

CONSTITUTIONALISM IN ASIA: ASIAN VIEWS OF THE AMERICAN INFLUENCE. By LAWRENCE WARD BEER (Ed.). [Berkeley: University of California Press. 1979. x+210 pp. US\$18.75]

Exercises in Comparative Law present a number of general problems to the author, or editor, seeking to present material from diverse origins and background. Simply put, the problems relate to the manageability of the theme chosen, the viability of the treatment adopted and the credibility of the conclusions drawn. In Comparative Constitutional Law, studies become particularly challenging when one realises that divergence between Constitutional Systems are often not merely due to factors legal/constitutional but historic and cultural; pertaining not merely to forms of Governments but the internal and external dynamics of whatever forces affect them; explainable not just through the texts of the Constitutions but often more truly by empirical studies of the Institutions of Law and State.<sup>1</sup> The scope

<sup>1</sup> Beer is aware of this when he says,

“Detailed studies of specific problems or aspects of individual nations — or, in some cases, of a specific ethnic sub-group within a given country — are a necessary basis for the development of constitutional theory and comparative perspective on legal doctrines; and too few such studies yet exist. Moreover, even when the scholarly stage has been carefully set for the exploration of modest binational, bicultural comparative speculation on a specific issue, it is difficult for the social scientist or legal scholar to see the terms of the comparison in accurate perspective and avoid the temptation to attribute meanings to words, institutions, and sociopolitical contexts that are characteristic of his own country or peculiar to the experience of only one of the nations being compared.” *op. cit.*, 9.

is enormous and therefore the inevitable problems of selection and treatment. Such steps as have been taken in this rich field of Asian Constitutionalism have brought us many insights. We need more of these which sharpen our perception of not only foreign constitutions but, in the ultimate analysis, our own. This is the experience that awaits us in reading works such as the one being reviewed. Indeed, that is the rationale behind most studies of Comparative Constitutional Laws. As long as that is the case one need not be unduly critical of modes and methodologies adopted.

The work under review is a collection of essays on the Constitutional Systems of Asian countries bringing together contributions made to the American Bi-Centenary Symposium on the theme of 'Asian Perspectives on the American Constitutional Influence in Asia.' To keep the perspectives well and truly Asian, contributions have been invited from Asian Scholars, nationals of the countries dealt with. The twin purposes of the Symposium, accordingly to the preface, were 'to further knowledge of Asian Law and to advance the Comparative study of law and constitutionalism'.<sup>2</sup> I feel the work goes a long way to fulfilling these aims. In addition to the preface which gives the background to the symposium organised by the Committee on Asian Law, there is an 'Editor's Introduction' to the book and individual historical introductions to the papers included in the book. There is also a short Bibliography at the back of the book. The work is well planned to accord with the specific, modest objective it has set for itself.

Readers' attention should be drawn to an earlier publication with the same title and theme. R.N. Spann (ed.) *Constitutionalism in Asia*<sup>3</sup> published in 1963, was also a collection of papers and discussions presented at the Australian National University, Canberra in 1960. It is tempting to compare these two similar works belonging to two different decades. However, a full and proper comparison is beyond the scope of this review. It should also be pointed out that the book under review is confined to a specific theme of 'American Influence' upon 'Asian Constitutionalism'. The reader may well wonder at this stage as to what may be meant by the expressions under inverted commas. What is the nature and extent of the Constitutional influence referred to? Sure enough, influence can come in a number of ways. In the case of a powerful, modern and highly urbanised country such as the USA even Coca Cola can be a carrier of American cultural influence (remember the excitement generated when Coca Cola was introduced into the Peoples' Republic of China) which could be linked, through a somewhat subtle process, to the recipient country's constitutional process! However, it is better that the organisers of the symposium refrained from laying down guidelines on this matter but left it to the participants.

As to what may 'Asian Constitutionalism' amount to, Beer is categorical:

Though the task is intricate, it has been undertaken and done so successfully. It should not be concluded that the task is impossible. Moreover, on a modest scale, most academic lawyers do refer to comparative material from other legal systems, sometimes without being conscious of doing so.

<sup>2</sup> *Op. cit.*, vii, *Preface*.

<sup>3</sup> Asia Publishing House, Bombay, London, New York, 1963.

“Obviously there is no such thing as ‘Asian’ constitutionalism and law, Asia is a vast region with many countries and over 60 per cent of the World’s population; each Asian nation- and indeed, each of many sub-groups within some Asian countries- has its own separate history and distinctive laws, customary law, and constitutional system. Moreover many Asian nations have shared as little in common with each other in premodern times as they share now with the United States.”

However Beer proceeds to state that:

“Elements of cross-national similarity — in traditional governmental system, legal concepts, religion, and colonial history — do loosely link some Asian countries, in sentiment if not often in practical politics.”<sup>4</sup>

The diversity of Asian societies notwithstanding the historical experiences of Asian nations, whether under colonial era or during the struggle for nationhood, do bind them and lend relevance to the expression ‘Asian Constitutionalism’. It must be something more than geographical contiguity that makes Asians readily appreciate each others social, political and cultural ways. I am sure that is the same in Europe where national diversity is still a factor. It is only in this loose sense can we use the term ‘Asian Constitutionalism’. Further justification for this notion may be found in other features common to many Asian countries.

Referring to the earlier work of 1963, there was much discussion on the meaning of the term ‘Constitutionalism’ itself. It was felt that the notion of ‘Constitutionalism’ should not be cast exclusively in the British or American moulds. That would be fallacious both in theory and practice. I suppose it was a useful *caveat* to be sounded against the tendency of drawing adverse inferences whenever some feature of constitutional government in Asia or Africa does not look the same as what is found in U.K. or U.S.A. But I also suppose that the search for a notion of ‘Constitutionalism’ is not a wasted effort and that one can find, at least, one or two universal norms, albeit as general guides, with which to study Constitutionalism in a given country. In Asia and Africa, any notion of ‘Constitutionalism’ can only have relevance when seen in the context of the over-all development sought by the people. This calls for an open mind in order that we may fully appreciate the nuances of the process of adaptation of contemporary constitutional ideals by the developing countries of Asia.

It is in the realm of constitutional ideals that the American experience captures the Asian imagination (and indeed the rest of the world). This is so even where Asians are critical of developments in American Constitutional Law and Practice. As Beer points out, most of us are apt to overlook the historic antiquity of the foundation documents of the Constitution of USA because we have the image of USA as a ‘new’ country that came into prominence after World War II. After all, the American and French Revolutions were so close to each other in point of time and spirit. The notions of Equality and ‘Rights of Man’ are common to both movements. Much more that this, I think, what accounts for the contemporary influence of American ideals is the extensive coverage American constitutional and legal discussions receive in the world press and media. I do think this is a decisive factor. Many people in Asia know more

<sup>4</sup> L.W. Beer, *op. cit.*, 4.

about U.S. Constitutional matters than they do about, perhaps, any other foreign nation.

Once a 'written Constitution' has been adopted, then principles of interpretation, the role of the courts and the powers of the Executive and, not the least, constitutional rights of the individual, all become issues in which relevant American material is readily available. It is in two areas in particular *viz.*, of Judicial Review and the Presidential system that U.S. Constitution has exerted the utmost influence on such Asian countries as Japan, India, the Republic of China, Philippines and South Korea. The essence of the comparative study consists in viewing the acknowledged U.S. Constitutional influence in the context of the particular Asian country's history and politics. Whether or not one believes in World Government and other Internationalist notions, one cannot deny the slow but steady evolution of universal norms of Constitutional Government. Be that as it may, the history and other factors internal to a nation will, in the ultimate analysis, be decisive factors. This is exemplified by the essays on Malaysia (by Tun Suffian, Lord President of Malaysia) and Singapore (by Professor S. Jayakumar). The learned contributors have, if I may say so, correctly disclaimed any noticeable U.S. influence upon the making or functioning of their countries' Constitutions.<sup>5</sup> The history and development of the two countries provide the answers to the question posed and, understandably, the learned contributors have analysed the main points of their respective Constitutional history. This, however, does not mean that the U.S. Constitutional experience of the past and present are devoid of any relevance to Malaysia and Singapore. Our contributors delineate the similarities between the Constitution of U.S., on the one hand, and the Malaysian and Singapore Constitutions, on the other. Clearly, there are similarities but I think, the dissimilarities are so many that it is unlikely that studies seeking to establish specific and direct links between these Constitutions would be undertaken. Therefore, I think the relevance may have to be confined to broad theory. However, U.S. decisions in various areas of both domestic and international laws could be usefully cited before Malaysian and Singapore courts. Depending on the nature of the litigation such, citation in argument could contribute to further growth of Malaysian and Singapore Laws.

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<sup>5</sup> "In what way has the Malaysian Constitution been influenced by the United States Constitution?"

At the outset I should say that I learned my law in England, where the law schools hardly touched on the U.S. Constitution, probably for fear that Malaysians and others from the Empire might follow the bad example set by the organizers of the Boston Tea party.... I should further and frankly admit that the Malaysian Constitution has been little influenced by the U.S. Constitution, at least directly, except for the incorporation of concepts that are universal...." — Tun Suffian, *op. cit.*, 131.

"To the question of whether the Constitution of the United States has influenced the Singapore Constitution, the candid answer must be in the negative. This, however, ought not be surprising, because... prior to independence as well as after independence there has not been a very intense relationship between the political and legal systems of the two countries." — Professor Jayakumar, *op. cit.*, 181/2.