

BOOK REVIEWS

Encounters with Singapore Legal History: Essays in Memory of Geoffrey Wilson Bartholomew BY KEVIN Y. L. TAN AND MICHAEL HOR, eds. [Singapore: Singapore Journal of Legal Studies, 2009. vii + 605 pp. Hardcover: S\$ 72.90]

For the serious student of the common law as a system, Singapore is a rare jewel. Along with Hong Kong, Singapore represents a linchpin of the common law system in the Asian setting. It is true that India remains the largest common law jurisdiction in the world. But in terms of the dispatch of work, and of the ability to adapt to meet the challenges of a rapidly evolving economy, Singapore is without compare. But therein lies a tremendous paradox. For the nature of Singaporean society could not be more different from that of England, the common law's birthplace. Nor indeed, could Singapore be more different from most other societies in which the common law system continues to flourish. That is because at base, the common law is a bottom-up system of social ordering. Even accepting, *arguendo*, the notion that judges represent certain entrenched socio-economic interests, the fact is that their freedom of action is limited by the nature of disputes that happen to be taken before them. That is why common law societies can so easily seem to outsiders as semi-anarchic. It is also why the substantive common law contains so many internal inconsistencies—which, as every law professor knows, are the bane of the law student's existence!

Singapore, in contrast, sees itself in rather different terms. It is no exaggeration to say that it is precisely the fear of disorder and anarchism—*Luan*, as the Chinese term it—that lies at the core of the Singaporean mind-set. To quote Lee Kuan Yew, who more than anyone deserves the title of the father of modern Singapore, “[l]aw and order provide the framework for stability and development” (Lee Kuan Yew, *From Third World to First: The Singapore Story, 1965- 2000* (New York: Harper Collins Publishers, 2000) at 241). This clash of “value-centricity” can be seen in many different areas of common law in Singapore. Perhaps most noticeable is field of administrative law, in which Singaporean judges regularly cite cases which implicitly embody a philosophy of individualism that no Singaporean in a position of authority would ever dream of positing. But it is not a clash that has received sufficient scholarly attention, at least outside the public law setting.

This is why *Encounters with Singapore Legal History*, edited by Kevin Y. L. Tan and Michael Hor, represents such an important contribution to scholarship. In a society that represents fertile ground for the comparativist, these essays represent an important step in placing in sharp focus the attempt to transplant a legal system that

came to systemic maturity during the Enlightenment, to a social setting that places a far greater premium on order and collective stability, than on the natural law values of liberty and individual autonomy. This alone makes this book a tremendously worthwhile addition to any common law scholar's collection.

Encounters with Singapore Legal History is in fact a collection of essays in memory of the late Professor Geoffrey W. Bartholomew. Geoff Bartholomew represented one of the last incarnations of what one might call "Imperial Man". Imperial Man was a species which, with the arrogance of today's prejudices and assumptions, is easy to mock. They were a group of almost exclusively Anglo-Celtic (and most often British) middle class men, who made their professional lives serving the interests of the British Empire in the colonies. At the end of their careers, they would return "home"—though of course during their decades abroad, England would have become in many respects quite foreign to them—armed with a CMG or OBE or ISO, to live out their dying years in comfortable obscurity. There were, of course, variations on this theme. Some Imperial Men contracted mortal diseases while on foreign service, and remain in graveyards shattered across the four corners of the earth. Others chose to retire not in England, but in one of the "settled" colonies that felt somewhat English, like Canada, New Zealand or Australia. And some Imperial Men became quite famous and remain known even today. But what linked them all was a commitment to what they saw as the quintessentially British values of fair play, hard work, and reserved politeness to others. To be sure, Imperial Man could often be insufferably smug, and far too confident about what the Duke of Windsor once referred to as "the essential rightness of all things British". But no one could doubt their earnestness, or the sincerity of their efforts to improve society.

Geoff Bartholomew was born in the Home Counties in May 1927—the same month that the Australian parliament first convened in the national capital of Canberra. He left school to join the Merchant Navy during the War. After demobilisation, he read economics at the University of London, from which he graduated in 1948. In 1950, he earned his LLB. In one of those wonderfully quixotic but very English episodes, he was permitted to read Islamic Law as one of his papers for the Bar Examination!

Bartholomew began his academic career as an assistant lecturer at SOAS. In 1956, he was appointed a Lecturer at the University of Tasmania. After a political showdown between the Law Faculty and the University, which culminated in the resignation of the entire faculty, Bartholomew moved to Khartoum in 1959. But after only two years in Africa, he took an appointment at the University of Malaya in 1960. In 1963, he moved to the University of Melbourne but in 1966 he returned to Singapore, as Dean of the Faculty of Law at what was by then known as the University of Singapore. After his deanship, he remained a faculty member until 1976, when he turned to Australia. He retired from full time academic life in 1993, and he died in 2005.

An Imperial Man, indeed. But what made Bartholomew worthy of this volume is the fact that even after he left Singapore, he remained a scholar of Singaporean legal history. In that sense, even though he spent just 14 years out of an academic career that spanned 50 in Singapore (Chapter 1: Kevin Y.L. Tan, "An Encounter with Legal History: Geoffrey Wilson Bartholomew" at 20), Bartholomew's influence as a Singaporean scholar is difficult to overstate.

For those who are acquainted with them, what Kevin Tan and Michael Hor have in common is a passion for engaging with students. They also share a flair for creativity. This collection of essays bears witness to that. All the contributors but two (Kwa Chong Guan of the School of International Studies at the Nanyang Technological University, and Tan himself) were students in Professor Tan's legal history course at the National University of Singapore. In light of this, it is not surprising that the essays span a wide range of topics—everything from law and architecture (Chapter 4: Cai Yunci, "Law and Its Impact on Singapore's Built Heritage"), to the historical treatment of riparian rights in Singapore (Chapter 6: Joel Teo, "A Legal History of Water"), to the evolution of Singapore's status in public international law (Chapter 7: Han Songuang, "Maritime Piracy & the Law in Singapore" and Chapter 5: Benedict C.W. Teo, "The Historical Evolution of Singapore's Status in International Law"). Almost all the essays are well-written and eminently readable. Many include wonderfully pithy turns of phrase. To offer but one example (though there are many), Tan Kah Tian posits that her essay on family planning laws, "is a story about the sort of people the state thought fit to be allowed to call Singapore 'Home'" (Chapter 10: "Thinking Historically About Family Planning Laws & Population Control in Singapore" at 318). This is a marvellous line—the sort that one wishes one wrote oneself!

In light of some of the challenges facing modern Singapore, a few of the essays are of particular contemporary interest. These include an essay by Charmain Fu Simin on the evolution of the penal system in Singapore (Chapter 12: "From Retribution to Rehabilitation: A Re-look at the Penal System in Singapore"), as well as two essays touching upon the perennially touchy issue of free speech (Chapter 13: Liang Shiqi, "A Legal History of the Press in Singapore" and Chapter 14: Kenneth Lim Tao Chung, "A History of Law and Theatre in Singapore, 1958-2004"). For those interested in university politics, there is a fascinating essay on the controversy surrounding the existence of Singapore's "Chinese" institution of tertiary education, Nanyang University (Chapter 15: Huang Kailin, "Interplay Between Community, State & Legislation in Nanyang University Education, 1953-1991"). But perhaps the most interesting contributions are those by Professor Tan, himself. This is because Tan is a distinguished legal historian in his own right—perhaps the leading legal historian in English-speaking Asia today. He would undoubtedly protest against this comparison, but if Geoff Bartholomew was to have had a worthy successor, it would without question be Kevin Tan.

Tan has three contributions in the collection. The first is a biographical sketch of Bartholomew's life (with some autobiographical aspects of Tan's own naissance as a legal historian thrown in). The second is an essay on the challenges associated with being a legal historian in Singapore, and of writing Singaporean legal history. Here, Tan reviews the major trends in historiography over the past century, dating from Maitland and running through to the Critical Legal Studies movement and its aftermath. He also discusses some of the logistical challenges in writing history in Singapore. This includes not only the patchiness of sources, a challenge that historians everywhere must face, but also the penchant for secrecy that runs so strong in Singaporean governmental culture. As Tan reminds us, the latter is not something that historians in jurisdictions with Access to Information legislation generally now have to face: "There is no legislation guaranteeing freedom of information in Singapore.

Official records are held by the various government departments and ministries and ultimate discretion rests on them in determining what is to be surrendered” (Chapter 2: “Challenges in Writing Singapore’s Legal History” at 56).

His third contribution is Chapter 16: “Lawyers in Politics, 1945-1990”. This is a subject that Tan has touched upon before, in his book, *Lee’s Lieutenants* (Lam Peng Er and Kevin Y.L. Tan, eds., *Lee’s Lieutenants: Singapore’s Old Guard* (St. Leonards, N.S.W.: Allen & Unwin, 1999)). Perhaps because it is familiar ground, Tan’s writing is at its liveliest in this essay. The subject is presented as a series of vignettes, but they are woven together nicely and present the reader with a coherent picture of the evolution of the character of the politicised arm of Singapore’s Bar through the post-War period.

Encounters with Singapore Legal History represents an absolutely wonderful contribution to the body of scholarship on the legal history of one of the common law’s most interesting jurisdictions. But what is more, it represents something special that so many talk about, but so few accomplish—the active involvement of students in the research life of the modern university. Professors Tan and Hor deserve to be commended for this really quite splendid collection.

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