Introduction

Is there any society in the world where the written laws accurately describe what people and institutions actually do, where people manage their affairs and resolve their conflicts precisely as the law codes prescribe, and where constitutional principles and regulatory requirements are scrupulously observed? The answer is certainly no. To achieve such a society would be impossible, and to live in it would at times be intolerable. Perhaps it is fortunate that there is always a difference between the dry abstractions and rigid mandates of black letter law and the messy complications of human existence – though we may sometimes wish the law had greater success in resolving those complications. The field of law and society chronicles this difference, this inevitable disparity between the promise of law and its delivery, between the rules and the reality. Law and society researchers expose the many ways in which law actually touches people's lives or remains dormant, in which law promotes justice or increases the potential for unfairness, inequality, and even violence.

In Asian countries, the difference between law on the books and law in everyday life presents itself with exceptional clarity. This is not surprising, since Asian legal systems are, for the most part, transplants from Europe or America, modified, to be sure, in their new surroundings, yet retaining key features that originated in distant and extremely dissimilar cultures. Colonial rulers or political elites imposed most Asian legal systems on populations who had little voice in their form or content. There was no assurance that laws and legal institutions established in this way would reflect the beliefs and behavior of ordinary people. Although most contemporary Asian legal systems have undergone considerable revision since they were first set up, observers have repeatedly noted the sharp contrast between the official laws of Asian states and the unofficial norms and practices familiar to most of the population. These gaps and disparities raise a number of very important questions, such as:

Why do Asian laws and legal institutions so often appear irrelevant to ordinary people? Why does law in Asian contexts fail so frequently to achieve its goals? What strategies for law reform are most likely to improve the situation? What role should law play – as opposed to unofficial customary practices – in resolving conflict in Asian societies? Under what circumstances have individuals and groups in Asia successfully mobilized the law and benefited from its application? What is the status of legal professionals in Asian societies, and what part might they play in advancing popular conceptions of justice?

Law and society researchers working in Asian settings have offered answers to these questions and others like them. It is not surprising that the field of Asian law and society has flourished in recent years and has attracted growing numbers of scholars, students, and policymakers who share a frustration with narrowly focused studies of legal rules or doctrinal exegeses. Although legal theory and the analysis of black letter law still predominate in many law schools, Asia has become a focal point for some of the most significant law and society research in recent years, and professional associations and centers for research and teaching in Asia have achieved greater prominence now than ever before. It is time, we believe, for a Reader that features the literature, theories, and methods of law and society research conducted in Asian settings.

This book presents studies that took place across the entire Asian region, from China, Japan, and Korea to Singapore and Indonesia, from Vietnam, Myanmar, and Thailand to Nepal, India, Sri Lanka, Pakistan, and elsewhere. It highlights the topics that have most interested law and society scholars who study Asia – we shall refer to them collectively as "Asian law and society scholars," though not all are themselves Asian by nationality or ethnicity – and it offers insights into the various ways in which the scholars conduct their research. It provides analyses of the classical legal and religious systems of Asia as well as the most recent law-related issues and developments. In short, this is a book designed not just for students but for scholars of Asia, for lawyers, judges, and policymakers, and for nonspecialists who wish to learn more about the region as seen through the lens of law and society research. It is intended to highlight some of the achievements and the most valuable insights of scholars working in Asia, and it is also meant to inspire further studies by pointing the way to new discoveries on the horizon. It is intended ultimately to contribute to better informed debates and decisions about laws, legal change, and justice in Asian societies.

I.1 What Is Law and Society?

For readers unfamiliar with the field of law and society scholarship, it may be useful to begin with an explanation of the term. We proceed with caution,

well aware that any definition will invite controversy. As law and society research has flourished in Asia and throughout the world, it has become vibrant, multicentered, creative, rapidly evolving, and highly diverse. As a result, law and society scholars nowadays tend to offer differing characterizations of their common field. Even the three editors of this Reader, who share longstanding involvements in the law and society field and are otherwise close colleagues and good friends, tend to define it in somewhat different terms.

This much we could probably agree on: In law and society scholarship, law and legal institutions are studied as social phenomena. Law is not presented as an autonomous system operating independent of its environment. As Lynn Mather (2008) puts it, "*Law is in society*, and most now agree with the argument Laura Nader made initially that the field should have been named 'Law *in* Society' rather than law *and* society." Because law is "embedded" in society, it cannot be studied exclusively on its own terms. The legal system's view of social phenomena, an internalized view that is necessarily constrained by law's own formal rules of relevance and textual interpretation, is like the shadowy vision of reality projected against the walls of the cave in Plato's famous allegory. But law and society researchers do not confine their view of society to the shadows projected inside the cave of the legal system itself. They study law directly, alongside other social and cultural phenomena. They stand in daylight outside the legal system, separate and apart from the legal actors and institutions whose behavior they wish to comprehend.

The tool kit of law and society scholars is ampler than that of traditional legal scholars and includes a number of quite different methodologies: historical or archival research, participant observation, qualitative interviews, broad-based surveys, other forms of quantitative data analysis, laboratory studies, and natural experiments, among others. Most law and society scholars use or at least draw upon empirical research, which Shari Diamond (2019) has defined as the "systematic organization of a series of observations with the method of data collection and analysis made available to the audience." Yet not all law and society scholarship fits within this definition of empirical research. What law and society researchers generally do *not* do is analyze law texts – judicial opinions, statutes, regulations, contracts, and the like – on their own terms rather than situating them in particular social and cultural contexts that must be brought into the discussion in one way or another.

It is almost easier to say what law and society is not than to say what it is. Law and society, as we have already observed, is not conventional legal scholarship of the kind familiar to law professors around the world. It is not merely the analysis of so-called black letter law, of legal doctrine, or of legal theory – though it sometimes takes black letter law as a starting point. Some law and

society scholars may begin with a statute or a judicial opinion, but they rely on fieldwork to trace its impact, workings, or origins in society. Thus, law and society research can provide a useful real-world assessment of legal doctrine and can point to better rules and procedures and better legal institutions. Like conventional legal scholars, law and society researchers pursue theory, but law and society theories are grounded and derived from data and are not of the armchair variety. In short, there may be significant overlap, but the two fields – conventional legal analysis and law and society research – are by no means congruent.

Nor is law and society quite the same thing as law and development, though these two fields also share common roots and interrelate in many ways. Law and society scholars tend to be more skeptical about the capacity of law to achieve development goals and more critical of the unintended consequences that may accompany the instrumental use of liberal legalism to realize social change. At the same time, however, many law and development scholars view law and society research as an essential tool for their work, one that can help them achieve a better understanding of approaches that have worked or failed in the past and are likely to succeed or fail in the future. Moreover, despite law and society researchers' skepticism about law's actual effects, most of them – like their colleagues in the law and development field – aspire to promote progressive social change. Perhaps that is one of the reasons why membership in the two fields tends to overlap.

Lastly, law and society is not the same thing as critical legal studies, even though the two fields intersect in their distrust of liberal legalism's optimistic claims. Law and society researchers typically rely much more heavily on data and on empirical research methods, which critical legal scholars sometimes view as overly positivistic, a misleading characterization that is resisted by the many law and society scholars whose work is qualitative and/or interpretive. Put another way, law and society researchers are more inclined to take the assertions of critical legal scholars as research questions worthy of investigation rather than as self-verifying pronouncements. Indeed, despite the common influence of postmodern theory on both groups of scholars – the work of Foucault, de Certeau, Bourdieu, and others – law and society scholars are more inclined than "Crits" to assume that there is some version of truth (or "social facts," to use Durkheim's term) out there waiting to be discovered by thoughtful engagement with people or social institutions rather than viewing truth claims as hopelessly subjective and relativistic. Moreover, law and society scholars consider it important to allow the data to speak and surprise them. Unlike critical legal scholars, they distrust analyses that fail to develop unexpected insights or that arrive at conclusions identical to the starting point of the scholarly journey.

Even this short list of distinctions should suggest some of the rewards of doing law and society research. Law and society research reveals how law actually works – and how it fails. It listens closely and with some humility to the unheard voices of ordinary people, who are most significantly affected by laws and legal institutions – not just the words of elite actors. It persistently uncovers the gap between law's aims and its actual impact. It examines law's intended and unintended consequences, and it highlights the ways in which law may actually exacerbate problems of inequality in wealth and power. Law and society researchers do not merely theorize about inequality or oppression; they document them in the words and life experiences of real people in specific circumstances.

In selecting the readings for this book, we have attempted to illustrate the unique insights that can be gained from excellent law and society research conducted in Asian settings. Each selection is meant to exemplify law and society research designs and research methods at work. The readings are varied in their approach and in their subject matter; we do not insist on a single orthodoxy. But all the excerpts have one thing in common. They all display the rewards of open-minded, inquisitive, fieldwork-based, creatively designed research with the capacity to surprise the researcher as well as the reader about the role of law in the lives of Asian people. For us as editors of this book, shining a bright spotlight on Asian law and society as a way of thinking about and conducting one's research is even more important than the facts or findings reported in each excerpt. We hope that readers will share our appreciation for the distinctive and, indeed, indispensable contribution that law and society scholarship can make and the perspective it can bring to the study of Asian societies and their legal systems.

But readers may still be confused about the definition of law and society and the terminology used by different people to discuss this field of research. Is "law and society" the same as "law and social science"? Is something different meant by "sociolegal studies"? And how about the "sociology of law"? "Law and social science," it has been argued, is a narrower term than law and society, since it seems to exclude research that draws on disciplines outside the social sciences, such as literary theory, cultural studies, philosophy, the fine arts, and, some would say, history. If that is the case, then defining our field more broadly as "law and society" seems preferable to "law and social science." "Sociolegal studies," on the other hand, with or without a hyphen, is a reasonably inclusive term, and in this Reader we use it interchangeably with "law and society." The term "sociolegal" appears in the name of an important UK-based scholarly organization (the Socio-Legal Studies Association), but it is also employed adjectively by many law and society scholars worldwide.

Finally, there is the term "sociology of law," which may at first glance appear narrower than it actually is. Scholars who use this term, including members of the Japanese Association of Sociology of Law, the European-based Research Committee on Sociology of Law of the International Sociological Association, and the Sociology of Law section of the American Sociological Association, do not restrict their research to the theories and methods of the discipline of sociology – as opposed to political science, anthropology, psychology, history, geography, or the humanities. Rather, those who identify as sociology of law scholars are typically part of the mainstream of what is generally considered the law and society field, regardless of their disciplinary background.

I.2 The Evolution of Law and Society in Asia

The field of law and society has expanded dramatically in Asia in the early twenty-first century, making the region a focal point for innovation in methods and theory. Along with the publication of hundreds of books and articles and the establishment of dozens of centers, institutes, and graduate programs dedicated to the study of Asian law and society, new Asia-focused scholarly journals have also been launched, and new professional associations have emerged alongside older associations of long standing. Hundreds of young, highly trained scholars have joined a prior generation of Asian law and society specialists to push the frontiers of research in new directions. Exciting findings based on fieldwork in Asia test old theories and generate new ones.

Admittedly, legal education in most Asian countries – like legal education elsewhere in the world – remains largely traditional, focusing narrowly on black letter law, legal theory, and rule memorization. Nevertheless, the social, economic, and political transformations underway throughout Asia have made it increasingly clear that conventional legal scholarship is no longer adequate to prepare lawyers, judges, and policymakers to succeed in this new social and economic environment. Changing times demand new approaches that are both wider and deeper than the old ones. The broad, interdisciplinary perspective of law and society has become more compelling than ever.

During this same period, the field of law and society has flourished worldwide, but it would be a mistake to regard Asian law and society strictly as a foreign import – yet another transplant from Europe or North America. Of course, global influences have been and remain important. But the field of law and society also has deep roots in Asia reaching back in some cases more than a century. Asian scholars and western scholars working in Asia have played an important part in the development of law and society as an international research field, both as researchers and as leaders in international scholarly associations. The history of Asian law and society should be mapped

not as a wave of influence traveling from Global North to Global South but as a number of tributaries flowing from many Asian countries and from outside the region that have joined quite recently into a single broad river.

Consider, for example, the rather different law and society origin stories in four Asian countries: Japan, Indonesia, China, and India. *Japan* is home to the world's oldest law and society association, The Japanese Association of Sociology of Law (JASL), which was founded in 1947. Japanese law and society first took shape during the early years of the twentieth century, following the establishment of the "modern" Japanese legal regime based on European models. The contrast between traditional Japanese law ways and the new legal system attracted the interest of Japanese legal scholars, particularly Izutaro Suehiro, who drew on the work of Eugen Ehrlich (1936) and Roscoe Pound (1910) in his efforts to study the "living law" from a sociological perspective rather than simply analyzing the new written laws on their own terms. Suehiro and other Japanese scholars conducted fieldwork in China and Japan to ascertain the "effective social norms that people actually complied with as rules of conduct" (Murayama 2013:569). After World War II, a new generation of scholars, most notably Takeyoshi Kawashima and Masaji Chiba, continued these efforts. In this intellectual climate, law and society studies became institutionalized in Japan, not only by the formation of the JASL but also by the designation of sociology of law as "a major subject of law study even after the establishment of the new professional law schools" (Murayama 2013:581).

The emergence of law and society in *Indonesia* followed a very different path. Cornelis van Vollenhoven, an eminent Dutch anthropologist, contended that the Dutch colonial government needed a better understanding of Indonesian customary law, since "[m]isunderstanding its character led to illegal expropriation of land and other resources" (von Benda-Beckmann and Turner 2018:257). Accordingly, he inspired a generation of researchers to conduct fieldwork studies of "local laws" in Indonesia and their sometimes conflictual relationship to the colonial legal superstructure – similar to efforts by anthropologists in other societies that fell under the control of European imperialists. Thus, research by scholars of Indonesia in the so-called Adat School should be understood as a product of colonialism and also, at least to some extent, as a check on its transgressions. After the Netherlands relinquished control over Indonesia in 1949, a few Indonesian scholars – such as Tapi Omas Ihromi and Satjipto Rahardjo – continued to conduct research and train younger scholars in the law and society tradition, but the most important scholarship continued to be produced by non-Indonesians, such as Daniel S. Lev, Franz and Keebet von Benda-Beckmann, and Adriaan Bedner.

Law and society in *China* followed yet another trajectory, with little activity apparent in the earlier years of the twentieth century (except for the seminal work of Tung-Tsu Chu [1965]) but a dramatic efflorescence in the 1980s and 1990s. As the Chinese government began to support sociolegal research, two major conferences were held in Beijing in 1987 and 1988, and the translation into Chinese of classic and contemporary law and society studies, mostly from Europe and North America, made them available to a growing number of eager young Chinese students and scholars (Liu and Wang 2015). Fieldwork-based research began to appear in the 1990s, largely focused on rural Chinese settings; and major centers of teaching and research emerged afterward. Of considerable symbolic importance, one of the first sociolegal conferences that led to the founding of the Asian Law and Society Association took place at Shanghai Jiao Tong University, which also became the home of the *Asian Journal of Law and Society*, published by Cambridge University Press since 2014. The story of law and society in China is, therefore, one of dramatic and quite recent expansion, supported by the Chinese government and led by a few particularly influential figures, such as Suli Zhu and Weidong Ji.

Law and society in *India* developed in quite a different way. British colonial administrators, like the Dutch colonizers in Indonesia, did engage in research on customary law and traditional Indian religious traditions, particularly Hinduism. Nevertheless, Srinivas (1987) and others have noted that pre-independence research in the social sciences was hardly robust, and it was not until the post-independence period that social science research began to expand. In large part, this was because the new political leaders believed that a modern democratic state required good social science research in order to make sound policy decisions. Nevertheless, the Indian Council of Social Science Research showed little interest in law and society studies, although it did support some topics that we might consider sociolegal in nature, such as the study of social class, women, and rural poverty. Ironically, in light of the general neglect of law and society research in post-independence India, one of the world's leading law and society scholars at that time – Upendra Baxi – was Indian, and some of the most influential American and European law and society scholars of the late twentieth century were Indian specialists: Marc Galanter, Susanne Hoeber Rudolph and Lloyd Rudolph, Robert Kidder, and J. Duncan M. Derrett, among others. In recent years, however, Indian and other South Asian scholars, notably Pratiksha Baxi and her colleagues, have promoted law and society scholarship within India and South Asia by organizing a highly successful organization, known as LASSnet (Law and Social Sciences Research Network), based at the Centre for the Study of Law and

Governance, Jawaharlal Nehru University. LASSnet meets every two to three years and attracts hundreds of scholars from the region.

It is evident from these four illustrative examples that law and society has emerged in very different ways in different Asian countries – and in a few countries it has scarcely emerged at all. Western intellectual influences have been important, and colonialism played a key role in some instances, but scholars in Asia themselves deserve most of the credit for nurturing the study of law and society and applying it to the circumstances of Asian societies. Indeed, they were the ones who realized that law and society research was uniquely suited to grapple with the rapidly changing conditions in Asia, first to study the ripple effects of legal "modernization" and then to study the consequences of globalization and tumultuous political and economic change. Many have recognized that law and society research can provide a reliable foundation for policy decisions now facing Asian societies. Traditional legal education, with its narrow focus on doctrine, is clearly not up to the task.

I.3 The Plan of This Book: Chapters and Crosscutting Themes

The literature on Asian law and society features a number of frequently recurring topics. To some extent, these topics are familiar to researchers in non-Asian settings as well, but those who study Asian societies tend to bring somewhat different emphases and perspectives. Moreover, because the settings in which they conduct research differ radically from those in which their colleagues labor elsewhere in the world, scholars of Asia have consistently contributed distinctive findings and theoretical conclusions. To provide an overview of the literature of Asian law and society, we have selected nine subject areas for inclusion in this Reader. They constitute the nine numbered chapters of our book:

1. Religion
2. Legal Pluralism
3. Disputing
4. Legal Consciousness
5. Legal Mobilization
6. Legal Professions
7. Courts
8. Crime and Justice
9. Practicing Law and Society Research in Asia

Before describing the content of these nine chapters, however, it is essential to highlight five meta-themes that crosscut all the chapters and all the readings.

These crosscutting themes can be thought of as the columns in a table in which the chapters are the rows.

The first crosscutting theme is *colonialism*. Though not a chapter of its own, colonialism is a conspicuous presence in virtually all the chapters of this book. The takeover of Asian societies by the imperial powers of England, France, the Netherlands, Portugal, Spain, Japan, Russia, Germany, and the United States profoundly disrupted the classical legal systems of Asia, established new and unfamiliar institutional arrangements, reshaped social hierarchies, and redefined the geopolitical spaces and boundaries of Asian states. Closely connected to the theme of colonialism is the concept of modernization. Beliefs about "modernity" and the elements contained in or implied by that term were typically imported by colonial governments and reinforced by the elite Asian actors they empowered. This led to an often-anomalous situation. In Europe, the idea of modernity was the product of protracted historical developments from the time of the Enlightenment to the twentieth century, but in Asia it was superimposed (or "transplanted") almost instantaneously on societies with quite different histories and cultures. As a result, phenomena that were thought to represent "modernity" – including the concept of modern law – were deployed by Asian actors in distinctive and often counter-intuitive ways. The ideas and institutions of modernity could be experienced by Asian people both as culturally alien and – at the same time – as essential to achieving justice and protecting rights. As we shall see, these same ambiguities and paradoxes surrounding the concept of modernity can be found even in a country such as Thailand, which never experienced colonization by a European power.

As an extension of colonialism and modernity, a second theme runs through virtually every chapter of this Reader: *legal and political transformations*. Before the colonial era, and certainly after it came to an end, Asian states experienced tumultuous changes that had a profound importance for law. Whether triggered by war, by revolution, by economic change, or by globalization, these transformations altered the political and economic systems of Asian countries and the behavior and beliefs of their citizenry. Change is, of course, a constant in all human existence, but the transformations that have occurred in many Asian countries are radical, far-reaching, and frequent, and their relationship to law has been complex. For example, some Asian governments, both national and local, use law as an instrument to promote economic growth; and, in turn, economic booms and busts influence the progress and results of legal developments. Moreover, legal changes often have symbiotic yet conflictual relationships with changes in civil society. Social reforms and advances may, for example, trigger the rise of legal activity in the form of