

Legal Consciousness in Asia—Editors’ Note to Special Issue

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“Legal consciousness” has emerged as one of the most dynamic fields of law and society research. It became a central focus for a number of law and society scholars in the 1980s and subsequently underwent periods of elaboration, self-examination, and expansion. Nowadays, when law and society scholars gather to present their research, significant numbers of them characterize their work as legal consciousness studies. Although this scholarly paradigm had originally attracted the attention of North American and European researchers, today it has been taken up by growing numbers of Asian researchers as well as those working in the Middle East, Latin America, and Africa.

This special issue is intended to illustrate the potential of legal consciousness research for those who study Asian cultures and societies. Its six articles address five different countries—China, Vietnam, Myanmar, Thailand, and India. We as editors are particularly pleased to point out that all six authors are relatively junior. Their collective embrace of the legal consciousness paradigm is gratifying, because it suggests that this genre of research will have meaning and value for the next generation of Asian law and society scholars. Indeed, their articles collectively illustrate the power of legal consciousness research for future empirical studies on a broad range of Asian topics. This special issue is therefore intended to provide a glimpse of the future of the law and society field in Asia and to assure readers that an extraordinarily talented group of younger scholars who explore legal consciousness issues is about to step to the forefront.

What do we mean by the term “legal consciousness”? While law and society scholars do not share a single definition of the term, it is generally agreed that the concept refers to “the ongoing, dynamic process of constructing one’s understanding of, and relationship to, the social world through use of legal conventions and discourses.”¹ Legal consciousness scholars, including the authors in this special issue, are interested in the thoughts and actions, the perceptions and behaviour, the ideologies and practices of ordinary people as they navigate their way through situations in which law could play a role. They are concerned not

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1. McCann (1994), p. 7.

only with the presence, but also the absence of law in people's understanding of the social world and their place in it. Therefore, legal consciousness studies do not simply measure the frequency of invoking law, or knowledge—or ignorance—of legal rules and rights, but also address the circumstances in which people perceive the law to be irrelevant and in which they do *not* engage with it at all.

Although law and society scholars take up legal consciousness research with different aims and methods, they tend to frame their analysis by using one or more of three different approaches that we will call Identity, Hegemony, and Mobilization. These three approaches are sometimes contradictory but more often are complementary and often overlap with one another, as in the six articles that make up this special issue.

The *Identity* approach views legal consciousness as an ongoing process of constructing the self in relation to law and legal rights. Relying on autobiography and narratives of the self, researchers examine how the relevance or irrelevance of law to a person's experience connects to the process by which that person's identity takes shape, making legal norms and institutions appear natural on the one hand or alien and inappropriate on the other.

The *Hegemony* approach treats law as a pervasive and powerful instrument of state control that can shape the categories, values, and assumptions of individuals even when it is not applied directly and instrumentally. Hegemony researchers trace the dominance of law and legal institutions over everyday life, and examine whether and how individuals resist law's power. Researchers using this framework aim to reveal the workings and the often invisible effects of law in the thoughts and actions of ordinary people.

The *Mobilization* approach investigates how legal consciousness promotes the role of law and the efficacy of rights in transforming social conditions. Mobilization researchers focus on the relationship between processes of social change and the experiences, perceptions, and actions of individual subjects who choose to use or avoid the law. At times, they study legal consciousness as a register of social change, at other times as a mechanism for achieving change, whether by individuals or by collective action.²

Although the six articles in this special issue do not fit neatly into one or another of the three research approaches described above, each article reveals their collective influence. Sometimes the concern is to dwell on particular types of identity formation in relation to law, other times to reflect on law's invisible but powerful influence on everyday life, and still other times to highlight the role of law in creating forms of consciousness that lead to individual or group action. The young authors have read extensively and drawn eclectically on leading works in the legal consciousness field to forge their own frameworks for understanding the thoughts and practices of their Asian subjects. Their approach also owes a great deal to their engagement with one another and with the two editors over an extended period of time. The special issue originated in a series of panels at the inaugural Asian Law & Society Association (ALSA) meeting and its pre-meeting Young Scholars' Workshop, held at the Faculty of Law, National University of Singapore (NUS Law), from 21 to 23 September 2016.³ We had solicited proposals for a panel series based on the theme

2. The three schools of legal consciousness research are discussed in "Legal Consciousness in the Twenty-First Century," an article in progress by Lynette J. Chua and David M. Engel.

3. NUS Law's Centre for Asian Legal Studies provided partial funding for some of the participants of the panel series at the ALSA meeting on 22–23 September 2016, and its Asian Law Institute sponsored the Young Scholars' Workshop on 21 September 2016. We are grateful to the anonymous reviewers of the articles, the chairs and facilitators of the

“Legal Consciousness, Culture, and Conflict in Asia,” and a number of scholars responded, including some who also participated in the pre-meeting workshop.

The panel series featured empirically grounded projects, in recognition of the growing number of Asia-based scholars who were drawn to legal consciousness as a useful paradigm for their work. Our aim was to foster a conversation among these scholars and to gain a sense of the commonalities in their findings. We believed that the synergies from their collective research efforts could represent a major contribution to the field of Asian law and society.⁴ Although there was a debate in the mid-2000s over the suggestion that legal consciousness might have exhausted its usefulness and that the paradigm might have entered its final days,⁵ we found—to the contrary—that it had become a vibrant and productive tool when applied to diverse Asian research sites. The six articles featured in this special issue exemplify the empirically rich possibilities of legal consciousness research in Asia, and suggest a productive future for the paradigm within the region.

Even though our ALSA panels did not target young scholars, we were delighted to find that all six authors whose papers were selected for this special issue happen to be recent PhD graduates or advanced doctoral candidates in law or social science programmes:

Qian Liu, “Legal Consciousness of the Leftover Woman: Law and *Qing* in Chinese Family Relations,” is a Ph.D. candidate at the Faculty of Law, University of Victoria, Canada;

Tu Phuong Nguyen, “Labour Law and (In)justice in Workers’ Letters in Vietnam,” was awarded her PhD this year by the Department of Political and Social Change, Coral Bell School of Asia Pacific Affairs, Australian National University;

Arm Tungnirun, “Practising on the Moon: Globalization and Legal Consciousness of Foreign Corporate Lawyers in Myanmar,” is a JSD candidate at Stanford Law School and Lecturer of Law at Chulalongkorn University, Thailand;

Lillian Hsu, “Resistance and Evasion in the Shadow of the State: Legal Consciousness of Intellectual Property Laws in Two Chinese Markets,” is a recent PhD graduate of the Department of Anthropology, University of Wisconsin, Madison, US;

Kitpatchara Somanawat, “Constructing the Identity of the Thai Judge: Virtue, Status, and Power,” is a PhD candidate in History and Lecturer of Law at Chiang Mai University, Thailand;

Rahela Khorakiwala, “Legal Consciousness as Viewed through the Judicial Iconography of the Madras High Court,” completed her PhD studies in law and governance this year from Jawaharlal Nehru University, New Delhi, India.

It is widely acknowledged that law-related research in Asia in the past has most often focused on legal texts, doctrine, and philosophy. We hope that the work of these young scholars will inspire others, both junior and relatively senior, regardless of their disciplinary training, to go beyond the study of legal texts and conduct original fieldwork. The six articles in this symposium suggest that the legal consciousness paradigm will prove a particularly rewarding approach for Asian law and society scholars in the years to come.

(*F*note continued)

panels and workshop, Keebet von Benda-Beckmann, Valerie Hans, Andrew Harding, Sida Liu, and Alec Stone Sweet, as well as the leadership and staff of the Centre for Asian Legal Studies and the Asian Law Institute.

4. They also grew out of 2012 and 2014 workshops on Southeast Asian law and society research funded by grants from NUS Law (Grant No. R-241-000-105-112).

5. Silbey (2005), but see Marshall & Barclay (2003); Hull (2016).

We are also very grateful to Professor Yoshitaka Wada, who has been a leading figure in the field of legal consciousness research in Asia for many years. His own broad-ranging studies have provided an inspiration for us and for the six authors whose work is featured here. Professor Wada has graciously agreed to provide a Foreword to this special issue, which introduces and briefly summarizes the six contributions. We thank him for his assistance and for the wonderful example he as a scholar has set for the next generation.

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