BOOK REVIEW

Legal Education in Asia: Globalization, Change and Context (Stacey Steele & Kathryn Taylor eds., Routledge: UK, 2010) Price: £ 95, Hardcover ISBN: 978-0-203-86225-4

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"Legal Education in Asia: Globalization, Change and Contexts" locates itself as the "first significant edited collection available in the English language on the subject of pre-qualification legal education in Asia".[1] For the publishers (Routledge) it is part of the wider "Law in Asia" series,[2] that includes other titles like "Public Interest Litigation in Asia", "Asian Discourse on Rule of law", "New Courts in Asia", "Regulation in Asia" etc. Many of the essays in this book had their genesis in the papers presented at a conference organized in memory of Professor Malcom D. H. Smith (late), Founder-Director of the Asian Law Centre at Melbourne University, Australia. Most of the contributors are also connected to this Centre. In a way, this book has 'emerged' as a collection of ideas rather than as a structure pre-determined by the editors. This also explains some of the shortcomings of this book.

The book comprises sixteen chapters divided into five parts. Part I reflect upon the theme of globalization in legal education and pays homage to the eventful life and career of Malcom Smith. Part II (Legal Education and Contexts) and Part IV (Country Case Study) are focused on Japan and present a structural criticism of legal education. Part III (Legal Education in Developed Economies) describes the reforms in legal education in Hong Kong, Taiwan, Singapore and South Korea. Similarly Part V (Legal Education in Transitional Economies) describes developments in legal education in such disparate jurisdictions as China, Vietnam, Afghanistan and Cambodia.

To appraise this work the reviewer first asks, what according to the editors is "Asia"? They bravely declare that they have not confined themselves to a "closed definition of Asia" and have traveled outside the traditional "rubric

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1. *See* LEGAL EDUCATION IN ASIA, GLOBALIZATION, CHANGE AND CONTEXTS 6 (Stacey Steele & Kathryn Taylor eds., Routledge, 2010).
2. *See, e.g.*, ROUTLEDGE LAW IN ASIA, http://www.routledge.com/books/series/routledge_law_in_asia_SE0821/(last visited, Dec.13, 2010).

of Asia".[3] It seems this traditional rubric of Asia according to the editors is simply Asia-Pacific. The editors give themselves credit for stretching the definition to include China and Afghanistan, as exceptions. But South Asia, Middle East and the post-Soviet Republics of Central Asia have been left out entirely without any explanation.[4] Omission of such vast areas of the continent makes the work less comprehensive and perhaps inadequate. Especially India or the Gulf-States are central to the continent and may have been of interest to an observer outside the region. A better strategy might have been to take representative samples from each region in Asia. Also removal of a vast part of the continent from the book's purview removes the "comparators", so to speak. For example one would like to know how India's law-schools function relative to China. What are the developments in Islamic legal education in the Arab world or in Pakistan as opposed to Indonesia? The editors on the other hand, put together an arbitrary assemblage of Japan, Korea, China, Indonesia, Taiwan, Vietnam, Hong Kong, Singapore and Afghanistan. There is very little connection between the jurisdictions covered and the content is neither adhesive nor comprehensive.

The book's content is also unevenly distributed. Almost a quarter of the book is dedicated to Japan (Part II and IV). This is not surprising in view of Malcom Smith's connection with Japan. In contrast, China – the largest and most prominent Asian jurisdiction gets a single chapter (Chapter 14 by Sarah Buddulph). Also, Singapore, perhaps the hub of educational innovation in Asia, is represented only by a short essay on the new curriculum at the Singapore Management University (Chapter 8 by Kee Yong Low). This lack of a balanced and coherent structure is an inevitable result of the circumstances of its origin, as indicated earlier.

The overarching theme of legal education reform in Asia seems to be Americanization. The effort in most jurisdictions is to emulate US practices in course, curriculum and pedagogy. In the very beginning of the book, the editors promise to provide "a context" to the developments all over Asia. "Context" and "globalization" form part of the iconography of the book, being displayed prominently on the cover design. However the rest of the book fails to live up to the promise. At the very beginning the authors try to make a brave effort to introduce an overall theoretical framework. In their essay, Kent Anderson and Trevor Ryan (Chapter 3, *A Comparative Critique of Admission to the Legal Profession and Japan's New Law Schools* –compare the state, legal practitioners, markets and educators to 'gatekeepers' and 'stakeholders', all of whom play a complementary role in shaping the future direction of legal education in Japan. They indicate that all these stakeholders should play

3. Steele & Taylor, *supra* note 1, at 7.
4. Professor Cheng Han Tan in his influential article on Asian legal education accepts the broad categorization of civil and common law systems and takes representative samples from South Asia, South East Asia, China, Japan etc. This, according to the reviewer is a better view. *See generally* Cheng Han Tan et al., *Legal Education in Asia*, 1 ASIAN J. COMP. L. (2002).

a symbiotic role instead of the State being the principal gatekeeper. Again in Chapter 4 (Internationalization of Legal Education), Jeff Waincymer, while focusing on Australia deliberates upon various facets of internationalization of legal education. The author details the debate surrounding the introduction of a "comparative" or foreign law component in the curriculum.

However the anthology fails to adhere to the analytical framework provided in Chapters 3 and 4. The "gate keeper model," expounded by Anderson and Ryan, is exclusively in the Japanese context. Arguably, this has resonance in Korea, Taiwan and China which have somewhat similar systems. But, the question arises as to how far is it relevant for common law jurisdictions such as Hong Kong or other jurisdictions like Indonesia and Cambodia? Indeed, there has been no effort in the subsequent chapters to expound on the model. If the state has a stifling presence in the Japan and Korea, then in Hong-Kong and Singapore the roles are reversed. It is the market that seems to direct the change in legal education. The question therefore arises who would represent the social interest in legal education in absence of the state? One answer can be that the role of the State will be fulfilled by the enlightened profession itself. Carol Jones does recount the traditional activist role of the Barristers in Hong-Kong that indicates such a possibility. Unfortunately she herself suggests that such activism arose out of a certain elitist Anglo-Saxon understanding of the legal profession that is on the wane. Therefore it would seem that legal education in Hong-Kong and Singapore is left with no other "gate-keeper" than the market. This reverse state of affairs may be just as detrimental as the situation in Japan. Carol Jones (Chapter 6) does raise the concern in context of Hong-Kong, but fails to address it. She also fails to connect the discussion to any particular analytical framework. The regulatory system guiding legal education in Cambodia and Vietnam has not been discussed in detail. These once again leave big lacunae in the content.

The other authors largely avoid any discussion on the substantive curriculum. The book is focused more on the institutional changes. This leaves the excellent essay by Jeff Waincymer (Chapter 4) an isolated, still-born exercise.

Of all the jurisdictions, the civil-law troika of Japan, Taiwan (Chapter 7 by Tay Sheng Wen (tr) Sean Cooney) and South Korea (Chapter 9 by Simon Spencer and Reyner Lee) cover bulk of the content. The authors describe the recent changes in pre-qualification legal education in these jurisdictions in detail. In the period between the late nineteen and early twentieth century all three jurisdictions had adopted Civil, Criminal or Commercial Codes based on the one prevalent in Imperial Germany. The course, curriculum and pedagogy in these countries have evolved accordingly, on the Teutonic model.[5] Recently

5. But these jurisdictions have not remained completely immune to the American influence even before the current phase of reforms. *See* MASAHIKO OMURA, SATORU OSANAI , MALCOLM SMITH, JAPAN'S NEW LEGAL EDUCATION SYSTEM: TOWARDS INTERNATIONAL LEGAL EDUCATION?, http://www.law.anu.edu.au/anjel/documents/ZJapanR/ZJapanR20_07_Smith_etal.pdf (last visited Jan. 18, 2011) (overviewing the legal education in Japan).

all three jurisdictions have veered from the undergraduate degree towards the American model of postgraduate degree. In Japan, already seventy four new law schools where law is read both at an undergraduate and postgraduate level are operational. Korea has introduced the postgraduate law degree and will phase out the undergraduate law schools by 2013. In Taiwan, the consensus seems to favor introduction of a postgraduate law degree.

Taiwan is still at the stage of introspection. Though the authors have not made it clear as to what is the impulse driving the change in Taiwan, the reviewer submits that presumably factors that drove changes in Japan and Korea drive Taiwan as well. Tay-sheng Wang (tr. Sean Cooney) proposes a 'two-track – multiple outcomes' system where post-graduate and graduate law schools will co-exist. However, graduate students will be required to make a choice at the outset if they wish to read law in order to practice or simply to acquire non-vocational legal knowledge. Students who choose the former will receive legal training that is similar to what undergraduate law students receive. This approach is novel but it is not clear to the reviewer where this proposal stands in the overall scheme of legal education reform. It is also not clear as to how this proposal will increase the supply of qualified lawyers with appropriate skills in the legal services market or for that matter qualified law researchers.

The reviewer finds the chapters in Part III insufficient. The impulse for the reforms and the outcome sought therefrom should have been made clear to the reader. The author provides only a few reasons for the reforms in Taiwan and Korea, such as increasing need for international trade lawyers. The content fails to connect the skill shortage to the reform in legal education – how will a postgraduate course produce better lawyers? A little more discussion on substantive curriculum would have helped. "Skill shortage", the reviewer thinks, is not the main impulse; the *raison d'être* for these changes are far more fundamental. In spite of their complex capitalist economies, these countries were marked by an exalted position of the bureaucracy and the State apparatus vis-à-vis the courts and a reticence among the population in seeking legal recourse for dispute resolution. In the past, this unique situation in the society (especially in Japan) has been seen both, as an effect of a lower societal development, as well as a hallmark of a fundamentally harmonious and consensus driven society.[6] The preeminence of this State centric system started waning away from the early nineties. A plethora of factors, prominent among them external pressure by key trading allies like USA and the Asian financial crisis in 1997, paved the way for change. These changes aim to dismantle the "developmental state" i.e. the State focusing on economic development through

6. *See* Masanobu Kato, *The role of law and lawyers in Japan and USA*, B.Y.U. L. Rev 627 (1987) (For the comparative analysis between the role of law and lawyers in Japan and USA).

heavy bureaucratic interference in business.[7] In case of Japan the primary force behind this change is still primarily external pressure while in case of Korea (and possibly) Taiwan, the domestic democratic reforms constitute a powerful force behind these changes. It is submitted that knowledge of this "context" is necessary as the contemporary reforms are no longer confined merely to the "superstructure" of syllabus, pedagogy, content but have spread to the "infrastructure" of degree, bar exam and the legal values imparted. These societies need more and different lawyers on the American mould as a part of a greater program to reorganize their societies on a more liberal democratic model.

China is another system, so to speak, in the tradition of German civil law. Sarah Buddulph's essay takes the reader through a tour of China's history of legal education, through the Republican period, the Cultural Revolution and, finally, the socialist market economy. The Chinese reforms, the author says, are predicated on the Communist party's 1997 vision of "governance is according to law". The notions of rule of law as understood in China and that understood in the west are arguably different.[8] Though this debate could not have been accommodated in the chapter or even the book, the author could however, have elaborated on the Chinese expectations from the curriculum change and outputs from new law schools. It would have been interesting to know how China expects a different breed of lawyers from these law schools charting American lines.

The authors have touched upon two subscripts in the above mentioned chapters, namely- the national bar examination and the substantive curriculum. In Japan, Korea and Taiwan the authors detail the oppressive shadow of an intensely competitive bar examination on legal education, where the rate of success is between 2 percent and 10 percent. The bar exam has resulted in crammed schools, fierce competition and extremely high legal fees by restricting the number of qualified lawyers artificially. It is also generally understood to have produced a system of legal education that encourages rote learning at the cost of skill development. Effort has been made in Japan and Korea to relax the bar examination. Korea plans to increase the rate of intake to approximately 5,000 from the present number of 1,002 (more than 30%). According to the authors, Japan plans to increase the pass rate to about 3,000 per year by 2010 from the 1990 average of 500. In China, according to Sarah Buddulph the bar examination and the National Judicial Examination play a large role in deciding law school curriculum. The author points out that many

7. *See* Tom Ginsburg, *Dismantling the "Developmental State"? Administrative Procedure Reform in Japan and Korea*, 49 AM. J. COMP. L. 585-625 (2001).
8. There exists lively scholarly debate on whether rule of law is possible without liberal democracy. For a quick overview, *see* Randell Peerbum , *Let One Hundred Flowers Bloom, One Hundred Schools Contend: Debating Rule of Law in China*, 23 MICH. J. INTL L. (2002), *available at* http://ssrn.com/abstract_id=316962(last visited Dec. 13, 2010).

in China question the propriety of the undue weightage given to exams but she withholds her own comments on the issue. The reviewer submits that it would have been instructive if the authors could contrast these national bar examinations with the bar examinations in the USA, with reference to the success rate and the skills tested therein. There have been several scholarly works on the desirability of the bar examination in the US itself,[9] some of that scholarship would have been relevant to the North-East Asian nations as well. A more intensive scrutiny of the bar examinations would have been useful. Kent Anderson and Trevor Ryan seem to suggest diluting the intensity of the bar exam but they do-not press their point.

The authors touch upon the substantive curricula in these law schools but they do not elaborate on this. It would be interesting to know how these societies seek to reconcile a liberal legal education in a fundamentally authoritarian framework, especially in case of China.

In her essay on the common law system of Hong Kong, Carol Jones (Chapter 6) tells us that Hong Kong, unlike its colonial parent United Kingdom (UK), does not consider social inclusion as one of the goals of legal education. It has remained a society characterized by "elitist values" and "status hierarchies".[10] In such a society, law was a "gentleman's profession" and the bar provided a sort of aristocratic counterweight to undemocratic government. The class hierarchy was maintained by the requirement of a high degree of proficiency in English that few possessed and frequent elite voyages to the UK. The author makes particular mention of the divide between the students of Hong Kong University and City University. The former served the social elite who preferred to be barristers and the later served a wider section of society, in terms of producing lawyers from the less prestigious business law firms.[11] Post reversion to China, the old English speaking elite found their status to be devalued. The old stress on English has still not disappeared but Putonghua is increasingly becoming important in the world of commerce and government. The author deplores Hong Kong's lack of a distinct "local legal identity" in this melee of change and confusion. She fears that market-driven legal education would only result in a class of comprador lawyers whose only goal would be to act as interlocutor between China and rest of the World, de-hors any idealism and sense of social responsibility of the Bar.

It is a pity that the chapter on Singapore focuses only on the curriculum and pedagogical approach of the School of Law of the Singapore Management University ('SMU Law'). There is no mention of its peer the National University of Singapore (NUS). A discussion on NUS would have been rewarding in its

9. *See, e.g.*, Daniel R. Hansen, *Do we need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case Wes. L. Rev. 1191 (1995).
10. Steele & Taylor, *supra* note 1, at 114.
11. Steele & Taylor, *supra* note 1, at 123.

own right as NUS has successfully managed to brand itself as "Asia's Global Law School". Another area of interest would have been its dual degree LL.M. program offered with New York University and East China University of Political Science and Law. Low states that one of the basic functions of SMU Law is to "produce commercially oriented lawyers". Thus, unlike Hong Kong, SMU has no illusion as to its true mission.

The authors herein strangely do not comment upon endeavors by both Singapore and Hong Kong to emerge as regional education hubs and produce "world class research Universities"[12] and actually export its educational services, including legal education.[13] It is not clear to the reviewer how an anthology dealing with "legal education" can avoid globalization.

The reviewer can only add a postscript. The American model of legal education with its emphasis on "marketability" is still based on certain inherent notions of democracy and social responsibility. Thus it maintains a balance through strong insistence on professional ethics, pro-bono work and social engagement. Neither modern Hong Kong nor Singapore, both authoritarian societies, share this democratic ethos. They selectively adopt the model, only to the extent that Americanized pedagogy stresses, i.e. the commercial and material applicability of law, over jurisprudential exposition. Such a selective adoption may be a recipe for disaster in the long run.

Veronica Taylor (Chapter 12) details how Afghanistan sees legal education as a facet of development. In Chapter 15, Dr. Teilee Kong describes Cambodia's return to the French legal tradition with the re-establishment of the Faculty of Law in 1992 and the recent spurt in private universities. Pip Nicholson and Samantha Hinderling (Chapter 13) evaluate the effectiveness of donor funded, ad-hoc legal training in Vietnam. The essays on these three peripheral but emerging societies are more descriptive than analytical but they certainly add diversity to the content.

Chapter 16 by Jemma Parsons and Jamhari Makruf is insightful. The authors recount the efforts by Indonesian Islamic institutes to convert into modern universities teaching both secular and Islamic law and social sciences. According to the authors the ultimate aim of these institutes is to produce an enlightened Muslim. Three trends are prominent, namely (a) institutional change to take the institutes closer to secular universities, (b) integration of Islamic and secular subjects, and (c) a demand for localization of content. This process has been encouraged by an increasing interest in *Sharia* law and Islamic finance. The authors could have done a comparative analysis on whether this

12. *See* Jamil Salmi, *The Challenge of Establishing World-Class Universities*, http://portal.unesco.org/education/en/files/55825/12017990845Salmi.pdf/Salmi.pdf (last visited Dec. 13, 2010).
13. *See* Rosemary Deem et al, *Transforming Higher Education in Whose Image? Exploring the Concept of the 'World-Class' University in Europe and Asia*, http://www.international.ac.uk/resources/trans.pdf (last visited Dec. 13, 2010).

is a stand-alone experiment in Indonesia or part of a larger trend towards change in legal education in the Muslim world.

To conclude, the reviewer finds the book to be no more than a mere series of selected snapshots of legal education in Asia that can at best enhance the general knowledge of a casual observer. It can be broadly slotted into the category of comparative law but it details various qualities of jurisdictions that are difficult to compare. Some of the individual articles are engaging and reflect well upon the institution that Malcom Smith built. But legal education in Asia is not a virgin territory; there is a plethora of literature on the subject. The reviewer is of the view that this "first significant edited collection" could have been a more focused and directed effort.