

formulierten sieben gesellschaftlichen Sünden beziehen: Politik ohne Prinzipien, Geschäft ohne Moral, Reichtum ohne Arbeit, Erziehung ohne Charakter, Wissenschaft ohne Menschlichkeit, Genuß ohne Gewissen und Religion ohne Opfer.

In Conrads Aufsatz "Schwierigkeiten beim Schreiben der Wahrheit – ein Brief Gandhis zur Universalen Menschenrechtsdeklaration der UN" wird aus Gandhis kurzer Antwort 1947 auf einen Fragebogen der UNESCO in Vorbereitung zur Universalen Menschenrechtserklärung zitiert: "I learnt that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only where we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed." 1939 formulierte Gandhi sogar "Das Recht, seine Pflicht zu erfüllen, ist das einzige Recht, für das es wert ist zu leben und zu sterben."

Conrad erläutert auch, wie die prinzipielle Abwertung des Eigentums, in der Gandhi sich mit Nehru und dem linken Kongreßflügel von ganz verschiedenen Prämissen aus begegnete, sich erheblich auf die indische Verfassung ausgewirkt hat.

Im abschließenden Artikel "Der Begriff des Politischen, die Gewalt und Gandhis gewaltlose politische Aktion" stellt Conrad Äußerungen von Carl Schmitt, Max Weber, Jaspers, Luther u.a. den Gedanken und Handlungen Gandhis gegenüber.

Die 500 Seiten dieses Buches sind eine packende, wenn auch fordernde Lektüre. Der Sorgfalt ausführlicher Quellenangaben und Anmerkungen (glücklicherweise auf den dazugehörigen Seiten) entspricht die kultivierte Ausdrucksweise sowohl in den deutsch wie in den englisch geschriebenen und fast ganz druckfehlerlosen Texten.

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*Jan D. Bayer / Magdalena Harnischfeger-Ksoll / Thomas Klötzel / Florian Ranft / Rolf A. Schütze u.a.*

### **Handbuch Wirtschaft und Recht in Asien**

Länderteile China, Indien

C.H. Beck'sche Verlagsbuchhandlung, München, 1999, ca. 1150 S., DM 348,-- (loose leaf binder)

*Alice E.S. Tay / Günther Doeker-Mach (eds.)*

### **Asia-Pacific Handbook**

Volume I: People's Republic of China

Nomos Verlagsgesellschaft, Baden-Baden, 1998, 834 S., DM 158,--

*Robert Heuser*

**Einführung in die chinesische Rechtskultur**

Mitteilungen des Instituts für Asienkunde, Nr. 315

Institut für Asienkunde, Hamburg, 1999, 518 S., DM 79,--

*Jörg-Michael Scheil / Tanja Gargulla / Christoph Schröder / Jakob Riemenschneider*

**Vertragsgesetz der Volksrepublik China**

Mitteilungen des Instituts für Asienkunde, Nr. 309

Institut für Asienkunde, Hamburg, 1999, 120 S., DM 56,--

The 1976 demise of Mao Zedong's régime in China was the starting point of rapid development in China. From around the same time, and often not unrelated to events in China, a huge surge of entrepreneurial energy throughout the region has since widened the economic significance of East and South-East Asia much beyond that part of the world's traditional powerhouse, Japan. European investors can no longer ignore the vast potential of a new litter of tigers whose vigour may only have been momentarily enfeebled by the recent crisis. Farther West, India's slow but steady move towards economic liberalisation has added another large player to the increasing number of countries whose emergence into globalised modernity is turning into an influential force in international relations and commerce.

The "Handbuch Wirtschaft und Recht in Asien", alongside earlier similar publications in English, reflects this heightened importance of 'Asia' to practical business. The first instalment of the handbook, reviewed here, contains the country materials on the People's Republic of China (PRC) and India, to be followed by volumes on Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, Taiwan, and Vietnam. Each country volume will be organised along the same basic schema, comprising chapters on the overall business environment; commercial transactions in import/export trade, outward processing, distribution, licensing and public procurement; direct investment; selected areas of domestic law; texts of relevant legal materials; and model contracts, forms and useful addresses in the country in question. The subject matter is admirably systematised for ease of reference, and it is to be hoped that electronic editions will in future enable the book to be quickly and accessibly updated. The authors of the China volume have for the most part avoided burdening the text by quoting Chinese-language terminology; some terms given are, however, transcribed incorrectly.<sup>1</sup>

The volume on China is at present about twice the size of that on India, reflecting the head start still held by the Middle Kingdom in international commercial relations and it remains to be seen whether distinct Indian assets, such as widespread competence in the English language and a democratic and law-based tradition of administration, will in the course of

<sup>1</sup> Chapter China A, section III.11, where Dr Weggel gives *renquan* for "Personenherrschaft" (rule of man) and *faquan* for "Rechtsherrschaft" (rule of law) whereas the correct Chinese terms of art are *renzhi* (rule of man) and *fazhi* (rule of law), respectively.

opening the country to foreign investors progressively narrow this gap. Huge economies like these two cannot, of course, be captured between the covers of a handbook and businessmen will be well advised not to dispense with expert local advice on practical matters, but this new reference work will significantly increase the complementary sources which can be consulted in preparation of specific ventures and in order to tap the expertise of legal advisers on the ground in an informed fashion.

The "Asia-Pacific Handbook" similarly provides an overview of law in the PRC but, instead of manual-style information, offers longer specialist essays, in large part reprinted from earlier publications. They cover the "Philosophical and Theoretical Bases" including an article on the legal régime of Hong Kong in the course of its transition from British colony to PRC 'Special Administrative Region', and essays on the modern PRC – "The Legal System" and "Economic and Commercial Law" – covering constitutional law and numerous areas of rules governing foreign investors' activities in Mainland China, from patents, joint ventures, taxes and intellectual property to technology transfer and arbitration. The authors are either practitioners or academics, mostly from North America and Australia. While some of these contributions have since been overtaken by legislative developments, the book nevertheless stands as a handy compilation of scholarly introduction to the large themes of law and its renascent rôle in the communist system of government in Peking. Besides the specialised papers, Professor Wang Guangwu's lecture on "Power, Rights and Duties in Chinese History" and Perry Kellner's study on "Sources of Order in Chinese Law" will be rewarding to expert and general readers alike. Reassembling work, previously published elsewhere may have stood in the way of unified editing which confusingly makes for different systems of transcription for Chinese terms being used in different articles.<sup>2</sup>

China's legal history spans several millennia, with written law said to date as far back as the 6th century BC. Legal rules were used to guide a vast imperial administration at all levels, in particular at that lowest rung of the central government, the district magistrate, who acted as a composite authority combining judicial and executive powers. Several of China's comprehensive codifications, especially during the *Tang*<sup>3</sup> (AD 618-907) and *Qing* (AD 1644-1911) dynasties, significantly informed legal development in neighbouring countries, such as Japan, Korea and what is now Vietnam. At the same time, Chinese legal tradition differed markedly from the discursive logic stressed by Roman law and also from the con-

<sup>2</sup> In Wang Gungwu's "Power, Rights and Duties in Chinese History", *ch'üan* (right/droit) is misspelt throughout as *ch'uan*.

<sup>3</sup> While the collection of the main articles of the *Tang Code* and their translation into vernacular Chinese in *Qian Daqun*, Tang lü yi zhu, Nanjing: Jiangsu guji chubanshe, 1988, is cited (p. 104, n. 120), no mention is made of the annotated translation of the commentaries on each article in *Cao Manzhi* (ed.), Tang lü shuyi yi zhu, 1168 pp., Jilin: Jilin renmin chubanshe, 1989.

ceptual attention to due process in all its forms, which has come to be the cornerstone of politics founded on the equal participation of (at least some of) their citizenry. Law in traditional China served less to bound authority for the protection of the emperor's subjects than to regularise the workings of the Son of Heaven's executive machinery throughout the empire. The facet of 'legal culture' within Chinese civilisation thus well deserves a comprehensive description.

Professor *Heusers* book divides into five major parts: "Introduction", "Factors Shaping Chinese Legal Culture", "Sources of Chinese Law", "Judiciary and Bar", and "Objectives of Law", followed by a glossary of legal terms including (simplified) Chinese characters and a selection of further readings in Western languages.

After methodological considerations in the introduction on classifying Chinese legal culture in an international historical context and two chapters in "pre-modern" legal concepts and the inception of "modern", Western-inspired legal thought from the late *Qing* until the advent of communist rule on the Chinese mainland in 1949, the bulk of the book is devoted to contemporary evolution of law in the PRC subsequent to the death of Mao Zedong and the following downfall of his ideological heirs, the so-called "Gang of Four" headed by Mao's wife, Jiang Qing.

The brief account offered in each of these chapters on various parts of modern PRC law is certainly helpful as a convenient, one-volume introduction to the subject, but – after taking note of copious detail on the law of, say, marriage, intellectual property, consumer protection, or use of farmland – the reader is left wondering what may constitute overall characteristics of PRC legal culture: the author's initial attempt to identify general aspects has soon given way to compendious presentation which shows many trees but not much of a wood. The very short concluding observations (pp 471-473) on "Symptoms and Perspectives of Change" hardly fill this gap. Many fascinating aspects of China's legal evolution therefore fail to be addressed. The secular debates, briefly alluded to in connection with the career of Shen Jiaben (p 136), on the perennial theme of "making the country rich and strong" (*fu guo, qiang bing*) in the face of encroaching Western imperialism, which stretch from the late *Qing* (and, as *fukoku kyôhei*, the *Meiji* Restoration) to the "Four Modernisations" launched by the late Deng Xiaoping, profoundly influenced legal thinking, by self-consciously elevating the incidental effect of legal renewal as a modernising agent to its primary purpose, in order to reinvigorate – and thus also to preserve – an embattled civilisation (or communist autocracy). The requirements of legal certainty subscribed to by Chinese legal modernisers of various stripes have contributed to shaping the language of legislation, away from traditional syntax and vocabulary towards parlance much closer to Western languages, a trend which has also long been similarly visible in modern Chinese generally<sup>4</sup> and would have merited more than a glancing reference (p 201). The selected

<sup>4</sup> Cf. *Lin Yutang*, Chinese-English Dictionary of Modern usage, Hong Kong: The Chinese University of Hong Kong, 1972, p. xx. On the unwelcome intrusion into modern everyday Chinese of half-digested English expressions and the consequent deterioration of literacy, see, among the

further readings (pp 502 ff) are confusingly listed in chronological<sup>5</sup> instead of alphabetical order.

Market-oriented reform in the PRC after 1979 increasingly required reliable legal tools to formalise and regulate the dealings between individual actors in the evolving 'liberalised' economy. This need produced the Economic Contract Law of 1981 which applied exclusively to contracts between domestic legal persons<sup>6</sup>, the Foreign Economic Contract Law of 1985 governing transactions between domestic and foreign parties<sup>7</sup> and the Technology Contract Law of 1987<sup>8</sup>. At the same time, drafting began on a civil code, and although no such codification has yet become law, a first step towards comprehensive civil codification was made in 1986 with the promulgation of the General Principles of Civil Law.

The new Contract Law which was adopted by the National People's Congress on 15 March 1999 has been in force since 01 October 1999, the 50th anniversary of the founding of the PRC, and replaces the abovementioned sectoral enactments on economic, foreign economic and technology contracts<sup>9</sup>. This law applies to all contracts except those regarding personal status, such as marriage, adoption and guardianship<sup>10</sup>, and thus for the first time in post-Mao Mainland China no longer legally distinguishes between domestic and foreign-related transactions<sup>11</sup>. A General Part deals with creation, fulfilment, modification, assignment and termination of contracts and matters of liability. A Special Part contains provisions on a number of typified contracts, on sales, supply of electricity, water, gas and heating energy, gifts, loans, rentals, leasing, work and services, building, technology transfer, bailment, warehousing, agency, commission business, and brokerage. In their introduction the translators describe the preparatory work in the run-up to passage of the new law and place this most recent enactment on contracts in a wider doctrinal context of Chinese jurisprudence. It is one of the merits of this translation purposely to eschew outward verbal similarity with German legal concepts in the rendering of the Chinese text and to strive instead for a terminology that remains consistent without suggesting substantive equivalence where such may

many voices lamenting such mindless adulteration, *Jin Shenghua*, 'Huoshui' hai shi 'ninao'? – yiwenti dui xiandai Zhongwen de yingxiang ['Running Water' or 'Mire' – on the Influence of Translation on Modern Written Chinese], *Mingbao Yuekan* (Hong Kong), March 2000, pp 57 et seq.

<sup>5</sup> Lin Yung-Jung (p 508) is misplaced in the chronological sequence.

<sup>6</sup> Sections 2, 55, cf. *Zhonghua remin gongheguo falü huibian* [hereinafter: ZGFLHB], 1979-1984, Peking: Renmin chubanshe, 1985, pp 239 et seq.

<sup>7</sup> Section 2, cf. ZGFLHB, 1985, pp 9 et seq.

<sup>8</sup> *Zhonghua renmin gongheguo guowuyuan gongbao*, Vol. 538, 26 June 1987, p 515 ff.

<sup>9</sup> Section 428.

<sup>10</sup> Section 2 paragraph 2.

<sup>11</sup> A step away both from defensive communist separation of the domestic 'socialist' system from the suspect international 'capitalist' order and from traditional Chinese notions of apartness from a wider world (*nei wai you bie*).

not be taken for granted. The quality of the translation appears to be remarkably good and only in a few instances does the accuracy of the original fail to be conveyed in the German version<sup>12</sup>. This translation as well as the introduction and the literature cited will be a welcome aid to practitioners and academic students alike.

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### **Die List**

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Seit über einem Jahrzehnt beschäftigt sich Harro von Senger mit dem Phänomen der List, die zwar weltweit angewandt, aber nur im ostasiatischen Kulturkreis von den Chinesen in der Lehre von den 36 Strategemen systematisiert und erforscht wurde (vgl. Besprechung seiner "Strategeme", VRÜ 1992, S. 463 f.). Er sieht hier ein "abendländisches Defizit", da die Akzeptanz strategemischen Verhaltens dem Menschen zusätzliche Freiräume eröffne. Um dem abzuhelpen, organisierte er am Orientalischen Seminar der Universität Freiburg/Br. im akademischen Jahr 1995/1996 die Ringvorlesung "List: Tücke oder Ausweg – eine Unbekannte in der westlichen Wissenschaft", für die er neben seinem eigenen Beitrag "Die List im chinesischen und im abendländischen Denken" 20 weitere Vortragende der unterschiedlichsten Fachrichtungen – von der Altorientalistik und Theologie bis zur Psychologie und Biologie – gewinnen konnte. Der Ertrag liegt in dem hier zu besprechenden Band vor und er kann sich sehen lassen.

Fast alle Autoren bekennen einleitend, daß sie sich aus eigenem Antrieb nicht mit dem Phänomen "List" beschäftigt, dann aber aus der Anregung des Hrsg. wertvolle Anregungen für weitere Forschungen gewonnen hätten. Zwei Gründe für diese das gesamte westliche Denken seit den griechischen Klassikern charakterisierende Zurückhaltung lassen sich aus der Gesamtheit der Beiträge herausfiltern: Einmal fühlte sich die abendländische Philosophie der Erforschung der "reinen Wahrheit" verpflichtet (*Ute Guzzoni*) und konnte deshalb mit der auf Manipulation dieser Wahrheit gerichteten List nichts anfangen; zum anderen aber fürchtete man wohl uneingestandenermaßen, durch Systematisierung die List auszuhebeln und so die Fähigkeit zum "Überlisten der List" (*Paul Gerhard Schmidt*) zu verlieren. Jedenfalls ist die Liste der literarisch überlieferten Listen aus vorklassischer (*Burkhard Kienast, Erhart Graefe*) und klassischer Antike (*Renate Zoepffel*), bei den Kirchenvätern

<sup>12</sup> As in section 77 which says "[If] the parties [so] agree through negotiations, a contract may be modified" (*dangshiren xieshang yizhi, keyi biangeng hetong*).