

Review of Mike McConville et al., *Criminal Justice in China: An Empirical Inquiry*

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In October 2011, China formally declared to the world that a socialist legal system with Chinese characteristics had been established (see State Council White Paper, *Socialist Legal System with Chinese Characteristics*, issued by the Information Office of the State Council on 27 October 2011, available http://news.xinhuanet.com/2011-10/27/c_111127507.htm (last accessed 27/10/11)). While it is, and will be for a long time, subject to debate what these ‘Chinese characteristics’ are in this socialist legal system, it is difficult to reject the claim that a legal system has indeed been established in China in terms of law-making and institutional building. In fact, progress and development in law-making and institutional building in post-Mao China have been remarkable, and certainly compatible with China’s phenomenal economic growth.

However, having laws is one thing, having them properly implemented and enforced is another. Law makes sense and acquires its life only when it performs its intended social functions through processes of implementation and enforcement. Put simply, having a legal system does not necessarily mean having a Rule of Law, however the latter might be interpreted. It is through the operation and functioning of law in society that justice, fairness, and human rights protection are achieved or abused. The concentration of efforts on law-making during the early period of post-Mao ‘legal construction’ is understandable; without law there is little that can be said about justice and fairness. However, now that a massive quantity of laws have been enacted rapidly and efficiently, the issue of implementation of law can no longer be ignored. As many Chinese scholars and practitioners have asserted, ‘a just law does not guarantee the justice of law’ and a refusal to obey the law creates a worse situation than one where there is no law to go by (see, e.g., Zhao Sanying, ‘On Rule of Law in a Market Economy’, *Economic Daily (Jingji Ribao)*, May 2, 1994, at 5.)

To lawyers at least, implementation and enforcement of law means much more than the achievement of substantive justice. Procedural justice is equally, if not more, important in

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assessing the Rule of Law in any given society. This is especially the case in the area of criminal justice.

How we go about assessing implementation and enforcement of law is no easy task, and assessing it in a comprehensive way is even harder, considering the vast size, huge population, and the disparity in social and economic development in the various regions in China. Scholars and practitioners have taken various approaches to understanding and assessing the actual operation of law in China, but most of them would agree that, to be convincing, empirical data and evidence should be provided to back up any claims or assertions about the law in action. This is, however, precisely where the major difficulty in the study of Chinese law lies—the lack of comprehensive empirical data to back up theoretical analyses. In the case of China, the problem seemed to be exacerbated when China practically banned all social empirical studies undertaken by foreign researchers.

The significance of a major empirical study of Chinese law and its major contribution to the understanding of law in action in China is therefore obvious in the context outlined above. The present work under review is one of the few such works that have emerged in the last few years when scholars, both in China and abroad, began to seriously and critically examine the reality of law (and Rule of Law) in China.

The book focuses on the Chinese criminal processes—a most critical area in terms of the operation of a Rule of Law—and represents one of the most comprehensive and in-depth empirical studies on the reality of criminal justice in contemporary China. It meticulously documents and observes and critically analyses every stage of the criminal processes, from pre-trial to the trial process, from police power to the constraints on defence lawyers, and from discretionary powers of the prosecutors to the conduct of judges. The group of researchers for this project collected data and evidence, and conducted interviews, and provided first-hand observations. Existing empirical studies and data, both on China and in relation to other countries, were also examined to provide a comparative context for the present study. It is a book rich in data and evidence and deep in analyses—a remarkable and admirable contribution to the important ongoing debate on the reality of Rule of Law in general and criminal justice in particular in China.

While the book is a result of a major project that had taken many years to complete, its aim is moderate and not at all ambitious. The authors describe their moderate ambition as to provide a rich description of China's criminal process in action. In reality, the project does much more than simple description or mapping of criminal justice. Its tangible outcomes include establishing empirical and factual accounts of the criminal processes under the 1996 Criminal Procedure Law, enabling targeting of aid and assistance and introducing a more rigorous empirical research tradition into China (p.19). I have little doubt that the authors have achieved what they set out to do, though the last objective, introducing an empirical research tradition into China, will depend on how widely the book will be available and read in China.

There is little doubt that most readers will find the book very valuable and rich in empirical data and evidence as well as in-depth analyses. Others, however, may question the validity of the various conclusions on account of the limited samples in the empirical research. One can easily say that 1,144 cases represent no more than a tip of an iceberg in the Chinese criminal justice system, and interviews of less than 300 personnel (including judges, prosecutors, and lawyers) (p.23) cannot adequately canvass the vastly different views among Chinese practitioners. What one must keep in mind is that, first, no sample will ever be large enough in a vast country like China, and, secondly, the size of the sample is more than sufficient for a meaningful empirical study which assesses one area of law and does not intend to generalize its conclusions regarding the whole legal system or the whole enterprise

of establishing a Rule of Law in China. Most importantly, it is the accumulated knowledge and scholarship upon which we can have a better and clearer understanding of Chinese law, and this present work is a very significant contribution to the body of scholarship, field knowledge, and critical evaluation of the actual operation of the Chinese criminal processes.

A caution needs to be made. I have always believed that Chinese law and legal development can only be meaningfully assessed if they are evaluated horizontally (comparing them in their historical and cultural backgrounds) and vertically (assessing them in their historical and cultural backgrounds). Essentially, the present book presents the operation of the Chinese criminal justice ‘as it is’ (how it works today under the current legal system). Though some empirical data drawing from studies in the UK, US, and other countries are introduced (and sometimes compared), the book is not a comparative study and nor, indeed, does it attempt to provide a developmental perspective (i.e. how much progress has been made since 1979). This then runs a risk that the data and evidence are open to interpretation and, in the worst scenario, open to misuse or selective use for various purposes.

Despite its shortcomings in the lack of a comparative and development perspective, the study is highly timely. Since its major reform in 1996, the Chinese Criminal Procedure Law is currently under review for another major reform geared to addressing the various difficulties in practice as well as incorporating new policies on crime control. The empirical data and evidence contained in the book should be most valuable to policy and law makers as well as to advisers in China in their efforts to improve the law and, hence, improve its practice. Most importantly, if the distinction between a ‘due process’ and a ‘crime control’ principle in criminal law and criminal procedure law is properly understood by Chinese law-makers, we can then expect some significant improvement of the law and practice in China. If this is achieved, this book would have accomplished far more than the moderate objectives the authors have sought to achieve.

In conclusion, I have little doubt that the book will be warmly received not only by students, practitioners, and academics specializing in Chinese law, especially in criminal justice and sociology of law, but also by those interested in comparative law and general China studies.