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Law and Society East and West: Dharma, Li, and Nomos Their Contribution to Thought and to Life

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BOOK REVIEWS


This is a gem of a book in comparative jurisprudence, and yet it has not been adequately noticed on this side of the Atlantic. Hence this review.

In this thoroughly researched and succinctly presented book, Dr. May explores the fundamental principles of life as they have developed in three major civilizations: India, China, and the West. The corresponding principles of *Dharma, Li, and Nomos* are explained in terms of how they came to be and what became their essential philosophical core. The economy of expression with which the author presents this is not merely an impressive style, it makes a more profound point. By presenting these three principles in one continuous theme, without the traditional shifting of the venue of thought in discussing such matters, the author forces us to appreciate these three different principles as part of our philosophical planet, with all the differences and incompatibilities among them. This approach ultimately allows the author to put his finger on some crucial jurisprudential consequences of this way of viewing thought and life.

*Dharma*, Dr. May explains, originated about 2000 B.C. at the inception of the Aryan civilization in India, in which the governmental leadership was assigned to the king and the spiritual leadership was entrusted to the priest. A fourfold division of society emerged by the end of the Rg Vedic period (1500-900 B.C.): the priest (*brahmana*), the warrior (*kshatriya*), the peasant (*vaishya*), and the serf (*shudra*). The universal cosmic order (*Rta*) was pre-existent, immanent, and independent, and gods gave examples of *dharma* to uphold that order. Under the literature of the Vedas, *dharma* was a complex of action, conduct, or-
Dharma, and principle of regularity. The Upanishads (900-500 B.C.) transformed it into a comprehensive support system for everyday life. Dharma was further elaborated by the subsequent dharmashastras, which adapted it to the changing conditions of life.

The Chinese li began as ceremony and ritual in the Book of History (about 1122 B.C.), it became correct and proper behavior in the Book of Poetry (1122-600 B.C.) and, with the Spring-and-Autumn Annals (770-464 B.C.), it pervaded all aspects of human existence. The five lessons of behavior (wu chiao) governed the corresponding five relationships in society (wu lan), namely, father and son, ruler and subject, husband and wife, elder and younger brother, and friends. Confucius (551-479 B.C.) made li into a principle of social organization and control, whose moral essence consisted in filial piety (hsia). An elaborate expression of it appears in the 3300 rules of behavior contained in the Book of Li (Li Chi), which was completed in the early part of the Former Han Dynasty (206 B.C. -8 A.D.).

The Western nomos originated with Hesiod (8th century B.C.) and, with Aristotle (384-322 B.C.), it became natural law. Eventually, it denoted a constituted order of society based upon individual rights and duties, resulting in the Western legal order.

Dr. May searchingly points to the contrasts and incompatibilities among what he calls these three “topoi.” The dharma principle of karma and the Confucian jen (humaneness) are non-existent in the Western nomos; the nomos-generated potential for man-made law is non-existent in dharma or li; the above-mentioned Rta is incompatible with the nomos idea of issuing commands for governance and the li idea of harmonizing worldly existence with nature. Order is pre-ordained in dharma, granted from without in nomos, and granted from within in li. Consequently, nomos provided the foundation for an idea of law from outside, li directed social obligation for harmony, and dharma generated texts teaching man his duty to support the dharmic order. Dharma and li, thus, yielded an all-pervasive way of life and nomos provided an organizational principle along specific commands. Validity in nomos depended upon the authoritative statement, whereas such a mode does not operate in li. The attribution of the principle of human existence to a di-
vine lawgiver characterizes nomos but is absent in li or dharma. Nomos proceeded to an abstract way of thinking about the laws of nature, whereas li was concretized in the five wu lan relationships and the task of the dharma-shastras was to show man's duty and not to articulate his individual rights. The li's conception of seeking an all embracing harmony excluded the antagonistic approach of claiming individual rights. A need to justify rights and duties arises in the nomos mode because the source of obligation in this mode is from outside, whereas dharma and li discover that obligation and its hidden sources because the source of that obligation is from inside. The Western institutionalization of rights is incompatible with the internal coherence of duty-bound ways of the pre-ordained dharma or socially-created li.

The jurisprudential implications of such insights are well pointed out in the book, the most important of which, to the present reviewer, is the argument against postulating "legal world-order from an all-embracing but largely insufficient (and unqualified) Occidental world-perspective." This book is an important contribution in non-parochialization of jurisprudence. It deserves close attention.

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2 REINHARD MAY, LAW AND SOCIETY EAST AND WEST; DHARMA, LI, AND NOMOS, THEIR CONTRIBUTION TO THOUGHT AND TO LIFE, 219 (1985).