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Legal Education and Legal Traditions: Selected Essays

Edited by Myint Zan*
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This edited volume of 127 pages on legal education and legal traditions is divided into eight essays. Legal education encompasses a myriad of topics spanning from economics to sexual behaviour and reflect various legal traditions, which are philosophical in nature. The traditions taken from the western European legal systems reach as far back to the Greeks highlighted in works by Aristotle and Socrates, followed by European medieval philosophers of various religious traditions, namely Thomas Aquinas (Roman Catholic), St. Augustine (Roman Cathlic) and Baruch Spinoza (Hebrew) as well as 17th-18th century's European political philosophers such as Rousseau and Locke. These laws and traditions have been imported into Southeast Asian (SE) countries via the British colonialisation. These traditions do not consistently prevent the political and constitutional turmoil in some SE Asian countries under dictatorships that trample on rule of law and human rights. Morality plays a role in the law, yet it never stays the same through the ages; the law must deal with changing morality, such as attitudes towards slavery or homosexuality.

Keywords
Devlin, Hart, Histography, Toynbee, Homosexuality, Harriet Beecher, Socrates, Slavery

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The eight chapters of this book treat very disparate topics, some of which relate directly to law, and some not as reflected in the following chapter titles.

Table 1: Eight Chapters and the Authors of the Book

Chapter	Subject	Author
1	Reflections on the Teaching of the Law of Sea of 1982 Law of Sea Convention	Mary George[1]
2	Future of Lawyers as Transaction Costs Engineers	Dennis Wye Keen Khong[2]
3	Human Values in Legal Professionals' Ethics Education	Gita Radhakrishna[3]
4	Teaching Law Undercover	Stewart Manley4
5	Socrates' Refusal to Escape from Prison: Later Philosophers' Possible Views on the *Crito*-	Charlene Constance Chai[5] & Myint Zan[6]
6	What Would Socrates Have Said on Two Conversations About Harbouring Runway Slaves and Running Away from Slavery in *Uncle Tom's Cabin* by Harriet Beecher Stowe.	Chew Yi Ting[7] & Kan Da Xing[8]
7	Relevance of Hart-Devlin Debate in Relation to the International Criminal Court	Chong Jun Min[9]
8	Spillover Thoughts in Rereading Time's Magazine's Obituary of Historian Arnold Toynbee: Teleologies of History, Contingency and *Sub Specie Aeternitatis*	Myint Zan

The editor and authors come from Southeast (SE) Asia, having taught or still teaching law or serving as practitioners (Advocate / Solicitor). The volume features specifically

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only two states of Southeast Asia, namely Malaysia and Burma (Myanmar). The volume is divided into two parts, the first of which is focusing on specific legal questions. The actual legal topics covered are diverse: law of the sea in Malaysia, professional ethics for Malaysian lawyers, teaching human rights under a dictatorship (Myanmar) clandestinely. The second part dwells on legal traditions, neither rooted in SE Asia, nor easily relatable to legal questions. The red thread running through these essays is ancient Greek legal traditions articulated by ancient Greek philosophers including Socrates and Aristotle. Surprisingly, the ancient Roman lawyer Cicero[10] is forgotten. Debated among the three legal philosophers was the nature of the state and whether the individual citizen who has been treated unjustly by the state may morally and legally disagree with the state and escape. Socrates, for example, was unjustly imprisoned but refused to escape from prison into freedom. Aristotle, the reader is reminded, disagreed. He would have escaped from prison if judged unjustly.

The authors of the essays do not in general draw parallels to any unjust acts of the current states in SE Asia or draw on citizens' perspectives on the purpose and ethics of the state. That task is left to an informed reader. Only one author speaks to the dictatorial situation in one SE Asian state, namely teaching human rights clandestinely underground in a military dictatorship (Myanmar) preceding the transition to democracy. The essay remains relevant for the current dictatorship after the coup in 2021. The next theme deals with interdisciplinary studies for law students in Malaysia, but is limited to economics and business as taught in some western faculties, e.g., the Ronald Coase theorem.[11] It is left to the reader who is familiar with law and economics to understand that a law student needs to comprehend the precaution that economic theory can undermine the law as protector of basic human rights. For example, Richard Posner, a Professor of Law and Economics at the University of Chicago posited that the market theory of efficiency ought to be applied to the application of the right to freedom of speech,[12] a fundamental human right which has been attacked in some SE Asian political contexts. The essay on economics and law could stimulate further discussion in the classroom about the modern works by Michael Sandel,[13] a Harvard political philosophy and law professor who describes how the free market mechanism undermines the legal system and weakens its role to assure justice. The concept of interdisciplinary studies for law students is at least explored in the volume, even though limited to economics. Law educators reading

10 Marcus Cicero, On the Laws (trans by David Fott) (Cornell University Press, 2014).

11 Ronals Coase, *The Nature of the Fitm*, 4:16 Economica 386-405 (1937).

12 Richard Posner, *Free Speech in an Economic Perspective*, Suffolk U.L. Rev. 1 (1986).

13 Michael Sandel, What Money Can't Buy: The moral limits of Markets (London: Penguin, 2012).

the volume could be stimulated to think more about integrating other related fields such as anthropology, which is relevant in the multi-ethnic/religious populations of SE Asia, where the human rights rule of protection of ethnic and religious minorities is breached, e.g. in the case of the Rohingya in Burma (Myanmar). Or more thought could be given to teaching about the psychology of judges regarding their social prejudices.[14] Besides the issue of teaching human rights in a dictatorship, one other article that addresses teaching a problematic issue in legal education relates to the widespread corruption among lawyers in Malaysia, breaching the rules of professional legal ethics even though it is an obligatory subject in this country.

Recommendations to cure the problem are plentiful in the essay. The nature of the problem as perceived by the author is that of individual ethics and lack of spiritual values that would produce an honest and conscientious person. The role of dishonesty in the general political and social context might need more attention to the discussion in the classroom. If the political and social context in a SE Asian country is riddled with corruption and suppression of human rights, for example, it can encourage lawyers, whether private or governmental, to engage in the same non-ethical practices just to survive in the profession in that context.

Concerning the interdisciplinary approach, there is throughout the volume a smattering of references to literary figures such as Harriet Beecher Stowe, Walter Scott, Emily Dickinson. The reader is left to contemplate what is the interdisciplinary relation between literature or literary critique and legal education. Shakespeare or Antigone[15] would have been more pertinent prominent literature to include.

One other essay is relevant to the laws in many SE Asian countries, namely, the essay on the Hart-Devlin debate in the UK whether to decriminalise homosexuality at least among men and decriminalise prostitution. The criminalisation was adopted in the British colonies (Indian Penal Code of 1860) and remains to this day in force. The international LGBT & Q movement has reached, for example Myanmar, where LGBT advocates are allowed to parade in the streets, but individuals have been arrested and imprisoned under the 1860 Indian Penal code.[16] Prostitution as a source of income for the very impoverished woman has been part of public debate in Myanmar as the government contemplated legalizing it prior to the coup. The issue is treated in the book as a topic of how law relates to morality or not and whether morality in political

14 Kimberly Papillon, *The Court's Brain: Neuroscience and Judicial Decision Making of Criminal Sentencing*, 49 J. Am. Judges Ass'n 48-62 (2013).

15 Jean Anouilh, Antigone (1951).

16 Michelle Yesudas, Life in the Shadows: Silent suffering in Myanmar's LGBT+ Denmark-Myanmar Programme on Rule of Law and Human Rights (2019).

terms is a matter of populism or democracy. Nonetheless, international law as in the Rome Statute of the International Criminal Court (ICC) is founded in morality for consensus among states. Whether this consensus constitutes a kind of international democracy or not is not explicitly explored.

While political philosophies relating to natural law and social contract with roots in Rousseau and Locke have been presented, the Roman lawyer and orator Cicero has been ignored, who posited law is reason, which is the source of natural law, a gift from gods and reason is above the state because it came into existence before the state. It is left to the reason of the reader to imagine how these theories apply specifically and analytically to the current legal and political governance patterns in SE Asia. The reader is confronted in the latter half of the volume with highly philosophical issues not easily related to issues in the countries of the authors specifically. The essays cover a myriad of disciplines, e.g. historiography and paleontology, not so easily relatable to contemporary law or legal traditions. Socrates again is a favourite figure, but not in the context of ancient legal doctrines; rather he is placed in the context of freeing slaves in America contrary to the pre-emancipation law at the time, compared to Socrates' dilemma not to escape from prison even in the face of injustice. The essay is fanciful but implies the question, i.e., do any of the legal and state philosophies of ancient European political writings pose fanciful issues in the context of SE Asia or not? One of the most intricate essays links social and political history which could be, e.g., found in the works of Toynbee and history of paleontology on the issue whether the evolution of nature mandated the appearance of humans as evolution progressed or not (Stephen Jay Gould vs Conway Morris). Toynbee is proven to have believed in the teleological unfolding of history in any discipline to carry out the Christian God's plan. This raises the question of what is the teleological unfolding of governance and human rights for the peoples of SE Asia? The reader may ask whether, under the concept of Toynbee, patterns in all fields of life fluctuate teleologically and are bound in time to change or not. We do not know, however, in which direction.

The essay on evolution asserts that certain developments were blips of history. The same term is transferred to the occurrence of genocide in the Holocaust. To describe the Holocaust genocide as a blip in history will undoubtedly incur the wrath of some international law scholars specialising in genocide. The Nurnberg trials which were organised to punish the perpetrators of the Holocaust form the basis that justifies creating the ICC today, which is treated in the volume as an example of law interlocking with morality in international law. Rwanda and Myanmar surprisingly are not mentioned in this context. The author explains he removes the word, 'genocide' from its original legal context even though the volume is about legal education. He

relegates the term to a matter of "historical provincialism" of the time, even though since the Holocaust there have been more recent genocides. International law experts may ask whether the ICC is trapped in a mentality of historical provincialism.

The volume is definitely intellectually stimulating, but the reader needs the same breath of knowledge along with a smattering of Latin as the editor and authors to bring coherency to all the disparate issues and their significance for modern law students in SE Asia. Each topic raised could constitute a book in itself, e.g. the ICC and international morality, Toynbee's impact on the history of governance in SE Asia, the theory of teaching human rights underground in a dictatorship, namely the teacher has as much to learn from the student as the student from the teacher and how to keep the subject matter alive for students risking their lives resisting dictatorships. The reader asks how would Socrates, Aristotle and Cicero react? What is the mandate of a practicing lawyer in negotiating for just treatment of such resisters? Or in negotiating a moral framework for economic justice?

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