

January 1992

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

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Recommended Citation

Surya Prakash Sinha, *Law and Society East and West: Dharma, Li, and Nomos Their Contribution to Thought and to Life*, 4 Pace Y.B. Int'l L. 425 (1992)

Available at: <https://digitalcommons.pace.edu/pilr/vol4/iss1/15>

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BOOK REVIEWS

Reinhard May, *Law and Society East and West. Dharma, Li, and Nomos their Contribution to thought and to life.* Wiesbaden: Franz Steiner Verlag, 1985, pp. 251.

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-

dinance, 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,¹ is the argument against postulating "legal world-order from an all-embracing but largely insufficient (and unqualified) Occidental world-perspective."²

This book is an important contribution in non-parochialization of jurisprudence. It deserves close attention.

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¹ Dr. May's conclusions are corroborated by historical and anthropological data, in addition to the philosophical analysis. See S.P. SINHA, HUMAN RIGHTS; S.P. Sinha, *Human Rights: A Non-Western Viewpoint*, 67 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE 76 (1981); S.P. Sinha, *The Missing First Step in the Human Rights Movement*, AMERICAN BRANCH, INTERNATIONAL LAW ASSOCIATION, PROCEEDINGS AND COMMITTEE REPORTS 71 (1985-86); S.P. Sinha, *The Axiology of the International Bill of Human Rights*, 1 PACE Y.B. INT'L L. 21 (1989); S.P. Sinha, *Why Has it not Been Possible to Define Law?* 75 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE 1 (1989); S.P. SINHA, WHAT IS LAW? ch. 1 (1989). I have gained much from Dr. May's study in preparation of parts of Chapter 1 of my book, *What Is Law?*, a fact which was inadequately acknowledged in that book due to an oversight.

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