

ses gebe), die Grundrechtsgarantien der mongolischen Verfassung vorgestellt (mit einem interessanten Abschnitt über Geschlechtergleichheit von *Sunjid Dugar*), wird die Rechtsprechung des mongolischen Verfassungsgerichts geschildert (vor allem zu Grundrechtsfragen). Weitere Ausführungen gelten dem Prozessrecht, insbesondere dem Verwaltungsprozess sowie dem Polizeirecht (mit einer vom Bayerischen Polizeiaufgabengesetz ausgehenden Darstellung des mongolischen Polizeigesetzes). Ein Abschnitt „Recht der Mongolei aus deutscher Sicht“ greift einige Varia auf. Dazu wird die mongolische Verfassung (auf Englisch) wiedergegeben, ein Text zur Reform der Juristenausbildung und eine Kurzdarstellung von 19 Entscheidungen des mongolischen Verfassungsgerichts (darunter 16 erfolgreiche Verfahren!), die dessen Rolle eindrücklich belegen.

Grundsätzliche und methodologische Ausführungen zum Begriff „Rechtstransfer“, der im Titel des Buches verwendet wird, kündigt Scholler für eine gesonderte Publikation an, doch ist das Thema auch hier schon von Einzelpunkten her präsent. Und in einer Schlussbemerkung formuliert der Autor ein Credo für Rechtsreform in Lagen wie derjenigen der Mongolei, in den Worten des Rezensenten: Das Gesamtrechtssystem muss eine klare Linie finden. Traditionellem Recht muss im Sinne der Wahrung einer eigenständigen Rechtskultur Bedeutung beigemessen werden. Soziale Aspekte sind stets zu berücksichtigen. Und: „Nationale oder wirtschaftliche Interessen der Geberländer dürften bei der Reform keine Rolle spielen“. Die Frömmigkeit namentlich des letzten Postulats nimmt ihm nicht seine Berechtigung. Aber nicht alle an solchen Prozessen Beteiligte nehmen das so ernst wie Scholler, was auch in diesem Band gelegentlich zur Sprache kommt.

Philip Kunig, Berlin

Oliver C. Ruppel / Gerd Winter (Eds.)

Justice from within: Legal Pluralism in Africa and beyond

Liber amicorum Manfred O. Hinz in celebration of his 75th birthday

Verlag Dr. Kovač, Studien zur Rechtswissenschaft, Band 271, Hamburg 2011, 646 pp.
58,00 EUR; ISBN 978-3-8300-5872-4.

Professor Dr. *Manfred O. Hinz* who is not only a lawyer but also a sociologist and anthropologist celebrated his 75th birthday in November 2011. Due to this occasion he has been dedicated a liber amicorum as an expression of appreciation of his academic and professional merits, acknowledgment of his personal and academic influence on colleagues, friends and students and his support of liberation and constant contribution to development in Namibia.

The special connection to Africa, and especially Namibia, reaches back to the support of liberation struggle as a main promoter of the Namibian Project by the University of Bremen. After Namibian independence in 1990 he worked, *inter alia*, for the Ministry of Justice and was later entrusted to establish the law faculty at the University of Namibia. As

legal pluralist, Manfred O. Hinz has strongly accounted for a rising awareness of the necessity to respect and to grapple with customary law in order to create a stable and peaceful society. He has always been closely connected to the ground rather than solely pursuing and elaborating legal theories. Linking theories and practical observations and transmitting his academic work into political concepts constitute both his scientific and his practical achievements.

The book is edited by *Oliver C. Ruppel* and *Gerd Winter*. Oliver Ruppel is a former student, later colleague and close friend of the consignee. He has worked together with Manfred Hinz at the University of Namibia and at the Human Rights and Documentation Centre (HRDC), which was headed by Oliver Ruppel as Director until 2010, while Manfred Hinz held the UNESCO Chair at the same institution. Manfred Hinz also paved the way for Oliver Ruppel to establish one of the worldwide 14 academic chairs of the World Trade Organisation (WTO). Ruppel currently holds a professorship for Public and Mercantile Law at the University of Stellenbosch (South Africa) specializing in Public International Law and in particular WTO Law, Climate Change Law and Sustainable Development Law. Gerd Winter is a long-standing colleague of Manfred Hinz at the University of Bremen where he was appointed in 1973 and has worked as Professor for Public Law with a main focus on Administrative Law, Comparative, European and International Environmental Law, and Legal Sociology. Sharing Manfred Hinz's concerns for the environment he became a member and main supporter of the anti-nuclear power group around Manfred Hinz that had specialised in law suits against nuclear power plants. The connection evolved to a close academic and personal relationship between the two lasting up to today.

The *liber amicorum* consists of five parts. Part one comprises different legal and historical articles about African colonial past and the liberation struggle. The second and third parts refer to a topic which has been highly influenced by Manfred Hinz' work: legal and political anthropology and plural legal architecture in a modern Africa. Part four entails various articles or "miscellaneous" on topical issues and from topics not directly linked to Hinz' work. The book concludes with an autobiographic chapter dealing with the consignee's life and his contributions to a new development policy.

The "Festschrift" comprises more than 30 articles in both German and English language from a wide spectrum of distinguished African and European mostly legal scholars but also authors and scientists from related disciplines with vast scientific and also practical and/or political experience in their fields of interest. Greetings in the beginning of the volume were expressed by Hon. Nahas Angula, the Prime Minister of the Republic of Namibia; Hon. Nangolo Mbumba, the Minister of Safety and Security of the Republic of Namibia; and Hon. Prof. Peter Katjiavivi, Member of Parliament and Chief Whip of the Republic of Namibia, founding Vice-Chancellor of the University of Namibia and former Namibian Ambassador to Germany, Belgium and the European Union. A selection of essays is represented in the following:

In his contribution to the first part *Henning Melber* critically analyses "some aspects of the narrow translation of a liberation movement – an agency of transformation – into an

exclusivist apparatus claiming to represent the interest of all people and a total monopoly in advocating the public interest” (p. 28). The transformation process often involves a mystification of the liberators which is used to strengthen the position of power of the new ruling elite. Melber describes it as changed control rather than changed perception of power. A limited willingness to accept oppositions and divergent views impedes the development of a liberal, democratic state, and political and economic equality. The author concludes with the recommendation to critically revise and examine not only the aims and goals declared to be pursued in African liberation struggles but also the mindset, norms, values, and expectations of those people who supported the liberation movement.

Further articles in the part about colonial past and liberation deal with the history and intention of a former war monument in Bremen which has been rededicated to the memory of victims of the colonial wars of 1904 to 1908 in German Southwest Africa (today Namibia) (*F. Thomas Gatter*), the role of Austria in regard to Namibia’s independence (*Walter Sauer*), propaganda, press and law within the South African apartheid system (*Oliver Ruppel*), and an analysis of the transformation of colonial politics to self-government by considering Hugo Preuss’ development of thought (*Dian Schefold*). The first section is concluded by an exceptional critical contribution in which *Julie Stewart* claims that the human rights approach has lost ground and moved to far away from individual human being’s life, wants and needs. “We need to seriously go back to the woman, the man in the village and the children to understand their needs and capacities. It is about engagement and right to rights.” (p.136)

The second chapter starts with an article about legal pluralism in a plural world. For the author, *Werner Menski*, Manfred Hinz is someone who has promoted a different notion about methodological approaches to globalization in law and to assess the human rights position in Africa which has also had impacted his work and education at the School of African Studies in London. He explains his image of “flying kites over African skies”, which has been highly influenced by Manfred Hinz’ ideas about legal pluralism, as a “new way of perceiving culture-specific applied legal pluralism” (p. 141). Envisioning law-making as a kite journey where one false move can make the kite crash and a gust of violent wind can potentially ruin its fragile structure illustrates the danger and risks of nation-building. The image as an advancement of its earlier triangular model emphasizes “specifically the inherent dynamism of law also in Africa, depicting its floating nature as superstructure which is at the same time solid and flimsy, hence vulnerable to all kinds of turbulences and disruptions” (p. 149).

The philosopher *Hans Jörg Sandkühler* reasons in his contribution that (1) the implementation of moral entitlements can only be realized through human rights as legal rights, (2) human rights are legally universal applicable and are itself universal, and (3) culture-relativistic strategies lead to legal relativism, de-universalization and deprivation of human rights protection. Human rights cannot be deduced from one ethical principle but have to follow a neutral legal concept in order to guarantee the right to dissent and the respect for individual freedom of choice about life decisions. Universal human rights norms reflect the

most widely accepted moral consensus in the present world. The interpretation of human rights is limited by the diversity of way of lives, on the one side, and the universality of the principle of dignity, on the other end. However, the norms of positivised human rights law entail evaluation criteria for an appropriate interpretation as well as assessment guidelines for human rights violations. He concludes that divergent reasons or justifications for the recognition of human rights are possible whereas its implication, application and protection have to respect the limits of intercultural concerted/agreed legal universality.

Tesfatsion Medhanie writes about the African political culture's compatibility to and impact on liberal democracy in sub-Saharan Africa. The author explains that African institutions have been impacted by tradition carrying on notions of hierarchy and gender relations and the idea of "umuntu ngumuntu nga bantu" ("I am because others are") which subordinates the individual to the community. The hierarchic concept in African culture where the decisions and opinions of individuals in superior positions is neither questioned nor challenged is not coincidental with the concept of liberal democracy but "anything facilitated sinister designs to set up and sustain authoritarian regimes under banners like one-party or no-party democracy" (p. 255). Medhanie, however, argues that certain factors as, for example, the failure to adopt the liberal democracy system to local needs and building it on indigenous ideological foundations have also been a major hindrance to the success of liberal democratic systems. He, further, assigns African societies insufficient cultural prerequisites for liberal democracy, in opposition to European countries where ideals and principles had grown over a long period and, especially in the time preceding the Enlightenment period. The best African states can do until sufficient prerequisite values in the context of frameworks for social responsibility have developed is to "be governments with social agendas catering to the extent possible for the needs of the people and providing the best that political culture affords and the international situation allows along the lines of liberalism and democracy" (p. 261). However, especially in view to the development agenda by the Western states, solidarity is needed; Western states should exemplify liberal democracy in the true sense in order to be credible promoters and supporters of liberal democracy in African countries and to help them developing the necessary prerequisite values.

The social-anthropologist *Helgard Patemann-Hinz* picks up the notion of the cosmopolitan human being by Appiah and analyses it by referring to Jung's collective sub consciousness. Globalisation has led to a more intense interaction between human beings from different places, cultures, backgrounds, etc. How does the collective sub consciousness influence this intercultural encounter or exchange? Patemann-Hinz dedicates to this question by critically analysing different concepts about subconscious collective forces from depth psychological, theological and philosophical points of view. She concludes by criticizing Appiah's idea of a cosmopolitan human being as missing a reference to non-western, divergent concepts of human social life. There would be no indication to academic discourse which broaches the cultural background in regard to explanatory models of approaches. To what extent does a subconscious connection of mankind exist cross-cul-

tural? The author reasons that for certain norms and values it does and for others it does not. Important is the openness for intercultural dialogue that is more than superficial and the willingness to acknowledge the existence of different frameworks.

Further articles in the chapter on legal and political anthropology analyse African traditional influences on common law in regard to the principle of public participation in South Africa (*Thomas W. Bennett*), legal pluralism in the German colonies between 1884 and 1914 (*Harald Sippel*), pre-colonial structures of power and fundamental social principles of the Manyo society (*Wilhelm J.G. Möhlig*), a Botswana perspective of legal pluralism with its challenges and opportunities (*Athaliah L. Molokomme*), and customary law in Southern Sudan (*Bankie F. Bankie*).

Katharina Ruppel-Schlichting and *Oliver Ruppel* open the third section with an overview of applicable laws and jurisdiction in Namibia as an example of implementation of the concept of legal pluralism within a national legal system. They start with a brief historical outline emphasizing its impact on the Namibian legal system with quite different sources as Roman law, Roman-Dutch law, British Common law, African customary law and the influence of international and regional law. The constitutional recognition of Customary and Common law, in force on the date of Independence and not conflicting with the constitution, exemplifies a major achievement of legal pluralism. In regard to Namibian jurisdiction which is elucidated by referring to the composition of the court system the traditional courts and, especially, the envisaged Community Courts find special attention. The Community Courts Act No. 10 of 2003 (which is, however, not yet implemented) would “give legislative recognition to and formalize the jurisdiction of the traditional courts” (p. 300). The authors then discuss regional influences by the African Union, Southern African Development Community (SADC) and other regional alliances which all have a more or less severe impact on Namibian legal and jurisdictional development. Examples of conflicts of laws which arise not only between the sources of applicable laws but also in terms of jurisdiction of Namibian courts are given and the authors stress that it is a challenge to find common ground between the different legal concepts and practices rather than to vitiate convergences.

David Butler, professor emeritus at the University of Stellenbosch, discusses the desirability of uniform legislation in the SADC member states to promote the use of conciliation to resolve commercial disputes between the members and in the relationship with third countries. He introduces and evaluates options available to a legislature in enacting conciliation-promoting legislation in common law and in the context of International Commercial Arbitration and provides two examples of specialized existing legislation, namely, the UNCITRAL Model Law on International Commercial Arbitration (MCICC) and the European Directive on Mediation. He then closer examines weaknesses of the UNCITRAL Model law under the two aspects of the enforcement of an agreement to conciliate and the enforcement of a settlement agreement and stresses with view to the promotion of conciliation in the regional context that “it should be easier to find workable mechanisms, particularly for harmonizing statutory provisions for the enforcement of settlement agreements,

that it is in a global context” (p. 418). The author calls the UNCITRAL Model law a ‘first-generation’ conciliation statute which, though, would still provide a very useful prototype from which a genuine ‘second-generation’ conciliation statute could be developed.

Gerd Winter is devoted to the specifications in the Protocol on Access to Genetic Resources and Benefit Sharing on the ownership of genetic resources and the sharing of benefits from its utilization in regard to traditional knowledge. The contributors *Thomas Falk* and *Michael Kirk* deal with the enforcement of statutory and customary forest management regulations in a northern region of Namibia, *Natalie Renkhoff* elaborates on public participation in the development of mining in Namibia in respect of a benefit sharing relationship between local communities and the mining industry, and *Cornelia Glinz* reports on and analyses necessity and challenges of the current administrative law reform in Namibia. The third part is concluded by an article about human rights and poverty in Africa by the director of the rule of law program for sub-Saharan Africa by the Konrad-Adenauer-Foundation, *Christian Roschmann*.

Under the headline “Miscellaneous” *Lorenz Böllinger’s* delivers a discussion about the social psychology of terrorism which is based on life path analyses of the German Red Army Faction (RAF) terrorists in Germany in the 1970s which have been carried out in course of a study of the individual, group specific, social and ideological conditions of German leftist terrorism. Gaining special relevance and attention through happenings as the terror attack of 09/11 or the recent case of rightist terrorist attacks in Germany an adapted version of his seven step career model is introduced and explained by law professor and psychologist.

Further articles in this section have been contributed by *Gerhard Stuby* (Disenchantment of an office or thoughts on the definite disappearance of the “German Empire”), *Sam K. Amoo* and *Clever Mapaire* (on the Relevance of Jurisprudence as a Course of Study), *Volker Galperin* (the Lion Fighter – Traces of Sumerian Mythology in West Africa), *Peter Cornelius Mayer-Tasch* (Midgard: Mythology and Symbolism), *Helke Kammerer-Grothaus* (Gutem(n)berg in the bush), and *Werner Hillebrecht* (NAMLIT – a personal account of a journey in bibliography and documentation).

The final part about the life and achievement of the consignee entails contributions by *Gunther Hilliges* and *Oliver Ruppel*. Gunther Hilliges, former Director of the State of Bremen Office for Development Cooperation, reflects on the numerous achievements of projects collaborated with Manfred Hinz. Oliver Ruppel provides a close insight into Manfred Hinz’s personal and academic life path. The section closes with a list of collected publications by Manfred Hinz.

This liber amicorum is a comprehensive composition of very thoughtful, scientific and practical valuable articles from different disciplines by authors from various backgrounds and, hence, perspectives. It makes a significant contribution to the discussion on legal pluralism and its theoretical and practical impacts as well as underlying concepts. Many of the essays relate to Manfred Hinz’s scientific findings and his way of thinking. Moreover, the interdisciplinary approach of many authors gives consideration to the fact that legal

pluralism and related topics cannot be analysed purely from a legal viewpoint but have to be understood from more than one perspective including, for example, the sociological, cultural or anthropological perspective.

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