

Foreword

This is the first English-language law and society journal edited in Asia, featuring contributions by Asian scholars, and concerned with Asian legal orders in East, South, and Southeast Asia. As an open forum and a platform for the free exchange of ideas, it aims to encourage dialogue, mutual understanding, and normative co-ordination between different civilizations and cultures, as well as to offer a forum for the further development of socio-legal studies in the twenty-first century.

The publication of the first issue of this Journal coincides with the fiftieth anniversary of the Law and Society Association. This historical coincidence has rich symbolic significance. It signals the global extension of the “law and society movement” in the past half-century, not only in Asia but also across the world. In the meantime, it also indicates a turning point for socio-legal studies, with its focus shifting to Asia, a continent with rapidly expanding academic capacity and the full potential to become a frontier for global institutional change.

Asia is, first of all, a geographical concept. Phoenicia as standing upon the edge of the Mediterranean looks up to sunrise, with Europe on its rear and Asia on its front. In the landscape of geopolitics, Asia is a political concept. It comprises an international order with overlapping circles of civilization. Nevertheless, there exists a dichotomy of two opposing historical views, one based on continent and the other on ocean. Through this perspective, societies and practices in the East Sea, the South Sea, the Indian Ocean, and the Mediterranean were cut off from and brought into certain tensions with ancient civilizations. Finally, Asia is a concept loaded with ideological force. The rise and decline of cultural soft power, coupled with its social impact and the conflicts between different worldviews, can be observed from such theses as *chinoiserie* by Voltaire, a stagnant Asia by Hegel, a reinterpretation of Asian values by Lee Kuan-Yew, and the critique of “crony capitalism” at the turn of the century.

In the past three decades, what becomes more noteworthy has been the tremendous development and integration of Asian economies. Today’s Asia is no longer in a state of “stagnation” as criticized by J.G. Herder or Hegel. On the contrary, it is in a state of unprecedented dynamism, with an awe-inspiring pace of development. With the established industrial power of Japan, and driven by the emerging economies of China, India, and Russia, a lively Asia is entering the world stage with an incomparable appearance of vitality, a great transformation in the world system to be seen only in centuries to come—an event that is bound to lead to paradigmatic innovation in both order and institutions. Likewise, the issue of constructing an “East Asian community” has been brought to the political agenda.

To a large extent, the integration of today’s East, South, and Southeast Asia rests upon the economic interdependence and common interests that arise out of free trade. Nevertheless, if we aim to build upon such integration and aim for a certain type of fate-sharing community with stability and long-term goals, or, to borrow from Benedict Anderson, a transnational, larger-scale “imagined community,” then economic interests are not sufficient as a binding force. Mutual understanding, empathy, and some degree of consensus in terms of social values must be reached. Without such core values, the free market would be devoid of

non-market essentials; a normative order would be less likely to emerge, and no safeguards could be offered to democratic politics. For this very reason, in discussing the future of Asia, we should consider not only economic interests but also social values, with special attention to institutions and cultures.

Today's Asia is no longer dominated by "Oriental Despotism," in the famous phrase of Karl A. Wittfogel. Reform, opening-up, and modernization are both historical experiences shared among Asian nations and strategic opportunities shared by Asia with the rest of the world. Most countries have reached consensus on such ideas as the rule of law, liberty, democracy, and justice. At the same time, the distinctive cultural value systems of Asia are gaining renewed understanding, interpretations, and combinations. A combination of Confucian philosophy, which emphasizes the ethics of responsibility and the spirit of "harmony with diversity," with the Habermasian theory of communicative action, is capable of providing a viable alternative basis not only for the economic integration of a pluralistic Asia, but also for the improvement of global governance that is premised on a similar plurality. Euro-America needs Asia as the "other" for self-identification, and vice versa. Asia needs Euro-America as a mirror to reflect its own past, present, and future. Socio-legal studies can be both a medium and a lubricant to channel these relationships in terms of symbolic interaction.

It is well known that the contemporary socio-legal studies emerged in the United States and Europe in the mid twentieth century in the context of the progress in social sciences as well as the imperatives of social reform, when major achievements were made in disciplines such as economics, political science, sociology, anthropology, ethnology, statistics, and other behavioural sciences. System theory, cybernetics, information theory, game theory, and Gestalt psychology provided abundant and sophisticated analytical tools and knowledge-generating stimulus for social administration and politico-legal decision-making. Furthermore, industrialization turned modern society into an unprecedented technological society, where state and legal operations became increasingly dependent upon a wide variety of techniques. It is precisely in this historical context that the interdisciplinary domain of socio-legal studies, drawing actively upon methods and paradigms from other disciplines, became popular among legal academics, judges, and lawyers.

Since the mid 1970s, the original research paradigm of socio-legal studies has undergone a period of reshuffling and reshaping, but a new alternative, foundational paradigm has not yet been established. For this very reason, there has emerged a plethora of meso- or small-scale theoretical models and empirical analyses. By the end of the twentieth century, socio-legal studies were largely influenced by theoretical models, modes of thought, and knowledge systems such as phenomenology, semiotics, structuralism, deconstructionism, exchange theory, hermeneutics, game theory, and complex system theory, where diversification intersects with homogenization. In terms of the commonality among different modes of thought, individualistic ideas are relativized, with a greater emphasis upon the interactions and communication between individuals, between individuals and society or state, and between individuals and nature.

It is important to point out that lawyers differ from social scientists in their understanding and treatment of socio-legal research objects. Generally speaking, lawyers tend to examine legal phenomena through a professional perspective, with the hope that research findings in the sociology of law can help improve objectivity and efficiency in law-making and

implementation through public administration and adjudication. They emphasize both the collection of factual data according to particular practical needs and a rationalistic interpretation of rules, decisions, and participants' motivations, with an analysis of the interrelationships and interactions between law and society from the perspective of roles and functionalism. In comparison, the entry point for social scientists differs essentially in that they prefer to grasp the essence and appearance of legal phenomena in a wider and more diversified social context, with their attention focused on an accurate description of facts and real situations, analysis from an observer's point of view, and the construction and empirical testing of scientific hypotheses.

Nevertheless, whether it be an emphasis upon law or social sciences, upon norm-related marginal phenomena or normative approaches, a basic tendency can be observed in the sociology of law during its paradigmatic transformation, namely, in its increasing characterization by an emphasis upon interaction and meaning rather than upon permanent institutions and functions. The implementation of law is no longer understood as a linear compulsion, but a two-way dynamic, during which neither the object nor the subject of legal operation should be studied in an isolated manner. Even an emphasis upon individual freedom and agency should be premised on a real individual capable of communication, with a strong sense of responsibility and a spirit of self-discipline. Likewise, the emphasis upon the rule of law and judicial independence should be premised on democratization and the procedural recognition and participation by the public as the basis of legitimacy.

To reposition socio-legal studies along this line of thought, especially from the perspective of Asian cultural and institutional transformations, we hereby venture to offer three basic principles or measuring criteria as the intellectual guidelines for our journal: (1) [for the methodology of socio-legal studies] to observe and explain social phenomena through law and to interpret legal order in society; (2) [for the value of socio-legal studies] whereas positivistic legal studies are based on individualism (personality), socio-legal studies are based on collectivism (*guanxi*); (3) [for the themes of socio-legal studies] the research shall be focused on the interaction between formal and informal rules. In spite of these basic principles, we plan to accept submissions from a wider range and aim to be as inclusive in the selection of topics as possible.

In the early twenty-first century, the world is undergoing a great transformation of division and re-ordering. The relationship between law and society has never been more important and more elusive. Under the impact of globalization, boundaries of all types are increasingly blurred, while the modern rule-of-law order, based on nation-states, is confronted with severe challenges, even as increasing risks have compelled national governments to strengthen ad-hoc governance. Seemingly everything becomes fluid, where traces of chaos can be seen wherever our vision takes us. In the meantime, the constitutive principles of order have demonstrated an enduring continuity. Be it modern paradigm or traditional culture, all has followed a set course, especially with regard to local knowledge and situational modes of thought that have continued to dominate individual conduct extensively. As a response to globalization, local self-identity is on the rise. In Asia, with economic development and a reconstruction of a social value system, the tensions between globalization and localization appear stronger, which further increases the pluralism already present in Asia.

In the age of globalization, communication should be strengthened to overcome "pluralistic ignorance." In this sense, the keyword of the twenty-first century is "communication."

Only through sufficient communication can we achieve mutual understanding, trust, and then consensus. To build a new Asian order we must pay special attention to a fundamental consensus on social values as its foundation, in which legal communication thus acquires significance of particular import. There is a famous proposition in socio-legal studies, namely, that discourse generates structure. We hope that the structural transformation of Asia will be realized through continuous and various processes of communication. We hope that the start of our Journal will lead to a new cultural silk road. This journey starts from Shanghai, but also from Seoul, Tokyo, Sydney, New Delhi, and Tehran. It runs across deserts, grasslands, high mountains, islands, and oceans, and back and forth among different knowledge portals in Asia. It communicates with all our partners interested in Asian law and social development, in Europe, America, Africa, and Oceania. Eventually, it arrives at a universal ideal of good global governance.

Arguably, the initiation of this Journal is a significant event for both the law and society community and the Asian law community. From now on, legal scholars in Asia, as well as all scholars interested in Asia, will have a communicative platform of our own and a public space that belongs to all colleagues and friends. Through this Journal, Asian experts, scholars, and intellectuals can voice their concerns on the restructuring order of the world, as well as on the diverse opinions from different regions and circles of civilization. All these efforts will not remain unpaid or futile, as they will indubitably contribute to the construction of a human society with greater justice and harmony.

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