BOOK REVIEWS

Studies in the Contract Laws of Asia: Remedies for Breach of Contract, edited by Mindy Chen-Wishart, Alexander Loke and Burton Ong [Oxford University Press, Oxford, 2016, ISBN 978-0-19-875722-1, 536pp, £75.00 (h/bk)]

Werner Menski in his leading work, *Comparative Law in a Global Context*, highlighted the dangers of a Eurocentric approach to comparative law. He stressed the need to adopt a global, plurality-conscious perspective. In the modern global economy, where China (according to WTO statistics) is the world's leading exporter and the so-called BRICS (Brazil, Russia, India, China and South Africa) economies continue to show impressive growth, increasing their share in world exports from 8 per cent in 2000 to 19 per cent in 2014, it is indeed difficult to justify a failure to engage with comparative law globally and yet there remains, despite the existence of specialist journals such as the *Asian Journal of Comparative Law* and the *Global Journal of Comparative Law*, a paucity of comparative studies between the private laws of Asian jurisdictions or even up-to-date accounts of the contract laws of some Asian jurisdictions in the English language. This, at least in the area of contract law, the new series—*Studies in the Contract Laws of Asia*—seeks to rectify by producing a six-volume series of works covering the key topics of remedies for breach of contract, formation of contract and third party beneficiaries, contents of contracts and unfair terms, invalidity of contract, ending and changing contracts, and public policy and illegality. While the first volume in this series on remedies for breach of contract covers nine jurisdictions (China, India, Japan, Korea, Singapore, Hong Kong, Taiwan, Malaysia and Thailand), it is hoped in subsequent volumes to extend this to Cambodia, Indonesia, the Philippines and Vietnam. This is an ambitious project, covering both common and civil law jurisdictions whose legal systems reflect the influence of the reception of Western contract law, notably that of England and Wales and Germany, and the legacy of colonial occupation (Korea and Taiwan, for example, are former Japanese colonies). We see also jurisdictions which, in recent years, have been forced to adapt to the demands of a market economy (China where the first contract law of the PRC was not enacted until 1981) and the end of colonialism (the handover of Hong Kong occurring only in 1997). We are further introduced to the phenomenon of 'double transplants'—Malaysia adopting the Indian Contract Act 1872, prepared for India by the British, in the Malaysian Contract Enactment 1899, while the Thai Civil and Commercial Code of 1925 was the result of copying out English translations of either the German Civil Code (1900) or Japanese Civil Code of 1898. To render this complex picture complete, as is well known, the Japanese Civil Code itself is a product of the influence of (primarily) the German Civil Code.

To respond to these challenges, the editors have brought together a team of leading academics and practitioners (including a former judge) to comment on the availability of specific performance (here entitled 'performance remedies') and damages (here 'money remedies') in each specific jurisdiction. The project has two main aims: to facilitate conversations both between Asian jurisdictions and Asian and European jurisdictions, and to promote the development and teaching of courses on comparative Asian contract law in law schools worldwide. Analysis is structured around a number of issues and themes (contributors were given detailed terms of reference), together with a number of case studies (taken largely from English case law) which required the authors to apply the law to see if, in practice, different results would eventuate. This latter idea—which bears some resemblance to the questionnaire approach of the Common Core project—is very helpful in converting the abstract into reality. The chapters are well written, in clear English and offer a variety of perspectives; the academic commentators, in particular, providing a critical and more theoretical analysis of the law in question. The book ends with a reading list/bibliography for each jurisdiction which will provide an extremely useful resource for researchers. The editors suggest wisely that the book can be read in a number of ways either by grouping jurisdictions with similar roots (common law; Japanese law) or, from a transplant perspective, for example,

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Hong Kong followed by Singapore for a sense of how the common law influence is being questioned or India followed by Malaysia to understand the nature of the 'double transplant'. As such advice indicates, this is not a book to read in a single sitting, but a book to dip into, often choosing comparable chapters, but with reference to a very helpful introduction and comparative conclusion. As such, each chapter stands alone and can be read in its own right.

A good conclusion is obviously vital in a project of this kind and Chen-Wishart's conclusion is thoughtful and demonstrates a mastery of both this area of law and the material in this book. She draws together the different jurisdictions discussed in this volume and tries to find evidence of convergence which might support regional harmonization of contract law. She further examines the topic of legal transplantation (which she covered so well in her 2013 article for the *International and Comparative Law Quarterly*). That evidence of convergence is found, despite obvious common/civil law distinctions relating to the primacy of specific performance or damages as the correct response to breach of contract, the relevance of fault and the different approaches to remoteness of damage (foreseeability v adequate causation), will be of interest to both comparative and contract lawyers. It is a shame, however, that the common and civil law genealogy of the jurisdictions in question is not dealt with in the introductory chapter. While it is helpful to state the population and GDP per capita of the subject jurisdictions (3), the reader—particularly the European reader—would have benefited from a greater understanding of the historical and political context of all nine jurisdictions before reading the chapters. Further, although some authors do address the law 'in action', for example, in Swaroop's chapter on Money Awards in India (105–6), it would have been useful also to have included a broader discussion of issues such as access to justice, and the impact of influences such as Confucianism which might lead to a preference for settling disputes by informal conciliation procedures.

Yet these are minor quibbles in what is a fascinating read for contract lawyers interested in the evolution of contract law in other economically strong jurisdictions (consider, for example, the rejection by the Singapore Court of Appeal of Lord Hoffmann's approach in *The Achilleas* [2009] 1 AC 61) or wishing to gain insights into the application of contractual remedies across the world. The changing role of specific performance in China resulting from the introduction of the market economy highlights the importance of context, for example. While specific performance is seen technically as a 'remedial right' (as you might expect from a civil law jurisdiction), Chen notes that when China was operating under a socialist planned economy, specific performance was the preferred remedy simply because goods available on the open market were limited, and monetary compensation would not therefore have been an adequate remedy due to the limited number of suppliers. Once, however, the planned economy is transformed into a market economy, it becomes possible to purchase substitute goods and Chen argues that now it can be said that granting specific performance is rare in China compared to the widespread use of damages, leading to more convergence with the approach found at common law. As such, we have a real insight into the motivating forces changing the nature of contract law in China. For comparative lawyers interested in legal transplants, there is also much to consider. The chapters on India and Malaysia highlight some of the difficulties in using transplants, for example, in assuming that the transplanted law remains the same as its source material or, in Malaysia, reaching a decision based on the Court of Appeal decision in *Ruxley Electronics & Construction Ltd v Forsyth* [1994] 1 WLR 650 prior to it being overturned by the UK House of Lords. Other examples include 'one of the most notorious maelstroms of theoretical debate in the history of the Korean Civil Code' concerning the tension between a test of remoteness based on foreseeability and yet influenced by German ideas of difference theory and legal causation; an issue also arising in Japan (131–3). The double transplants add further tensions, for example in Malaysia where the courts interpret section 74(1) of the Contracts Act 1950 as essentially a statutory enunciation of the rule in the English case of *Hadley v Baxendale* (1854) 9 Exch 341 despite variations in the statutory language in the Act, showing an apparent preference for English authorities over Indian cases.

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As may be seen, the editors have produced a volume which throws fresh insights on contract law across Asia and which, in particular, forces the reader to rethink preconceptions of Asian jurisdictions as mere shadows of their colonial past. As a reader, I very much look forward to the appearance of the next five volumes in this series and the editors are to be commended in providing a valuable addition to comparative law scholarship.

PAULA GILIKER*

The Thin Justice of International Law: The Moral Reckoning of the Law of Nations by STEVEN R RATNER [Oxford University Press, Oxford, 2015, 496pp, ISBN 978-0-19-870404-1, £50.00 (p/bk)]

The Thin Justice of International Law constitutes an ambitious attempt to demonstrate and convince both international lawyers and philosophers that international law is supported by a moral foundation which contributes to the development and maintenance of a just world order. Steven Ratner hopes that this will incentivize more robust interdisciplinary engagement with international law and philosophical ethics in order to advance global justice through international law.

In Part I, Ratner presents his analytical framework. Firstly, by examining current debates on global justice—including, from the international legal perspective, both Bruno Simma's concept of community interests and the New Haven School's conceptualization of law—he determines that an approach comprehensively integrating international law and philosophical ethics is largely lacking (Chapter 1). In Chapter 2, Ratner provides the groundwork for such an approach, to enable the assessment and promotion of international law's contribution to a just world order. He addresses both the conceptual issues pertaining to the identification of the standard of justice and the method by which the just nature of international legal rules will be assessed. Equipped with an international lawyer's insights into the political and institutional constraints of the realm in which the law operates, Ratner adopts a non-ideal standard of justice, which is 'thin' because it is claimed to represent a moral minimum. This is comprised of two core principles—or 'pillars' as he prefers to call them—which emerge from a process of internal discovery and justification which he undertakes. The first is the advancement of interstate and intrastate peace, and the second is the non-interference with basic human rights. The way in which these pillars are operationalized in assessing the just nature of international legal rules is subsequently explained. The rule of law—which, for Ratner, includes considerations of fairness—and effectiveness, as evidenced by a substantial degree of compliance, are also deemed relevant to some extent to this assessment (Chapter 3).

In Parts II–IV, Ratner appraises international law's core components against the two pillars of justice. A thematic structure underlies the assessment of a broad range of rules, including the 'core norms on statehood' (Part II), those relating to 'territorially-based protections of human rights' (Part III) and the 'core norms of the global economy' (Part IV). Ratner's international legal expertise enables him to provide a succinct and clear summary of the relevant rules, despite debates and uncertainty regarding their content. Each section commences with a synopsis of the rules, which are then evaluated against the pillars of thin justice. The previously determined components of international law are taken into account in the assessment of the rules pertaining to the membership and decision-making rules of international organizations, as the pillars adopted are often, but not always, irrelevant in this context. Given that the standard of justice is derived from the observation of international legal rules, the conclusion that most norms are in fact just is somewhat unsurprising. Nevertheless, Ratner's approach does not equate to an

*University of Bristol, paula.giliker@bristol.ac.uk.

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