

have only “more complex, specifically postwar forms” (p. 176). The book would have benefited, too, from stronger and more frequent linkages between the detail of the narrative and the overarching arguments of the work as a whole. At times the narrative swamps the argument. These are small quibbles, however, compared to the contribution O’Byrne makes to understandings of Japan in the late 1940s and the 1950s in a book that will be essential reading for a wide range of people, well beyond those specifically interested in the history of economic thought.

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*Criminal Justice in China: A History.*

By Klaus Mühlhahn. Cambridge, MA: Harvard University Press, 2009. Pp. 365.

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This book commences with the words: “Anger. Disgust. Fear. These words describe the reactions of the majority of Americans and Europeans toward what they hear about criminal justice in China.” Negative sentiments toward the Chinese state and its legal institutions are not unique to Westerners. When the present writer, not far from the end of former president Jiang Zemin’s term of office, taught sociology of law for a short period of time at a university in Beijing, the reactions of many students were quite frank: “What help is there in so much theory? Have a look around you and tell us, where is there any law in this country?” Even the writer’s Chinese colleagues in Chinese legal history seldom concealed their doubts about the possibility of any rule of law in Chinese society. Arguing against their doubts often merely prompted new doubts about the writer’s own ignorance of the mass of examples of law-abuses in Chinese history. Ironically, scholars engaged in “a China-centered history of China” (such as Paul Cohen) are even more confronted by the question “Law, Law, What Law?”, which after William P. Alford’s brilliant essay on that topic seemed to have found a good answer.<sup>1</sup>

To be sure, during Hu Jintao’s presidency the skeptical voices of students have conspicuously subsided. That can be understood partly as a result of the students’ increased fear of spies among them from the Zhongxuanbu, and partly as a sign of the convincing influence of Hu’s program for a “Harmonic Society” on some urban segments of the population which have clearly benefited from economic growth. Nevertheless, the predilection of Chinese rural or regional populations to engage in riots is a blatant sign of a deep distrust of the Chinese people against the state and its legal institutions. One root of this distrust without doubt can be found in Chinese modern history, which Klaus Mühlhahn takes pains to investigate thoroughly in his new book.

The starting point of Mühlhahn’s endeavor is the obvious dramatic change that took place in criminal justice during the reforms which started in the final years of the Qing dynasty and continued through the Republican era until the outbreak of the Second World War (Chapter 2: “The Prison Regime: Republican China”). During the course of the political struggle of the Republican Government against the Chinese Communist Party (CCP), the Second World War and the subsequent civil war in China, the reforms were completely subverted by intervention from military and secret services under martial law and a general state of emergency. The politicization and brutalization of

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1 Paul Cohen, *Discovering History in China: American Historical Writing on the Recent Chinese Past* (New York, Columbia University Press, 1984), pp. 149–98; William P. Alford, “Law, Law, What Law? Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law,” *Modern China* 23:4 (1997), pp. 398–419.

criminal justice that occurred as a result played an important role in diminishing the reputation and legitimacy of the Nationalist government. Ironically, the experiences of communist inmates in prisons and concentration camps contributed decisively to an enhanced awareness of the revolution. The metaphor of the prisons being a “school for revolution”, which is striking in narratives of former communist inmates, is a vivid illustration of the effects of political imprisonment (Chapter 3: “Trials of Terror: War and Revolution”).<sup>2</sup>

The CCP graduated “summa cum laude” from the Republican “School for Revolution”. Although we should not forget several attempts to establish a formal system of criminal justice based on Marxist theory and Soviet experience, the first thirty years of the People’s Republic of China were characterized by an even more extensive politicization of criminal justice (and social life overall). In political movements like the Campaign to Suppress Counterrevolutionaries and the Cultural Revolution, mass trials and accusation or examination meetings at residences or work units, all still subject to strict party control, made criminal justice a tool of the party’s, or maybe Mao Zedong’s, class struggle. They succeeded in bringing the class struggle right down to the street and work unit, thereby infiltrating every small corner of society, even niches to which traditional state power would never have found its way. The result of the almost thirty years’ revolution was mass executions (mainly in the beginning stage) and mass imprisonment (mostly in “labor reform” camps). Conservative estimates by the author suggest an overall incarceration rate of more than 10 percent of the population and a cumulative death toll in camps and prisons of at least ten million, not including the unknown millions who were executed or killed outside the camps, during political campaigns (Chapter 4: “Reform through Labor: The Communist State”).

In short, Klaus Mühlhahn’s new book is a graphic and shocking account of one of the greatest human disasters in the twentieth century. Citations from Hannah Arendt and Carl Schmitt and remarks on similarities to German concentration camps show clearly that the author is aware of the strong resemblance to the Holocaust. But notwithstanding, he does not lose sight of an important distinction: in Chinese labor reform camps, as he puts it, “death was an individual event”.

The author does not restrict himself to mere description of the disaster. His book is a very ambitious enterprise, and he carries the banner of acquiring “a comprehensive knowledge of the whole of criminal justice in China: its past and present, the underlying values and theories, its practices and consequences, its capacities and failures, and, last but not least, the human costs and experiences”. He combines three key dimensions to provide a general interpretative framework: 1. legal discourse, 2. culture or society, especially norms and values, and 3. experience. Within this trinity the most elaborate dimension is without doubt the third. His book intends to present “not only an account of the legal and institutional development of criminal justice but also tries to bring to life the experience of inmates and prisoners”, and without a doubt has reaped a rich harvest from these efforts. The book is thus aligned with a new kind of Chinese studies which, emerging in the final two decades of the twentieth century, overturned the formerly prevalent view of the relative unimportance of law in Chinese civilization and evinced great interest “in such issues as the gap between ideology and actuality, the manner in which central efforts to exert control played out at the local level, and the fate of women, outsiders, and others not previously principal subjects of Chinese history” (Alford, cited in note 1 above, p. 410).

However, is not a trinity of “1. legal discourse, 2. culture or society, and 3. experience” perhaps too ambitious a goal for a single book? Under the title “Criminal Justice in China”, and after introductory remarks on a “well-reasoned response” to allegations of human rights violations, the reader naturally

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2 It is surprising that the author does not mention the influence of the politicization of criminal justice during the first thirty years of the PRC on its reputation and legitimacy. The conclusion that the current general distrust of the state and its institutions has roots in those times of political upheaval does not seem too far-fetched.

expects great achievements in the first dimension of legal discourse. But, in comparison to the vivid description of the experience of inmates and prisoners, legal discourse is much the weak side of this book. This is partly due to deficiencies in our contemporary knowledge of Chinese traditional legal discourse. The first chapter, despite its promising title “The Right Degree of Pain”, gathers from secondary literature a great collection of notions with a sometimes more or less metaphysical touch like “the use of the number five legitimized the use of penal violence by the ruler”, or that the sentencing of capital crimes and execution of death sentences only in late autumn or winter is “another example of the influence of cosmological ideas”, or that “the law even accepted that a father might intentionally kill a child as a penalty”. This potpourri of factoids is illustrative of the fragmentary nature of our knowledge,<sup>3</sup> and falls far short of giving a comprehensive picture of the “past” history of criminal justice in China.

Another difficulty with legal discourse is prompted by the tide of events in modern China. The legal reforms during the last ten years of the Qing dynasty, the fifteen years of the Beiyang government and the first several years under the Guomindang (GMD) government, which leave plenty of scope for legal discourse, stand under the shadow of Western impact. Although the author argues that “Confucian beliefs ... influenced the Chinese concepts of crime, punishment, and prisons just as much as Western models”, intrinsic Chinese features of legal discourse during that period are hardly to be found in the author’s detailed description of the reform plans of figures such as Shen Jiaben 沈家本, Wang Yuanzheng 王遠征 or Zhao Chen 趙琛. The reader is forced to be content with the “fact” that “Chinese and Western penal theories came together in their belief in man as perfectible and correctable”, and that “the confluence of different strands explains the ease with which Western theories were transmitted and translated into Chinese law and society”, which sounds a little naive.

During the following period, the last fifteen years under the GMD and first thirty years under the Communists, the country was ravaged by war and revolution, and legal institutions were shattered by excessive political intervention and abuse. Since the greater part of the book is dedicated to these troubled times, doubt should be entertained as to whether it is possible to extract “a comprehensive knowledge of the whole of criminal justice” out of this very particular political and social situation. Let us, for example, imagine how German history would look if we wrote a “comprehensive history of the whole of criminal justice in Germany” based mainly on the experiences during the Nazi regime. Although such an account might be sophisticated and incorporate a detailed explanation of its roots in the institutional inadequacies and economic difficulties of the Weimar Republic, would not it give a rather distorted picture of German criminal justice in general?

Admittedly, “law is contested and dynamic”, and we should not “dismiss law when it fails to function as intended”. “To the contrary, the disjunctions between law and practice may often be particularly illuminating” (Alford, cited in note 1 above, p. 412). Nevertheless, complexity, malleability and subtlety of law needs to be differentiated from the deliberate destruction of law under totalitarian regimes. As self-evident as it may seem, it is necessary to state that the almost fifty years of totalitarian terror under Chiang Kai-Shek and Mao are not representative of Chinese political culture, and that the violence they used against supposed political enemies is not representative of Chinese criminal justice. Neglecting to draw a clear line between these phenomena entails the danger of reinforcing old colonial prejudices and mistrust of Chinese legal institutions in general. Before deciding on “Criminal Justice in China” as the title of this brilliant book of modern Chinese history, more serious inquiry into traditional legal discourse and institutions, especially into traditional ways and instruments of

3 If we ask for culprits, we have to go back to Xue Yunsheng 薛允升, and Shen Jiaben 沈家本, the so-called fathers of modern studies on Chinese legal history. They cannot evade the charge of having abused Chinese legal history with the objective of promoting Western-style legal reforms. Especially Shen Jiaben’s attack on “Bifu” 比附, one of the most essential elements of traditional legal reasoning, drawing, although knowing better, an analogy with “analogy” in Western legal reasoning, has left a big gap in our knowledge of traditional legal argument, jurisprudence and jurisdiction.

controlling state power and preventing abuses of it, followed by an analysis of the failure of those instruments in the half-century under discussion, would have been highly desirable.<sup>4</sup>

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*Merchants, Traders, Entrepreneurs: Indian Business in the Colonial Era.*

By Claude Markovits. Basingstoke: Palgrave Macmillan, 2008. Pp. xii + 292.

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After the positive implementation of liberal economic policy at the beginning of the 1990s, India enhanced its rate of economic growth from 3.2 percent (annual average from 1965 to 1981) and 4.8 percent (in 1981–1988) to 6.3 percent (in 1988–2006).<sup>1</sup> This accelerated rate of growth was attained largely by revitalizing activity in the private sector by merchants, traders and entrepreneurs. The revival of such activity meant, for example, that the share of gross domestic investment by the private sector to the gross domestic product increased from 10.3 percent in 1980 and 14.7 percent in 1990 to 23.4 percent in 2004.<sup>2</sup>

Despite the recent increase in activity, we have only a limited amount of research focusing on the historical role played by such merchants, traders and individual entrepreneurs in modern South Asia. *Merchant, Traders, Entrepreneurs: Indian Business in the Colonial Era* by Claude Markovits, a distinguished specialist in the history of the mercantile and entrepreneurial world of South Asia, is a collection of the author's recent fruitful attempts to fill this gap.

The book is organized in three parts, each of which consists of several chapters written between 1981 and 2003 on the Indian mercantile and entrepreneurial world during the colonial period. Most chapters in these three parts supplement or extend arguments in two of the author's previous books: *Indian Business and Nationalist Politics, 1931–1939: the Indigenous Capitalist Class and the Rise of the Congress Party*, published by Cambridge University Press in 1985, and *The Global World of Indian Merchants, 1750–1947: Traders of Sind from Bukhara to Panama*, from the same publisher, in 2000. Thus, *Merchants, Trader, Entrepreneurs*, on the one hand, gives us a good summary of his arguments in these two books, and, on the other, strengthens the arguments he constructed there.

The first part, "Business and Politics", deals with the relationship between business interests and political nationalism – a theme that Markovits described in detail in *Indian Business and Nationalist Politics*. In that book, he established that nationalist politics started receiving the collective support of the Indian business classes after the 1930s since these classes, especially big business, saw a business advantage in collaborating with the Indian National Congress, and were not motivated by nationalist feelings.<sup>3</sup> Chapter 1, "Congress Policy Towards Business in the Pre-Independence Era", makes clear that, in response to rising collective support from the Indian business classes, a clear

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4 Naturally, this would go beyond the scope of "criminal justice", but is not the seemingly unreserved equation of state violence with legal punishment in this book already a stretch of the concept of "criminal justice"?

1 Panagariya, Arvind, *India: The Emerging Giant* (Oxford: Oxford University Press, 2008), p. 6.

2 Esho, Hideki, *Ririkushita Indo Keizai: Kaihatsu no Kiseki to Tenbou* 離陸したインド経済: 開発の軌跡と展望 ("The Indian Economy at Take-Off") (Kyoto: Minerva Press, 2008), pp. 132–33. The original source is the Government of India, *Economic Survey 2007–2008* (New Delhi, 2008), pp. A-10, A-11.

3 A useful summary of the implications of the book is given in Manali Chakrabarti, "Why Did Indian Big Business Pursue a Policy of Economic Nationalism in the Interwar Years? A New Window to an Old Debate," *Modern Asian Studies* 43:4 (2009), pp. 983–87.