
A Review of Kevin Y.L. Tan, The Singapore Legal System

Kevin Y.L. Tan (ed.), *The Singapore Legal System*. 2d Edition. Singapore: Singapore University Press, 1999.
Pp. xxx, 531 [Hardcover US\$80, Paperback US\$45].

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We are now witnessing a proliferation of books on the law of East Asian jurisdictions,¹ a reflection of the increasing economic importance of that region (notwithstanding recent turbulence). This volume is the work of a group of law professors of the National University of Singapore and is intended both as a student textbook and as a general introduction to Singaporean legal structures, for general and foreign readers. The first edition was published some ten years ago and was then (we are now told on the back cover) the first “holistic” treatment of Singapore’s legal system in over fifty years. This second edition is almost twice the length of the first, with fourteen chapters overall and entirely new chapters on the “context” of the Singapore legal system, the constitutional “framework,” administrative law, the relations between Singapore law and international law, legal education, and alternative dispute resolution. Remaining chapters deal with legal and constitutional history, Parliamentary law-making, the applicability of English law, jurisdiction of courts, judicial precedent, the legal professions (two chapters) and legal aid. There is no discussion, however, of private law and footnotes are sadly and unacceptably placed at the end of each chapter.

One of the authors tells us elsewhere, though not here, that the “Chinese-educated Chinese [in Singapore] have a deeply-rooted distrust of courts and the law” while the “English-educated Singaporeans (Chinese, Malay, Indian and others) are more

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¹ See e.g. in addition to the present volume, *ASEAN Legal Systems* (Singapore: Butterworths Asia, 1995); A.H. Chen, *An Introduction to the Legal System of the People’s Republic of China* (Singapore: Butterworths Asia, 1992); R.H. Folsom, J.H. Minan & L.A. Otto, *Law and Politics in the People’s Republic of China* (St. Paul, MI: West Publishing, 1992); S. Lubman, ed., *China’s Legal Reforms* (New York: Oxford University Press, 1996); H. Oda, *Japanese Law*, 2d ed. (Oxford: Oxford University Press, 1999); P.-L. Tan, *Asian Legal Systems* (Sydney: Butterworths, 1997); H. von Senger, *Einführung in das chinesische Recht* (Munich: C.H. Beck, 1994).

inclined to push for strengthening of institutions ... The tension between these two tendencies will characterise the Singapore legal system for some time to come."² So it is important to realize that this book tells only part of the story of normativity in Singapore. As in the rest of Asia, the visible Western-style law which is described exists in an already-crowded normative field. There is a hint of this in Joel Lee Tye Beng's chapter on alternative dispute resolution, in which he states that "adjudication may not necessarily be an appropriate dispute resolution process for Singapore taking into account our cultural background," though there can be "no turning back" from the process of reception of English Common Law.³

The book thus deals with institutions and principles which are familiar to common law lawyers, since Singapore—unlike Indonesia, Vietnam, the Philippines, Japan or China—has never known European Civil Law. The interest of the book is in the different reading which the common law receives in the Singaporean context. This context has been described as one of "soft authoritarianism",⁴ even as an "illiberal, quick-march exercise of authority,"⁵ in which "marshalling rather than limiting state power to promote development goals has assumed paramountcy."⁶ So the Common Law exists in an essentially one-party political context, and its private law (very loyal to that of England) is used to augment Singapore's role as an international financial centre, providing the same legal background as that of London and Hong Kong.⁷ What are some of the characteristics of this current and voluntary adherence to increasingly distant tradition?

As stated, the private law has remained essentially in English form. Its content is thus not detailed, and it is said that although "theoretically" it would be open to a Singapore court to reject an English case, "[i]n practice ... that seldom (if ever) happens."⁸ Only in 1993, after some three decades of political independence, was the ongoing reception of English statutes brought to a close. Appeals to the Privy Council ceased in 1994. The chapter on legal education is very critical of the consequences of this state of affairs on legal education, speaking of "an unhealthy obsession with rule-learning

² W. Woon, "Singapore" in P.-L. Tan, *supra* note 1, 314 at 352 [hereinafter "Singapore"].

³ J.L.T. Beng, "The HDR Movement in Singapore" in K.Y.L. Tan, ed., *The Singapore Legal System*, 2d ed. (Singapore: Singapore University Press, 1999) 414 at 427.

⁴ K.Y.L. Tan, "Economic Development, Legal Reform, and Rights in Singapore and Taiwan" in J. Bauer & D. Bell, *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999) 264 at 283-84 [hereinafter "Economic Development"], qualifying Singapore's human rights record at 267 as "average" among developing countries (no extrajudicial killings or indiscriminate imprisonment of political dissidents) and stating at 283 that "... there is little impetus for change emanating from the lower reaches of the political spectrum").

⁵ A. Saint, Review of P. Hall's *Cities in Civilization*, *Times Literary Supplement* (9 April 1999) 9 at 10.

⁶ T. Li-ann, "The Constitutional Framework of Powers" in K.Y.L. Tan, *supra* note 3, 67 at 70.

⁷ "Economic Development", *supra* note 4 at 267.

⁸ W. Woon, "The Applicability of English Law in Singapore" in K.Y.L. Tan, *supra* note 3, 230 at 238 [hereinafter "Applicability of English Law"].

and precedents” and an “especially virulent form” of legal positivism.⁹ The court structure displays a typically common law proliferation of inferior tribunals, with first-instance, High Court jurisdiction beginning only at \$250,000 Singapore dollars (circa \$Can 230,000). The legal professions are not divided, and are now being opened to foreign competition, though slowly. Judges enjoy security of tenure. It is said, however that the common law of defamation and contempt of court are used in a way which seems to “undervalue the community’s interest in free discussion.”¹⁰ Criteria for legal aid are “rather stringent” and subject to a merits test;¹¹ criminal legal aid has been abolished, since the Government did not wish to “both prosecute and defend the same person,” though this does not prevent the assignment of duty counsel and 15% of lawyers have volunteered for a Criminal Legal Aid Scheme.¹²

Singapore law is less varied than that of some other East Asian jurisdictions, however, since the unwritten law of the Malay people (*adat*) has been formally eliminated, “no indulgence” being given to “the customs of the natives.”¹³ Still, Islamic law has proven more resistant and the “Shariah Court” remains competent in regard to Muslim religious, family, and succession matters.¹⁴ It is said, however, that Islamic law “is not a tradition with which the majority of Singaporean jurists are very familiar.”¹⁵

Kevin Tan and his colleagues are thus to be congratulated on providing an excellent overview of Singapore’s western, written law, as it bears on Singapore’s fundamental legal institutions.

⁹ A.R.H. Loke, “Educating the Thinking Lawyer: The Past, Present, and Future of University Legal Education in Singapore” in K.Y.L. Tan, *supra* note 3, 325 at 352.

¹⁰ T. Li-Ann, *supra* note 6 at 92; and see “Singapore”, *supra* note 2 at 321 (“In practice, Singaporeans do not feel entirely free to express views critical of government policy ...”).

¹¹ Y.H. Ying, “Provision of Legal Aid in Singapore” in K.Y.L. Tan, *supra* note 3, 446 at 456.

¹² *Ibid.* at 461, citing Parliamentary Debates 1995, at col. 1349.

¹³ “Applicability of English Law”, *supra* note 8 at 237, and see n. 22 at 244 asking “Would the British have recognised ‘adat’—inadequately translated as ‘custom’—as law, even if they were aware of it?”

¹⁴ Y.T. Min, “Jurisdiction of the Singapore Courts” in K.Y.L. Tan, *supra* note 3, 249 at 278.

¹⁵ G.F. Bell, “The Singapore Legal System in Context—Whither the Concept of the National Legal System” in K.Y.L. Tan, *supra* note 3, 1 at 12, and see n. 70 at 24, listing statute-approved English language books on Islamic law.