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William Twining (ed.)

Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi

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The predominant legal approach to Human Rights has developed in a distinctly Western tradition with little reference to non-western perspectives, despite the fact that namely post-colonial legal discourse has developed distinct approaches to human rights. "Southern Voices" is one of the first attempts to make such distinctive opinions from the Southern hemisphere accessible and contrast them to the Western academic mainstream on Human Rights research. An attached bibliography broadens the scope of the edition.

The editor of this book, *William Twining*, presents four intellectual activists who in a remarkable way interfere in the contemporary discourse on Human Rights. The book has six parts. It begins with a brief introduction discussing the main arguments of each of the four authors. Twining invites the reader to regard the particular perspectives by comparing their different socio-cultural contexts. The core of the book consists of four parts, each presenting some excerpts from the previously published works of the four intellectuals referring to the topics selected by Twining. The editor has met all four personally and at the beginning of the chapters devoted to the individual authors he explains the work of each, their educational and personal background and their special professional setting. These introductory remarks are in each case followed by a substantial essay of the individual author expounding their particular approach to the topic in question followed by a list of suggested further readings.

The book on the whole offers a good insight into the similarities and differences. It helps to compare each particular stance to the other and allows relating them to those patterns of thought that are typical for Western approaches in the study of Human Rights. In my opinion the main purpose of this book has to be seen in its emphasis on challenging the prevailing ideological tendencies in Western research on Human Rights. Twining's edition makes available the particular views of four legal scholars from a non-Western background to a Western audience. Different social contexts, socio-cultural and activist experiences shaped the mind-set with the help of which they understand, investigate and evaluate law and justice. This pluralist approach counts as an invitation to make academic discourse on international human rights less parochial and ethnocentric.

All four writers, briefly introduced in the following, have been political activists as well as academic theorists. *Francis Deng* from Kordofan in Western Sudan is known for his career in international diplomacy as well as for his conciliatory role in the Sudanese north-south conflict. The central thematic concerns of his academic work focus on the questions of identity and the complex interaction between tradition and modernisation. The excerpts

of his work reprinted in this volume outline the traditional values of his people, the Ngok Dinka of the Sudan, relating them to the norms of Human Rights, to democracy, and to the questions of good governance. He argues that the core values of Dinka tradition and belief are indeed compatible with the values underlying the Universal Declaration of Human Rights. His cultural approach to the justification of Human Rights strictly rejects cultural relativism but nonetheless underscores the importance of local traditions necessary to substantiate and complement the otherwise abstract notions of universal rights.

Abdullahi An-Na'im, a Northern Sudanese and a committed Muslim is well known for his progressive ideas regarding the Shari'a and Human Rights. Twining chose excerpts of An-Na'im's work representing what he identifies as the three stages of the author's intellectual biography. Stage one is focusing on the reformation of Islam in the light of Human Rights and international law. The second is emphasising the internal cultural dialogue necessary to give legitimacy to the Human Rights. And finally, An-Na'im argues for a secular state that allows religion to co-exist with public life, public policy and legislation, although he strongly opposes coercive enforcement of the Shari'a by the state. Commitment to universal Human Rights in the Muslim world, he insists, will only be achieved if those rights can be culturally traced and are consistent with the belief in Islam. To An-Na'im universal Human Rights are legitimised through internal dialogue even more than through cross-cultural appreciativeness.

Yash Pal Gay from Nairobi, Kenya, has an unrivalled experience of constitution-making in post-colonial states and in advising governments in Asia, the South Pacific and East Africa. One of his tasks was to reconcile tensions between particular cultural values in multi-ethnic societies and to strengthen the universal aspects of Human Rights through negotiation. Like the others he rejects the exclusive versions of universalism and relativism. He supports an international Human Rights regime in a pragmatic and materialist sense achieved through negotiation and encoded in covenants accepted by the local people. But he points out that governments invoking cultural interests and the right of self-determination may often cover up the reality of material interests and massive violations of Human Rights.

Upendra Baxi, from Gujarat in India, is a highly influential activist and writer both in India and South Asia. He describes his perspective on Human Rights as that of a comparative sociologist of law. Like the other writers he also is a supporter of the concept of Human Rights within the international context; but he recognises that the current Human Rights regime is risking to lose touch with those who should be its beneficiaries. He sharply criticises the inflexibility of the Human Rights discourse on the part of the powerful and educated. He calls into mind that the violated, the poor and oppressed are the true authors and interpreters of those rights. Taking rights seriously must involve taking human suffering seriously. To oppose hegemonic interests, imperialism, and patriarchy we must engage in a discourse of human suffering that is capable to move the world.

All four Human Rights scholars and activists are legally trained and belong to the post-Independence generation of intellectuals living in countries of the global south. They all

experienced colonial rule and have contributed to legal discourse and activism in post-colonial contexts. All four have earned degrees, or have taught at well-known universities such as Berkeley, Harvard, Yale, Emory, and Oxford. They are what Twining calls “cultural hybrids”. It could be argued that some of the authors’ opinions were deeply shaped by the ideological bias of Northern academic thinking. Yet, all four try to steer a path between universalism and particularism by emphasising the importance of the local and by stressing the importance of dialogue to overcome the fruitless struggle in Human Rights politics.

The book is a valuable and recommendable introduction for students as well as activists to non-western perspectives on Human Rights. For senior scholars of all disciplines it provides a necessary reminder to take into account the experiences and values of individual cultures. The ideological domination of academic institutions of the global north, the handful of critical legal scholars from the global south, the problems of doing research in the poor world, and the fragmentation of international legal studies, has among other things, so far prevented a holistic, trans-cultural dialogue in the study of Human Rights. Even though there are significant differences and disagreements between the four thinkers represented in this volume, they are allies in their struggle to fight poverty, deprivation, and inequality by furthering the development and implementation of Human Rights values. William Twining has successfully made accessible voices of the South as a first step towards de-parochialising the established juristic canon.

Ira Melnikow, Bremen

Masanori Shiylake

Verfassung und Religion in Japan

Schriftenreihe des Zentrums für rechtswissenschaftliche Grundlagenforschung Würzburg,
Bd. 5

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Masanori Shiylake, Jg. 1947, gehört als Professor der juristischen Fakultät der Universität Kyoto zu den bekannten und prominenten Stimmen der japanischen Staatsrechtswissenschaft. Im Rahmen einer Kooperationsverbindung der Universitäten Kyoto und Würzburg, hier: mit dem Zentrum für rechtswissenschaftliche Grundlagenforschung hat er in den Jahren 2010 und 2011 zwei Vorträge gehalten, die in diesem Band publiziert sind.

Auf S. 11 bis 23 geht es auf neuestem Stand um einen Überblick über eine die japanische Verfassung seit ihrem Erlass im Jahre 1946 bis heute begleitende Verfassungsänderungsdebatte (welche bisher zu keiner Änderung geführt hat), auch im Vergleich zur Lage und anderen Realität unter dem deutschen Grundgesetz und in Verknüpfung der normativen Ausgangspunkte mit politischen Bestrebungen und ihre Kommentierung in der Wissenschaft. Der interessante Beitrag lässt sich lesen auch als Fortführung des von Rainer Wahl herausgegebenen Bandes über Verfassungsänderung, Verfassungswandel, Verfas-