

THE CONFUCIAN RENAISSANCE
BY REG LITTLE AND WARREN REED
BOOK REVIEW

Longer Book Reviews

Reg Little and Warren Reed, The Confucian Renaissance, Federation Press, Sydney, 1989 1-xxx Frontispiece, ix-xi Table of Contents, xiii-xvi Introduction, 1-109 Text \$19.95 (r.r.p) (Paperback)

The *Peoples' Daily*, the official organ of the Chinese Communist Party, carried an unusual lead story on 21 March 1991. It concerned human rights in China. Without so much as a word about the killing of citizens in Tiananmen Square, the trials of pro-democracy students throughout China and the execution of one such student in the preceding week, the *Peoples' Daily* declared that human rights in China were "more realistic, equal and extensive" than those existing in Western countries. The view of human rights in such countries was called "unscientific, incorrect and contrived". China was said to provide superior human rights where they really mattered, eg the treatment for the old, the handicapped and ethnic minorities. The *Peoples' Daily* contrasted the current state of human rights in China with the position before in 1949.

The notion of a right to speak out against the régime may be enshrined in the constitution of the Peoples' Republic of China; but putting that right into practice is another thing. Events such as those of June 1989 in China, and other events closer to home in countries which share an apparent commitment to Western human rights values and to the rule of

law, pose the question whether such notions are truly universal. Are they, instead, like the Westminster Parliament, a delicate plant not likely long to survive in different climates, with significantly different legal and cultural traditions?

This is one of the subjects tackled by the authors of this important new book. Although its focus is cast more widely than constitutional, human rights or legal concerns, it is an important book for members of the Australian legal profession. It is written by two former officers of the Australian foreign service. They draw on their extensive experience in Asia. They are plainly sympathetic to many of the values and achievements of Asian communities and determined to communicate some of the essence of these values to Australians. The book's message is that Australians, like it or not, must adjust to the place of Australia in the world. Over-simplifying the message somewhat, the authors contend that China and the Four Dragons (Taiwan, Republic of Korea, Hong Kong and Singapore) remain profoundly influenced by the cultural inheritance of the Confucian ethical tradition. They state that this tradition is based ultimately not on notions of human rights but of human obligations; not on the individual but on the community; and not on the rule of law but the rule of virtue or, in practice, of powerful men.

Australia finds itself in a part of the world which is changing rapidly. It is clearly destined to be influenced profoundly by the resurgent economic and political power of what the authors describe as "the North Asians". To "North Asians", Australia is something of an historical

anachronism: a basically European culture left over South of Asia, after the departure of a former European colonial empire. To the extent that Australia is considered at all in their thinking (which is not much) it is seen as a place unsympathetic to Confucian values and one condemned to a kind of disorganised mediocrity.

The authors do not judge this clash of cultural norms. They state the obvious. If Australia is to find its place (and that of its people) in a region increasingly likely to be dominated by the "North Asians", it must become more aware of their approaches to fundamental issues: including such issues as human rights and the rule of law.

On specifically legal points the authors have a number of important things to say. For example, they trace to a "recurring debate between Confucian and legalist factions throughout Chinese History" a suggested tension between rule of law notions and "government by Man or Virtue". In *The Analects*, Confucius declared:

"Lead the people by laws and regulate them by penalties and the people will try to keep out of gaol but will have no sense of shame. Lead the people by virtue and restrain them by rules of decorum, and the people will have a sense of shame and moreover, will become good."

Even superficial familiarity with the societies of North Asia demonstrates the continuing impact on them of this Confucian instruction. Confucius may simply have captured cultural norms which were already well established. But by expressing them clearly, he provided a banner to those Chinese (and other Asian) communities who question legalism and individual rights, promoting instead the power of the state as exercised by its highly educated élite.

Confucius' teachings gained widespread support in China paradoxically because the Qin Dynasty (221-207 BC), the first to unite China, was a period of Draconian law. It was because during this period the tenets of legalism predominated, rigidly stressing the letter of the law over all other considerations, that the teaching of Confucius and the Hundred Philosophers who succeeded him gained the upper hand in China. They have maintained that upper hand, according to the authors, in the evolution of Chinese civilization over more than two thousand years since.

Whilst Asia remained closed, or later subservient, to Western cultural and economic interests, this differing philosophy and world view was Asia's concern. But in an age of telecommunications, international travel, growing international trade and interjurisdictional contacts, the differing perception of the rôle of the law in society held in China, and countries sharing its Confucian legal philosophy, have become much more relevant. Nowhere are they more important than in the Pacific and for countries like Australia which look set to come increasingly under the influence of the economic power of the "North Asians".

The book traces the early and later acquaintance between the Asian communities and "the Christian barbarians". It sketches the importance of the nineteenth century leadership of Japan, of the Chinese Revolution and the Vietnamese "triumph" over the United States. It outlines the pervasive influence of the English-speaking people in the global bodies which were established after the Second World War. The authors suggest that the North Asian communities are content to watch these global systems "decay, until

pressure mounts to oblige them to accept leadership without becoming involved in overt contests and conflict".

It is in this context that the authors urge the importance of achieving an understanding in Western countries of the "modern form of renaissance of Confucianism" that lies behind the "economic miracle" of Japan and helps to explain also the rapid advance of the Four Dragons and to foretell the economic advance, in the twenty-first century, of China itself. Amongst other things, the high emphasis on rigorous even ruthless competitive education and the allotment of lifetime positions in government and private bureaucracies can be traced directly to Confucianism. The authority and responsibility carried by officials who rule society is accepted "in a manner unthinkable in a non-Confucian environment". Asian societies lay emphasis on the rule of man, rather than of law, to maximise harmony and cohesion. They stress ritual or rites and ensure that individual activity is pursued within a framework of established ceremony and courtesies which help to preserve the social consensus.

The authors note that, to the degree that Western observers perceive what is happening, they tend to be critical of the "less than rigorous application of the exact letter of the law" in Japan:

"The long Confucian-legalist debate which runs through Chinese history gives a dimension to Chinese and Japanese perspectives on the law which is lacking in the West where there has been no similar contest over the merits and demerits of a legalist approach to the ordering of society."

Trying to understand such a fundamentally different

perception of law and its rôle in society is difficult for a Western lawyer brought up in a country which with rare exceptions accepts that "a government of laws not of Men" is a fundamental tenet, not seriously to be questioned. Professor Ronald Dworkin (eg in *Law's Empire*) may argue that in our system, like the Confucian, law is sustained by its own mandarin class, their power nourished by accepted notions that they are instruments for society's good. But most members of society and most of our mandarins appear conscientiously to accept such a limited rôle. That is why the questioning of such a notion comes as something of a shock.

During the Gulf conflict in 1991, President Bush declared, as a major war aim of the Allies in liberating Kuwait, the establishment of a "New World Order". He affirmed both before and after the end of the conflict that its purpose was to ensure respect for "the rule of law" in the international legal and political system. It would be interesting to question the authors of this book on the extent to which, in the minds of North Asians, the United States (and its Western Allies) have lived down the "Vietnam triumph". To what extent have Western values, led by the Flagship of the United States, re-established their hegemony over international institutions that will design the shape of the world in the twenty-first century? To what extent will the next generation of young people in Asia, exposed to Western ideas, come to reflect the individualistic values of Western societies?

The importance for lawyers of this small book, is that it takes them effortlessly into the world of a different

culture. The value to Australian lawyers in particular is that that world appears destined profoundly to influence our part of the globe in the years immediately ahead. According to the authors, Japan, China and kindred societies will continue to grow in power. They will increasingly play down Western concepts of rights and individualism in order to maximise national purpose and community obligation. They will be little constrained by Western notions of legality, except where these are an essential part of maximising advantage. Recent events in Singapore and Malaysia lend force to these predictions.

Clearly, it will be important for lawyers of the Western tradition, dealing with lawyers in these fast developing economies, to be aware of the different starting points for their approach to "legal" issues. Supporters of the universality of notions of the rule of law and human rights point to the persistence of support for them in Eastern Europe, despite forty years of autocratic rule. Condoning departures from human rights in developing countries may be seen, from this perspective, as involving a cultural judgment that rights of individuals in such countries are less worthy of respect than those of people in developed communities.

On the other hand, the established philosophies of Asia existed for millennia before the comparatively recent attempt to define universal human rights. It cannot be expected that such philosophies and attitudes to law and to society, can be swept aside in a generation or two. There may even be lessons which Confucian societies, with their emphasis on community and obligations, may have to teach the

fight-asserting societies of the West, including Australia.

Looked at from the perspective of the end of the barren debates of the Cold War, and the demise of international communism, there seems little doubt that the twenty-first century will confront different and possibly still more potent ideological forces. One of these is clearly the rise of fundamentalist religions. These include fundamentalist Christianity, Hinduism and, most especially, Islam. We already have clues of what is boiling there. The value of *The Confucian Renaissance* is that it turns attention to another semi-spiritual and certainly philosophical force which is in the ascendent. The rapid rise in the economic power of the countries subscribing to Confucian philosophy cannot now be ignored. And as the authors demonstrate, it is a philosophy with important consequences for lawyers in Australia. Indeed, it has portents for the shape of the new world legal order which may not be as new as some people presently expect.

The book can be criticised on a number of grounds. There is some repetition. There is no adequate critical analysis of the arbitrariness and political oppression of a rule of "Men or Virtue". There is no reflection, for example, on the lowly status of women in some Asian communities. Confucius meant what he said when he talked of a rule of men or virtue. There is no index. The cover material does not disclose the background and credentials of the authors. But these are comparatively small points when weighed against the value of the basic ideas which the authors have distilled and presented. And distillation this is. In a book of 109 pages, freed of footnotes and learned discourse, they have conveyed an important message relevant to all as we approach the 21st century.