittman Potter lead off by examining the convergence of securities laws in Malaysia, Singapore, Japan and China. The same convergence of laws is identified in the next essay by Robert Howell on two areas of intellectual property law, namely, parallel importation and reputation spillover. In the next piece, William Neilson studies Vietnam's recent entry into the ASEAN Community and its commitment to a strategy of economic pragmatism. In their concluding chapter, the editors observe that, taken together, these essays support the thesis that the process of convergence of economic laws is accelerating both regionally and globally and point to several factors contributing to convergence. These factors include increased international competition and the need for economic convenience, comparable legal traditions and educational and commercial linkages, and the increased unipolar pressure of capitalist countries such as the United States since the apparent collapse of most socialist economies.

The civic sector of the book comprises three essays on constitutional laws in the region. Cheryl Crane, Mark Gillen and Ted McDorman's essay on the issue of constitutional versus parliamentary supremacy in Canada, Malaysia and Singapore is an insightful exploration of the separate developments occurring in these jurisdictions pertaining to this issue. In the next essay by Ted McDorman, the submission is made that Thailand's new state constitution does not spell any hope of suddenly embracing the 'cult' of constitutionalism of the United States but only a modest shift away from the 'cycle of Thai politics' involving coups, constitutions and elections. The third essay by Joanna Harrington, Ted McDorman and William Neilson provides an interesting insight into the progression of the Vietnamese state constitution commencing with the nationalistic text of 1946 and ending with the economically motivated but Party-controlled text of 1992. From these essays, the editors have

drawn several thoughtful conclusions. They include the assertion that, while all written state constitutions serve symbolic as well as operational purposes, the ratio between them varies greatly depending on the predominant values and interests of the political culture. Furthermore, they contend that the development of operational, as distinct from symbolic, civic law on the Western model will not happen in the short or medium term in radically different, non-litigious and non-Western legal cultures.

Under the behavioural sector, Gerry Ferguson's essay on the legal regulation of mental disorder begins by noting the clear and systematic adoption of Western-based criminal laws in most Asian countries. However, this formal textual convergence of the criminal laws of the East and West hides the wide divergence in actual practice or enforcement at the indigenous village level. In the next essay, John McLaren compares the social history of the sex trade with the objective of analysing the way the legal systems of Australia, Canada and Thailand have responded to female prostitution. The editors, in their concluding comments, contend that there is greater divergence of the laws in the behavioural sector compared to the economic and civic sectors. Factors contributing to divergence include the differing stages of economic development of the various countries in the region, the lesser impact of international legal instruments on the behavioural area, and cultural resistance by Asian countries to the corrupting influences of the West on their youth.

The fourth and final sector of the work comprises three essays concerning subjects which are multi-sectoral in that they involve issues impinging upon more than one sector. Thus, in Douglas Johnston's essay, the argument is made that because environmental law is a mix of economic, civic and behavioural elements, it is the focus of highly diverse interests and values. Similarly, the discussion of Australian, Canadian, New Zealand and United States native laws by Hamar Foster shows how those laws are primarily a mix of economic (property and commercial) and civic (sovereignty and governance) concepts but frequently complicated by behavioural concerns involving crime and punishment, adoption and custody of children, interspousal relations and spiritual autonomy. Finally, Andrew Pirie's views on the use of alternative dispute resolution in Thailand and Cambodia as a diversion away from unsatisfactory formal legal structures, are applicable to any of the three sectors. In their concluding remarks on these essays, the editors say that it is extraordinarily difficult to predict whether the trend in the next few decades will be towards convergence or divergence in these cross-sectoral areas. They opine that convergence is more likely to occur in the more open societies that tolerate 'civil society' intervention in the decision-making processes controlled by the state.

This work is an immensely valuable contribution to the small but growing literature on Asia-Pacific legal development. Readers would certainly be able to find at least one essay which should be of interest to them among the great number of issues covered. The research and scholarship of each essay is of a very high standard as is the production quality of the book. In their final concluding section, the editors acknowledge that there is much more work that needs to be done on the study of legal developments in the Asia-Pacific. In particular, the generalizations they have made about trends to convergence or divergence are subject to revision or qualification. Additionally, the editors see the need for further studies to be undertaken on a much wider range of topics and encompassing an even greater variety of methodologies and legal systems or cultures. They end by saying that the value of comparative law (which is a hallmark of the work) "depends on discovering new modes of transnational and transcommunal scholarship that accommodate the competing demands for better information and value enhancement" (at 594). This volume of essays has laid much of the groundwork for embarking on this discovery.

As such, the editors and contributors are to be highly commended for bringing this excellent work to fruition. It certainly deserves a place on the 'must have' list of institutional and personal libraries having a focus on Asia-Pacific studies, legal and political cultures, and legal comparatism.

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