



Judicial Independence and the Rule of Law in Hong Kong, Steven Tsang (ed) Hong Kong: Hong Kong University Press, 2001, xvi + 208 pp, paperback, HK\$190].

Since Hong Kong became a Special Administrative Region of China in 1997, there has been continual debate on the extent to which the rule of law can be maintained in Hong Kong. Much of this debate has focused upon the judiciary and the importance of maintaining its independence, both from the national and local governments. The role of the judiciary is especially significant in Hong Kong because there is no elected government and only part of the legislature is elected from geographic constituencies. Thus, the burden of checking the abuse of government power in Hong Kong will frequently fall upon the courts.

This judicial role became particularly controversial during the “right of abode” cases, in which the Hong Kong Court of Final Appeal (CFA) initially ruled against the Hong Kong government on the question of how to interpret Articles 22 and 24 of the Basic Law. Unwilling to accept the judgment, the Hong Kong government made the much criticised (at least by the legal community) move of seeking a different “interpretation” of Articles 22 and 24 from the Standing Committee of the National People’s Congress (NPCSC). Although there is no doubt that the NPCSC had the power to issue an interpretation (under Article 158 of the Basic Law), it was widely hoped that this power would be exercised very rarely and only when a case was actually referred to the NPCSC by the CFA. Indeed, it was not at all clear that the Hong Kong government had the power to seek an interpretation from the NPCSC on its own. Nonetheless, the NPCSC granted the Hong Kong government’s request and issued the requested interpretation on 26 June 1999, essentially overruling the CFA’s interpretation for the purpose of subsequent cases.¹ Given the explicit language of Article 158, the CFA had little choice but to follow the new interpretation, which it did in the case of *Lau Kong-yung and Others v Director of Immigration*,² decided on 3 December 1999. The entire saga was viewed, by many commentators, as an attack on the authority of the Hong Kong courts. It may also be viewed as a deliberate attempt by the government to discourage the CFA from ruling against the government in sensitive cases. However, others criticised the Hong Kong CFA arguing that it erred in refusing to seek an interpretation from the NPCSC in the first place.

¹ See “Interpretation by the Standing Committee of the National People’s Congress of Arts 22(4) and 24(3) of the Basic law of the Hong Kong Special Administrative Region of the People’s Republic of China” (adopted by the Standing Committee of the Ninth National People’s Congress at its Tenth Session on 26 June 1999).

² (1999) 2 HKCFAR 300.

In light of this saga, and several related controversies, an up-to-date and hard-hitting book on the topic of judicial independence and the rule of law in Hong Kong could make a significant contribution to legal literature. Unfortunately, this particular book, which originated as a collection of conference papers written by eight different authors, does not quite fit that niche. This is primarily because the book is out of date on certain key events. The editor states that the papers were updated to include events which happened “towards the end of June 1999 ... when the implications of the right of abode cases were sufficiently clear”.³ In fact, there is no analysis, or even any mention, of the NPCSC’s actual interpretation of 26 June 1999. This omission seriously weakens both Chapter 1, “Commitment to the Rule of Law and Judicial Independence”, by the editor, and Chapter 3, “Judicial Independence under the Basic Law”, by Byron Wong. Wong attempts to explain the omission by noting that his chapter was submitted for final editing before the interpretation was actually issued – but, as he cites a newspaper statement published on 22 June 1999,⁴ it is clear that he was updating the chapter only a day or two before the NPCSC’s interpretation was adopted. It is difficult to understand why any editor or author would not have waited another week and included the actual interpretation – especially as it was widely known that the decision was imminent.

The failure to analyse the actual interpretation is particularly baffling given that the book was not published until 2001 – a full 18 months after the NPCSC adopted the new interpretation. Indeed, I expected the book to include not only in-depth analysis of the NPCSC’s interpretation (and its potential impact on judicial independence), but also the CFA’s judgment in *Lau Kong-yung* (given in December 1999) in which it was compelled to apply the NPCSC’s new interpretation. Ironically, a competing book, *Hong Kong’s Constitutional Debate: Conflict Over Interpretation*,⁵ that was published a year earlier than the Tsang book, is more current on these issues.

Given the 2001 publication date, I also expected Tsang’s book to include some analysis of the Hong Kong CFA’s decision in *HKSAR v Ng Kung-sui and another*,⁶ decided on 15 December 1999. In that case, the CFA upheld the constitutionality of laws prohibiting desecration of the local and national flags (overruling the Court of Appeal which had previously held that the laws were constitutionally invalid interferences with freedom of expression). The CFA’s judgement has been criticised by some commentators as representing a

³ At pp xxii.

⁴ At p 66.

⁵ Chan, Fu, and Ghai (eds), *Hong Kong’s Constitutional Debate: Conflict Over Interpretation* (Hong Kong: Hong Kong University Press, 2000).

⁶ [1999] 3 HKLRD 907.

significant retreat from its initially robust defence of human rights.⁷ Thus, I expected to find some discussion of the judgment – particularly whether the CFA might have been influenced by a concern that the NPCSC could issue another interpretation in the event that the government lost its appeal. Instead, the book notes only the Court of Appeal's decision and the fact that an appeal was filed by the government in April 1999.

Of course, no book can be completely up to date – especially one that consists of chapters by many different authors. However, a book ought not to be *18 months* out of date as soon as it is published. This failure to update the relevant chapters (at least to the end of 1999) is particularly disappointing because it is, in other respects, quite a good book. Chapter 5, "Individual and Institutional Independence of the Judiciary", by Peter Wesley-Smith provides a very comprehensive and detailed analysis of the different types of "judicial officers" in Hong Kong and their terms of appointment. Wesley-Smith argues that while "regular judges" are well protected from executive interference, there is cause for some concern with respect to the institutional arrangements for "non-regular judges" (such as recorders and deputy judges).

The remaining chapters address a range of topics relevant to the rule of law in Hong Kong. In Chapter 4, "The National Security Factor: Putting Article 23 of the Basic Law into Perspective", Fu Hualing provides an interesting and readable account of the political and legal dimensions of Article 23 (which requires the Hong Kong SAR to enact laws to prohibit acts of treason, secession, sedition, and subversion against the Central Government). In Chapter 6, "Prospects for Due Process under Chinese Sovereignty" Johannes Chan comments on the prospects for due process in the Hong Kong SAR, noting the recent controversies over the decision to prosecute. He also reviews several administrative law cases and argues that there is "grave doubt" as to whether the rule of law is really being upheld in those matters which "mean a lot to the government". In Chapter 7, "Freedom of the Press and the Rule of Law", Richard Cullen provides an interesting overview of the media and its regulation in Hong Kong. However, this chapter would have benefited from some analysis of the Court of Final Appeal's 1999 decision in *HKSAR v Ng Kung-sui & Anor*.⁸ In Chapter 8, "Prospects for the Rule of Law: the Political Dimension", Leo Goodstadt offers a brief, but useful, discussion of the political dimensions of preserving the rule of law in Hong Kong and what motivated the Chinese government to permit Hong Kong's legal system to survive, at least formally, despite its strong mistrust of the British advocacy of the rule of law.

⁷ See, eg Wacks, Raymond, "Our Flagging Rights", (2000) 30 *Hong Kong Law Journal* 1.

⁸ Although not directly related to the media, it was the first important CFA decision on freedom of expression and must have caused concern among journalists.

However Chapter 2, “The Rule of Law and Criminal Justice in the 19th Century” is of great interest. Christopher Munn demonstrates, very colourfully at times, that due process was not an automatic characteristic of British rule and was frequently violated in 19th century Hong Kong. For example, Munn describes how men arrested for piracy by the colonial authorities were regularly handed over to the Chinese authorities for punishment simply because the colonial government wished to avoid overloading its courts and prisons. He also describes how, during Governor MacDonnell’s “blitz” on crime in the 1860s, the number of floggings dramatically increased, often through the use of extra-judicial and “plainly illegal methods”. This chapter provides a very good start to the book as it reminds the reader that judicial independence and the rule of law are not simply abstract concepts, but have very real consequences for the lives of people who come into conflict with the government. Similarly, the challenges to the rule of law presented by Hong Kong’s reunification with China are not mere academic questions. These issues require continual attention, debate, and vigilance. Otherwise, Hong Kong’s legal system could gradually drift towards a state of disregard for rule of law and due process – the state of affairs that existed in Hong Kong in the 19th century and continues to exist today in much of China.

Carole J. Petersen*

* Associate Professor, Faculty of Law, University of Hong Kong.

Laws of Taxation in the Hong Kong SAR by Berry F. C. Hsu [Hong Kong: Hong Kong University Press and Open University of Hong Kong Press, 2001, 237 pp, paperback, US\$29.95, HK\$180].

Dr Hsu has done those interested in Hong Kong's taxation system a great favour. His book, *Laws of Taxation in the Hong Kong SAR*, is the first local publication that seeks to explain Hong Kong tax law from anything other than a black letter law perspective. It sets out to, and provides, a commentary on the theory underpinning taxation in Hong Kong and critically evaluates the Hong Kong tax system rather than merely providing a detailed description of it.

The first chapter sets the tone for the work: theories and structure of taxation, including a very useful discussion on the constitutional basis and sources of taxation law and practice in Hong Kong. Other topics covered include tax on land income (Chapter 2), tax on salaries income (Chapter 3), tax on business profits (Chapter 4) and depreciation allowances (Chapter 5). The final chapter is devoted to tax administration and ethics (Chapter 6). Throughout the book, the author endeavours to examine two fundamental issues: who should be taxed; and what the tax base should be. The issues are generally raised in a legal context (see particularly Chapters 3, 4 and 5), but with a brief introduction to the non-legal considerations involved (such as social, economic and governance).

Notwithstanding its strengths, this book can also be frustrating. Sometimes, broad general statements are made, while obvious unasked questions are left for the reader to ponder. For instance, the following questions all arise from passages contained in Chapter 3:

1. "In recent years, overall government revenue in the HKSAR has been very much dependent on land sales"¹

True, but what are we going to do about it?² In essence, this question begs for an examination of Hong Kong's tax base and whether, if it is too narrow, more general taxation should be introduced.

2. "Hong Kong has a relatively narrow salaries tax base"³

Perhaps, but is this due to the relatively small number of taxpayers, or is it related to the very high level of personal allowances that effectively

¹ At p 84.

² To be fair, in Chapter 4 the elastic nature of Government income from land revenue is reiterated and other gaps in Hong Kong's taxation system, such as the absence of a capital gains tax and any general tax on investment income (including interest), are recognised. The combination of these factors leads the author to conclude that "The long-term solution for the HKSAR if it wants to raise inelastic revenue is to become part of a global tax system", pp 197–198.

³ See n 1 above.

exempt the great majority of employees in Hong Kong from paying salaries tax at anything like the standard rate of 15 per cent?

3. The discussion of *Glynn's case*⁴ on taxation of employment fringe benefits⁵ is informative, but missing is any critical appraisal of the Government's response to this decision.⁶ In short, the response was a surprising reversion to the pre-*Glynn status quo* that effectively undercut any move to reform taxation of employee fringe benefits that, most commonly, are enjoyed by the more wealthy members of our community. Why should holiday allowances, or "passages" as they are quaintly called in statutory language⁷ redolent of a voyage on the QE2, be tax-free in the 21st century?
4. "There are strict, and inequitable, deduction rules for salaries tax"⁸
This is true, but is this counterbalanced by the very generous personal allowances granted to individual taxpayers? What, if any, are the advantages of such a strict system when judged against the competing principle of simplicity (for which equity is often sacrificed), bolstered by very low rates of taxation? If, for the sake of argument, simplicity and certainty are more important than the Inland Revenue Ordinance providing for a more complex yet more equitable economic reflex of income, then why should these deduction rules be that much more restrictive than those applicable to persons carrying on a trade, business or profession?

Laws of Taxation in the Hong Kong SAR is also fairly eclectic in terms of the tax policy issues raised for detailed discussion. For instance, good coverage is given in Chapter 2 to show how property tax evolved from an equitable tax base to the current regressive system favouring owner-occupiers; in Chapter 3 the shortcomings of traditional family taxation in a modern world is treated sympathetically; and in Chapter 4, the traditional capital versus revenue dichotomy is discussed from an economic perspective and a query raised whether taxation of capital should continue to be ignored in Hong Kong. However, other key tax reform topics, such as whether Hong Kong's jurisdiction to tax should be changed from the current, very restrictive source-based system, could also have been placed under the microscope. Similarly, the absence of any broadly based indirect tax in Hong Kong (apart from the hidden "land" taxes in all their various forms) is in need of much greater analysis.

Has Dr Hsu tried too hard to give his book more "knowledge relevance" (my words, not his) for students of traditional taxation courses? Many pages,

⁴ (1990) 2 AC 298.

⁵ See n 1 above, pp 101–102.

⁶ See Inland Revenue (Amendment) Ordinance 1991 (Ordinance No 1 of 1991).

⁷ Inland Revenue Ordinance (LHK, Cap 112) s 9(1)(a).

⁸ See n 1 above, pp 115–116.

if not the greater part of certain chapters (such as Chapters 3, 4, 5 and 6), are devoted to an explanation of “the law”. One problem with this approach, of course, is where do you stop and how detailed should the discussion be of those areas covered?

The following examples illustrate these concerns. The commentary on source of employment income in Chapter 3 is both detailed and critical of IRD practice. A good case is made that the current law and practice should be analysed to assess its relevance in today’s e-commerce / IT world. This approach seems precisely in line with the aims for which the book was written. However, why should the reader then be faced with many pages dealing with the distinction between an employee and an independent contractor when the key problems in this context, namely the wildly different deduction rules applicable to salaries tax versus profits tax, the uses and abuses of service companies exploiting those differences and the inequities flowing from non-mandatory personal assessment, are not highlighted to any great degree?

Another example relates to coverage. In Chapter 4, after analysing the source concept for profits tax purposes – a critical topic – the author considers the taxation of royalty income. The *HK-TVBI* case⁹ is commented upon, but not the Court of Final Appeal decision in *Emerson*,¹⁰ which will result in a change in the law.¹¹ The dilemma is thus obvious: if the book is intended to appeal to students of Hong Kong taxation, then, ideally, it should be more encompassing; but if it is intended to focus more on tax policy and an explanation of Hong Kong’s taxation structure, then why not redefine the work solely within this context? To try to do both may well result in injustice to each.

I trust that readers will excuse the reviewer for ending with an anecdote. In two recent pieces of very disparate research, I became interested in taxpayers’ rights in Hong Kong and the relationship between accounting practices and Hong Kong profits tax. I am pleased to report that the *Laws of Taxation in the Hong Kong SAR* examined both topics, and proved helpful.

In conclusion, I commend Dr Hsu for his serious approach in attempting to explain the nature of taxation in Hong Kong; for his analysis of the shortcomings, as well as the advantages, of Hong Kong’s system of taxation; for his useful focus upon taxation of land; and for his initiative in examining certain avenues for taxation reform. The *Laws of Taxation in the Hong Kong SAR* deserves a place in the library of any serious student of Hong Kong taxation and will be indispensable to any reader interested in understanding the structural nature of taxation in Hong Kong.

Andrew Halkyard*

⁹ [1992] 2 AC 397.

¹⁰ [2000] 1 HKLRD 238.

¹¹ See Inland Revenue (Amendment) Bill 2000.

* Associate Professor, Faculty of Law, University of Hong Kong.

Legal Traditions of the World, H. Patrick Glenn [Oxford: Oxford University Press, 2000. xxiv + 371 pp, paperback, US\$29.95]

What kind of reader would be most tempted to pick up a book with the grand title “Legal Traditions of the World”? The likely candidates, I would say, are those who are searching for an overview of the world’s legal traditions, and those who might like to use the book as a guiding reference before entering into a particular field. Indeed, the advancement of our understanding of different legal traditions is one of the aims of the author. In his work, Glenn walks us through seven legal traditions in the order of chthonic law (perhaps better understood as customary or indigenous law), Talmudic law (Jewish law), civil law, Islamic law, common law, Hindu law and Asian legal traditions. However, Glenn’s ambition is not fully realised given the scope of materials that he has to cover.

While seeking to advance the reader’s understanding by mapping out a myriad of legal traditions, Glenn’s ultimate aim is to explore what we can do with our traditions. From the outset, Glenn explains that a deeper understanding of traditions is essential because of a decline in faith towards normative authority of formal sources of law, of growing collaboration among jurists to solve world problems, and of an increasing role of legal influence in the global scene. Throughout his work, Glenn is consciously pushing the discussion of legal traditions onto the global stage, in particular the issue of human rights. In each chapter, he explores how each tradition can contribute to the human rights debate.

Because of Glenn’s twin ambitions, to give an account of the legal traditions of the world and to demonstrate that we can do something with them, the book is oriented towards these two goals. Chapters 1, 2 and 10 are for readers “not so much interested in law, but interested in tradition and its relation to society”,¹ whereas the other chapters are for readers who are eager to learn about the substantive aspects of legal tradition.

The structure and content of the book will be briefly dealt with before I share my own views. Chapter 1 lays out the framework of the book by defining tradition as a “bran-tub of information”. By this, Glenn means that tradition is composed of collective information that is transmitted from generation to generation. Its survival, legitimacy and authority depend on its “persuasiveness” to the current generation. Chapter 2 extends this concept of tradition from a historical perspective onto the global stage. Glenn argues that growing interaction between individual states naturally results in a competition for each tradition to influence and out-race the other. Of all the traditions,

¹ At p xxii.

Glenn considers Western, Islamic and Asian traditions to be the main competitors in the process of globalisation. After discussing the seven chapters on substantive laws, Chapter 10 summarises the essential elements of each tradition, and takes up the formidable task of reconciling their differences.

In the seven chapters on the substantive aspects of legal traditions, the stated aims of Glenn are to discuss the sources and content of each particular tradition, the justification for its lasting influence, its reception to change and its relation to other traditions. In each of these seven chapters, Glenn also addresses certain themes. He offers examples of state law under the particular tradition, how the particular tradition perceives the notion of rights, how susceptible it is to corruption, and what it can offer to the entire family of traditions. The common thread that runs through each of these seven chapters is how each tradition can contribute to the advancement of human rights issues.

Though one can have few objections to Glenn's partition of his book into "theoretical" and "substantive" parts, and to his choice of issues in each chapter, the arrangement of his seven substantive chapters is puzzling. The arrangement of Chapters 3 to 6 (from chthonic law to common law) reflects the placement of each tradition in historical time with the assumption that chthonic law has its roots in time immemorial. He then treats Talmudic law, followed by civil law with the Roman conquest of a large part of the world after Christ. Concurrent with these developments was the simultaneous development of the Islamic legal tradition and the common law tradition, but at later stages in this chronological order. Hindu and Asian legal traditions are left to be discussed at the end and they stand oddly apart from this arrangement. Despite Glenn's claim that readers who are only interested in one particular tradition can just concentrate on the individual chapter, Glenn makes a lot of cross references and comparisons between the chapters. For example, both Talmudic and Islamic legal traditions share a common hierarchy of legal sources. They are described by Glenn as traditions based on "revelation", touching all areas of private law with special concerns over diet, hygiene, rituals and prayers. In the discussion of civil and common law legal traditions, while Glenn points out their similarity in origins and contributions to the world for their high regard to human reason and respect to individuality, the chapters are divided by the discussion on Islamic legal tradition. A better choice may have been to group legal traditions and religious connotation (Talmudic, Islamic and Hindu) together, put chthonic and Asian legal traditions together for they manifest an entire way of living, with discussion on civil legal tradition and common law tradition closely following each other.

Arrangement of chapters aside, I also found myself in argument with Glenn in other respects. A major criticism is that Glenn's practical aim of "doing something" with different traditions is contradictory of the very definition of

tradition itself. Throughout the book, Glenn hopes that we can learn from each tradition, draw out its best part so that we can make a hybrid of all the best qualities. However, as intimated by Glenn himself, tradition is by nature a home-grown phenomenon. How, then, could one transplant tradition so easily? At points in his book, Glenn stresses that tradition is “inextricably interwoven with one’s beliefs”,² is about a way of living,³ is dependent on an “accumulating character”⁴ with “a particular style of rationality”,⁵ and is rooted in “a particular context”.⁶ The result of uprooting and exporting tradition is, therefore, bound to be futile. Perhaps Glenn himself also realises the difficulty and impossibility of “mixing” and “reconciling” different traditions. The last chapter of the book, “Reconciling Legal Traditions: Sustainable Diversity in Law” is in fact a simple affirmation of the diversity in our world and the philosophy that life should move on. Glenn lists what each tradition can offer and criticises the inadequacy of each. What he means by reconciling the different traditions is an urge for exchange of information and acceptance of differences. The concern over the human rights debate also ends in vague rhetoric where Glenn advises us to examine particular problems in detail in the given circumstances of each country. However, after becoming familiar with the people, the places, the schools, the local circumstances, and the specifics, what standard should one apply? The local one or a universal one yet to emerge? It would be helpful if Glenn could offer us concrete examples of how to solve a particular problem, and to show what difference it would make if one is to leave one’s neighbours alone by developing an appreciation for others’ traditions.

Viewed from the above perspective, Glenn has arguably failed to accomplish the goal of informing his readers about what can be done with world traditions and to convince them that they can solve world problems if they are equipped with this knowledge. And what of Glenn’s second goal of letting his readers learn about the world’s traditions? Glenn has fared much better in this regard by delivering a colourful, interesting and stimulating account of various traditions. The choice of adjectives in the above sentence is meant to be individually applied to individual chapters in the book.

This is largely due to the fact that Glenn has adopted different styles of writing in each chapter. For instance, Glenn takes the reader step by step towards an understanding of Talmudic and Islamic legal traditions. These two chapters reflect a clear and descriptive approach where the origins of the two legal traditions are traced and the characteristics of each are clearly

² At p 57, discussion on chthonic law.

³ At p 261, discussion on Hindu law.

⁴ At p 97, discussion on Talmudic law.

⁵ At p 100, discussion on Talmudic law.

⁶ At p 218, discussion on common law.

identified. In contrast, the other chapters seem to assume that readers have a basic knowledge of the subject matter. In the latter case, readers may also find themselves in constant debate with the author, especially regarding the chapters on chthonic, Hindu and Asian legal traditions.

To comment on chthonic legal tradition, Glenn includes African and South-east Asian customary law, native law from North America and Inuit legal tradition. It is, thus, difficult for Glenn to avoid making over-generalised and sweeping statements. Moreover, the nature of chthonic legal tradition is often intangible and fluid. In the end, what the readers learn from this chapter is essentially that chthonic family law "in general" is informal and consensual, and that chthonic notions of property are "generally" for communal or collective enjoyment. What we should have learnt from chthonic thought is, however, its respect for land and environment. Even if the above statements are true, one cannot not help question whether it is meaningful to reduce such a kaleidoscope of colourful legal landscapes into a single formula. Without doubt, the nature of the legal tradition concerned also poses difficulties for depiction. This is equally true for the discussion on Hindu and Asian legal traditions.

Both Hindu and Asian legal traditions have gone through evolutions of thousands of years. Moreover, legal traditions are just facades of a more embracing tradition in India and other parts of Asia. Inevitably, this brings us back to my first major criticism: How can we export traditions? Though Glenn quotes evidence that Hindu legal tradition does survive in east Africa and in some Western states, he understates the fact that it is practised by Hindu people who are living out their entire tradition. A more interesting and significant point raised by Glenn is the possibility of Hindu law co-existing with modern state law in India. Glenn merely raises the issue and glosses over it without much elaboration. The nature of Hindu legal tradition could well be an exemplar for Glenn to illustrate how legal tradition could supplement formal legal order when the latter lacks supportive normativity.

Similar inadequacy can also be observed in the discussion on Asian legal tradition. Other than tracing the historical development of the tradition and its gradual displacement by Western legal systems in South-east Asia, Korea, Japan and China, Glenn says little about the relevance of the tradition to contemporary Asia, and its interaction and relation to formal legal orders. Moreover, the chapter on Asian legal tradition is also confusing. At the beginning of the chapter, Glenn explains that Asian legal tradition, including Confucianism, refuses to root normativity in formal structures and sanctions. He describes it as a tradition based on "persuasion and obligation".⁷ Glenn further points out that there is "little place for describing the detail of Confucian regulation of

⁷ At p 280.

society”⁸ for one is supposed to understand its general teaching. Anyone who has some familiarity with Confucianism will have a hard time in accepting this supposition. It is well known that Confucius’ teachings were written in the Three Books detailing how society should be organised and how relationships should be ordered. It is true that Confucius despises the use of legal sanctions and the reliance on legal rules, but the emphasis that he places on family and morals has resulted in a much more powerful and pervasive form of social sanctions. In this social world, obligation has an indispensable role to play because it is the organising force of human relations. Despite the fact that Glenn explains the concept of *li* in the latter pages of the chapter as a set of moral rules, it would have helped if Glenn could have explained at the outset the binding nature of “persuasion” and the force of social sanctions in Asian legal tradition.

Notwithstanding these criticisms, Glenn has offered a great deal of food for thought. I would say that the best chapters in his book lie in the discussion on civil and common law legal traditions. In these chapters, Glenn adopts an interpretative approach where he is making the best sense of accepted knowledge and introducing new perspectives to apparently familiar areas.

Instead of reiterating the development of civil law or merely pointing out its essential characteristics, Glenn places the discussion of civil law in the context of the rise of Western science in the age of reason when rationality and individuality were dominant ideals. Glenn further advances his argument by perceiving civil law legal tradition as playing a paramount role in continental Europe because it facilitated the rise of the nation states and the search for identity. Following this line of logic, Glenn has confidence in the influence of civil law legal tradition on the European Union. Whether or not one agrees with Glenn’s view, he has offered a new slant on a familiar topic.

The account of common law legal tradition is even more fascinating. Glenn starts the chapter with the bold statement that the birth of the common law is a pure historical accident, and the prominence given to judges and the jury is largely a result of political concern. The new rulers in 1066 were suspicious of the pre-existing civil law systems and were eager to look for their own loyal adjudicators. As the Normans were keen to establish their legitimacy, they were willing to incorporate the locals into a jury system. It was only at a much later stage that judges allied themselves with Parliament against royal executive authority. Glenn also observes that common law legal traditions were heavily influenced by Islamic legal tradition as evidenced in the development of the Inns of Court,⁹ and its style of debate. Continuing along the historical trajectory, Glenn concludes by pointing out the mutation of the common law in the American, Canadian and Australian systems, where there is a re-alliance

⁸ At p 283.

⁹ At p 209–210.

to its civil law counterpart. Unlike most chapters, Glenn does not end the discussion on common law by stating what it can contribute to the world, rather he focuses on the problems within the tradition such as the growth of large firms which exacerbates the problem of ethical control and makes it difficult to avoid conflicts of interest among lawyers and among clients themselves. Glenn also attributes the problem of the "lost lawyer", those who lost sight of their primary obligation to society, to the nature of common law tradition. Though one may have noticed all these problems, rarely would one point one's finger at the legal tradition. By delivering a plausible argument, the chapters on civil and common law legal traditions have provided a thought provoking and stimulating account of legal traditions.

Overall, this book may not be a suitable guide for readers who are looking for a quick accessible reference to the terrain of legal traditions. It is hard to do justice to any legal tradition within the length of 50 pages. To do so would risk either giving a broad-brush overview, or delivering an advanced study of the subject. Glenn seems to have chosen to tread a middle path. His work is catered more to those who already have a background, however limited, of a particular tradition or traditions and would like to know more. The detailed footnotes and numerous references in the book are particularly helpful indicators for readers who are eager to delve further into the vast sea of legal traditions.

*Anne Cheung**

* Assistant Professor, Faculty of Law, University of Hong Kong.