nischen Nachkriegsverfassungsgeschichte werden, und mit der ein Verfassungswandel bei Art. 9 festgeschrieben werden könnte, wird die des OGH im »Naganuma-Fall« sein. Solange das mit Spannung erwartete Urteil jedoch nicht gefällt ist, kann eine Wandlung der japanischen Verfassung von 1946 aber (noch) nicht festgestellt werden.«

Die Arbeit enthält im Anhang den Text der JV in der von Wilhelm Röhl übersetzten Fassung und den Grundsatzentwurf des Verfassungsuntersuchungsausschusses der LDP vom 6. 10. 1972. Hervorzuheben ist auch das reichhaltige Literaturverzeichnis, das in einen japanischen und einen westlichen Teil gegliedert ist. Der Autor, der vier Jahre in Japan studierte und dort als erster Deutscher den Magister der juristischen Fakultät der ehemals kaiserlichen Osaka Universität erwarb, hat das umfangreiche Material im Originaltext gelesen und wichtige Fragen mit führenden japanischen Verfassungsrechtlern, Politologen, Richtern und Politikern diskutieren können. Bei aller Detailtreue und Tiefe ist ihm eine wirklich lesbare Abhandlung gelungen, zu der man ihm nur gratulieren kann.

Nach Abfassung dieser Rezension hat der OGH im Naganuma-Fall das mit Spannung erwartete Urteil verkündet, welches der Problematik jedoch nicht gerecht wurde, da auf die verfassungsrechtliche Seite kaum eingegangen wird. Mit dieser Auffassung ist auch nach Ansicht des Autors die Auffassung der Regierung untermauert worden, daß die SVS nicht verfassungswidrig sind.

Matthias K. Scheer

Brian E. McKnight
The Quality of Mercy, Amnesties and Traditional Chinese Justice
Honolulu: University of Hawaii Press, 1981, pp xii, 172, U.S. $ 15.00 (hardcover)

The legal culture of Imperial China, spanning more than two thousand years, from the Former Han (206 B.C.) to the fall of the Qing (A.D. 1911), has produced many laws and a vast body of records, many still extant today.

Works in Western languages have presented some facets of this pristine tradition to Western readers, but most of the huge territory has not yet been accessibly mapped for the Occidental comparatist.

In the Chinese tradition law was neither conferred upon men from a divine source, nor was it democratically formulated – it was an instrument of autocratic imperial rule. Although no metaphysical authority above the emperor was instituted by religion, this absolute temporal ruler was, certainly in earlier orthodoxy, considered as enmeshed in a transcending cosmic order bounding his worldly authority. The ›Mandate of Heaven‹ was said to subtend imperial legitimacy, and natural disasters and social upheavals could accordingly be seen as signs that an unjust, or merely hapless, Son of Heaven, as the emperor was also called, had forfeited his celestial authority as a ruler of men.

Amnesties in early imperial China were thus an expedient whereby the stern intransigence of the law could be tempered by foregiveness, to the credit of the emperor as an equitable monarch who rightly enjoyed Heaven's favour. They were naturally also employed for more mundane objectives, such as placating internal opposition or to enhance a new emperor's stature on accession to the throne.

Amnesties usually stated which offenders were to benefit, excepting as a rule those guilty of serious offences against the state and other heinous crimes under penal law. Professor McKnight has surveyed the long period of traceable amnesties, giving examples of their scope, wording and the manner of their promulgation by the emporer. Research outside China on these amnesties is only beginning, and it is therefore noted without criticism that this account has little to say on their local implementation by local government officers. This as well as regional amnesties will have to await further, more detailed study.

Under the Song (A.D. 960–1279) amnesties occurred with great frequency. One element defining their scope was a date before which an offence must have been committed or until which a sentence must have remained unexecuted. The time which would usually elapse between an criminal offence, its discovery, investigation, possible apprehension of the offender, and the subsequent prosecution and sentencing left a considerable probability for the lawbreaker to escape scot-free through the intervention of an amnesty.

This trend was strikingly reversed from the Yuan dynasty onwards, which made very sparing use of amnesties, as did succeeding houses until the end of the Qing in this century.

The frequent recourse to amnesties was prompted, on Professor McKnight's explanation, by the limited capacity of imperial judicial and correctional institutions. A very small number of trial judges (about 800 sub-prefects for 50 to 60 million people under the Southern Song) had to investigate and process an inordinately large number of cases. Moreover, incarceration was not among the sanctions used in Chinese penal law and the facilities for detaining those awaiting sentencing and later reviews were minimal. The inadequacies of personnel and prisons thus forced the government to reduce the backlog of cases pending by interventionist measures. This necessity was at the same time draped in the cloak of metaphysically inspired imperial benevolence, transmuting an implied admission of executive impotence into a bestowal of clemency on his subjects by the wielder of supposedly supreme power.

No similarly plausible explanations are offered for the sharply reduced number of amnesties after the Song period. The judicial apparatus may simply have narrowed the purview of its own administration of criminal justice, thus artificially lessening the caseload. Alternatively, the autocratic hold by central government on the lower echelons of the civil service under the Ming and Oing dynasties may have stunted official initiative on these levels, in effect causing a withdrawal by the state from many areas of law enforcement. Private agencies may have stepped in, such as guilds, village elders, etc, to uphold a system of sanctions and regulation no longer directly operated by government.

The historical change in the rôle played by amnesties as well as their execution at the lo-

cal level remain to be explored. Professor McKnight's introduction has, however, illustratively sketched the outlines and the magnitude of the topic. It is to be hoped that his book will stimulate further research in this field.

Wolfgang Kessler

Julius Goebel
The Struggle for the Falkland Islands, A Study in Legal and Diplomatic History
With a Preface and an Introduction by J. C. J. Metford, New Haven & London: Yale University Press, 1982, pp xxx, 482, £ 10.95 (Cloth), 5.95 (Paper)

Argentina's invasion of the Falkland Islands represents the first attempt by a third-world nation in an intermediate stage of industrial development to wrest by force a colonial possession from a Permanent Member of the United Nations Security Council. Argentina's military action was widely held to be in clear violation of Article Two of the UN Charter proscribing the use of force for the resolution of international disputes. It was for this reason that the United Kingdom could seek and obtain support in particular from the United States but also from the other members of the European Communities. The conflicting claims of both Britain and Argentina pose, however, problems far exceeding the ambit of Article Two UN Charter as each of the two states purports to be the rightful sovereign in respect of the islands, a controversy which is as bitter emotionally as it is of long standing in the history of diplomacy and international law. Its early stages locked Spain, Britain and, to a lesser extent, France in a protracted diplomatic dispute and decisively shaped the legal backdrop to the eviction of the Argentine garrison from Port Luis on East Falkland by a superior British force in January 1833.
The islands today known as the Falklands were first settled by the French under Antoine de Bougainville who with the consent of the French government undertook a privately financed expediton there and, in April 1764, took possession of the entire group of islands in the name of his king. These islands were known in France as »Les Malouines«, after the sailors of St Malo who had frequently made voyages to this part of the South Atlantic.
The Spanish considered this as another menace to their dominions in the Americas which had been under constant pressure from rival European powers and had been further diminished by the Treaty of Paris concluding the Seven Years' War. After the establishment of the French colony on East Falkland the British who had long been interested in the group sent John Byron, the grandfather of the poet, to the South Atlantic where he, in late January 1765, being ignorant of the anterior French presence, in his turn purported to take possession of the islands for Britain. The alliance between Spain and France of 1761, the so-called Family Compact, smoothed the way for Madrid to obtaining the formal cession of the French acquisition in the Falklands. This transaction