

VICTOR H. LI

Law Without Lawyers. A Comparative View of Law in China and the United States
Westview Press, Boulder, Colorado, 1978, XI, 120 S.

Self-centredness on the part of Westerners and Chinese in their mutual encounters has perennially impeded understanding, and Professor Li's intention to engage our attention, critically towards American legal culture and empathetically towards that of the People's Republic of China, is wholly to be welcomed.

His discussion focusses on Chinese concepts and approaches to practice in the broad equivalent of the field of "criminal law" which markedly differ from American, or generally Western, patterns. In this regard, Professor Li's sketch of the pervasiveness of neighbourhood structures in Chinese urban and rural areas, and their restraining influence on deviant behaviour points up interesting lessons for Western law enforcers faced with crime at the community level. An enhanced importance of "face" in Western societies and, consequently, the possibility of more effectively employing shaming and other public exposure of offenders might yet prove a more wholesome response to many types of crime than, e.g., the uneasily mollified sanctions at the disposal of juvenile courts in this country.

Unfortunately the author has been dramatically overtaken by events in the People's republic, where the legislative work and publicised debate of the last two years¹ have now firmly discarded much of what Professor Li strongly recommends as the "law without lawyers" in China.

Noting appropriately the mostly superficial reception of Western jurisprudence by Chinese modernisers during the first decades of this century, he contrasts with obvious approval the alleged claptrap of Western legal jargon and procedural arcana with the reassertion in China of the "rule of man" over the imported forms of administering justice. He particularly emphasises the importance in Chinese norm enforcement of the organised study of state policies and of Confucian-inspired moral suasion. Such acceptance of rules of policy through their wide dissemination by debate among the citizenry is said to be illustrated by the implementation of family planning. I am afraid Professor Li's belief in the seminal power of government-sponsored sermonising on the virtues of planned parenthood stems more from wishful thinking than from fact: the desolate reality of Chinese population growth over the past ten years or more has recently been highlighted by a spate of – legislative activity to promote birth control, elevating family planning to constitutional importance² as well as making it a duty at law of married couples³. Furthermore, stringent regulations⁴, incisively penalising non-compliance, have now lent "teeth" to the merely verbal efforts, much as Western legal do's and don'ts are complemented by sanctions to secure conformance.

In the penultimate chapter the author relates a 1956 (!) case where an observant spectator at a trial caused her husband, a high party official, to pursue the matter with the authorities and thus eventually brought about the rehabilitation of the person previously convicted. This episode is instanced in the book to indicate efficient popular surveillance of the criminal process. While Professor Li concedes that such review by happenstance is not, perhaps, the happiest manner of correcting judicial errors he assures us that it is easy in China to gain access to a responsive official in order to make one's complaint.

1 Cf. F. Münzel, "Übersicht der Gesetzgebung der VR China in der Zeitspanne 1977–1979", in: WGO – MfOR 1979, p. 365 ff.; Huang/Kessler/Liu/Münzel, *Recht in China*, Mitteilungen des Instituts für Asienkunde, No. 104, Hamburg, 1979, passim.

2 Article L III para 3, PRC Constitution 1978.

3 S. 12 Marriage Law 1980.

4 E. g. Wenhui Bao (Shanghai), 29. August 1979; cf. also my article "Straffe Zügel in der Geburtenplanung", in: VRÜ 13 (1980), pp. 187 ff.

The flaw in his appreciation of the rôles in modern China both of government by moral suasion and of redress through the support of official personae who benevolently agree to assume the part of avenging the disinherited is this: in actual fact the educational debates alone do not suffice, and the governors know this well as their regulatory measures testify. Secondly, if no set rules operate by which government officers can be held accountable, if, in other words, ins with the right chaps is the only way of achieving justice we are back at good old despotism, graft etc.

Many Chinese lawyers and laymen are painfully aware of the lack of law in their polity, not least because of the iniquities suffered by countless people in the so-called "Cultural revolution". This is why the Chinese press became alive, shortly after the disappearance of Mao and the "Gang of Four", with articles denouncing the "rule of man" and demanding that the rule of law be restored.

A sample of Professor Li's language may show how slightly he values the accountability of the governors and the right to an effective voice in government for the much-laboured "masses". At the end of the "Hundred Flowers" letup the régime suddenly became "surprised and shocked", and "a crackdown, the anti-rightist campaign, began . . ." (p. 31). Professor Li also stresses that officials may not overstep the mark with impunity because "rectification campaigns . . ." "tend to take place on a regular basis every few years . . ." (p. 89). We are left to muse which prime political mover (Great Helmsman?) all of a sudden experienced a fit of consternation at the appearance of outspoken criticism and made "a crackdown . . . begin". Who, we may continue to query, so wonderfully produces the tendency of purgatory convulsions to occur at intervals? The answer is certainly not: rules on which an aggrieved party may rely in order to bring to book those guilty of delinquency; instead, enlightened string-pullers initiate cathartic exercises "on a regular basis", or simply begin a "crackdown".

In his desire to present the Chinese mechanisms of social conflict resolution in a sympathetic light, Professor Li has been moved to the point of credulity. Reading current Chinese legal journals, like MINZHU YU FAZHI, leads me to believe that most Chinese today have bidden good riddance to the lawless state which Professor Li so avidly mistakes for exemplary administration of justice.

Wolfgang Kießler

TERUAKI TAYAMA

Die Entwicklung des landwirtschaftlichen Bodenrechts in der japanischen Neuzeit

Aus: Volkmar Götz und Wolfgang Winkler (Hrsg.), Schriftenreihe des Instituts für Landwirtschaftsrecht der Universität Göttingen, Bd. 19, 1978, 75 Seiten.

In diesem Bändchen zeichnet der Verfasser die Entwicklungsgeschichte des japanischen Bodenrechts von der Modernisierung Japans in der Mitte des 19. Jhs. bis zur Gegenwart nach. In einem ersten Teil beschreibt er die Rechtsentwicklung vom Beginn der Meiji-Zeit bis zum Ende des Zweiten Weltkriegs (1868–1945) mit dem Schwerpunkt auf der Entstehung des Bürgerlichen Gesetzbuches (1898) und dessen Pacht- und Vererbungsbestimmungen und weiterer landwirtschaftlicher Sondergesetze. In dem zweiten, weitaus ausführlicheren Teil, werden die die Landwirtschaft betreffenden Gesetze von der landwirtschaftlichen Bodenreform nach dem Zweiten Weltkrieg bis hin zum geltenden landwirtschaftlichen Bodenrecht, niedergelegt im Landwirtschaftsgesetz von 1961 sowie einiger Änderungsgesetze bis zum Jahre 1972, dargestellt.