

*Constitutional Law in China*, Lin Feng [Hong Kong: Sweet & Maxwell Asia, 2000, 378 pp, paperback, HK\$1,295, US\$166].

Dr Lin has written a very useful text on China's constitutional law for English readers. It is the first English book that systematically introduces the constitutional structure and process in China and the academic debates on many of the important constitutional issues. For those who teach and study Chinese law in English, this is a valuable addition to the limited English literature on Chinese public law.

The book can be divided into three parts according to the subject matter covered. The first part, which includes the first two chapters, reviews Chinese constitutional history and principles. The author argues that while the Constitution remains dominated by the political ideology of the Chinese Communist Party (CCP), it has started to recognise the value of the rule of law and the concept of individual rights.

The second part (chapters 3–7) describes the formal structure and process of state institutions. Chapter 3 examines the congressional system, in particular the role played by the National People's Congress and its Standing Committee. Much of this chapter traces the theoretical origins of the congressional system in a socialist state, and highlights relevant differences with "western" parliamentary systems. The various aspects of the existing congressional system are sketched although not deeply analysed.

Chapter 4 is a lengthy chapter that explores the structure of the legislature and the legislative process in China in some detail, providing useful information on China's emerging law-making procedures. Chapter 5 then examines the Executive, and the State Council in particular. It also comments on the evolving function of the President and the controversies surrounding the Central Military Committee. However, the law-making functions of the State Council and its subordinate organs are mentioned only in passing. This is surprising given the significance of administrative regulations in Chinese law.

Chapter 6 explores the relations between central and local governments. This chapter is well written. The author's insightful analysis of the different dimensions of the central and local relations goes beyond the formal constitutional provisions and addresses many of the political and economic issues. Chapter 7 offers a good summary of the election law in China. Unfortunately, the only meaningful elections that currently take place in China, ie village elections, are not mentioned at all. Chapter 8 briefly discusses the role of the CCP in China's constitutional structure and the limit of so-called multi-party co-operation in China.

The final part, consisting of the last three chapters, broadly explores the possible constraints on state powers. Chapter 8 comments on the structure

and functions of the courts and the procuratorate. It also discusses the possibility for, and limits on, judicial independence. Chapter 9 addresses the issue of rights and duties in the Constitution. It traces the “western” and “Chinese” origins of the concept of rights, but says little on the protection of rights (or the lack of it) in the contemporary context. This chapter includes more discussion of the concept of Asian values than I would expect, given that this topic has attracted only limited interest within China and its academic circles. The last chapter examines the concept of congressional oversight of the implementation of the Constitution, which has existed in China only in theory.

The book peruses and summarises the academic debates on constitutional issues in China and introduces overseas readers to the Chinese constitutional discourse. The author’s ability to draw widely on Chinese sources is a real strength of the book. But this factor also underpins a weakness of the book. Because the book relies so heavily on Chinese sources, it is constrained in its approach by the boundaries set by the ongoing debate *in China* on constitutional law.

In some respects, the book is more an introduction to Chinese constitutional scholarship rather than to the constitutional law of China itself. This is only natural given the limited application of the Constitution and the fact that the Constitution is not justiciable. However, this inevitably limits the scope of the book, since topics for discussion within academic circles are still largely determined by the political sensitivity of the subject matter and the level of tolerance of the CCP itself. Therefore, issues that may not have any practical relevance, such as constitutional review, are discussed at great length in this book because they are not terribly sensitive and have attracted sufficient attention in China. Unfortunately, much of that academic debate does not have any practical relevance within China’s political process, since it is concerned with what are in the end largely moot questions. Meanwhile, other, more directly relevant issues (such as the role of the CCP and human rights) are not sufficiently analysed because they are still very sensitive topics in China.

A related problem is the lack of references to the English language literature on China’s Constitution and political system. For example, there is a large body of literature on the people’s congress, the judiciary and human rights, and the CCP in particular. Failure to refer to those sources restricts the contribution this book could have made to the ongoing dialogue between Chinese and overseas scholars on this important topic.

These shortcomings in the book are all related to the fact that the Chinese constitutional process is still profoundly political, making it difficult to write on China’s constitutional law in a conventional way. Dr Lin’s book succeeds in introducing Chinese constitutional theories to the English reader and providing a clear and thorough presentation of Chinese constitutional debate. However, its legalistic arguments are too reductionist and lack sufficient discussion of the political reality of Chinese constitutionalism. This

problem underscores the limits of a legalistic approach when applied to the Chinese Constitution, which remains a fundamentally political document.

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