Asia-Pacific Trusts Law, Volume 1: Theory and Practice in Context, by Ying Khai Liew and Matthew Harding (eds), (Oxford: Hart Publishing, 2021), viii + 414 pp., hardback, £00.00, ISBN: 978-1-509-93479-9.

In the law of trusts, the Asia-Pacific region ranges from common law jurisdictions such as Australia and Singapore to civil law countries in Southeast Asia where the trust does not officially exist, as well as South Pacific nations which are some of the world's least regulated offshore service providers. In 2013, Lusina Ho and Rebecca Lee compiled the first authoritative volume on a core part of the region (*Trust Law in Asian Civil Law Jurisdictions*). *Asia-Pacific Trusts Law* edited by Ying Khai Liew and Matthew Harding is wider in scope, capturing in a single volume diverse issues such as the interactions between customary law and English law in the colonial context, the challenges posed by offshore and commercial usages of the trust, and theoretical questions such as the fate of the beneficiary principle.

Although economically the region's centre of gravity lies further north, in Liew and Harding's formulation, common law jurisdictions form the core of Asia-Pacific trust law. While Australia's status as a leading country in trust law is rarely doubted, the doctrinal distinctiveness of Australian trusts is seldom a subject of direct study. Traditionally, English law has required a beneficiary to exist in all non-charitable trusts (*Morice v Bishop of Durham* (1804) 9 Ves 399), although the leading offshore case of *Schmidt v Rosewood* [2003] UKPC 26; [2003] 2 A.C. 709 seems to have cast doubt on the principle. Jessica Hudson shows that, despite being an onshore jurisdiction, modern Australian cases have in fact been consistent with the decision in *Schmidt*. As such, they support a view of the discretionary trust where the trustee's discretionary power amounts to a suspension of any party's entitlement to the benefit of property. To the present reviewer, this is reminiscent of the "ownerless" Quebec trust, where no party has a real right to property. In other words, the Australian beneficiary's right to due administration is not contingent upon a beneficial interest, but rather it stems from a broader legal principle that more than one legal person must exist in any legal relationship. While this feature is consistent with the orthodox English beneficiary principle in requiring a party who can compel the trustee to adhere to trust terms, there is no requirement that the party must be a beneficiary, and it is the trust's "asymmetric constitution" which explains the imperative to have more than one person. For New Zealand, Jessica Palmer observes that on issues such as the sham trust (*Clayton v Clayton* [2016] 1 N.Z.L.R. 551), courts have not taken seriously enough the core trust concept, and have resorted too readily to other solutions such as a reformulation of the rules of property. These two chapters offer a refreshing approach which challenges conventional English understanding, inviting scholars to pay closer attention to divergences between trust law in England on the one hand, and Australia and New Zealand on the other.

In Hong Kong and Singapore, colonialism has played an important role in the formation of local trust laws. In some respects, the situation is similar to Stelios Tofaris's description of India in a later chapter, in which he contrasts colonial courts' assimilation of indigenous concepts such as the Islamic *waqf* or the *benami* to the trust with the appropriation of the English trust by local residents. For Hong Kong, Lusina Ho and Rebecca Lee also draw an important distinction between British colonial authorities' limited recognition of indigenous trust-like institutions such as the *tong* and wealthy locals' use of the English trust. In the first category, colonial law's recognition of the trust was often selective: while giving managers of traditional *tong*s the powers of a trustee under a 1905 statute, in *Kan Fat Tat v Kan Yin Tat* [1987] H.K.L.R. 516 the court nonetheless disapplied the rule against perpetuities on the ground that the English rule would

lead to an unjust and oppressive outcome. As the decision went against an earlier view of the Privy Council (*Yeap Cheah Neo v Ong Cheng Neo* (1875) L.R. 6 P.C. 381) on similar ethnic Chinese familial-religious institutions in the Straits Settlements (modern-day Singapore and Malaysia), it highlights the diversity of doctrinal pathways within the British Empire. For Singapore, Kelvin Low explains the preference (in *Chan Yuen Lan v See Fong Mun* [2014] SGCA 36) for Lord Neuberger's dissent in *Stack v Dowden* [2007] 2 A.C. 432 by the importance of the traditional family in the ideology of the country's ruling party, which leaves little room for judicial legislation on family home trusts. Taken together, the two reports demonstrate the importance of local socio-legal landscapes in the leading Asia-Pacific financial centres, which diverge in significant ways from English norms, notwithstanding the close juristic connection between England and Asia in questions of trust and property law.

On the civil law side of Asia, Japan's trust statutes of 1922 and 2006 have played a key role in shaping the development of trust law in the region. For Masayuki Tamaruya, as Japanese trusts expand from the commercial to the family sphere, Japanese courts have been resolute in their opposition to attempts to circumvent public policy rules such as forced heirship. At the same time, they are highly pragmatic in the balancing of different parties' interests, and in doing so maintain a high level of transparency despite a low international profile, whereas heterodox legislative innovations such as non-charitable purpose trusts are rejected by practitioners. Ying-Chieh Wu probes further the practical tensions caused by the Supreme Court of Korea's recognition of the insolvency effects of security trusts even where a debt rehabilitation order is made, which to the author suggests an excessive emphasis on the legal form of the trust to the neglect of the context in which such trusts operate. Hui Jing's chapter on China's Charity Law 2016 argues that a specialised regulatory framework is central to charitable trusts' effectiveness in China's socio-political environment, in which the state plays a hegemonic role. Crucially, unlike English law, settlor autonomy is protected by denying standing to the regulator in trust disputes. As Jing argues, such a measure would increase public interest in the trust, and allows the charitable trust to support the state's wider goals relating to philanthropy.

While it is often Atlantic offshore jurisdictions which capture trust scholars' attention, Katy Barnett's chapter reminds us that the South Pacific hosts some of the world's most transgressive trust regimes. The Cook Islands "international trust" created by statute in 1984 was designed to capture American clients seeking to place their wealth beyond the reach of *any* creditor. Significantly, a creditor must satisfy the court that all claims against the settlor's personal property are exhausted, and remedies are available only against the settlor's share of the fund, while foreign judgements are categorically unenforceable. As Barnett notes citing sociologist Brooke Harrington, many offshore jurisdictions suffer from "a crisis of state legitimacy, resulting in a hollowing out of civil society and distrust in government and the judiciary" (*Capital Without Borders*, 2016). In my view, the novel discussions provoked by recent trust cases such as *Webb v Webb* [2020] 8 WLUK 8 from the South Pacific, which explored the question of a settlor's retention of control over a trust, invite a more thorough engagement with the socio-legal context arising from the virulent competition between offshore jurisdictions. Finally, Richard Garnett discusses the role of private international law in the region's trusts landscape, highlighting the prevailing Asia-Pacific common law tendency to link choice of law rules with the obligation in dispute, which contrasts with Australia's preference for privileging the law of the forum where an equitable right or remedy is invoked.

The strength of *Asia-Pacific Trusts Law* lies in the dialogue which it facilitates between Asia's diverse legal systems and trust scholars from the respective jurisdictions. From the perspective of English legal scholars, it is particularly valuable in highlighting the latest developments in Australia and the South Pacific, while building on recent efforts to deepen our understanding of private law's historical and socio-legal moorings (for example Tang, "From Waqf, Ancestor Worship to the Rise of the Global Trust" (2019) and Yip, "Comparing Family Property Disputes in English and Singapore Law" (2021)). Yet, the book's vast scale (offering country reports on the seventeen largest economies in the region) makes the task of identifying an overall message hugely challenging: at times, broad scope might have come at the expense of coherence. Two suggestions can be made. First, echoing Justice Glazebrook's remarks at the book's online launch at the University of Melbourne, more can be done to tease out the role of indigenous customary law in the region's settler colonies, and to put it into conversation with the role of colonialism in Asian jurisdictions where non-Western populations form the majority. Secondly, although the scale of trusts usage is arguably larger in the Western Pacific than in continental Europe, a comparative study involving civil law trusts requires a more systematic discussion of Asian laws' relationship with their European cousins, as well as reflections on comparative methodology beyond the identification of the trust's development in Asia as a case of legal transplant (Watson, *Legal Transplants* (1974)). This is particularly important in order to highlight clearly the volume's contributions to the wider comparative trusts debate (Braun, "The State of the Art of Comparative Research in the Area of Trusts" (2015)).

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