

ROBERT HEUSER, *Grundriss der Geschichte und Modernisierung des chinesischen Rechts*. (Studien zu Recht und Rechtskultur Chinas, Band 2). Baden-Baden: Nomos Verlag, 2013. 286 pages, €74.00. ISBN 978-3-8487-0781-2

What are the essential features of China's pre-modern history of law, which covers a period of about 3,000 years? What is the relationship between the millennia-old legal tradition, which exerts its influence even at the beginning of the 21st century, and the requirements of a modern Chinese legal system?

In his masterpiece, Robert Heuser, Professor of Chinese legal culture at Cologne University in Germany from 1992 to 2011, provides the newest, most complete Western answers to these questions. Seven treatises published between 1983 and 2008 in Japan and Germany have been combined after an intensive revision and the addition of substantial supplements. The brilliant result is an overview of the entire course of China's legal history up to the modernization efforts of the present day.

The first two chapters and Appendix 1 focus on history and tradition. The following two chapters describe the process of legal modernization. The Appendices 2 and 3 deepen the reflection about the challenges that tradition imposes upon modernism.

The book is full of valuable statements which shed light on the historical roots of the status of law in today's People's Republic of China: "With Chinese law, we are carried back to a position whence we can survey, so to speak, a living past, and converse with fossil men" (p. 15). "The Chinese law forms its own legal system among the legal families of the world" (p. 66). "The traditional Chinese legal culture [...] never attained an independent position separated from the political power" (p. 186). "China has never provided institutions that have put the Emperor clearly under the law" (p. 274). "The Chinese language is an important carrier of the Chinese culture" (p. 282). "Language and scripture have an irreplaceable continuity. Every foreign cultural element must be expressed and interpreted by the Chinese language and scripture" (p. 273). "We cannot hope that immediately after their transfer into Chinese language and scripture, concepts and rules of modern law become overnight a part of the Chinese legal system" (p. 283).

Whereas Kai Vogelsang in his recent book *Geschichte Chinas* (China's History, Stuttgart: Reclam Verlag 2012) considers discontinuity as a characteristic trait of China's history, Robert Heuser rightly emphasizes its continuity. "The Babylonian people have disappeared. Therefore, the Babylonian cultural heritage is today only material for research and historical remember. [...] The Chinese people as the carrier of the Chinese culture (including legal culture) has survived and developed over the millennia. [...] Because of the thousands of years of continuance [...], the taking root (*Einwurzelung*, p. 125) of foreign [legal] culture in China depends on the intellectual-emotional recognition and approval of the Chinese people" (p. 285, 272).

Some terms are not translated coherent. For instance, the translations of the Chinese word *fazhi* are not consistent. Heuser alternates between translating this term as *Gesetzesherrschaft* (rule of the laws, p. 201, 268), *Rechtsherrschaft* (rule of law, p. 208, 259, 266, 279), rule of law (p. 194), *Recht* (law, p. 191), *Rechtsstaat* (state under the rule of law, p. 191), *Rechtssystem* (legal system, p. 197), *durch Gesetze geleitet* (guided by laws, p. 207).

He interprets or renders *li* – another key term – as *li* (p. 23 f.), *Riten* (rites, p. 18, 67, 83, 97), *Ritenregeln* (rules of rites, p. 59), *Ritual* (ritual, p. 28), *Ritualregeln* (ritual rules, p. 59), *Sitten* (customs, p. 17f.), *Traditionsnormen* (traditional norms, p. 24), *Gewohnheitsrecht* (customary law, p. 26), *moralische Gewohnheit* (moral custom, p. 26), *Sittlichkeit* (morality, p. 65), *die Regeln der überlieferten Sozialnormen* (the rules of the traditional social norms, p. 78), *Moralnormen*, *Gewohnheiten*, *Üblichkeiten* (moral norms, customs, usual practices, p. 70), and *Primärnormen* (primary norms, p. 264).

One weakness of the book is caused by the author's view of the law in the very wide German sense of *Recht* rather than in the narrow Chinese sense of *fa / falü*. In his eyes, every norm guiding the society ("sozialordnende Norm", p. 19), whether in ancient times or modern, is "law". In the pre-imperial period (before 221 B.C.), "both *Fa* and *Li* together form the legal order" (p. 19). However, one could argue that *fa* and *li* are two different kinds of social norms. This is evident in imperial times (after 221 B.C.), when under the Tang Dynasty (618–907) not only a penal code, but also a ritual code with rules that applied even to the emperor were compiled. This duality of two types of imperial codes is not mentioned in Robert Heuser's book. The reader gets the wrong impression, as though the "Confucian ethical commandments (*Li*)" (konfuzianische ethische Gebote (*Li*), p. 264) were absorbed by the penal code. But a certain corpus of *li* continued to exist in a specific code of highest sophistication.

Robert Heuser treats legal norms during the period when Mao ruled in China in the same juricentric way. For Heuser, not only norms issued by the state, but also norms issued by the Chinese Communist Party are legal norms (for details about the norms of the Chinese Communist Party see Harro von Senger: Recent Developments in the Relations between State and Party Norms in the People's Republic of China, in: Stuart R. Schram (ed.): *The Scope of State Power in China*, London: School of Oriental and African Studies, 1985, p. 171–207). In fact, the status of the norms of the Chinese Communist Party (political line, polarity norms, policy norms) as primary norms above the law of the Chinese state has remained unchanged since 1985.

With respect to the time before the foundation of the People's Republic of China in 1949, he writes: "In the areas controlled by the Chinese Communist Party, the Party law, that is to say orders of the leading Party organs, were the main source of law" (p. 193). About the time after 1949, he writes: "The 'socialist law' [...] consisted to a smaller extent of laws promulgated by the National People's Congress [= the Parliament] [...] and to a larger extent of

‘political guide lines’ (*zhengce*) laid down by governmental departments and/or organs of the Communist Party” (p. 189). If it would be true that the Chinese Communist Party is a law giver, should we then consider the “Cultural Revolution” (1966–76) as a period under the rule of law, because Mao Zedong, acting as the chairman and in the name of the Chinese Communist Party, issued many instructions which deeply influenced Chinese society?

A glossary and an index would have been helpful. Certain references in a footnote to another footnote or a page are not precise. Sometimes there are two different translations of the same Chinese texts. The important article translated in Appendix 1 was published in 1997 and not, as indicated (p. 266, footnote 12), in 1998. However, these and other flaws detract little from the high opinion we have formed of this great scholarly work.

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CARSTEN HERRMANN-PILLATH, *Wachstum, Macht und Ordnung. Eine wirtschaftspolitische Auseinandersetzung mit China*. (Institutionelle und Evolutorische Ökonomik 48). Marburg: Metropolis Verlag, 2015. 586 Seiten, € 38,00. ISBN 978-3-7316-1108-0

Carsten Herrmann-Pillaths Buch ist ein Monumentalwerk mit nahezu enzyklopädischem Charakter. Es führt ökonomische, sozial- und kulturwissenschaftliche Ansätze zusammen, um politisch-ökonomische Kategorien und den Einfluss von Kultur auf chinesische Wirtschaftsprozesse zu analysieren. Der Autor bezeichnet das Buch mit Recht als „wirtschaftsphilosophisches“ Werk. Er liefert keine fertigen Ergebnisse, sondern möchte seine Ausführungen als Diskursschrift verstanden wissen, die den Leser zur Weiterbeschäftigung mit verschiedenen Fragen zu Chinas wirtschaftlicher und gesellschaftlicher Entwicklung einladen soll.

Der Autor beginnt mit einer tiefgehenden Selbstreflexion, wenn er zunächst das Unvermögen „allgemeingültiger Theorien der Erklärung wirtschaftlicher Prozesse“ beleuchtet. Dabei geht es ihm um die Vermeidung von sog. *institutional monocropping* – der unkritischen Übertragung sozialwissenschaftlicher Theorien, die auf Analysen westlicher Gesellschaften und Institutionen basieren, auf die Verhältnisse anderer Weltregionen, ohne deren Besonderheiten zu berücksichtigen. Er wirft die Frage auf, um mit Ludwig Wittgenstein zu sprechen, ob wir nicht Opfer von „Sprachspielen“ werden, die uns Strukturierungsregeln an die Hand geben und unser Denken in einer bestimmten Weise formen, jedoch der Realität Chinas nicht entsprechen. Meinen Chinesen z. B. mit Begriffen wie „Staat“, „Markt“, „Unternehmen“, „Freiheit“, „Macht“, „Familie“ usw. dasselbe wie deutsche Betrachter? Herrmann-Pillath versteht sein Werk als Beitrag zur emischen Betrachtung anderer Kulturen, indem er aus der Perspektive der teilnehmenden Beobachtung im anthropologischen Sinn seinen Blick von „innen“ auf die chinesische Kultur richtet.