

Reviews

WERNER F. MENSKI, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. London: Platinum, 2000, VI, 590 pages, £ 30.00. ISBN 0-9535728-1-1

Werner Menski's book is a major work on a subject that started drawing the attention of legal scholars in Europe in the latter half of the nineteenth century, but did not become a major discipline till the middle of the next century. The movement from nationalism to internationalism in the nineteenth century naturally contributed to this development. Several associations and societies of scholars were constituted in different European countries for the promotion of comparative law and its study at university. By the middle of the twentieth century almost all major universities in the West including the United States and Canada had introduced it as a subject of study for a law degree course. Countries such as India with close affinities to the received Western legal systems also prescribed it for their law degree courses by the 1960s. Several major works appeared as basic readings on the subject and several universities and other institutions launched legal periodicals to encourage research and publication of the findings on comparative law. The increasing number of works and periodicals testifies to the growing importance of the subject. As we move from internationalization to globalization comparative law is also being increasingly examined and presented in that light as in the present work.

Even after the existence and growth of comparative law for over one and a half centuries scholars continue to disagree about its nature and scope, and whether it is a subject in its own right or merely a method of study. They, however, agree on its immense utility for a better understanding of different peoples, their laws and legal institutions, promotion of international relations, legal reforms and evolution and development of general principles for the legal theory and resolution of disputes. Even if its distinctiveness as a discipline remains doubtful, comparative law has contributed to the evolution and understanding of several legal notions and phenomena. Several principles of law have emerged or been refined through comparative legal analysis as is obvious from works like Sir Henry Main's *Ancient Law*. More than anything it has helped in the understanding of the legal phenomenon as it operates among different peoples of the world.

Menski's book is a remarkable addition to that understanding in an ever shrinking world. Most remarkably it draws our attention towards a simple and obvious fact generally ignored by Western legal scholars – the fact that no universally agreed concept or definition of law exists so far even in the West. It reminds us of the historical reality that law has existed in all societies but it may have been perceived and identified differently in different societies. Mere dif-

ference in its perception or identity does not justify recognition of its existence in some and denial in others. Western scholars, however, generally assume that law is what they perceive or identify it to be. Those whose conception of law does not match their own lack, in their opinion, any concept of law. Therefore, their scheme of a globally applicable legal regime conforms exclusively to their understanding of law without regard to what others may think of it. Menski finds such an approach not only narrow and parochial, but also inimical to the development of a healthy and cosmopolitan approach to law. Law is not an end but a means to an end. The possibility of others having better means of achieving certain ends can and should not be foreclosed. The foreclosure is, however, inevitable unless we remain open to learning from others. Otherwise we end up creating a legal regime that is not as efficient as it could be. Obviously nobody would opt for a less efficient system if he had the choice. The choice is, however, possible only when we have more than one option. Pursuing this simple logic the author invites us to examine the different legal systems with an open mind.

Menski's background as a German indologist inducted into law at the School of Oriental and African Studies, University of London, having proficiency in several oriental languages and close personal and family connections with India, many years of teaching and research experience of Asian and African legal systems, and interaction with students and scholars from Asian, African and Western countries, equip him eminently to speak authoritatively on comparative law. This is what he has done in the present book. Unlike other authors he has not dealt with all the legal systems of the world. He has confined his work to the legal systems with which he has directly come in contact. The book is divided into two parts. Part I – "Comparative framework" – contains an introduction and the first two chapters. The introduction deals with the issue of globalisation and the place of Asian and African legal systems in it. Chapter 1 raises the issue of study of comparative law in a global perspective and, after drawing attention to its existing Western bias or Eurocentricism, lays down certain guidelines for comparative legal education in a globalised world that must take into account the experiences of all legal systems. Chapter 2 deals with the concept of law in Western society from earliest times to the present, including the recognition of legal pluralism. Part II – "Regional comparisons in a global context" – includes chapters 3 to 6 which deal respectively with Hindu, Muslim, African and Chinese laws. The concluding part of the book reemphasizes the issues raised in the introduction and draws a global vision of law which must incorporate the best that different legal systems offer. A bibliography for each chapter and a subject index complete the book.

As already noted, the book is not merely an addition to the existing literature on comparative law; it is a new approach to the discipline. It invites Western as well as non-Western scholars to examine the phenomenon of law as an effective instrument of global coexistence. They should not confuse the ends with the means and get entangled with means as if they were ends. Self-contained isolated societies of the past may have devised means to achieve self-perceived ends in their own way. Now, when they constitute one global society

they must logically pool together their perception of ends and adopt the best means to achieve them. The book is to be highly commended for bringing home this simple logic and for illustrating and underlining it by examples from different legal systems. It must be read by all who care for the creation of a better life on the globe.

Mahendra P. Singh

Der Buddhismus I. Der indische Buddhismus und seine Verzweigungen.

Von Heinz Bechert, Johannes Bronkhorst, Jacob Ensink, Jens-Uwe Hartmann, Petra Kieffer-Pülz, Hans-Joachim Klimkeit, Siegfried Lienhard, Ian William Mabbet. (Die Religionen der Menschheit, 24,1). Stuttgart/Berlin/Köln: Verlag W. Kohlhammer, 2000. IX, 512 pages, € 83,60. ISBN 3-17-015333-1

The first time that Buddhism was treated in the series "Religionen der Menschheit" was forty years ago in a contribution by André Bareau. Though Bareau's article has not lost its value (as Heinz Bechert emphasizes more than once in his "Introduction"), the time was ripe for an update. To avoid a mere remake, the editors of the series have chosen a different approach by treating Buddhism in its regional dimensions or "Indian Buddhism and its ramifications", as the subtitle has it. Right at the outset, it should be noted that this approach obviously has an inherent problem, if "Indian Buddhism" is to mean the same as "original" or early Buddhism. As we do not know exactly what "original" Buddhism looked like, we can only try to reconstruct it from the scriptures of the various "schools". For quite some time, the Theravada branch was acknowledged to have faithfully preserved the teachings of the Buddha (this acknowledgement went along with the claim, especially by the Buddhists of Sri Lanka, that they had preserved the "words of the ancients" best), while more recent research has shown that the various Northern schools also have numerous "original" texts in their scriptures. Whatever one's standpoint in this question may be, we must acknowledge that the Southern (Theravada) school is just one of the regional ramifications among others and can no longer claim higher credibility.

The first three chapters deal with the Three Gems representing "Indian Buddhism". The first one on the Dhamma (by Johannes Bronkhorst) is in a way the most "traditional" part of the book, focusing mainly on canonical texts which are quoted extensively. Bronkhorst is however careful enough to introduce his contribution with a reflection upon the criteria for determining the Buddha's original teachings as against later additions and modifications. The following chapter by Hans-Joachim Klimkeit deals with the personal dimension of Buddhism, viz. Maitreya, Tathagathas, Bodhisattvas and of course Gautama.

The contribution by Petra Kieffer-Pülz balances Bronkhorst's introductory chapter insofar as normative "texts" almost completely disappear in favour of practice and modes of behaviour of monks, expressed in inscriptions, architecture etc. In taking this path, her article appears to be heavily influenced by the works of Gregory Schopen. If maps are missing in the volume, then particularly