

Zitierhinweis

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weise sich die spätantike Gesetzgebung als anlassbezogen und sei – wie er in seinen Ergebnissen betont – »mit einem stemmatischen Modell« (814) erklärbar.

In der Tat erweist sich das Stemma als ein gutes Bild, um die Abhängigkeit von und die Variation früherer Texte in späterer Gesetzgebung zu erklären, wobei sich erwägen ließe, dieses Modell auch auf die Rechtsetzung im Prinzipat zu übertragen. Die oben vorgeschlagene Infragestellung der »Geltung« von antiken und spätantiken Gesetzen ist damit sehr gut vereinbar, denn die innergesetzliche Referenzierung zeigt, dass die Anordnungen zwar möglicherweise bekannt und einschlägig waren, keineswegs aber die »Geltungskraft« einer modernen Norm für sich beanspruchen konnten. Somit erweist sich die Neubewertung der spätantiken Gesetzgebung durch R. als äußerst fruchtbar. Zu-

dem finden sich in Rs. Werk immer wieder ertragreiche Exkurse und wichtige Nebenerkenntnisse. So bildet das Kapitel »Vererben und Erben in der Spätantike« (264–290) einen Abriss über die Entwicklung des Testamentrechts bis zum 4. Jh., wobei nicht die rechtlichen Aspekte, sondern die sozialen Realitäten im Vordergrund stehen; darüber hinaus finden sich weiterführende Passagen zu *deportatio*, *relegatio* und *exilium* (321–341) sowie zur spätantiken Infamie (353–405).

Selbst wenn man nicht in allem den emphatischen Aufrufen von R. zur Abkehr von der bisherigen Lehre folgen wird, machen der Gedankenreichtum, die konsequente Quellennähe und die intellektuelle Eigenständigkeit der Darstellung das Werk zu einer in jeder Hinsicht anregenden und überaus gewinnbringenden Lektüre. ■

Marie Seong-Hak Kim

The Legal Past of Asia When It Was the World*

Professor Janos Jany discloses at the beginning of his *Legal Traditions in Asia* that »one of the most important inspirations to writing this book was the late Professor H. Patrick Glenn's magnum opus, *The Legal Traditions of the World*«. Glenn's book, first published in 2000, is a global account of laws, separated into »traditions« in the context of world history. *Legal Traditions in Asia*, written by a specialist of Jewish, Islamic, and Zoroastrian law, focuses on Asian laws, which Jany breaks down into Ancient Near Eastern, Islamic, Hindu, Chinese, and customary law »legal circles«. Glenn's work has been acclaimed for demonstrating that the disciplines of comparative law and legal history are one and the same. Jany's reaffirms the significance of history, religion, and philosophy in comparative law research. Yet the two books are rather different in spirit, structure, and approach.

Professor Jany states that his organizing scheme of the concept of »legal circle« is »identical to

neither legal tradition nor legal system« (6). He defines a legal system as »a totality of laws in a particular state«, whereas a legal tradition is composed of laws which »are not a product of political law making and their boundaries are less clear cut as that of a legal system« (6). The »legal circles«, each composed of a »dominant« legal culture to which »satellite« legal cultures were attached, can help group local variants of legal traditions, he argues. The satellite legal cultures of the Ancient Near Eastern legal circle include cuneiform law, Jewish law, Persian law, and the law of the Church of the East. Jany separates the Islamic legal circle into pre-Islamic Arabia and classical Islamic law. The Hindu legal circle comprises Hindu law in India as well as the Buddhist Thai-Lao and the Mon-Burmese legal traditions in Southeast Asia. Societies belonging to the Chinese legal circle, embodying Confucian thought, are Vietnam, Korea, and Japan.

* JANOS JANY, *Legal Traditions in Asia. History, Concepts and Laws*, Cham: Springer 2020, viii + 496 p., ISBN 978-3-030-43727-5

The author identifies three models of how the ties between the dominant and satellite legal cultures in these four legal circles were created: through cultural and religious expansions in the cases of the ancient Near East and of Hindu law in Southeast Asia; through political and military influences in East Asia; and through commercial relations and economic activities, as witnessed in Islam's gaining footholds in Central Asia and the archipelago of Southeast Asia. Jany's fifth and final legal circle of customary laws does not fit into the dominant/subordinate framework, and the laws of many localities, such as *adat* law, could have been placed under one of the four dominant legal circles. But the author chose to group them together to form a separate legal circle, because they display a variety of similarities that elaborate »a new, Asia-specific classification of customary laws« (8).

The introductory chapter in *Legal Traditions in Asia* is brief, and readers who expect an extended prolegomenon offering central themes and arguments are recommended to read the Concluding Remarks first, where the author articulates the book's main theme in terms of the immutability of legal traditions. Jany writes: »The status quo between the spheres of influence among Asian legal systems and circles were [*sic*] constant throughout the entire legal history of Asia and no Asian legal circle was able to or willing to influence other legal circles to the extent of shaking their foundations and base them on different underlying principles. [...] Asian legal circles remained constant and stable without any cross-fertilisation among them.« (461) According to him, changelessness prevailed in the internal working of each legal circle as well: the relationship between a dominant and a satellite legal tradition, once formed, remained largely frozen. This thesis, while persuasive to an extent, seems to downplay the fact that the diffusion of a foreign religion, moral philosophy, or laws based on them took place through encounters and contacts, a normal process of historical development, to which Asia was no exception.

The Asian continent was one well-connected world. The Silk Road passed through Mesopotamia, Syria, Persia, the Arabian Peninsula, Central Asia, north India, and to China, serving as a path for the transmission of religions, ideas, and technology. Maritime trade linked the Indian Ocean with the Red Sea and the Mediterranean, connecting East Africa and southern Europe to Eurasia,

and this was how Islam supplanted Buddhism in most of India and Southeast Asia. The author notes that Hindu and Chinese laws »adopted nothing from each other, despite their connection through various channels (trade, Buddhist missionaries)« (462). Yet, it is not clear which time period the author is referring to. What exactly is Hindu law and what is Chinese law, defined in which era? Jany says that »the status quo lasted for a remarkably long historic period and each legal circle was closed and inward looking without any intent to learn or adopt anything from another Asian legal circle« (461–462). This statement would benefit from a more specific temporal reference. Legal history should privilege the time dimension.

This book explains the constancy of Asian laws in terms of legal pluralism. Legal pluralism was common in societies where religious law was dominant, for example in Muslim countries, which delicately sustained an »equilibrium lasting for long centuries« (467) in the region. According to Jany, it shielded individual legal circles from being affected by one another, until this state of balance was destroyed by Western colonization. Yet, highlighting the presumed plurality and innate cultural elasticity or adaptability should not obscure the dynamic forces of exchange underlying this vast continent over thousands of years before the coming of European colonialism. Here, Jany's view contrasts with that of Glenn, who defined »tradition« as information and declared that his goal was to study the transmission of information, that is, the irrepressible communication of ideas over time, both within and without legal traditions.

The author's discussion of »legal pluralism and politics« in modern China is of interest. After Mao's death, »the centralised state allowed Chinese society for [*sic*] a limited (legal) pluralism in some areas of law in exchange for not interfering to [*sic*] politics at all«, and »with this new policy of statism in economy, China emerged as one of the most important players globally which created a new relationship between society and the centralised state (entrepreneurship)« (465–466). But does the policy of allowing limited rights to private property as part of state *dirigisme* really evince a pluralistic legal order? The Chinese Communist Party has had no intention to recognize a legal order other than the unitary state law. The party leadership's sincerity in reviving Confucian philosophy is suspect, too, as it features, at best, a muscular

Confucianism that combines the rhetoric of persuasion with the threat of force to support the status quo.

Jany's dense book is packed with highly interesting details. The discussions of laws in the Near East and Middle East are doubtless thorough and authoritative. The author's analysis of Jewish and Islamic scholars' discourses, jurisprudence, and legal training are insightful and perceptive. Less so are the latter parts of the book dealing with South Asia, East Asia, and Southeast Asia, which draw mainly on Western-language secondary sources. Some sections read as if they were from a survey history book. The overall coverage is thus uneven. Some errors are expected when personal and geographical names as well as terms in so many different languages appear, but there are more than the usual number of infelicities. It is regrettable that deficiencies in copyediting and proofreading have diminished the readability of this important contribution to comparative legal history. There are handy glossaries for selected chapters, yet the absence of an index must be

pointed out as a major defect in a book of this nature – at least in its print version.

The significance of this book is clear, nonetheless. Not many can write a book like this one, pulling together a daunting amount of information. Professor Jany's ambitious and painstaking work offers readers essential reference materials and a much-needed foundation for linking a great diversity of legal traditions to one another. His book marks a timely and welcome occasion to promote a dialogue among jurists, historians, theologians, philosophers, anthropologists, and anyone else interested in the evolution of laws when Asia, borrowing Stewart Gordon's words, was the world. Professor Glenn reminded us that »comparing is thus becoming no longer a process of simple, allegedly factual, determination of similarities and differences, but [...] an ongoing and dynamic process of co-existence, of (potentially different) equals«. We anticipate continued explorations of influences across the legal circles as set forth in *Legal Traditions in Asia*.



Helwig Schmidt-Glintzer

Das Recht der Mitte*

Drei Bände mit einer Darstellung der Geschichte des Rechts in China, oder besser: Geschichte der chinesischen Rechtskultur sind hier anzuzeigen. Herausgegeben von Chinas Doyen der Rechtsgeschichte Zhang Jinfang, Jahrgang 1930, wird die Rechtskultur von den Anfängen bis in die Gegenwart in ihrer Entwicklung nachgezeichnet. Es ist eine Darstellung aus chinesischer Perspektive, die sich auf die Theorie des Marxismus-Leninismus als ihre Grundlage beruft, ohne weiter darauf Bezug zu nehmen, wenn man von Formulierungen abieht wie: »The economic pattern of agrarianism, the political system of despotism, the social structure of family-centered patriarchy, the stable blood

and geographical relationships, [...] have constituted a unique national condition which has further determined the main feature of Chinese legal civilization« (I, v). Für eine westliche Leserschaft wiegt schwerer, dass, von einigen japanischen Ausnahmen abgesehen, in keiner Weise die internationale rechtshistorische Forschung berücksichtigt und auch an keiner Stelle auf sie verwiesen wird. Neben der umfangreichen angelsächsischen Forschungs- und Übersetzungsliteratur ist immer noch nützlich Robert Heuser, *Einführung in die chinesische Rechtskultur* (1999) und ders., *Grundriß der Geschichte und Modernisierung des chinesischen Rechts* (2013).

* JINFAN ZHANG, *The History of Chinese Legal Civilization. Ancient China – From About 21st Century B.C. to 1840 A.D.*, vol. 1 + 2, Singapore: Springer 2020, xxi + 1308 S., ISBN 978-981-10-1027-9 [zitiert als I + II]

JINFAN ZHANG, *The History of Chinese Legal Civilization. Modern and Contemporary China (From 1840 –)*, Singapore: Springer 2020, xv + 903 S., ISBN 978-981-10-1030-9 [zitiert als III]