

Bei der Unterscheidung zwischen dem Meeresboden der ausschließlichen Wirtschaftszone ("sea-bed of the exclusive economic zone") und dem Meeresboden jenseits der Grenzen der ausschließlichen Wirtschaftszone ("sea-bed beyond the limits of the exclusive economic zone") bezeichnet er ersteren als "*primary sea-bed*", den zweiten als "*outer shelf*".

Die Notwendigkeit dieser Begriffe besteht darin, daß für das "*primary sea-bed*" die Art. 56 ff. und 76 ff., für den "*outer shelf*" jedoch nur die Art. 76 ff. der Konvention einschlägig sind.

Bernaerts hat durch diese Begriffe daher eine saubere und verständliche Abgrenzung und Unterscheidung geschaffen.

Durch die Konzeption wird somit das Buch ein geeignetes Vademecum für jeden, der sich mit dem Seerecht oder der III. UN-Seerechtskonvention beschäftigt oder beschäftigen will. Die Veröffentlichung einer deutschen Fassung des "Guide" wäre sehr zu begrüßen. Aber darauf sollte man nicht warten, denn sechs Jahre nach dem Ende der III. UN-Seerechtskonferenz liegt leider immer noch keine offizielle deutsche Fassung der Seerechtskonvention für eine interessierte Öffentlichkeit vor.

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Guy Kirsch, Klaus Mackscheidt

China. Ordnungspolitik in einem konfuzianischen Land

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The Chinese People's Republic, comprising almost all of Chinese ethnicity in Asia, has also remained the principal theatre of perennial attempts at large-scale adaptation of China's vast, still largely traditional society to the pressures of "modernity" as chiefly represented by industrial capitalism. Recognition that old homegrown ways would no longer serve has often provoked a marked assiduity to absorb foreign ways and means for the betterment of a new China. Thus numerous academic luminaries from the West travelled to early Republican China in the beginning of the 1920s to disseminate their teachings, not unlike their spiritual brethren who had previously tried to spread the Word among the "heathen Chinese".

Deng Xiaoping whose reform policies have now superseded the doctrinal rampages of the late Mao Zedong has again paved the way for a considerable flow into China of foreign ideas and their propounders, and once more the attempt is made to import foreign elements that may help to accelerate the modernisation of Chinese society.

In view of China's marked distinctness as compared with differences, say, between nations of Europe and North America, it may be suspected that many of those who have displayed their intellectual wares in China after 1979 were not in a position to prepare themselves

adequately for their audiences and their particular preoccupations. Reporting in many Western media about recent Chinese economic policy would, on the contrary, suggest that outside perception of economic matters China has remained overly informed by the conceptions of home debates. This frequently leads to appreciating developments in China solely in terms of controversies familiar to the observer, such as "interventionism" vs. "laissez-faireism", etc., so much that Mr. Deng's policies are occasionally celebrated as the final apotheosis, in farflung Cathay, of the tenets of supplyside economics.

Professors Kirsch and Mackscheidt, respectively economists at the universities of Fribourg in Switzerland and Cologne in Germany, have undertaken the huge effort to approach China, where they also went to lecture, in a radically empathetic fashion.

They draw on their readings of classical Chinese literature to substantiate their view that Chinese society has, throughout the ages, been organized almost exclusively in a hierarchical, "vertical", fashion. In contrast to the West, where *grosso modo* the spheres of state and society - the "vertical" and "horizontal" dimensions - can be found to have been ordered ethically and legally in China, according to the authors, order was conceived of as existing only in the hierarchical domain constituted by the imperial government which pervaded human relationships so that the "horizontal" component was reduced to insignificance. Consequently, ethical norms evolved mainly within "vertical" relations, "horizontal" ones remaining an amoral no man's land from which any translation into the realm of order meant entering, or reentering, the state's world of subordination within the Confucian hierarchy. Comparing China's experience with the West's, the authors find that there is no equivalent in China to the "horizontal" ethics predicated upon the equality of independent private producers and traders of goods and services, as in the policies posited as the models of Western democracy. There the bourgeois and the citizen represented twin aspects of the same individuals who by consent constituted state authority as the collectively maintained guarantor of equal intercourse among men. Diminishing "vertical" authority by enlarged freedoms for entrepreneurial activity as advocated by the Dengist reformers might thus deprive of all normative order an entire sphere of human conduct now subtracted from the control by "vertical" rules. This newly liberated activity is, however, unlikely to flourish if left in an amoral, chaotic, state.

Contemporary market-oriented reforms thus carry the risks either of leaving people ill-equipped to succeed in ordered "horizontal" interaction, particularly in the marketplace, causing society to degenerate into a *bellum, omnium contra omnes*, or of consciously asserted new bourgeois individuality rejecting the remnant "vertical" rule still maintained by the Communist Party, leading to the latter's revolutionary destruction as in 18th-century France.

The stakes therefore seem high in the debate about economic reform in China as it puts at risk not only the dominance of the present élite but perhaps all ordered society in mainland China. It would be a measure of the gravity of China's crisis as perceived by today's

leaders that they should accept such dangers as an inevitable price to pay for the country's successful "escape from predicament".¹

It is perhaps surprising that two economists should have analysed economic reform in China almost exclusively by reference to the orthodox Great Tradition of Confucianism, wholly disregarding the Little Tradition, and in particular the history of Chinese commerce and finance. The considerable commercial exchanges found from early periods of the empire onwards² may also have produced, however much in the shadow of the Confucian "gentlemen", an ethic suited to the needs of the merchant "players" who played their trades in the many local and regional market towns of an already well-monetised traditional economy. Further investigation seems necessary before the authors' assumption can be safely accepted that the "horizontal" enclaves inside Confucian "verticality" have brought forth no precepts besides sheer violence by which human behaviour may be stably guided. There can, on the other hand, be no doubt that any "horizontal" ethic in China has always been secondary in relation to the dominant Confucian "verticality", and for this reason the foundations of a civil society in that country will need significant strengthening to permit smooth progress.

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Diese Studie erscheint in der Reihe "Wirtschaftsrecht der internationalen Telekommunikation" und ist Bestandteil eines Forschungsprojekts über internationale Kommunikationssysteme des Max-Planck-Instituts für Ausländisches und Internationales Privatrecht in Hamburg. Wie die übrigen im Rahmen des Projekts erschienenen Länderberichte aus Amerika, Asien und Europa basiert dieser Band auf einem - mit abgedruckten - Fragenkatalog, der dem Leser Vergleiche der verschiedenen nationalen Berichte erleichtern soll.

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1 cf. Thomas Metzger, *Escape From Predicament. Neo-Confucianism and China's Evolving Political Culture*, New York: Columbia University Press, 1977.

2 cf. Mark Elvin, *The Pattern Of The Chinese Past*, Stanford: Stanford University Press, 1973.