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EDITORS' FOREWORD: The Changing Role of Law in Asia: Revolution or Devolution?

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LEXISNEXIS SUMMARY:

... [*vii] This issue of Jindal Global Law Review (JGLR) explores the concerns that confront Asian countries in a world reconstituting itself after a prolonged financial crisis. ... The contributions explore the evolution of laws and regulations in Asia with particular attention to its political, economic and social landscape. ... While a legal framework has been established in Japan that strongly mirrors the west, will Japanese society correspondingly acquire western characteristics such as the increasing legal consciousness and litigiousness of its people? ... Yet, as with Jeong, Umakanth hesitates to overthrow these Western legal principles and prefers instead to retain and tinker with them. ... This conforms to the editors' understating of the Asian view on crime, victims and the erasures of trauma. ... Yet, as the case of the Chinese Constitution shows, blindly aping legal principles to please Western nations or to meet Western standards can create incoherence within municipal legal frameworks. ... They question whether Asian culture and values are being used as a justification for insufficiently expanding and deploying a law that is based on Western [*x] principles. ... The result is that the rights framework in Singapore does not meet Western standards. ... With Asian countries re-modeling the structure of their legal education to follow the American format, Gupta asks whether lawyers in Asia will soon be mass-produced along American lines. ... Examining the reforms in legal education in different Asian countries brings-up the same questions that others have asked in the larger context of laws and regulations in Asia. ... To conclude, the articles not only discuss Asian issues but also seek to put forth the non-Western understanding of law and justice.

TEXT:

[*vii] This issue of Jindal Global Law Review (JGLR) explores the concerns that confront Asian countries in a world reconstituting itself after a prolonged financial crisis. The contributions explore the evolution of laws and regulations in Asia with particular attention to its political, economic and social landscape. Multiculturalism has thus far dominated

the discourse on Asian laws. Today, the success of multiculturalism is being questioned. In that vein, Zizek finds that multiculturalism is a perverse logic of multinational capitalism. n1 Further, Chimni cautions that "both cultural essentialism and reductionist materialism are unhelpful in understanding an Asian approach" to law. n2 A combined reading of Zizek and Chimni can be used to evaluate the much vaunted growth of capitalism with an Asian face. No doubt, the growth of capital and foreign investment is the driving force behind many Asian countries' legal reforms. However, before the recent global financial crisis, globalization meant following Western policies and practices on law and legal reforms. Some scholars believe that the post-crisis world stands for a reversal and reassessment of these practices. This new Asian approach to law means both; groping towards Westernization as well as running away from it. Articles in this issue reflect this state of indecision among scholars and policy makers. It is with this in mind that this issue sets out to draw the contours of a new Asian approach to law.

The present volume is our first thematic one. It opens with Justice Krishna Iyer's moorings on the philosophy of life and law, or what he calls the *jurisconscience* and the disconnect within Asian states. JGLR's objective of providing a platform for alternative legal scholarship n3 is inherently connected to its location in Asia. Through its Asia focus, this issue carries forward the central inquiry of our previous issues i.e., the assessment of global processes [*viii] as seen from the multi-colored lenses of different perspectives. Through its diversity of contributions covering jurisdictions such as Japan, Korea, China, Cambodia, and Singapore, it represents a dialogue that is gradually gaining primacy, one between the global East and West.

McAllin's paper titled "Does Law Matter in Japan? The Emerging Role of Law, Lawyers, and Legal Institutions in the Revitalization of Japan" goes to the heart of the inquiry that this volume raises -- how do we characterize legal change in Japan? McAllin examines the process of Japanese deregulation and the factors that motivated it. Was the process of legal 'reform' a response to western criticism or a product of internal review? Its effect on Japanese society was to transform it from a "closely controlled, group-oriented society to one based on the concept of individual rights". While a legal framework has been established in Japan that strongly mirrors the west, will Japanese society correspondingly acquire western characteristics such as the increasing legal consciousness and litigiousness of its people? Or is there such a thing as cultural rooting in Asia that can withstand structural shifts in the law towards western models while retaining the identity of Asian societies and cultures?

Jeong's article describes a similar struggle between Korean culture and its ability to absorb and adapt to western-style, 'universal' corporate governance norms. Reforms such as increasing transparency and corporate competitiveness which Koreans were lead to believe will lead to the creation of 'world-class' Korean companies. Despite this, the objective of reducing corporate fraud by increasing transparency has not been met. Corporate fraud is still prevalent in Korea, just as it is in those Western nations from whom Korea has adopted its corporate reforms. Adopting universal Western legal principles will not succeed unless they are tailored to address the concerns arising in Korea. Yet Jeong returns to those very same Western legal principles to address legal reforms in Korea.

Umakanth's piece shares with Jeong the struggle between Asian and Western values and their reflection in the regulation of corporate behavior. Umakanth compares the role of independent directors in China and India to the US and UK. In that sense he directly confronts the universalization of Western principles in Asian countries. Umakanth finds that structural, political, legal and cultural constraints exist in China and India that limit their ability to blindly adopt Western principles of corporate governance. Thus, Umakanth argues that structural differences as much as cultural ones are responsible for the unsuccessful attempts at law reform along Western lines. Yet, as with Jeong, Umakanth hesitates to overthrow these Western legal principles and prefers instead to retain and tinker with them.

Davis considers the interplay of law, culture and politics in China's relationship with Tibet. The article provides a substantive analysis of Chinese laws and regulations that govern Tibet with the objective of determining how [*ix] China is addressing Tibet's concerns. Given India's role in Tibet and the history of India's relations with China, the future of Tibet plays an immense role in the stability of South Asia as a whole. The article raises a question that is fundamental to the theme of this issue, i.e. what is the role that law plays in determining the future course of events in Tibet?

Mohan and Sathisan argue that the participation of victims in war crime tribunals does not erase their traumatic past. They offer ways in which to "conceive and engage with non-judicial measures outside the court-room which may be more resonant with victim civil parties". Mohan and Sathisan challenge the formal understating about victims' participation in such tribunals. This conforms to the editors' understating of the Asian view on crime, victims and the erasures of trauma. The Asian perspective, the editors maintain, is far removed from the Freud-inspired inquisitorial view of a victim's past.

GU and Chen consider how the Chinese legal system has evolved through the recent enactment of the Chinese anti-monopoly law. The authors question whether this law, which represents China's path towards legal evolution, meets the standards and expectations of the West? The authors resist the Western critique of China's new law as not progressive enough. They present a defense of this law along the lines that other contributors to this volume have done of other laws in Asia. The law must consider China's own interests and circumstances. Time, or rather the direction of change that a law presents, is another factor that should be considered in evaluating the content of new laws. The authors argue that the intent behind China's anti-monopoly law rather than the content of the law itself should be examined.

Deva, on the other hand, challenges (rather than defends) the utility of the 'transitory' Chinese Constitution of 1982. He favors a universal and not a pluralistic constitutional standard. Deva believes that it is necessary to have uniformity of legal standards, even if those standards have been perpetuated by the West. He argues in favor of borrowing from the West. Yet, as the case of the Chinese Constitution shows, blindly aping legal principles to please Western nations or to meet Western standards can create incoherence within municipal legal frameworks. Accordingly, the Chinese Constitution enunciates constitutional principles that seem almost practically irrelevant given the political structure of China. What then is the objective in seeking the Chinese Constitution to meet Western benchmarks? Is it possible to ignore the political landscape of China in designing and critiquing its law? Can we characterize a law that follows Western principles in letter but is far removed from the spirit and politics of its people as revolutionary?

Shi and Wong directly confront the argument against pluralism in their article on counter-terrorism laws and human rights violations in Singapore. They question whether Asian culture and values are being used as a justification for insufficiently expanding and deploying a law that is based on Western [*x] principles. They ask whether human rights standards are universal. They contend that more than legal principles, it is the inactivism of Singapore's judiciary that has stunted legal change and evolution in Singapore. The result is that the rights framework in Singapore does not meet Western standards. Should we then characterize the framework in Singapore as regressive? Or can we evolve a framework of assessment that is not dependant on Western standards?

Gupta's piece befittingly concludes this volume on law in Asia with the review of a book that is a tribute to Prof. Malcolm Smith, a pioneer in the field of Asian law. With Asian countries re-modeling the structure of their legal education to follow the American format, Gupta asks whether lawyers in Asia will soon be mass-produced along American lines. Examining the reforms in legal education in different Asian countries brings-up the same questions that others have asked in the larger context of laws and regulations in Asia. Responding to these questions requires a deeper inquisition of Asian perceptions of culture and society.

To conclude, the articles not only discuss Asian issues but also seek to put forth the non-Western understanding of law and justice. Authors have used myriad techniques; from comparative to contestational. We hope that this issue not only adds to the existing world of information but to consciousness as well about Asian issues and solutions.

FOOTNOTES:

n1 Slavoj Zizek, *Multiculturalism as the Cultural Logic of Multinational Capitalism*, 225 NEW LEFT REV. 28

(1997).

n2 B. S. Chimni, *Is There an Asian Approach to International Law?* 14 ASIAN YEARBOOK INT'L L. 264 (2010).

n3 V. Kanwar & P. Singh, *Editors' Forward*, 2 JINDAL GLOBAL L. REV. I-IV (2010).