

BOOK REVIEWS

Administrative Law and Governance in Asia: Comparative Perspectives BY TOM GINSBURG AND ALBERT H.Y. CHEN, eds. [Oxon: Routledge, 2009. x + 384 pp. Paperback: US\$47.95]

The book under review is the fourth publication in the *Routledge Law in Asia* series. A distinguishing feature of the series so far has been its emphasis on issues of public law within Asia. This is particularly valuable because, although the focus on the economic rise of Asia has resulted in a burst of scholarship on economic and commercial aspects of Asian jurisdictions, a similar level of interest in Asian public law scholarship is yet to emerge fully.

The book is edited by Tom Ginsburg and Albert Chen. While each is a respected scholar of public law, both editors have been part of recent collective projects that have increased the profile of comparative public law scholarship, especially for jurisdictions located in Asia. For other contributions to this volume, the editors have assembled a diverse and eclectic group of scholars, including some leading public law scholars within Asia. An attractive feature of the volume is that several authors take radically different positions on the basic questions addressed in the volume. By electing to leave such disagreements in the final text, the editors enable readers to judge for themselves which view they are persuaded by. This choice also adds to the credibility of the enterprise by demonstrating that the underlying issues are complex, open to different interpretations, and are not easily understood or resolved.

In their joint preface, Ginsburg and Chen explain that the focus of the volume is on the phenomenon of ‘judicialization’ in the specific context of administrative law, governance and regulation within East and Southeast Asia. In his introductory chapter, Ginsburg defines the concept of ‘judicialization’ as “the expansion of judicial involvement in the formation and regulation of public policy” (Chapter 1, p. 3). Ginsburg asserts that in recent years, such expansion has become routine in significant policymaking decisions that only a few years ago would have been perceived as being within the domain of other actors in government or in the private sector. The preface notes that the area of administrative law has witnessed great changes in many Asian jurisdictions lately, which makes the region particularly interesting for scholars of judicialization. The editors assert in the preface that a more specific purpose is to examine the role of judiciaries in Asia in shaping this transformation. Such a focus, they contend, will lead to an understanding of governance in individual Asian countries while enabling the testing of broader comparative hypotheses relating to the phenomenon of judicialization more generally. As I will seek to demonstrate in

the details of this review, the editors have succeeded in delivering on this ambition of the overall project.

The volume is divided into three broad sections, 'General Perspectives,' 'North-east Asia and Greater China' and 'Southeast Asia' the contents of which in turn are addressed in a total of sixteen chapters. While five chapters deal with broader issues (the introduction, the conclusion and three chapters on 'General Perspectives'), the rest provide jurisdiction-specific perspectives for eleven Asian nations, namely, China, Hong Kong, Indonesia, Japan, Malaysia, the Philippines, South Korea, Singapore, Taiwan, Thailand, and Vietnam. While the geographic coverage is impressive, the volume does not live up to its title since large parts of Asia (principally, but not limited only to, the nations within South Asia) are excluded. The editors are quite aware of this: in their joint preface, they emphasise that their focus is "on a particular region of the world, East and Southeast Asia" (at p. ix). This is a minor quibble, one which may not be attributable to the editors, but the title does have the potential of misleading the potential audience of the work on its actual scope.

In reviewing the book, my primary aim is to summarise its contents. I will focus also on disagreements among the individual authors that raise basic and perennially relevant issues in public law. My own reactions and critique are set out in the concluding part of the review.

Ginsburg's introductory chapter analyses the main findings of the existing literature on the idea of judicialization, which address aspects and trends in countries outside Asia, and specifically within Europe and the U.S. His chapter focuses on various theories (accounting for 'economic', 'political' and 'international' factors) that seek to explain why the shift towards judicialization is occurring. Ginsburg concludes that while no single theory can explain the variation in the timing and extent of judicialization, "it is the interaction of local political conditions (including politics within the legal system) with structural constraints in the economy that lay the basis for judicialization" (Chapter 1, p. 11). Ginsburg later considers some of the consequences of such a shift as well as the limits of the phenomenon. In between, he briefly covers the American debate over judicialization and sets out, in broad strokes, the historical evolution of administrative law in the U.S. from the New Deal era to the contemporary period. While Ginsburg's introduction refers to the experiences in several Asian countries, it appears that he comes to the central issue focused upon in the volume primarily from the perspective of administrative law in the U.S.¹ Ginsburg also refers tangentially to the related phenomenon of 'juridification', which he describes as the spread of legal discourse and procedures into social and political spheres where they were previously excluded or minimized. Ginsburg's discussion of these issues is "generic" in that it draws conclusions across jurisdictions, although from time to time he does speculate on how this may impact Asian jurisdictions in particular ways, given the different dynamics of governmental politics within specific nations in Asia.

The questions and themes identified by Ginsburg's comparative survey form the starting point for many of the specific jurisdictional analyses that follow in Chapters 5-15. At one level, Ginsburg's introduction and the volume as a whole can

¹ As some of the contributors to the volume point out, this is not the most apposite starting point for a comparative survey of judicialization of administrative law.

be understood as asking the following basic descriptive question: Has judicialization of administrative law and governance occurred in Asia in recent years? Ginsburg's introduction is somewhat unusual in a volume of this kind, because it does not provide a summary of the chapters to follow. Perhaps this is because that task is taken on by Chen's concluding chapter in the volume, to which I shall now turn.

Chen's concluding chapter (Chapter 16) aims at answering the specific question identified in Ginsburg's introduction in relation to the judicialization of administrative law in Asia. It also summarizes the answers for eleven Asian countries by looking to the analyses offered in Chapters 5-15. Indeed, a substantial part of Chen's conclusion is devoted to a quantitative analysis of the phenomenon of judicialization (and/or juridification) of administrative law. Chen then goes on to identify five broad categories. Based on his analysis of the individual authors' views as expressed in Chapters 5-15, Chen concludes that four jurisdictions (South Korea, Taiwan, Hong Kong and the Philippines) exhibit "clear cases" of "increasing degrees of judicialization and juridification". Japan exhibits "increasing but still very limited degree of judicialization"; Thailand exhibits "considerable increase in degrees of judicialization"; China, Vietnam and Indonesia exhibit "low degrees of judicialization and juridification", and Malaysia and Singapore exhibit "no significant movement towards judicialization". This seems to provide a rather cut-and-dried summary of the book project. However, as we shall see, Chen's approach, methodology and conclusions are subjected to critique by some of the other contributing authors. A point worth noting is that while Ginsburg emphasizes in the introduction that the focus is upon judicialization rather than juridification, several authors have in fact addressed the nature of juridification in their respective country studies, which is perhaps why Chen's conclusion refers occasionally—and somewhat inconsistently—to both phenomena.

Michael Dowdle's chapter, which follows Ginsburg's introductory chapter, fundamentally questions some of the assertions set out by the editors in their respective contributions. He first contends that the phenomenon of judicialization is anything but recent, and that it instead has a history dating back to the nineteenth century in England and in the early United States. After seeking to make good this historical claim in the first part, Dowdle's effort in the remaining part of the chapter is devoted to demonstrating that the editors' view of 'judicialization' may share a fault in common with a similar trend in recent scholarship on the issue, which "tends to conflate into a single category a wide diversity of regulatory dynamics that have a similarly wide diversity of developmental implications" (Chapter 2, p. 23). To show the diversity of such regulatory dynamics, Dowdle relies on different examples from modern China's experiences with administrative law reform and judicialization. Dowdle also takes on the entire thrust of Chen's concluding chapter, when he states that "it may be best overall to talk simply in terms of *changes* in the courts' constitutional functionalities rather than in terms of *increases* (or *decreases*) of one particular aspect of the courts' constitutional functionality" (Chapter 2, p. 36). As we shall see, a closer analysis of the individual chapters does seem to bear out Dowdle's claim, because even the jurisdictions which are within the same category identified by Chen show the presence of differing causal factors. Elsewhere in the chapter, Dowdle implies that the notion of judicialization is usually viewed through the lens of Anglo-American law, and suggests that looking to continental European models (both historical and contemporary) may be valuable in seeking a fuller understanding of the underlying

complexities of the concept that he seeks to unpack. Dowdle concludes by agreeing that the concept of judicialization can be “a very powerful tool” for understanding regulatory change. He cautions, however, that it “must be treated with particular care” (Chapter 2, p. 36).

Colin Scott’s chapter also takes issue with claims made in the general literature on regulation and judicialization. Scott demonstrates that the U.S. experience with administrative law, regulation and increasing judicialization, far from being a model or starting point for comparative analysis, is quite a unique and exceptional situation. (The subtitle of Scott’s chapter, tellingly, is ‘American exceptionalism and other ways of life’.) Scott shows that even within the common law world, the U.S. experience is singular, because the U.K.’s experience with regulatory politics in the 1980s was quite different, and arose out of a set of political, institutional and economic factors that were not at all similar to those in the U.S. He goes on to show that regulatory politics and dynamics within Europe more generally were quite different from the U.S. and U.K. experiences. Scott argues that rather than focusing on processes of agencification², one might instead focus on the ‘regimes approach’ which “analyses the various state and non-state actors participating within any given regulatory space” (Chapter 3, p. 38). Scott devotes the rest of his chapter to illustrating how the ‘regimes approach’ works in practice, drawing examples from a number of European jurisdictions, including the European Union, and some Asian jurisdictions. Scott concludes by implicitly challenging the basis of the survey undertaken by Chen in his conclusion, and by other scholars writing in similar fashion. This is evident from his argument that “[t]here is no judicialization index which could be deployed to compare the extent of judicialization in different jurisdictions” (Chapter 3, p. 54). He asserts that the peculiarity of particular national factors could lead to apparently similar policy changes yielding markedly different instances of judicialization. More fundamentally, Scott emphasizes that whether the effects of judicialization will be positive or negative depends on the point of view adopted by the person posing the question. He emphasizes that increased judicialization could also have negative effects, because it has the potential to “create a world of more defensive and cautious service provision and regulation, in which litigation risks are recognized and minimized, at the expense of vitality and innovation within the sectors affected” (Chapter 3, p. 55). Scott’s larger point—which is underscored several times throughout his contribution—is that “there may be reasons to perceive any judicialization trend differently in different spaces and different times” (Chapter 3, p. 55). As will be seen, Scott’s concerns are echoed—often without attribution, and perhaps unknowingly—by several of the authors of individual jurisdictions. His claim is also borne out by a joint reading of the chapters focusing on individual jurisdictions (Chapters 5-15) reiterating the difficulty of drawing any general conclusions from the book project as a whole.

The final chapter in the first part of the book is contributed by Kanishka Jayasuriya. Taking its cue from Ginsburg’s identification of ‘international factors’ that cause judicialization of governance in the introductory chapter, Jayasuriya’s chapter focuses on global developments in the sphere of administrative law that lead to the

² Scott contends that agencification is a focus that is the result of the dominance of the U.S. model of government in public policy thinking about regulation.

phenomenon of ‘decentring’ and an overall fragmentation of the state. Jayasuriya notes that the phenomenon has different connotations for ‘established democracies’ in the West, and the ‘newly industrializing countries’ located in Asia. In the former, the new mechanisms of ‘decentring’ are layered on older instruments of administrative law, while in the latter (and Jayasuriya offers China as an example), these decentred sites are a primary component of the new regulatory state. The rest of Jayasuriya’s chapter focuses on the phenomenon of global administrative law, and argues for the importance of developing ‘accountability communities’ to ensure that they lead to the “remaking of state structures in the Asia Pacific” (Chapter 4, p. 73).

The second and third parts of the book focus on the eleven individual jurisdictions located in Northeast and Southeast Asia. Each of these chapters seeks to provide an overview of recent changes in administrative law within the country it focuses upon, and to answer the question posed in the introduction about changes in levels of judicialization of administrative law. In discussing the individual chapters, I will depart from the order suggested in the table of contents of the book, and opt instead for the classification of jurisdictions adopted by Chen’s conclusion, moving from jurisdictions that have, in his summation, experienced greater degrees of judicialization to those that have experienced lesser degrees of judicialization. The jurisdictions in the first category identified by Chen are: South Korea, Taiwan, Hong Kong and the Philippines. As we shall see, there is considerable diversity in the causal factors which contribute to the same trend witnessed in these jurisdictions. The contributing authors also disagree amongst themselves on the normative soundness of such a trend.

The Republic of Korea and Taiwan are two Asian jurisdictions which fit the global trend of increasing judicialization of administrative governance. The views of the authors who have contributed chapters on these two nations for the volume have interesting commonalities and contrasts. Jongcheol Kim’s descriptive narrative of developments in Korea confirms the assessment mentioned above. Furthermore, it shows, through a statistical analysis, that the trend towards judicialization in Korea has indeed been quite dramatic: the quantum of administrative litigation in Korea quadrupled in a relatively short period of seven years between 1998 and 2005. Kim explains that apart from the universal causes of judicialization (identified in Ginsburg’s introduction), there have been local causes as well. Kim emphasizes, however, that the extremely elitist and economically conservative nature of the judiciary means that this is not a trend to be celebrated. He concludes that the judiciary should seek to ensure Korea’s transition from a developmental towards a regulatory state by avoiding naked policy making and by using its power wisely and cautiously. Kim’s prescription for, and scepticism about, the role of the judiciary, is in stark contrast to the approach adopted by Jiunn-rong Yeh in describing the situation in Taiwan. Although Yeh uses Kim’s conceptual categories in describing Taiwan’s current phase as a transition from a developmental to a regulatory state, he appears less concerned about judicial expansiveness in Taiwan. He cites judicial practice and specific cases to back his claim that the judiciary in Taiwan has adopted “process-centric” features that “encourage dialogue between divergent actors rather than substituting judicially preferred policies for those of the regulatory authorities” (Chapter 7, p. 138). Notably, while Kim focuses on a range of factors as explaining the process of judicialization in Korea, Yeh zeroes in on one particular factor—democratization—as the principal

causal factor in Taiwan. Yeh contends that the process of democratization has institutionally transformed the nature of the overall regulatory regime by incorporating the virtues of transparency, participation, deliberation and partnership. Yeh asserts that the Taiwanese judiciary has been both a beneficiary of, and an enthusiastic participant in, this process. While it may well be that Korea and Taiwan have had different experiences with democratization and judicialization of administrative governance, the contrasting views of the authors do suggest that their differences may also be a function of differing normative perspectives on the role and viability of larger democratic processes and judicial review.

Johannes Chan's chapter on Hong Kong begins with a brief but comprehensive history of the legal system of Hong Kong that also places its administrative law regime within a larger socio-political context. Chan demonstrates that greater judicialization of administrative governance in Hong Kong in recent years is linked to the change in political status of the island, from a former British colony to a Special Administrative Region within China. By providing a multi-layered account that is finely attuned to the complex political realities of present day Hong Kong, Chan demonstrates that the situation in Hong Kong is quite different from that of Taiwan, where it was the processes of greater democratization that have, in Yeh's account, generally led to greater judicialization. Chan shows that the same result has occurred in Hong Kong due to the "fragmentation of political power" in the political institutions of Hong Kong, which in turn has been caused by changes brought about by the departure of the colonial power and the shifting of the centre of governmental power to Beijing. Chan demonstrates how the courts in Hong Kong have used classic doctrines of English administrative law to adopt a more active role in governance. He notes, however, that the courts have been simultaneously careful not to overstep their authority, to avoid jeopardizing their overall power and legitimacy. Chan emphasizes the dire need for reforming the "strenuous relationship between the Legislature and the Executive" in Hong Kong in order to conduct daily governance. While he praises the judiciary's sagacity, Chan is well aware of the precariousness of its situation. He astutely recognizes that the continuing presentation of socio-political issues as legal issues in litigation before the courts "ossifies judicialization of administrative decisions and emasculates the distinction between law and policies" (Chapter 8, p. 167). His prognosis is that this is "a negative verdict and a sign of frustration [with] the political process" which will lead in the long term to the undermining of the rule of law.

Chan's cautious praise for the role adopted by the judiciary in Hong Kong is in sharp contrast to the view of the same institution's role in the Philippines adopted by Raul Pangalangan. Pangalangan agrees with Chan's basic point by asserting that judicialization of governance in the Philippines has occurred, not as a way of affirming forces of democratization, but as a "mode of correcting the deficiencies of democratic processes" (Chapter 14, p. 324). Pangalangan explains that the current constitution of the Philippines, adopted in 1987 under the stewardship of President Corazon Aquino, was designed to prevent the recurrence of the authoritarianism of the Marcos years. He is extremely critical, however, of the decision of the members of the drafting Commission (who were apparently "handpicked" by President Aquino instead of being elected) to vest the judiciary with strong powers to bring about a welfare state, displaying their inherent distrust of the processes of democratic politics. Pangalangan's writing style makes it a bit difficult to follow the details of his argument—a task made more difficult by his tendency to quote from decisions of

Supreme Court cases at length without always making the context clear. However, it appears that he is critical of the “formalism” and “mechanistic thinking” that is prevalent in the evolving jurisprudence of the Supreme Court of the Philippines. Pangalangan quotes the insights of critical legal theorists such as Unger with approval to conclude that the problem with the 1987 Constitution is rather fundamental because it “shifts to unelected judges the power to apply their own discretion in reviewing decisions by the politically accountable branches of government and, worse, to dress up the review in the language of the law” (Chapter 14, p. 319). Pangalangan’s analysis reiterates the normative skepticism exhibited by Kim’s chapter on South Korea towards the phenomenon of judicialization of administrative law.

Reverting to Albert Chen’s classification of the jurisdictions covered in the volume, Japan and Thailand are the next two jurisdictions to be considered, although Chen considers each to fall within a category of its own. Hitoshi Ushijima’s chapter begins with a brief description of the historical evolution of Japanese administrative law which did not, in earlier periods, encourage administrative litigation or strong judicial action. Ushijima explains that there have in fact been recent changes to Japan’s administrative law regime, which would appear to provide support to the editors’ thesis that Asia may be witnessing a phase of judicialization in administrative governance. In identifying the factors which have caused an expanded arena for courts in the realm of Japanese administrative law, Ushijima’s analysis reiterates some of the economic, political and international factors identified by Ginsburg’s introduction to the volume. He also cites figures which show that there has been a steady if incremental rise of new administrative cases filed each year during the period between 2002 and 2006.³ Ushijima speculates that this may be because, despite the new avenues, there is a traditional caution exercised in Japanese legal circles towards the prospect of litigation and judicial action in general, as there are concerns about ‘over-judicialization’ in society. Ushijima asserts that whether things will take a dramatic turn from the status quo will depend on how the greater opportunities for judicialization are balanced by the ever-present concern about over-judicialization.

Peter Leyland’s chapter traces the historical origins of Thailand’s administrative law regime, noting that it has been strongly influenced by French models. Leyland emphasizes the significant changes brought about in Thai constitutional, legal and political culture by the 1997 Constitution, before focusing on specific changes in the area of administrative law. Leyland reiterates the importance of the question that several other contributors have also grappled with in this volume: “[s]hould a group of non-politically accountable judges be empowered to frustrate the will of elected politicians?” (Chapter 11, p. 247). Leyland joins other commentators on the Thai constitutional system in praising the architecture and vision of the 1997 Constitution for its attempt to recognize fundamental problems in Thai society, and its innovative solution of setting up a series of watchdog institutions. In the area of administrative law, a system of Administrative Courts and an ombudsman were introduced for the first time in 1999. Leyland’s analysis of the functioning of these new institutions since their establishment a decade ago indicates that they have achieved a fair degree of success, especially when viewed against the record of other institutions

³ However, the overall rise is not considerable, given that in 2002 a total number of 1,662 new cases were filed, while the figure for 2006 was 2,093.

under the 1997 Constitution. Leyland notes that these new administrative institutions have managed to stay relevant even after the coup in September 2006, though their situation—along with that of the entire Thai legal system—remains somewhat precarious and uncertain as a result of the contemporary situation in Thailand. By focusing on overall statistical records as well as the functioning of the administrative courts in politically sensitive cases, Leyland seeks to provide evidence for his argument that the new administrative law regime in Thailand has made a substantial contribution towards maintaining the balance between “the desire of politicians to attain political objectives within the law, and judicial scrutiny of political decision-making and executive action to set the limits on the exercise of public power” (Chapter 11, p. 247).

This section will cover the last two categories in Chen’s analysis. The penultimate category—of countries which have witnessed low degrees of judicialization of governance—consists of China, Vietnam and Indonesia. Chen’s final category—jurisdictions which have shown no movement towards judicialization—consists of Malaysia and Singapore.

Randall Peerenboom’s chapter on China, like those of Dowdle and Scott, seeks to challenge some of the general trends and normative assumptions in the literature on judicialization of administrative governance. Peerenboom asserts that while there has been an undeniable shift towards *legalization* of administrative governance in China, the evidence for *judicialization* is more mixed. Peerenboom notes that even as administrative litigation has come to be an accepted feature of the PRC political–legal landscape, there has simultaneously been a move towards *dejudicialization* because of the recognition of the limits of judicial institutions in tackling pressing socio-economic issues. Peerenboom’s account of the evolution of administrative law in China, particularly since the enactment of the *Administrative Litigation Act of 1989*, is especially sensitive to the peculiarities of China. These include the fact that China has a civil law tradition, and that its political arena is overwhelmingly dominated by a single party, which has affected both the nature and content of administrative reforms that have been initiated. Peerenboom concludes by challenging what he describes as the ideological assumptions of those who seek to export a mix of ideologies—neo-liberal market economies, liberal democracy and the rule of law—to developing countries. Peerenboom asserts that a similar set of assumptions seem to (mis)guide perceptions of authoritarian regimes, ignoring the role that institutions such as judiciaries can play even within the constraints that exist in such polities.

John Gillespie’s chapter on Vietnam focuses—as does Peerenboom’s chapter on China—on the crucial role played by the communist party in determining the fate of administrative reforms. Gillespie also focuses on the limitations of the central leadership of the party in bringing about judicial reforms along the lines dictated by global institutions. Gillespie endorses Peerenboom’s point about the obstacles facing those who seek to export ideology-based institutional reform measures. By describing the fate of such reforms in Vietnam, Gillespie seeks to show that the assumptions of such models do not work well in Vietnam. This is because governance decisions there are taken, especially at the local level, through a complex series of negotiations between public and private actors, and by processes which are often more extra-legal than legal. This account belies the expectations of transparency, stability, universal law and clear administrative hierarchies which underpin the legal

reform models prescribed by aid institutions such as the World Bank, the Asian Development Bank and their counterparts. Gillespie's detailed and rich account of the process of 'juridification' of administrative law in Vietnam illustrates how complex and particularized the trajectories of national legal regimes tend to be. Gillespie does not seem entirely averse to global prescriptions, but underscores the need for a much more grounded understanding of the underlying factors that impede reform within particular domestic administrative law regimes.

Stewart Fenwick's chapter on Indonesia provides a rich, contextual analysis of Indonesia's overall and recent legal history, focusing on the post-Soeharto era reforms. In common with several other authors, Fenwick focuses on larger public law issues primarily because, as he demonstrates, administrative law reforms and courts in Indonesia have not had much impact despite the push for reform in the last 15 years. It soon becomes evident that appreciation of these macro issues is necessary to understand why the administrative law courts and new laws have met their current level of implementation. Fenwick's analysis is informed by a focus on the actual realities of the law and politics in Indonesia, and he takes great effort at presenting the current state of affairs, warts and all. The overall picture that is presented is quite a grim one, but Fenwick expresses optimism about recent developments under the Yudhoyono administration, which indicate a shift in governmental mentality, and an "acceptance of judicial review as part of the broader process of democratic transition" (Chapter 15, p. 350).

Methodologically speaking, Gan Ching Chuan's account of judicialization of governance in Malaysia is in contrast to Fenwick's contextual account in that the wider socio-political context in Malaysia is more or less ignored, and emerges only in passing. Gan's focus instead is on doctrinal law and developments within Malaysian public law in recent years. Gan's argument is explicitly normative and comparative; he is deeply disappointed with the current state of administrative and constitutional law in Malaysia. He advances a passionate argument encouraging legal actors in Malaysia to draw inspiration from current developments in India, a jurisdiction that provided inspiration for the founding document of Malaysia, its Constitution, in the mid-twentieth century. Most of Gan's analysis focuses on the larger context for public law in Malaysia, which is one where courts have a general tendency to interpret rights issues narrowly and restrictively. Gan describes how there are occasional rulings which seek to enlarge the arena of fundamental rights—and consequently that of judicial power—but which are invariably met with "backsliding" by the same court in later years, or as is also quite common when such adventurous rulings emanate from lower courts, are overruled by the Federal Court which sits at the top of the judicial system. Gan provides a long list of recommendations, which essentially consist of importing large parts of judicially created administrative law measures from India. Although Gan cites a number of cases decided by Indian courts, he does not seem to engage with the large body of literature on India's administrative law regime, which is often as severely critical of the state of administrative law within India as Gan is of the situation in Malaysia.

Perhaps Gan's reaching out to a foreign jurisdiction for inspiration is understandable, given his frustration with the Malaysian judiciary's refusal to rely upon the considerable resources available to it within its domestic constitutional machinery to exercise a robust role over administrative law issues. This certainly explains the

persistence of similar examples of scholarship in Singapore.⁴ Commentators of the Singapore public law landscape who fit this description are similarly critical of the extremely deferential role that Singaporean judges have traditionally adopted towards public law and administrative law issues. The typical solution proffered by such scholarly analyses is similar to that of Gan in that judges in Singapore are urged to follow the example of English judges from the 1960s and 1970s who are perceived to have brought about a revolution in English administrative law. In avoiding this tendency, Jolene Lin's chapter breaks new ground. Instead of bemoaning the lack of effective judicial review of administrative action, Lin focuses on the actual processes by which governance is carried out in Singapore. She seeks to identify the confluence of factors that have enabled Singapore to be an outlier to the trend in developed economies of requiring judiciaries to act as an external check on the administrative state. Lin in fact argues that "it is unlikely that the judiciary will perceive a more active role for itself" (Chapter 13, p. 289). Her emphasis is on the agencies of daily governance in Singapore (including government ministries, statutory boards and regulatory agencies) and on the overall socio-political environment. Lin argues that this overall culture is quite different from that of, for instance, the U.K., where there is an instinctive distrust of government. At some points, Lin expresses skepticism about the intrinsic value of a culture of adversarial litigation, especially for developing societies that, in her view, focus almost singularly on economic survival and see the law as an instrumental tool to facilitate economic development. While Lin's own normative position on the need for judicialization of governance is somewhat ambiguous (at least as articulated in this chapter), she does acknowledge that the political realities in Singapore may have a bearing on the existence of a regulatory culture that is quite averse to judicial oversight of administrative actions. She also asserts that this regulatory culture is unlikely to change in the near future "barring fundamental change in the way Singapore is currently governed" (Chapter 13, p. 306).

In writing for a book of this character and scope, a potential contributor has to confront at least two different challenges. The first challenge is an obvious one for comparatists: when writing for a general, comparative audience, one has to provide sufficient background about the socio-political context and the legal history of the jurisdiction concerned, because the general reader cannot be expected to be familiar with these features, particularly in relation to specific Asian states. An interdisciplinary account, drawing richly from politics, economics and law-and-society perspectives is almost an imperative rather than merely a methodological choice for a contributor to such a volume. Most of the authors contributing to this volume seem only too aware of this challenge, and have tried in different ways to address it in their respective contributions. Unfortunately, a few contributions are less sensitive to the demands of this challenge, resulting in an inadequately contextual description of particular jurisdictions. However, this is only to be expected, given the magnitude of the project. Hopefully, readers will be inspired to conduct their own further research on such jurisdictions.

The second challenge poses more substantial hurdles, because it is clear that the various authors conceive of administrative law in different ways. This challenge arises from the differing conceptions of the subject even within the common law

⁴ Most of such scholarship is cited in the references in Jolene Lin's chapter on Singapore.

world. So, for instance, the American lawyer's approach towards an administrative law issue is quite different from the way a lawyer trained in the U.K. approaches a similar issue. In the American approach, the bulk of administrative law consists, as Scott has noted earlier, of statutory controls on independent regulatory agencies outlined in the *U.S. Administrative Procedure Act of 1946*. The conventional British approach to administrative law, on the other hand, has almost no statutory basis, and focuses predominantly on judicial review of administrative action which has been developed almost entirely through a 'creative' (but highly confusing and indeterminate) process of judicial rulings that build incrementally on previous judicial efforts to penetrate bureaucratic and administrative systems. In the civil law world, approaches to administrative law are also dictated by statutory frameworks, which differ among European nations. This is particularly relevant for the volume at hand because several of the Asian states focused upon have had, either through encounters with colonialism or voluntary processes, significant historical exchanges with Western models of administrative law that have a continuing impact on their contemporary administrative regimes. Although some of the authors are, as we have seen, well aware of these differences in comparative conceptions of administrative law, some others seem less sensitive to this factor, which makes for an uneven quality of description across the eleven chapters. As a result, in some chapters (such as those dealing with the Philippines and Malaysia), the focus is on general constitutional law issues, almost to the exclusion of administrative law issues in particular. While the blurring of lines between these two often related disciplines is understandable, consciousness of, and sensitivity to, some notion of boundaries is necessary in a volume that sets out to describe the terrain of 'administrative law and governance in Asia,' rather than public or constitutional law more generally. Some of this difficulty could possibly have been addressed by setting out a common definition or conception of administrative law across the jurisdictions being focused upon. This is by no means an easy task, and the editors might well have concluded that it was best not to do so. However, the book would certainly have benefited from some editorial commentary on this issue.

My hope is that this longer-than-usual review has demonstrated the richness and variety of important issues that are canvassed by the Ginsburg–Chen volume. Although I have been critical of some aspects of the book, my critique stems from a desire to aid the overall academic project, and to ensure that both its foundation and future development are rendered sounder. The editors and individual authors are to be congratulated for providing an academic resource that is both informative and provocative, in that it raises as many new questions about this neglected area of the law as it seeks to resolve. In the tradition of the best work in comparative law, the book raises foundational questions about the issues it focuses upon generally, and not only for the jurisdictions in Asia that are formally the subject of its study.

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