

12-1-1952

ASIAN LABOUR LAWS. By International Labour Office. New Delhi: I.L.O., Indian Branch, 1951.

S. A. Bayitch

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

---

**Recommended Citation**

S. A. Bayitch, *ASIAN LABOUR LAWS. By International Labour Office. New Delhi: I.L.O., Indian Branch, 1951.*, 7 U. Miami L. Rev. 133 (1952)

Available at: <http://repository.law.miami.edu/umlr/vol7/iss1/18>

This Book Review is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# BOOK REVIEWS

ASIAN LABOUR LAWS. By International Labour Office. New Delhi: I.L.O., Indian Branch, 1951. Pp. 1285. \$7.50.

Asia's progress is by no means a legalistic proposition. On the contrary, the basic question is whether or not that continent will be able to surmount its inherent economic poverty, preserving more or less its present social and political structure. It is to be kept in mind that Asia has a steady excess of agricultural population in relation to its cultivable land and a lack of a fair distribution of products, industrial production being simultaneously unable to supplement additional living funds or absorb the huge human surplus. Political unrest, latent for ages, now fomented by strong outside political pressures hampers Asia's recovery at a time when the firmly established Communist regime in Siberia, fundamental changes going on in China, transitional difficulties in India and Indonesia and the increasing popularity of nationalization schemes in the Near East are pressing toward social and political changes, some of them long overdue. In such a situation mere statutory enactments are inadequate to cope with problems to be solved. In order to be effective they have to be integrated with a well balanced socio-economic plan particularly designed for the area where they are intended to operate.

The International Labor Organization realizes this basic truth. Its efforts to further sound labor legislation in Asia are, therefore, not limited to supplying legal patterns as developed by its Geneva Office. On the contrary, its undertaking is planned to tie in, on a much larger scale, with socio-economic plans prepared by other international agencies. A promising start in that direction was made at the first ILO Regional Conference in New Delhi in (1947) and later continued in Ceylon in (1950) where some fundamental problems of Asia—within the present most stressed objectives of the ILO, namely industrial relations, manpower, social security and productivity—have been discussed.

In that situation with time running out and with a promising start having been made the present collection of Asian labor laws deserves special notice. The present reporter, however, will limit his attention to one of the many aspects opened by this voluminous book—its importance for comparative law studies.

It is not at all surprising to find that many of the enactments published in the present collection derive their existence from one or another form of colonial rule in Asia, *e.g.* in Indo-China or Malaya; many of such enactments are kept in force with rather slight amendments in the now independent

states, *e.g.* in India, Indonesia, Pakistan, etc. These laws reflect, of course, all the characteristics of British, French or Dutch law, in the same way as Spanish and American influences are noticeable in the Philippine labor law. The impact of foreign patterns is clearly visible also in laws passed by independent states, *e.g.* in China where, to mention only one typical instance, provisions concerning termination of labor contracts are almost word by word patterned after Continental models (1932, p. 342). A penetrating impact of foreign labor law is evidenced by the recent Japanese legislation where typically American labor law concepts and institutions have been transplanted into a legal system which followed, until now, rather German legal patterns (p. 911).

It may be safely stated that, at the present time, radiations from two focal points guide Asia's labor legislation. One is the law of the West introduced during the colonial period, at the beginning of Asia's industrial revolution. These legislative schemes, springing from the basic tenets of a free market, of private ownership of means of production, and of the idea of independent and legally recognized labor unions with all their privileges, *i.e.* collective bargaining, collective agreements, arbitration, strikes, etc., were introduced, in many instances, not so much to deal with analogous situations in these countries, as rather in an attempt to bring about in that way the higher living standards connected with these legal institutions in the West. Such legal patterns, however, are adequate only for countries where the underlying political and economic system, including their advanced methods of production, has developed into a well balanced equilibrium of broadly distributed centers of power. There the most recent taboo created by the Western Man, the Picket Line, with its equally mystical rationalization of free speech, may be a proper expression of minutiously balanced powers competing in such a society. But it seems rather doubtful whether that 'taboo' can be effectively added to the Asian home products in that field, as a working remedy for that continent's tremendous pressures resulting from a complete lack of such equilibrium (Hong Kong, 1948, p. 438). The same goes for the various types of plant democracy patterned after the Post-World-One plant personnel representations in Europe. China has copied that idea in its 1932 law (p. 345) after the Betriebsräte as planned in Germany during the early Weimar period, and the institution of the comités d'entreprise (1945) was simply extended to French Indo-China (1947, p. 748), to be "duly adapted to local conditions" (Art. 14).

Outside of that, the introduction of some of the well established Western labor law, especially of schemes of a primarily technical nature, social insurance and safety codes, seem to be rather a success. Apparently this is what encourages the ILO to continue transmitting through its incessant activities new impulses to Asian countries now in process of reshaping their

labor legislation. The contribution made by the ILO conventions and recommendations is shown in the Introduction (pp. 1-267).

The impact of the Western Man's labor law is well illustrated by the present collection, and it seems to be rather an academic question whether there is something left in these enactments that could be considered as being originally Asian. That question, however, cannot be answered on the basis of the publication before us, since it contains almost exclusively recent, and primarily technical labor law. Beside such law, old customs are certainly in force in many areas. It is probable that such local specialties are preserved in one or another statute concerning farm labor (*e.g.* the recent Indian Plantations Labor Act 1951). One quite recent enactment (Hong Kong, 1923, p. 410) seems to preserve the flavor of past times by providing that a master may not subject his minor servant 'mui tsai' to any "punishment to which such employer might not reasonably subject his own daughter."

The other focal point shaping Asia's labor law at the present time is a newcomer. It is the Soviet legal, economic and political doctrine, for the past three decades entrenched in the vast empire of Siberia, and by now dominating China. The idea of the proletarian class state, its dictatorship and a most complete subordination of the law, the courts, the bar and the laboring class to such doctrines pervade the recent Chinese enactments covered with the usual coat of people's democracy. One of these enactments is incorporated in the present collection, *i.e.* the Trade Unions Law (1950, p. 387).

In a situation where there is more at stake than most of us are fully able to realize, the impressive volume *Asian Labour Law* is a timely reminder. In recognizing the pioneering character of the publication as well, the present writer cannot refrain from suggesting important improvements for a second edition which will be soon demanded by rapidly changing legislation. First, some important Asian countries are omitted which should have been included, especially all of the Near East, including Turkey, Israel, Iraq, Iran, Arabia and also Korea. Labor law as in force in Siberia is of a special interest and should be added as well. Secondly, most of the enactments contained in this collection present labor law in its rather technical sense, especially interminable and tedious ordinances concerning administration of social insurance and many safety regulations. These documents might have been safely omitted or presented in excerpts. At the same time, there are only a few documents concerning individual labor contracts and litigation of claims arising out of them. The present writer would also like to see included all the constitutional provisions establishing principles for labor legislation in these countries. Finally, it is to be pointed out that although lists of additional legal sources are made available to the reader, the citations given refer mostly to local Official Gazettes, rarely available outside of the particular country. Moreover, these lists are far from being complete. They should also be made useful by adding references to other publications, in-

cluding articles dealing with the respective enactments. The Geneva Office will certainly add to the success of the following edition of the collection by contributing all necessary bibliographical data, including case materials.

*Asian Labour Laws* is, even in its present form, a handy collection of legislative documents and, therefore, a valuable contribution to comparative labor law.

S. A. BAYITCH

ASSOCIATE PROFESSOR OF LAW  
UNIVERSITY OF MIAMI

LAW AND SOCIAL CHANGE IN CONTEMPORARY BRITAIN. By W. Friedmann.  
London: Stevens and Sons Ltd., 1951. Pp. 322.

Broadly speaking, and to the extent that these twelve essays knit together into a connected whole, the author has set himself the task of testing the validity of a political thesis—that of Karl Renner, the Austrian Social Democrat of the period following the First World War, and of considerable Marxist inspiration—in the light of the evidence of social and political evolution in Britain afforded by recent case law. He announces his intention of carrying out this task specifically in relation to the modern English law of property (treated in Chapter 2), but the ramifications of Renner's thesis provide, it would appear, the underlying approach to the wider ramifications of the law of property in the general framework of English law as it stands today.

Now, much of modern case law in England is concerned with the interpretation of statutes; "the growing importance of statutory legislation as an instrument of legal and social change," as the author points out (p. 3 Introduction), was clearly seen by Dicey fifty years ago in measuring the political potentialities of the legislative machinery established by the Liberal State under the influence of Bentham and his followers. A glance through the Table of Statutes to which Professor Friedmann refers in his book shows that very nearly half of them (28 out of 61) date from 1945 or later, and the remainder are thinly represented in the years stretching back from 1945; the main weight of the author's investigation is, in other words, directed to the legislation passed in the six years of Labour Government in Britain—a government avowedly holding views broadly similar to those of Renner and confessedly setting out to create a political society in conformity with them, using statutory legislation as one of its major instruments so to do. Thus, it can not be a matter for surprise that at the present juncture the general state of the law in England conforms with the prognostic contained in Renner's thesis.

It is not, therefore, in that direction that the more positive value of the book must be sought, but rather in the demonstration it affords, in