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Pluralism, Transnationalism and Culture in Asian Law

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Pluralism, Transnationalism and Culture in Asian Law

A BOOK IN HONOUR OF M.B. HOOKER

EDITED BY

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To M.B. Hooker,

whose scholarship and passion started it all.

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Preface

This book stems from a symposium held at the Faculty of Law of the National University of Singapore on 27–28 September 2012 in honour of Professor M.B. Hooker. Professor Hooker was a pioneer in the field of legal pluralism. In fact, his scholarship laid the foundation of the field. His 1975 book *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (1975) was seminal and opened this field of study. The man has been tremendously influential.

In the first chapter of this book, entitled *M.B. Hooker and Southeast Asian Law: Path-breaking Passions*, Veronica Taylor traces the career of M.B. Hooker and gives us a list of his publications. I will therefore refrain from doing this in this preface. I will however state my admiration for the man and scholar. Professor Hooker has been very influential on me (and so many others), yet I met him for the first time only at the symposium we held in 2012. Although by all accounts M.B. Hooker has been generous in his personal support for young scholars, in my case, due to distance, his influence was not personal but truly merely intellectual, which makes it clear that the man has been a leader in the field.

The chapters of this book are very diverse, reflecting the breadth of legal pluralism and of M.B. Hooker's scholarship, which covered legal pluralism, Islamic law, Malaysian and Indonesian law, *adat* law, etc. I will not here introduce each of the chapters — the table of contents should suffice to show the breadth of this collection. It is however an homage to M.B. Hooker that colleagues with such diverse interests readily volunteered for a symposium and book in his honour — it shows the breadth of his own scholarship and its influence. All the chapters relate to legal pluralism. All of them relate to Asia (which goes as far as Israel).

I wish to thank my colleagues Veronica Taylor of the Australian National University and Michael Dowdle of the National University of Singapore for assisting me in editing some of the chapters of this book.

On a sad note, we were very sorry to learn of the loss of two contributors between the symposium and the publication of this book. Professor H. Patrick Glenn, another giant in the field of comparative law, has passed away. His wife, Jane Glenn, also of McGill University, has kindly agreed to the publication of the final version of his chapter. Franz von Benda-Beckmann, who had co-written a chapter with his wife Keebet von Benda-Beckmann, also sadly passed away before the publication of this book. A great loss to all of us and to anthropology generally. We are grateful that Professor Keebet did the final editing on behalf of both of them.

I hope you will enjoy the book as much as I enjoyed working with this group of authors.

Gary F. Bell
National University of Singapore
28 August 2016

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I would like to thank the National University of Singapore for the generous research grant that allowed us to hold a conference in 2012 from which this book stems. I would also like to thank the Faculty of Law of the National University of Singapore and its Centre for Asian Legal studies for their support.

I also would like to thank the *Asian Journal of Comparative Law*, a journal of the Asia Law Institute (ASLI), which authorized the reproduction of an article by Arif A. Jamal (Chapter 3). I would also like to thank the artists who authorized the reproduction of their work in Chapter 7.

But mainly all the authors of the different chapters would like to thank Professor M.B. Hooker for his leadership in the field of legal pluralism and for inspiring all of us.

About the Contributors

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The late Professor Franz von Benda-Beckmann was an honorary Professor at Leipzig University and at the Martin Luther University in Halle. He obtained his first law degree at the High Court in Schleswig, his PhD at the University of Kiel and his second law degree at the High Court of Hamburg. After working in Zürich for five years he worked at the University of Leiden, heading a small research institute dealing with law in the former Dutch colonies. In 1981 he was appointed Professor for Law and Rural Development in Developing Countries at Wageningen University. In summer 2000 he moved to Halle to establish and head the project group Legal Pluralism at the Max Planck Institute for Social Anthropology together with Keebet von Benda-Beckmann.

Professor Keebet von Benda-Beckmann is an honorary Professor at Leipzig University and at the Martin Luther University in Halle. She holds a law degree from the University of Amsterdam and obtained her PhD at the University of Nijmegen. She first was an assistant in sociology of law at the University of Zürich, then worked at the University of Leiden, and taught for a while in Wageningen. In 1982 she took a position in anthropology and sociology of law at Erasmus University Rotterdam, where she later received a personal professorship in the anthropology of law in 1998. In summer 2000 she moved to Halle to establish and head the project group Legal Pluralism at the Max Planck Institute for Social Anthropology together with Franz von Benda-Beckmann.

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The late Professor H. Patrick Glenn was the Peter M. Laing Professor of Law, Faculty of Law, McGill University, a Member of the International Academy of Comparative Law and President of the American Society of Comparative Law. He taught and had research interests in the areas of comparative law, private international law, civil procedure and the legal professions. His book *Legal Traditions of the World* (2000) received the grand prize of the International Academy of Comparative Law. A fifth edition appeared in 2014. He has been Director of the Institute of Comparative Law and in that capacity worked on projects on the reform of the Russian Civil Code and judicial education in China. He was a member of the Royal Society of Canada and the International Academy of Comparative Law and has been a Bora Laskin National Fellow in Human Rights Law, a Killam Research Fellow, and a Visiting Fellow of All Souls College, Oxford. In 2006 H. Patrick Glenn received the Prix Léon-Gérin, a prestigious award bestowed by the Government of Québec, in recognition of his contribution to comparative law throughout his career. In 2010–11 he held the Henry G. Schermers Fellowship of the Hague Institute for the Internationalisation of Law.

Professor Andrew J. Harding is a leading scholar in the fields of Asian legal studies and comparative constitutional law. He commenced his academic career at the National University of Singapore (NUS) before moving to SOAS, University of London, where he became Head of the Law School. He joined NUS from the University of Victoria, BC, Canada, where he was Professor of Asia-Pacific Legal Relations and Director of the Centre for Asia-Pacific Initiatives. At NUS he has served as Director of the Centre for Asian Legal Studies and Director of the Asian Law Institute. Professor Harding has worked extensively on constitutional law in Southeast Asia and has contributed to scholarship in comparative law and law and development, having published fourteen books as author or editor. He is co-founding editor of Hart Publishing's book series *Constitutional Systems of the World*, a major resource for constitutional law in context, and has co-authored the book on Thailand in that series (2011) and authored that on Malaysia (2012). His most recent book is *Constitutionalism and Legal Change in Myanmar* (2017).

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Dr Nadirsyah Hosen has been working as a Senior Lecturer at the Faculty of Law, Monash University since July 2015. Prior to this role Dr Hosen was an Associate Professor at the School of Law, University of Wollongong. He has a Bachelors degree (UIN Syarif Hidayatullah Jakarta), a Graduate Diploma in Islamic Studies, a Master of Arts with Honours (University of New England), as well as a Master of Laws in Comparative Law (Charles Darwin University). He completed his first PhD (Law) at the University of Wollongong and a second PhD (Islamic Law) at the National University of Singapore. Dr Hosen is internationally known for his expertise on sharia and Indonesian law.

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expertise in Islamic law and has conducted research in many areas, including on sharia and custom in a sedentary tribal society, the reinstatement of Islamic law in the Sudan by means of statutory codification and legislation, legal circulars and court decisions, and the Mahdi's legal methodology and its application in the Sudan (1881–85) as reflected in legal documents issued by the Mahdi.

Professor Ratno Lukito is a Professor at the Faculty of Syari'ah and Law at the State Islamic University Sunan Kalijaga Yogyakarta. His MA in Islamic studies was obtained from the Institute of Islamic Studies, McGill University, Montreal, Canada (1997), while his Doctor of Civil Law (DCL) was obtained from the Institute of Comparative Law, Faculty of Law, McGill University (2006). His thesis was on conflict and resolution among the three legal traditions of *adat*, Islamic law and civil law in Indonesia, under the supervision of the late Professor Patrick Glenn. He was a Postdoctoral fellow of KNAW-Van Vollenhoven Institute, Faculty of Law, Leiden University, the Netherlands (2009–11). He is currently a fellow of the American Institute for Indonesian Studies. He has authored twelve books and thirty-six articles, mostly on the topic of Islamic law and legal traditions in Indonesia. His book *Legal Pluralism in Indonesia: Bridging the Unbridgeable* was published in 2013. He has been working recently on a monograph entitled "Islamic Law and State in Indonesia: Confabulating the Sacredness".

Professor Veronica Taylor is a socio-legal scholar and Professor in the School of Regulation and Global Governance at the Australian National University and an ANU Public Policy Fellow. Her major contribution to socio-legal studies centres on rule of law assistance as a form of foreign policy and as an emergent field of professional practice. She examines (i) the rise of non-Western rule of law exporters, (ii) regulatory analysis of the rule of law industry and (iii) empirical study of the practice and professionalization of rule of law promotion and law and justice interventions.

