

Speech by SJ

Following is an Opening Statement by the Secretary for Justice, Ms Elsie Leung, on "The Present and Future of Civil Law in Greater China" at a conference on the Bicentenary of the French Civil Code at the City University of Hong Kong today (November 9):

President Chang, Mr Mostura, Dean Malanczuk, ladies and gentlemen,

It is a great honour for me to say a few words at this landmark conference. The bicentenary of the French Civil Code, and the 20th anniversary of the City University of Hong Kong, are proud events that are worth celebrating.

They prompt us to look at current legal issues from a broader perspective - to look at the big picture. How did our legal system develop in the way it did? What were the major influences? What direction should we take in future? What is the ultimate goal of our legal system?

This two-day conference gives us an opportunity to explore these fundamental questions in the context of Greater China. There can be few, if any, countries which have within them such a rich legal heritage. Greater China has benefited from all three major legal systems of the modern world : the civil law system, the common law system, and the socialist system.

The heritage

The civil law system originated, of course, from the great French Civil Code. That Code now stands tall after 200 years, having spread throughout continental Europe and to other continents. It influenced the modernisation of the Japanese legal system in the 19th century, and the promulgation of comprehensive codes in China between 1928 and 1935. Those codes continue to form the basis of the legal system in Taiwan. In its Portuguese form, the civil law took hold in Macau. After the Reunification of Macau and the Mainland in 1999, that system remains in force by virtue of the Basic Law of the Macau SAR.

The common law system was introduced in Hong Kong when it was under

British administration. It contributed to Hong Kong's development by providing a secure legal environment for residents, businessmen and investors. That common law system continues here after Reunification by virtue of the Basic Law of the Hong Kong SAR.

The Mainland experienced turbulent times during the last century, and this was reflected in its legal system. After the establishment of the People's Republic of China in 1949, the previous legal system was abolished and steps taken to construct a new socialist one. In the 1950s, a Soviet-style legal system was being developed, but many conventional legal principles were denounced as a result of the Anti-Rightist Campaign. Then, in the mid-60s came the Cultural Revolution, when chaos and disorder reigned in place of law.

Fortunately, in 1978, Deng Xiaoping declared that - 'In order to safeguard people's democracy, the legal system must be strengthened.' Since then, the Chinese legal system has developed at an impressive pace, and is underpinning China's incredible economic growth. The Chinese Constitution now emphasises that the PRC exercises the rule of law, protects citizens' lawful private property, and shall respect and safeguard human rights. China's accession to the WTO will undoubtedly further speed up the process of modernising its legal system.

The future

That, in a nutshell, is how we got where we are now. But what of the future? The four legal systems within Greater China may differ, but they can still work together for the good of the country.

Among the topics to be discussed at this conference are various types of co-operation, such as the recognition and enforcement of judgments and arbitral awards. Co-operation in these areas can be achieved despite the differing legal systems. But it undoubtedly helps if we understand each others' systems first. Since Reunification, it is gratifying to see the positive steps that have been taken by the various legal jurisdictions to understand each other better. I am sure that these steps will continue.

There is no reason why different legal systems cannot happily co-exist within one country. The USA and Canada are largely common law jurisdictions, and yet Louisiana and Quebec operate under the civil law. The European Union has

demonstrated that both common law and civil law countries can give effect to the multitude of EU obligations, in areas such as commerce and human rights. Indeed, membership of the EU is helping to harmonise the laws in countries with different legal traditions.

Globalisation is another factor at work in the development of transnational commercial laws. And an increasing number of international conventions are being promulgated, and implemented in countries regardless of the system of law they practise.

Function of the law

Legal systems exist for a purpose. Within Greater China I believe there is a growing consensus on what that purpose should be - to contribute to political stability and social order, and to protect the basic rights of the citizen. The way in which this is done may vary in the various parts of Greater China. But, if we are working towards the same goal, we can overcome obstacles and contribute to the economic and social development of our country.

Conclusion

We must therefore keep up our dialogue. This conference is an important part of that process, and the organisers are to be commended for the excellent programme they have put together.

I wish all of you a fruitful and enjoyable two days.

Ends/Tuesday, November 9, 2004

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