

**EASTERN LEGAL SYSTEMS: LAW, CULTURE AND PLURALISM**

**IN EAST ASIA**

**FOREWORD**

**The Hon Justice Michael Kirby AC CMG**

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Countless commentators assert that, if the 20th century was the century of America, the next century will be that of Asia and the Pacific.

As if to herald and symbolise the coming ascendancy, the stroke of midnight on 30 June 1997 saw millions of people around the world glued to their television sets as the colonial flags came down in Hong Kong and the flag of the People's Republic of China was raised. This was at once a telling political and cultural transition. But it was also a legal one. Power, legal power, passed peacefully from one civilisation to another. From a European nation surrendering the last major remnant of its Empire in Asia to a newly confident Asian power of global importance. Each civilisation involved in the events in Hong

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Kong is proud of its traditions. Each would view the past and the future in differing ways. But the passage of political and legal power was unmistakable. It was tangible.

The best outcome of that transition may be an acceptance that the coming century will also be stamped with the same insistence upon the rule of law which was a strength of British rule in Hong Kong as it was refined. It is an idea which is still fragile in the society to which Hong Kong has now passed. It is not foolish to hope that legality, respect for fundamental human rights and for the independence of an uncorrupted judiciary and of a vigilant legal profession (which have played such an important part in the economic success story of Hong Kong) may now spread their influence elsewhere in China. Indeed, elsewhere in East Asia.

Many of the legal systems described in this book will be relatively familiar to lawyers of other countries of the common law. An Australian lawyer entering a courtroom in Hong Kong and Malaysia would feel immediately at home. A New Zealand lawyer sitting in a courtroom in Singapore or, for that matter, in the Philippines, would see the all too familiar features of the adversarial system derived, ultimately, from England.

However, the value of this book is that it not only explains legal systems of other countries of the region outside the common law world but, even in such countries, it goes behind the superficial similarities in matters such as legal dress,

courtesies and procedures to demonstrate the way in which imported ideas have been steadily adapted to the East Asian environment. Ancient philosophies and different religious beliefs have moulded the substance of the law. Differing cultural values have affected the legal systems and the approaches of their personnel.

In the mid-1990s, I had the rare opportunity to serve as Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia. Cambodia is a country whose legal system has been completely shattered by successive periods of revolution, genocide, invasion and isolation. It is unsurprising that the Cambodian legal system does not yet rank a chapter in this book. The difficulty of creating a legal order there, virtually from scratch, cannot be readily imagined by a lawyer familiar with the established institutions and inherited traditions of a country such as Australia. My successor as Special Representative (Ambassador Thomas Hammarberg) has laid emphasis, as I did, upon the necessity of building a rule of law system to provide a lasting foundation for economic prosperity and for the protection of human rights essential to civilisation. The progress of Cambodia remains troubling. But the lessons of those countries which have fared best in economic advancement can be found in this book. To assure long term economic prosperity, it essential to have an established legal system. Only this provides the measure of certainty and predictability which attracts large scale investment. Prosperity is also the best guarantee of the growth of a human rights culture.

It is difficult, in a world of global linkages, to manage a free economy without the ideas of civic freedom spilling over from travel, communication and economic rights.

Rather belatedly, Australia and New Zealand have begun to awaken to their geographic advantages. They have begun to realise the opportunities which lie in their neighbourhood. Those opportunities will extend beyond trading in goods and services. There will also be a great movement of people and of ideas. The ideas will include the rule of law, universal human rights and the protection of the independence of judges and lawyers. But the flow of ideas will be a two-way street. Lawyers from the Antipodes can learn from colleagues to their north that fundamental rights go beyond (although they include) what happens in a police station, courtroom and polling booth. They also involve, as I discovered in Cambodia, the right to food and clean water, to education for children and essential healthcare. These are the urgent priorities for many ordinary people in the societies covered by this book. Lawyers in Australia and New Zealand can learn about the different priorities of different countries. Lawyers in East Asia can learn from Australasian colleagues of the value of stable institutions, predictable legal outcomes and the quest for efficient court procedures.

But neither of us can learn from the other without a ready means to open our minds and to begin the dialogue. This book is a first step on that important journey. I hope that future editions will include chapters on Thailand and the Philippines - and

eventually Cambodia. But I also hope that the authors will suggest directly the lessons which Australasian lawyers can derive from observing their neighbours at work in the law, drawing on the ancient civilisations that underpin their legal systems.

The traffic in ideas now runs in both directions. The era of colonial superiority has passed. Australasian lawyers have begun to understand the great challenge which is presented to them. This book is to be welcomed because it evidences a new attitude - one fitting for the coming millennium.

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