

BOOK REVIEW

AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA, by Albert H.Y. Chen, Butterworths Asia: Singapore, 1992.

*Reviewed by Frankie Fook-Lun Leung**

As a professor of Chinese Law at an American law school, searching for an appropriate textbook for the class¹ has not always been easy. This book is therefore highly recommended. At least two leading scholars in Chinese law have respectively made the common accusation that biased reporting has projected a mirage of the Chinese legal system being more effective and structurally organized than it really is.² Any writer on contemporary Chinese law faces the dilemma of a legal system which has been expediently built, harboring forces which have the tendency to cause its own destruction at the whims of its builders, principally the bureaucratic cadres and the seemingly omnipotent Communist Party.

Chapter 2 of the 1982 Chinese Constitution contains a comprehensive list of the rights of citizens,³ however, there is no mechanism whereby those rights can be asserted of citizens who have been castigated as "enemies" of the people. Their constitutional rights can be severely abrogated.⁴ The author also described in significant detail the major features of the Chinese legal system, e.g., the interaction between the Chinese Communist Party and the State,⁵ the different institutions responsible for law-making,⁶ the rules of legal interpretation which are different from the Common Law or Civil Law jurisdictions,⁷ the collegiate court system,⁸ the Procuratorates;⁹ the

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1. Another book on a similar subject and published by the Nutshell Series is RALPH H. FOLSOM ET AL., *LAW AND POLITICS IN THE PEOPLE'S REPUBLIC OF CHINA IN A NUTSHELL* (1992) is too sketchy and unanalytical by comparison.

2. Stanley Lubman, *Studying Contemporary Chinese Law: Limits, Possibilities and Strategic*, 39 AM. J. COMP. L. 293 (1991); William P. Alford, *Seek Truth From Facts—Especially When They are Unpleasant: America's Understanding of China's Efforts at Law Reform*, 8 U.C.L.A. PAC. BASIN L.J. 177 (1990).

3. ALBERT HUNG-YEE CHEN, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* 51 (1992).

4. *Id.* at 52.

5. *Id.* at 75-76.

6. *Id.* at 79-92.

7. *Id.* at 95-102.

8. *Id.* at 110-17.

9. *Id.* at 124-27.

legal profession as a body of State workers;¹⁰ among others.

The only major deficiency apparent in the book under review is that the author relied exclusively on library-bound literature research, albeit his research was thorough and based on primary and secondary sources, both Chinese and English. Therefore, no reference whatsoever was made as to how the legal system operates in practice and what accounts for the disparity between theory and practice. For example, it would be a glaring omission on the part of the author not to describe how, in ordinary life, Communist cadres and party members do not treat the written codes and regulations seriously, if they do not ignore them entirely, whenever administrative discretion or human judgment is exercised. The same observation may be applicable to the judges who defer in their decision-making to the bureaucrats or party members. However, in all fairness to the author, in at least one instance, he did warn readers that there is “a significant gap between the law-in-the-books and the law-in-action, between enacted rules and actual practice.”¹¹

Another minor defect of this books is that although the author devoted Chapter 2 to the legal history of traditional China, no mention was made to the historical heritage of the traditional concepts in other chapters to illustrate how the contemporary Chinese legal system is still heavily burdened or influenced by traditional forces.¹² One of the continuing debates on the contemporary Chinese legal scene is indeed whether antiquated feudalism rather than Marxist Communism forms the cornerstone of, and exercises pervading influences over, the legal system.¹³

No doubt, detailed and up-to-date analysis of different aspects of the contemporary Chinese legal system must continue to be sought in journal articles.¹⁴ Any serious student must turn to those learned journal articles for in-depth descriptions and observations. Nevertheless, as an introductory text, the book under review serves a more than adequate function. It should also provide a forum for discussion on various subjects generically subsumed under the Chinese legal system whenever legal practitioners seek a basic

10. *Id.* at 130-44.

11. *Id.* at 152. See JAY MATHEWS & LINDA MATHEWS, ONE BILLION—A CHINA CHRONICLE 234-52 (1983).

12. The author did briefly describe how the legal profession historically never constituted a respected profession in traditional China. CHEN, *supra* note 3, at 128.

13. Frankie Fook-lun Leung, *Some Observations on Socialist Legality of the People's Republic of China*, 17 CAL. W. INT'L L.J. 102 (1987). For a thorough discussion of Rule of Law in traditional China see Karen Turner, *Rule of Law Ideals in Early China?* 6 J. CHINESE L. 1 (1992); see also Goossen, *An Introduction to Chinese Law: Does it Exist? What is it? How is it Interpreted?* 27 OSGOOD HALL L.J. 93 (1989).

14. See on human rights, Albert Hung-Yee Chen, *Human Rights in China: A Brief Historical Review*, in HUMAN RIGHTS IN HONG KONG 176 (R. Wacks, ed. 1992); economic law, Donald C. Clarke, *Regulations and its Discontents: Understanding Economic Law in China*, 28 STAN. J. INT'L L. 283 (1992); law reforms, Dicks, *The Chinese Legal System: Reforms in the Balance*, CHINA QUART. 540 (Sept. 1989); legal profession, Timothy A. Galatt, *Lawyers in China: The Past Decade and Beyond*, 23 N.Y.U.J. INT'L L. & POLITICS 751 (1991).

knowledge. Without having to plunge into pragmatic bread-and-butter topics like arbitration practice and investment law.¹⁵ A little learning is certainly a dangerous thing! Without a fundamental knowledge of the Chinese legal system, one would argue that just reading a practitioner-oriented treatise may lead the reader to form a distorted perspective derived oftentimes from a misconceived attempt to analogize and extrapolate from the readers's own ethnocentric experiences to a totally alien legal landscape.

15. Practitioner-originated books are *FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA* (Michael S. Moser ed., 2d ed., 1987); *DOING BUSINESS IN CHINA* (William P. Streng & Allen D. Wilcox eds., 1989); *HENRY R. ZHENG, CHINA CIVIL AND COMMERCIAL LAW* (1988).

