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Comparing the Teaching of Comparative Law: A View from Singapore

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Abstract
This article explores what makes the teaching of comparative law distinctive as well as familiar in Singapore (and Southeast Asia more broadly), and so contributes to a process of comparing the teaching of comparative law. I argue that one must balance both familiarity and distinctiveness when teaching comparative law in Southeast Asia. This means that, on the one hand, we can indeed draw on general and even classical materials when teaching comparative law in this region. On the other hand, there is the need to address specific features that shape the context of Southeast Asia. Finally, I discuss how the Southeast Asian example may be instructive because of this balancing in highlighting the importance of teaching comparative law in other parts of the world.

My Lords, the discipline of comparative law does not aim at a poll of the solutions adopted in different countries. It has the different and inestimable value of sharpening our focus on the weight of competing considerations. And it reminds us that the law is part of the world of competing ideas markedly influenced by cultural differences.[1]

I. SETTING THE STAGE

A course in comparative law with a focus on Asia is a compulsory module in two law schools in Singapore. Variously styled 'Comparative Legal Systems' (at the Singapore Management University) or 'Legal Systems of Asia' (at the National University of Singapore), these modules seek to expose students to some variety of comparative perspectives and analyses.[2] In approaching the teaching of these subjects, one has to try

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1. *Macfarlane v Tayside Health Board (Scotland)* [1999] UKHL 50, [2000] 2 AC 59, 81 (Lord Steyn).

2. See 'Curriculum' (SMU) <https://law.smu.edu.sg/llb/curriculum> accessed 11 March 2019; 'Core Courses' Description' (SMU) <https://law.smu.edu.sg/programmes/bachelor-laws/why-smu-law/rigorous-challenging-curriculum/core-courses-description> accessed 11 March 2019; 'Typical Schedule of Modules' (NUS) <https://law.nus.edu.sg/student_matters/llb_prog/typ_sch_llb.html> accessed 11 March 2019.

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to make the content relevant to local students and to the local legal environment(s).[3] In doing this, one encounters some distinctive as well as more generic challenges.

This article will explore what makes the teaching of comparative law distinctive as well as familiar in Singapore, and so contribute to a process of comparing the teaching of comparative law. Fundamentally, I argue that one must balance both familiarity and distinctiveness in Southeast Asia. This means that, on the one hand, we can draw on general and even classical materials to teach comparative law in Southeast Asia. On the other hand, there is the need to address specific contextual matters that shape the context of Southeast Asia. Finally, I discuss how the Southeast Asian example may be instructive because of this balancing in highlighting the importance of teaching comparative law in other parts of the world.

II. FRAMING PERSPECTIVES

I begin with some framing perspectives.

Werner Menski, in his book on comparative law in Asia and Africa,[4] identifies a number of characteristics that shape the analysis of non-Western legal systems. These include: the importance of taking a global perspective (not just within the paradigm of the West); an awareness of hybridization due to locality (that is, the 'locality-coloured' and culture-specific aspects of these legal systems); the normative challenge that these systems present to what he calls the lego-centricity of the West; the impact of plurality in these systems due to their porosity, but not only in Asia and Africa (that is, a recognition of plurality and porosity being a worldwide phenomenon); legal boundaries as being fuzzy (the line between law and non-law not being clear); the recognition that law shapes and is shaped by society and culture, such that law is not a neatly packed box, and, relatedly, that law is 'encultured' and is a 'lived tradition'.[5]

As a result, Menski further suggests that a globally valid understanding of law needs to be aware of the written and unwritten, formal and informal, and hence must move beyond the binary of developed/ formal vs underdeveloped/ informal. He also suggests that to understand the law as applied, one must take into account the socio-cultural context. Menski thus proposes a cosmopolitan outlook – neither Eurocentric nor Europhobic; balancing international and local.

A second framing perspective comes from Patrick Glenn's well-known invitation to think in terms of legal traditions, not families. As Glenn says: 'law is essentially a

3. The legal curriculum at Singapore's third law school, Singapore University of Social Sciences (SUSS), does not have a required module of this type, though some of the same content might be covered in the module 'Legal Methods and the Singapore Legal System', which is required for both the SUSS Bachelor of Laws (LLB) and Juris Doctor (JD) programmes. See 'LLB Undergraduate Studies Programme Overview' (SUSS) <www.suss.edu.sg/programmes/programme-details/Pages/Bachelor-of-Laws.aspx> accessed 11 March 2019; and 'JD Programme Overview' (SUSS) <www.suss.edu.sg/programmes/detail/juris-doctor-lawjd> accessed 11 March 2019.

4. Werner F Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006). See 'Comparative Law and Legal Theory from a Global Perspective' ibid, ch 1.

5. See ibid, especially, 'Legal Pluralism', ch 2.

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tradition, that is to say something that has come down to us from the past'.[6] For Glenn, a legal tradition must be seen as normative information, not just factual. Consistent with Menski, however, Glenn notes that:

> The idea of legal tradition thus allows us to broaden our concept of law while at the same time supporting the existence of state law. It is not a zero-sum game. We can make use of non-state law while not weakening the normative force of state law. The question of how to reconcile the two then arises.[7]

A third, complementary, framing analysis comes for Esin Örücü. According to Örücü:

> [an] awareness that the law is not static, that it moves and changes and that legal systems today are at crossroads, is essential … more and more systems will be mixed and mixing … It is the study of this 'mixedness' that can illuminate the path towards the comprehension of the interaction of law and culture.[8]

Örücü adds that 'sometimes "mixedness" can be the manifestation of a transition, sometimes it can be a final outcome of the process … [It] is usually a result of historical accident'.[9] In the result, she says that:

> what is necessary today is a reassessment of individual legal systems according to the old and new overlaps, combinations and blends, and of how the existing constituent elements have mingled and are mingling with new elements entering them. *I propose a scheme that regards all legal systems as mixed and overlapping*.[10]

To the above, we can add Teemu Ruskola's warning that 'it is foolish, even dangerous, to attempt to provide a summary description of a topic as vast as the East Asian legal tradition'.[11] This would apply equally to Southeast Asia, which Andrew Harding has described as being characterized by a nomic din.[12]

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6. H Patrick Glenn, 'A Concept of Legal Tradition' (2008) 34(1) Queen's Law Journal 427, 431 (citing AWB Simpson, *Invitation to Law* (Blackwell 1988) 23).
7. ibid 440.
8. Esin Örücü, 'A General View of "Legal Families" and "Mixing Systems"' in David Nelken and Esin Örücü (eds), *Comparative Law: A Handbook* (Hart Publishing 2007) 185.
9. ibid 178.
10. ibid 170 (emphasis added).
11. Ruskola continues by saying: 'I shall nevertheless proceed with such an attempt, with the important qualification that what follows is the description of an East Asian legal tradition – namely, what I call the classical legal tradition of East Asia, or by way of analogy, a kind of East Asian ius gentium. Although it is a historically significant tradition, by no means does it exhaust the entire East Asian legal universe. To suggest so would, indeed, be foolish. Yet the very notion of an East Asian legal tradition itself – whether characterized as singular or plural – requires some further methodological observations. First, just what does the term "East Asia" encompass? Second, what do we mean by a "legal tradition"? The answer to neither question is obvious.' See Teemu Ruskola, 'The East Asian Legal Tradition' in Mauro Bassani and Ugo Mattei (eds), *The Cambridge Companion to Comparative Law* (CUP 2012) 257.
12. Andrew J Harding, 'Global Doctrine and Local Knowledge: Law in South East Asia' (2002) 51(1) International and Comparative Law Quarterly 35; and Andrew J Harding 'Comparative Law and Legal Transplantation in South East Asia: Making Sense of the "Nomic Din"' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing 2001).

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These framing perspectives can be both inspiring as well as daunting for the scholar, and even more the teacher, of comparative law in general. They indicate that the task of comparative scholarship is complicated by the plurality and indeed fluidity of its subject(s). At the same time, they point to the realization that comparative law offers the inspiring possibility of a deep and rich understanding of the content and context of different legal regimes.

Therefore, when it comes to understanding the role of comparative law in Asia, and of using Asia to compare comparative law, whether for teaching or research purposes, what becomes essential is to unpack the context(s) of Asia; to show what a perspective from Asia can bring to the comparative table. This is of course no mean feat given the sheer scale, scope, and vastness of Asia – hence Ruskola's above-noted caution must be kept in mind. That said, it is the goal of this article to outline aspects or factors of the context of Asia that provide shape to understanding Asian experiences and contexts. These factors show both the familiarities and differences that characterize Asian contexts, each of which will be discussed in turn.

III. FAMILIARITIES

I begin with topics that will be familiar to and for the teaching of comparative law in many jurisdictions. Singapore and Southeast Asia have been profoundly influenced by legal traditions with origins in Europe, namely the common law and civil law. These influences emerged through the direct process of colonial experience and imposition, as well as in other cases by adoption. In whatever form, the traditions of the common law and civil law (especially in its German form, but also with some influence of French law, Dutch law (Indonesia), and Spanish law (The Philippines)) are clear and profound. In this respect, a comparative law course in Singapore can share at least two features that are familiar and indeed consistent with comparative law courses in other environments.

The first is the relevance of a general discussion of the common law and civil law traditions, including their historical origins and developments, their major characteristics and sources. One might think of this as an introduction to the traditions. It is indeed important to provide such general introductions. 'Common law tradition' students in Singapore are usefully taught about the sources, methodology and, if you will, the habits of the mind of a civil law trained lawyer, and students from civil law Southeast Asia should also understand how a common law lawyer thinks. At one level, this is purely pragmatic. Singaporean lawyers will inevitably be interacting with the law of their neighbours in Southeast Asia (and indeed farther afield), especially given Singapore's small geography, open economy, and its positioning of itself as a regional hub for commercial activity. This also applies to other lawyers in Southeast Asia. And once one starts to move even short distances within Southeast Asia, one encounters different legal traditions, cutting across the civil law and common law. So, to properly serve the needs of their clients, Singaporean and other Southeast Asian lawyers will need to have some familiarity with 'the other' legal tradition, and to this end, an overview of the common law tradition and civil law tradition

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(s) provides a first introduction and useful launching pad for further discovery. It is thus important to introduce, even if only at a rudimentary level, the primary sources of law, the way in which legal topics are organized and the *mentalité* of lawyers trained in a different tradition as a first step towards dialogue and understanding. However, learning about the civil law for common lawyers or the common law for civil lawyers is not just an exercise in understanding the other. In my experience, more interestingly, it is also useful in encouraging students to consider what their own tradition consists of and to be given an opportunity to reflect on the history, outlook, and orientation of themselves as a common law lawyer or a civil law lawyer.

Second, it is important to discuss the way in which both the common law and civil law have developed local particularity. Of course, local particularity is not just a phenomenon of Asia. There is particularity within different expressions of the same 'tradition' such that, of course, French civil law is not the same as Dutch or Italian civil law and in the common law tradition, Australian common law is different from Canadian common law, which is in turn different from Irish common law, even though all of these jurisdictions have been influenced by English common law. Equally, when influences have moved there is also local particularity and adjustment to context in the reception of different systems. Thus, it comes as no surprise that the common law or civil law expressions in Southeast Asia are distinctive from each other.[13]

The exploration of these 'traditions' and their different manifestations, and of the related questions of thinking about the existence of legal families or not, of the prevalence of 'mixedness', and of legal pluralism is familiar grist to the comparative law mill. Here, the context of Singapore and Southeast Asia, with the lesson of needing to take account of context, and the way in which comparative law may be taught in this context, seems to share much with the way in which comparative law may be taught in other parts of the world.

More specifically, for teaching purposes, this must mean that it is fair to draw upon the classical comparative law materials that introduce students to common law, civil law (and indeed other large legal traditions such as Islamic law, Hindu law, etc). Once introduced, however, these should be contextualized to the local environment, in doctrinal, historical, and cultural terms. The contextualization can be best done by drawing upon local examples that both show what is shared with other jurisdictions as well as what is different. For instance, in discussing the common law, one might note how almost all common law lawyers will be familiar with rotten snails in ginger beer,[14]

13. For a recent study confirming the same in the context of Singapore, Hong Kong, and Malaysia, see Kwai Hang Ng and Brynna Jacobson, 'How Global is the Common Law? A Comparative Study of Asian Common Law Systems – Hong Kong, Malaysia, and Singapore' (2017) 12 Asian Journal of Comparative Law 209. Ng and Jacobson say in conclusion that: 'This article argues that the common law in Asia is not positioned as a set of local laws rooted in common customs or practices, but as a globalized system of law that operates as a well-tested set of legal know-hows … Arguably, the most striking finding is that foreign citations are almost as common as domestic citations in the case law of the three jurisdictions. As such, not only do the three deviate greatly from the practices of the Anglo-American common law; together, they represent an extraordinary case of the Commonwealth model.' ibid 231.

14. *M'Alister (or Donoghue) v Stevenson* [1932] UKHL 100, [1932] AC 562.

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and the assertion that 'in summertime village cricket is the delight of everyone',[15] both of which references come from foundational cases in the law of torts. However, when it comes to criminal law, Indian, Sri Lankan, and Singaporean lawyers will think of the *Penal Code*,[16] Canadians of the *Criminal Code of Canada*[17], New Zealanders of the *Crimes Act 1961*,[18] and English and Australian lawyers will probably think predominantly through case law.[19]

What does the recognition of local particularity entail? It demands the consideration of those historical, political, social, and cultural factors that take the same and make it different. For instance, Kerstin Steiner has recently written about differences that exist in Southeast Asia with respect to the bureaucratization of Islamic law. She concludes by noting similarities between the codes regulating Islamic law in Singapore, Malaysia, and Brunei which, as she says, are 'not surprising given their common history and frequent legal borrowing from one country to another'.[20] Importantly however, she adds: 'The codes have common elements at first glance, yet the result, the approach to how Islam is to "guided" (sic) is depending on the individual country context.'[21] In short, context matters. This is so because of the embeddedness of law in the social and political contexts. As Jaakko Husa has said: 'Law is part and parcel of society's cultural entirety – law is the law of the human communities …'[22]

Furthermore, the contextualization should be used discursively to move between similarity, or what is shared, and differences. In other words, the contextualization should be used to highlight where there are elements of the legal system within a jurisdiction that are shared, or even partially shared, with other jurisdictions, to illustrate how the shared elements might be differently applied or interpreted, as well as to point out differences, even within kindred jurisdictions.

IV. DISTINCTIONS

At the same time as noting what is familiar, there are also distinctive elements of the environment of Singapore and Southeast Asia that influence the way comparative law must be approached. These derive from the historical, sociological, and political context of the region. Below, I offer five major distinctive elements of the Southeast Asian environment.

15. *Miller v Jackson* [1977] 1 QB 966 (CA).
16. Penal Code, Act No 45 of 1860 (India); Penal Code (Cap 224, 1985 Rev Ed) (Singapore).
17. Criminal Code, RSC 1985, c C-46, as amended (Canada).
18. Crimes Act 1961, Public Act No 43 (New Zealand).
19. See Arif A Jamal, 'Comparative Law, Anti-Essentialism and Intersectionality: Reflections from Southeast Asia in Search of an Elusive Balance' (2014) 9 Asian Journal of Comparative Law 197.
20. Kerstin Steiner, 'Branding Islam: Islam, Law, and Bureaucracies in Southeast Asia' (2018) 37(1) Journal of Current Southeast Asian Affairs 27, 52.
21. ibid 53.
22. Jaakko Husa, 'Comparison', Helsinki Legal Studies Research Paper Series – Paper No 51, 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3174643> accessed 11 March 2019; and Jaakko Husa, 'Comparison' in David S Law and Malcolm Langford (eds), *Research Methods in Constitutional Law: A Handbook* (Edward Elgar Publishing 2019) (forthcoming).

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A. *Colonialism*

Legal systems in Southeast Asia have been profoundly influenced by colonial experience and the imposition of colonial legal orders. Indeed, it may be fair to say that colonial rule significantly remade these legal systems through the importation-cum-imposition of new legal frameworks, sources, and languages. In fact, as some commentators have noted, legal ordering was of major importance to the colonial project of control.

Thus it has been said that:

> Law was crucial to the establishment and maintenance of the colonial order across the world … Recognized as the 'cutting edge of colonialism', law was utilized as a coercive force, supported by the power of the colonial state, to help secure order, to promote capitalist development, and to restructure social relations … The reason law was so important to the establishment of a colonial order was that it was a central mechanism to define relationships between state and society.[23]

At a basic level, it is the colonial legacy that explains why, for example, Singapore and Malaysia are 'common law', but their neighbour Indonesia is 'civil law' and a Dutch legal model, while, for example, Laos' civil law has been shaped by a French legal model.

The colonial experience was a complex process, however, involving both introducing the new (and imported) as well as remaking the existing. For instance, John Comaroff notes:

> That 'mode of warfare'– or rather *lawfare*, the effort to conquer and control indigenous peoples by the coercive use of legal means–had many theatres, many dramatis personae, many scripts. Most commonly noted among them was the creation of so-called customary law, a particular subspecies of the genus of historical practice that has come to be known, after Hobsbawm and Ranger (1983), as 'the invention of tradition.'[24]

The colonial experience, therefore, did not entirely eradicate local legal materials, but it often did reshape them, casting 'traditional' or 'customary' law into colonial moulds – such as by way of codification, with its attendant formalization, on the one hand, as well as marginalization, on the other hand. Thus, *adat* in Indonesia or Islamic law in other parts of Southeast Asia were reshaped into modern legislative forms by the colonial administrators.

The impact of the colonial experience is shared by many parts of Asia, and it creates its own dynamics of drawing upon the colonial experiences and making the colonial experience 'ours' as well as, progressively, becoming independent of the colonial context and colonial norms.[25] This is a dynamic and creative tension that is present in

23. J Michael Williams, 'Law', *Colonialism: An International, Social, Cultural, and Political Encyclopedia* (2003) vol 1, 333–34.

24. John L Comaroff, 'Colonialism, Culture, and the Law: A Foreword' (2001) 26 Law and Social Inquiry 305, 306.

25. For example, as Kevin Tan has remarked with respect to Singapore:

> Once brought into Singapore, the common law in Singapore was on its own. English judges do not continue to make law for Singapore and 'subsequent developments in the common law in the English courts do not automatically apply to Singapore.' Developments of common law doctrine

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Singapore and other parts of Southeast Asia, but is of course an experience that their former colonial masters do not share.

What is fundamental to understand is the way that legal categories, languages, sources – and indeed traditions – from outside of Southeast Asia became so (re)defining of the legal systems of the region through the powerful means of the colonial experience. Comparative law in Europe will not have to encounter the impact of a colonial past in the same way; comparative law in Southeast Asia cannot avoid this task.

B. *Customary/ Informal/ Traditional Law*

The presence of what Patrick Glenn has called chthonic traditions or of customary or traditional law is something that must be addressed in Southeast Asia. Not only do chthonic traditions exist in the history or background of communities in Southeast Asia; they continue, until today, to be present both formally and informally in their legal systems. Again, *adat*, which it must be remembered is a plural noun,[26] offers one ready example, but so too can notions of political rule associated with Buddhism (*dhamma* or *dharma raj*).

In the case of *adat* in Indonesia, its sources as well as those of Islamic law (or Muslim legal traditions) are not from the state, but older and more ancient traditions that are not found in statute.[27] *Adat* has also survived sometimes through a symbiotic relationship sometimes through less cooperative means, from the deep past, through colonial governance and into the present day, including in modern legislation. Consider, for instance, the reference to 'Malay custom' (a pretty clear English rendering of '*adat*' or '*adat Melayu*') in the *Administration of Muslim Law Act* (AMLA) in Singapore. For instance, Section 35(3) of the AMLA, which concerns jurisdiction, says:

> (3) In all questions regarding betrothal, marriage, dissolution of marriage, including talak, cerai taklik, khuluk and fasakh, nullity of marriage or judicial separation, the appointment of hakam, the disposition or division of property on divorce or nullification of marriage, the payment of emas kahwin, marriage expenses (hantaran belanja) and consolatory gifts or mutaah and the payment of maintenance on divorce, the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law, *as varied where applicable by Malay custom*.[28]

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in England did not directly affect the development of Singapore which continued to develop and flourish on its own, taking into consideration its unique social circumstances and the needs of its population.

See Kevin YL Tan, 'Singapore: A Statist Legal Laboratory' in E Ann Black and Gary F Bell (eds), *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations* (CUP 2011) 330, 337.

26. See discussions of this in MB Hooker, *A Concise Legal History of South-East Asia* (Clarendon Press 1978), ch 1; MB Hooker, *Adat Law in Modern Indonesia* (OUP 1978).
27. See Gary F Bell, 'Indonesia: The Challenges of Legal Diversity and Law Reform' in Black and Bell (n 25) 267.
28. AMLA (Cap 3, 2009 Rev Ed) (Singapore) (emphasis added). Section 112 of AMLA, also makes reference to the Malay custom saying:

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Adat is also referenced in Malaysia within the constitutions of its states. For instance, Section 55(2) of the *Laws of the Constitution of* [*the state of*] *Selangor 1959* states that the Sultan of the state may act in his discretion in a number of functions, including 'any function as Head of the Muslim religion *or relating to the custom of Malays*' (Section 55(2)(d)).[29] In the *Laws of the Constitution of* [*the state of*] *Johore* 1895, it states, identically, in Section 7(2)(d), that the Ruler may act in his discretion with respect to 'any function as Head of the Muslim religion *or relating to the custom of Malays*'.[30] Thus, it is important to appreciate the continuation of the concept of *adat* in Southeast Asia, including its expression in formal legal materials. Chthonic norms are also important in other parts of the region as well, especially in relation to family law and property, which are prime topics for these traditions, though they can extend to other legal areas too (like governance and criminal law).[31]

One cannot of course say that the presence of the chthonic legal traditions is unique to Southeast Asia, since it simply is not. Africa immediately comes to mind as another location where chthonic legal traditions persist, but so too do indigenous communities in Oceania or the Americas. Nonetheless, the chthonic legal traditions cannot be ignored when considering Southeast Asia and especially in considering certain jurisdictions. Indonesia may be considered the prime example, and indeed teaching about the Indonesian legal system without discussing *adat* would be fantastically inappropriate and inaccurate.[32]

C. *Religion*

Asia presents different religious demographics from other parts of the world. In particular, Asia exhibits fairly high levels of religious affiliation (especially, in Central, South, and Southeast Asia), high levels of religious diversity, a different mix of religious traditions, and the strong presence of Islam, Hinduism, Buddhism, and Confucianism. In fact, by one measure Singapore is the country with the highest religious diversity in the world.[33] Indeed, in Southeast Asia in particular, the strong presence of Muslim legal traditions or the 'Islamic law family', both historically as well as in contemporary application, cannot be neglected.

Distribution of Muslim estate to be according to Muslim law

112.—(1) In the case of any Muslim person domiciled in Singapore dying intestate, the estate and effects shall be distributed according to the Muslim law as modified, where applicable, *by Malay custom*. (Emphasis added).

29. Laws of the Constitution of Selangor, 1959, in *Constitutions of the States of Malaysia* (2nd edn, International Law Book Series 1998) 545 (emphasis added).

30. ibid 34 (Laws of the Constitution of Johore, 1895) (emphasis added).

31. See for a general discussion, Hooker, *Adat Law in Modern Indonesia* (n 26) and MB Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws* (Clarendon Press 1975).

32. For a recent discussion of Indonesia, see Franz von Benda-Beckmann and Keebet von Benda-Beckmann, 'Legal Pluralism and Legal Anthropology: Experiences from Indonesia' in Gary F Bell (ed), *Pluralism, Transnationalism and Culture in Asian Law: A Book in Honour of M.B. Hooker* (ISEAS-Yusof Ishak Institute 2017).

33. See Pew Research Center, 'Global Religious Diversity' (*Pew Research Center*, 4 April 2014) <www.pewforum.org/2014/04/04/global-religious-diversity/> accessed 11 March 2019.

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Comparative law analysis must, therefore, take account of how these dynamics inform the contexts of Asia, especially vis-à-vis other parts of the world. This is not simply because of the presence of religion in Southeast Asia, though that is one aspect of it. It is also, to be clear, because of the range of religious traditions, with the different sorts of understandings of the relationship between 'religion and the world', and the different sorts of claims that might be made on the state for religious accommodation. Thus, a framework of what religion is or what religion might ask from the state that is premised on the Abrahamic faiths of Judaism, Christianity, and Islam cannot be taken as the sole paradigm in Southeast Asia when encountering Buddhism, Taoism, and Hinduism, for example. This matter becomes particularly relevant in light of the ubiquitous presence of guarantees of 'freedom of religion' in Southeast Asian constitutions.

In short, the religious landscape in Southeast Asia must be understood for its distinctiveness and with its nuances. This landscape also presses more sharply on the legal orders in the region than it might do in other parts of the world – both in an absolute sense and due to its variations. For instance, the formal presence of law that is linked to a religious basis, such as Islamic law, is present in several locations in Southeast Asia such as Indonesia, Brunei, Malaysia, Singapore, and Thailand.

To give just a cursory illustration, consider that in Indonesia, the *Law No 7 of 1989 on Religious Judicature* provides for Islamic courts of first instance as well as Islamic appeals courts in every province. Cammack and Feener report that in 2010 there were 343 first instance Islamic courts as well as 29 appeals courts.[34] Indonesia also has a *Compilation of Islamic Law* (*Kompilasi Hukum Islam*), promulgated through presidential order[35] that applies Islamic legal norms with respect to marriage and inheritance for Muslims and regulates religious endowments (*wakaf* (Bahasa); *awqaf* (Arabic)). Indonesia also has a body to issue Islamic legal opinions (*fatwas* or *fatawa*), called the *Majelis Ulama Indonesia* (MUI or the Indonesian Council of Ulema). In Malaysia, Article 3(1) of the *Federal Constitution of Malaysia* declares Islam to be the religion of the Federation, Article 3(2) makes each state's local Ruler the head of Islam for the state (or in the absence of a local Ruler confers this power on the national King (*Yang di-Pertuan Agong*) and Schedule 9 of the Constitution permits states to enact and apply Islamic law. Malaysia also has a national Islamic Religious Council (typically known by its local acronym, JAKIM) and Sharia (local spelling 'Syariah') courts. Even Singapore, which does not have a Muslim majority and which affirms itself as secular, has a Syariah Court,[36] and an Islamic Religious Council (known locally as the *Majlis Ugama Islam Singapura* (MUIS))[37] that can issue *fatwas*, and the AMLA which establishes MUIS and the Syariah Court as well as stipulates how Islamic law matters are to

34. Mark E Cammack and R Michael Feener, 'The Islamic Legal System in Indonesia' (2012) 21(1) Pacific Rim Law & Policy Journal 13, 21.

35. Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam [Presidential Instruction No 1 of 1991 on Dissemination on Compilation of Islamic Law].

36. Syariah Court Singapore <www.syariahcourt.gov.sg> accessed 11 March 2019.

37. MUIS <www.muis.gov.sg> accessed 11 March 2019.

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be more generally administered in Singapore. Thailand too has its Central Islamic Council of Thailand (CICOT),[38] whose head, the Sheikhul Islam, is appointed by the King as well as the Provincial Islamic Councils. In legislation, Thailand has an *Administration of Islamic Organization Act*[39] and an *Act on the Application of Islamic Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala, and Satun Provinces*,[40] the latter generally applying Islamic legal norms on family and succession issues for Muslims in these Thai regions.

Islam is not the only religious tradition to find itself expressed within the legal systems of Southeast Asia. The present *Constitution of the Republic of the Union of Myanmar*, for example, recognizes Buddhism as the predominant religion in the country.[41] Myanmar also has the *Law Relating to the Sangha Organization 1990*[42] to order and regulate the Buddhist Sangha. In Vietnam, too, the legal system addresses and in this case more forcefully regulates religions. Ngoc Son Bui reports that there are now fourteen religious communities recognized by the Vietnamese state, and cites a Vietnamese Ministry of Foreign Affairs report that as of 2015 there are thirty-six state-recognized religious organizations with 24 million followers (27 per cent of the total population of around 91.9 million people).[43]

With this context in mind, the types of claims that religion might make on the law, and the way in which religious-inspired norms might influence the law is important to explore. As Bouma, Ling, and Pratt note:

> Religious diversity then becomes a driving force behind innovations in social policy as governments attempt to make societies inclusive of increasing numbers of groups. In this context those who have no religion may feel threatened by the rise in the salience of religious belief and practice. Given its pervasiveness and importance, religious diversity is now a critical factor in analysis of social and political stability.[44]

Comparative law teaching in Singapore and Southeast Asia needs to highlight these forces and how they impact – directly or otherwise – the legal environment.

D. *Shifting Power Dynamic and the 'Rise of Asia'*

As economic and geopolitical forces change, Asia, including Southeast Asia, is emerging as a more powerful region of the world. While Japan is experiencing relative decline, China is now an economic superpower, and India an emerging economic

38. CICOT <www.cicot.or.th/en/about> accessed 11 March 2019.
39. BE 2540/CE 1997 (adopted on 17 October 1997).
40. BE 2489/CE 1946 (adopted on 19 November 1946).
41. Constitution of the Republic of the Union of Myanmar 2008, s 361. For a discussion of Buddhism in Myanmar see Nyi Nyi Kyaw, 'Regulating Buddhism in Myanmar: The Case of Deviant Buddhist Sects' in Jaclyn L Neo, Arif A Jamal, and Daniel PS Goh (eds), *Regulating Religion in Asia: Norms, Modes, and Challenges* (CUP 2019), ch 8.
42. State LORC Law No 20/90 of 31 October 1990.
43. Ngoc Son Bui, 'Legal Regulation of Religion in Vietnam' in Neo, Jamal, and Goh (n 41) ch 7.
44. Gary D Bouma, Rod Ling, and Douglas Pratt, *Religious Diversity in Southeast Asia and the Pacific: National Case Studies* (Springer 2010) xviii.

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superpower. Southeast Asia is itself rising, with more wealth and more geopolitical importance of ASEAN countries. In the result, instead of being legal receivers, Southeast Asia is shifting to becoming a potential legal exporter. Here, Singapore offers a number of examples of how this dynamic is playing out.

One example of this is the Promotion of Singapore Law Committee,[45] which, as its name suggests, is explicitly seeking to promote the use of Singapore law in the region. Another complementary example comes in the way Singapore is making its law available via the Singapore Law Watch website.[46] This site provides visitors with an easy-to-access ready reference type of information on key aspects of Singapore law. Its purpose, too, is clear: to make (or enhance) Singapore as a hub for the provision of legal services, and to do so with the use of the substantive law of Singapore.

As a third example, one can look at recent notes from Indranee Rajah, SC, who previously served, inter alia, as Second Minister for Law in Singapore (and is currently Minister, Prime Minister's Office, Second Minister for Finance, and Second Minister for Education). In the first of these notes, titled 'Lawyers Go Global',[47] Rajah highlights overseas mission trips – of which eighteen are being organized in the upcoming three years – to countries in Asia or Southeast Asia. These mission trips highlight two aspects relevant to teaching comparative law in Southeast Asia. First, the mission trips are designed specifically to target 'fast growing regional countries'. This is unsurprising, but it reinforces the point that the economic muscle of Asia or Southeast Asia is strengthening and this is being recognized by the Singapore government as an opportunity for Singapore lawyers. Second, Singapore is explicitly working to develop what the note calls 'The Singapore Lawyer' brand (indeed, the note even presents a 'Lawyers Go Global' logo), and thus to 'export' Singapore legal expertise in its own right. In short, a more assertive promotion of Singapore law in a more assertive Southeast Asia.

The second note on 'The Future of Dispute Resolution in Singapore'[48] pushes this point even further. Rajah highlights that, according to a recent ranking,[49] Singapore is now 'the 3rd most preferred seat of arbitration globally' and the SIAC (Singapore International Arbitration Centre) is now the '3rd most preferred arbitral institution globally'.[50] The note goes on to discuss 'The Asia Story', remarking that 'Asia's rise has been steady and rapid … [and that] Asia is expected to grow at over 6%

45. Singapore Academy of Law, 'Senate & Committees' (*Singapore Academy of Law*) <www.sal.org.sg/About-Us/Senate-Committees/Legal-Development-Cluster> accessed 11 March 2019.

46. 'Editor's Pick' (*Singapore Law Watch*) <www.singaporelawwatch.sg> accessed 11 March 2019.

47. Indranee Rajah, 'Lawyers Go Global' (*Ministry of Law*, 27 March 2018) <www.mlaw.gov.sg/content/dam/minlaw/corp/News/Note%20on%20Lawyers%20Go%20Global.pdf> accessed 11 March 2019. See also Law Society of Singapore, 'Lawyers Go Global – Help for Singapore Lawyers to Venture Overseas' (*Law Society of Singapore*) <www.lawsociety.org.sg/For-Lawyers/Lawyers-Go-Global> accessed 11 March 2019.

48. Indranee Rajah, 'The Future of Dispute Resolution of Singapore' (*Ministry of Law*, 19 June 2018) <www.mlaw.gov.sg/content/dam/minlaw/corp/News/Note%20on%20Future%20of%20Dispute%20Resolution.pdf> accessed 11 March 2019.

49. Paul Friedland, '2018 International Arbitration Survey: The Evolution of International Arbitration' (*White & Case LLP*, 9 May 2018) <www.whitecase.com/publications/insight/2018-international-arbitration-survey-evolution-international-arbitration> accessed 11 March 2019.

50. Indranee Rajah, 'The Future of Dispute Resolution of Singapore' (n 48) 1.

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this year, more than double the expected growths of other regions in the world'.[51] It further highlights, in addition to dispute resolution by arbitration, the existence of the Singapore International Commercial Court, which was established in 2015, and concludes with a section on 'The Singapore Approach' and the steps taken to create an 'ecosystem' (of institutions and expertise) to make Singapore a globally desirable location for dispute resolution, whether via arbitration or litigation.

The reporting of these developments in Singapore is an effort to make a straightforward and maybe obvious point. The Singaporean developments evidence a trend within Southeast Asia – but perhaps with Singapore as the current leading exponent – both to turn towards the region due to its increasing economic growth and potential, as well as to use the local regimes as a paradigm or benchmark and to seek to export the local regimes globally. As such, the rise of Asia[52] thus has the potential to reverse past patterns in the flow of legal normativity, and implications for comparative developments in the future. Specifically, comparative law needs to recognize what one might characterize as a reversal of the colonial pattern, wherein jurisdictions move from being recipients of legal normativity and substantive law, to places that because of their economic and geo-political clout, engage in spreading their norms, ideas, and substantive law both regionally and more generally.

E. '*Cultural Values of Asia*'/ '*Asian Values*'

Lastly, I raise the highly contested and debated concept of their being distinctively Asian values (or even sub-Asian level values like East Asian values, or South Asian values or Southeast Asian values), which may have distinctive impacts on the legal norms developed in the region. Of course, there is a real challenge here. Asia is vast and its sheer size in terms of geography, population, languages, cultures, etc fundamentally challenges any effort to find *an* Asian voice (or, for instance, Southeast Asian voice). Indeed, considering the context of East Asia, Teemu Ruskola has suggested that an East Asian legal tradition can only be understood as having existed historically.[53]

Be that as it may, it is necessary to consider cultural inflections in Asia that may influence law. One example that always comes up when I am teaching comparative law in Singapore is the country's *Maintenance of Parents Act 1996*,[54] which as the

51. ibid 2. Growth rate figures are derived from the Asian Development Bank, 'Asian Development Outlook 2018: How Technology Affects Jobs' (Asian Development Bank April 2018) x <www.adb.org/sites/default/files/publication/411666/ado2018.pdf> accessed 11 March 2019. See ibid x for the headline figures.

52. For a report on the shift of economic power, see Natalie Nougayrède, 'Global Power is Shifting to Asia – and Europe Must Adapt to That' *The Guardian* (London, 9 September 2017) <www.theguardian.com/commentisfree/2017/sep/09/global-power-shifting-asia-europe-must-adapt> accessed 11 March 2019. And for a fascinating graphic representation, see Richard Dobbs and others, 'Urban World: Cities and the Rise of the Consuming Class' (*McKinsey Global Institute* June 2012) 17, Exhibit 3 <www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Urbanization/Urban%20world%20Cities%20and%20the%20rise%20of%20the%20consuming%20class/MGI_Urban_world_Rise_of_the_consuming_class_Full_report.ashx> accessed 11 March 2019).

53. See (n 11) above.

54. (Cap 167B, 1996 Rev Ed) (Singapore).

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legislation itself says is 'An Act to make provision for the maintenance of parents by their children …', Singaporean students readily cite this as an act grounded in the Asian (Confucian) value of filial piety and further note that this value system undergirds the meaning and local sense of the Act.[55]

Constitutional law scholars Jiunn-Rong Yeh and Wen-Chen Chang have looked for something distinctive in East Asian constitutionalism. Their conclusions show different strands of scholarly analysis. They note that:

> some scholars … embrace a universalistic view of democratic constitutionalism and human rights and stress that societies of East Asia or Asia as a whole exhibit the same capability to reflect upon universal human rights values as other societies and cultures. These scholars deem the current constitutional progress in East Asia worthy of dialogue and of eventual convergence with the values held by advanced constitutional democracies in the West.

But,

> [o]thers, however, recognize Confucianism as a distinctive tradition shared by most states in East Asia and seek to emphasize comparable liberal elements in those ancient teachings that may prove a solid foundation for democratic institutions and modern principles of rule of law and constitutionalism.[56]

After examining the work of constitutional courts in South Korea, Taiwan, and Japan, they conclude that:

> The perceived Asian value of 'state before self' notwithstanding, East Asian constitutional developments have been focused on constraining government power, protecting individual rights (especially of women and children) and have given voice to a vibrant civil society. Judicial statements in individual cases did not elevate collective values or public morality over civil and political rights. To the contrary, the three courts … had no hesitation to prioritize rights of individuals over collective morals and values.[57]

So, the jury appears to be out. Is there a distinctive position that emerges from Asian (or subregional – East Asia, South Asia, Southeast Asia, etc) locations?

The answer may be yes and no, and here Singapore may be an excellent illustration. No, Singapore or Southeast Asia may not be so unique that they are impervious to being influenced and analyzed through the developed toolkit of comparative law. However, yes, it behoves comparative analysis to consider, à la Örücü, what

55. These sorts of comments and the identification of the Maintenance of Parents Act 1996 as expressing the Confucian value of filial piety are interesting because, in fact, it may be said that the Act was necessary precisely because filial piety as a cultural value was not sufficiently strongly established in society. That is, if filial piety was actually manifest with children caring for their parents as part of an ingrained Confucian mentality then there would have been no need for the Act. The very fact of legislating for children to maintain parents, therefore, suggests a perceived absence, rather than presence, of Confucian morality in practice. On the other hand, the identification of the Act with a Confucian-inspired value is not unreasonable or unfair, and this value helps the Act to make 'cultural sense'.

56. Jiunn-Rong Yeh and Wen-Chen Chang, 'The Emergence of East Asian Constitutionalism: Features in Comparison' (2011) 59 American Journal of Comparative Law 805, 809–810.

57. ibid 838.

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constitutes a Singaporean or Southeast Asian 'mixedness'. For instance, in his paper on Chinese Family Firms in Indonesia and the Question of 'Confucian Corporatism', Daniel Fitzpatrick concludes:

> This disconnection between East Asian corporate law and reality is a fact. It is a tempting step, therefore, to blame it for the 'failure' of corporate law in East Asia. The argument simply runs that law which is too disconnected from reality has little hope of success … 'Cultural' propensities to hierarchy, family loyalty and group networks are far more likely to govern management actions – and to lead to these poor corporate governance results – than mere 'black letter' provisions of law.[58]

However, Fitzpatrick goes on to caution:

> This paper does not deny that 'culture' is an element in East Asian legal behaviour. But it does argue that culturalist explanations of comparative law, particularly economic law, reify notions of 'culture' in a way that wholly fails to provide a structured and predictive model for analysis. The lesson is, of course, that cultural notions of neo-Confucianism need to be assessed with great care, whether it be in respect of economics or law. What is required is a model that analyzes neo-Confucianist phenomena in the light of its institutional context and inputs.[59]

It is the importance of the cultural nuance that is to be highlighted here. Singapore's *Maintenance of Parents Act 1996* mentioned earlier may find parallels in other jurisdictions (though equally it might be impossible to imagine comparable legislation in other environments). In fact, most civil law jurisdictions would have requirements for support of parents (and parents' support of children). For instance, the *French Civil Code* (in English translation) says:[60]

> **Art 205**
> *(Act no 72-3 of 3 January 1972)*
> Children owe maintenance to their father and mother or other ascendants who are in need.
> **Art 206**
> *(Act of 9 August 1919)*
> Sons- and daughters-in-law owe likewise and under the same circumstances, maintenance to their father- and mother-in-law, but this obligation ceases where the spouse owing to whom the affinity existed and the children born of his or her union with the other spouse are dead.

However, the way this is understood and applied will almost certainly be contextually formed. This context need not lead us to the conclusion of a *completely* different legal and cultural register in Singapore vis-à-vis other locations, but it might tell us that

58. Daniel Fitzpatrick, 'Chinese Family Firms in Indonesia and the Question of "Confucian Corporatism"' in MB Hooker (ed), *Law and the Chinese in Southeast Asia* (ISEAS 2002) 150–168.
59. ibid 165–166.
60. Original French text: French Civil Code (promulgated on 27 March 1803), arts 205 and 206 <www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006422659&cidTexte=LEGITEXT000006070721> accessed 11 March 2019.

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something is different. And that something has a grounding in the context of Singapore or perhaps Southeast Asia more generally.

V. CONCLUSION

Perhaps consistent with the approach taken everywhere, the above observations seek to emphasize the historical and cultural *context* of Singapore and Southeast Asia (highlighting specifically colonialism, religious demographics, presence of chthonic traditions, and Asian values) as well as the forces of cultural and political *change* (changing economic and geopolitical realities). These contexts include the familiar patterns of teaching comparative law thus are relevant. But they also include the particular, and point to elements of analysis and therefore of teaching that are more specific to Asia.

From a viewpoint of Singapore or perhaps Southeast Asia more generally, what is proposed therefore is that the teaching of comparative law must balance the familiar and different. This calls for a cosmopolitan approach of a particular type. For Menski, as mentioned above, this cosmopolitanism is about moving beyond the paradigm of Western, state-centric law. For Patrick Glenn it involves a multi-valent logic that 'is "degree-theoretic" in replacing a binary option with one which tolerates degrees, usually expressed as degrees of truth' and which he sees as, for example, consistent with the Buddhist notions of a 'middle way' and Jainist reconciliation of extremes.[61]

Consistent with these perspectives, I am suggesting a cosmopolitanism not in the sense of being homogeneous and 'one-size-fits-all'–cosmopolitan because it is capacious enough to move anywhere and everywhere without the need for contextual adjustments. Rather, I argue for a cosmopolitanism that takes account of context, but recognizes what the context shares with other contexts, and further that the context is porous and dynamic in geographical and temporal terms.

Comparative law adds richness to the understanding of law students when it brings this type of cosmopolitanism to their attention. And it is here that the teaching of comparative law in Southeast Asia can contribute beyond the local environment. Southeast Asia has often been called a 'rojak' – an eclectic mix that is not resolved or melted together but rather whose elements retain their distinctiveness even as they comingle. Comparative law has, with all good intentions, sought to order diversity, to organize it into groupings that make sense as families or systems or even traditions. The Southeast Asian experience shows that this type of project must, first, come to grips with much more diversity than it has (too often) accounted for in the past; it must go beyond the common law / civil law divide to see many crosscutting contextual forces.

Second, the organizational impulse of comparative law should accept its own limitations and see its task not to explain comprehensively but perhaps better to explore thoughtfully. As Brian Tamanaha has written:

61. H Patrick Glenn, 'Asian Thought and Legal Diversity' in Bell, *Pluralism, Transnationalism and Culture in Asian Law* (n 32) 31.

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> Law is rooted in the history of a society, continuously remade in relation to social factors. Law is an integral aspect of society and society infuses law, their interaction mutually constitutive and bidirectional in cause and effect. Law assumes different forms and functions in connection with levels of social complexity and surrounding economic, political, cultural, technological, ecological, and social factors.[62]

In this light, the example of Southeast Asia suggests that comparative law's task becomes a narrative exercise, more a verb than a noun, and the elucidation of context it provides can both challenge and enable law students to appreciate better what Lord Steyn called 'the world of competing ideas markedly influenced by cultural differences'.

62. Brian Z Tamanaha, *A Realistic Theory of Law* (CUP 2017) 1.

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