

Is China Destined to Democratize?

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China is neither unfit for democracy, nor predisposed to political liberalism by its Confucian traditions. Aiming to dismiss these two simplistic ideas, this book brings together prominent specialists on political China.

Book reviewed: Mireille Delmas-Marty and Pierre-Étienne Will (eds.), *China, Democracy, and Law: A Historical and Contemporary Approach*, with a foreword by Philip A. Kuhn, translated by Naomi Norberg, Leiden and Boston, Brill, 2012, 915 pp. [First published in French: *La Chine et la démocratie*, Paris, Fayard, 2007, 894 pp.]

In the 1990s, a challenge to the universal values that are the basis of human rights emerged in Asia. This challenge rejected not human rights or the democratic regime themselves, but the Western wish to impose them on others as the criteria for judgement, thus denying to other cultures the option of disputing or adapting them. The rapid development of several Asian economies (Japan, Korea, Taiwan, Singapore and Hong Kong) strongly encouraged this cultural relativism. Denouncing the West's individualism and competitiveness, the theory of "Asian values" partly attributed the economic success of these countries steeped in Confucianism to solidarity, team spirit, respect for the family and hierarchies, and zeal in the workplace. The articles presented by Mireille Delmas-Marty and Pierre-Etienne Will in *China, Democracy, and Law* bring a new perspective by questioning and analysing the view that attributes almost democratic, Western-style virtues to Confucianism and to traditional Chinese institutions. The authors of these articles also find troublesome the allegation that the Chinese political "tradition" is incompatible with the modern liberal democratic values and practices that for more than a century now have been held up as examples for China to follow.

Instead of prognosticating about the future of the People's Republic of China, these authors have chosen to make "a critical assessment of all the state or civil institutions, practices, debates, and experiments likely to influence in one way or another China's encounter with the different forms of political modernity; or to phrase it differently, to evaluate the repertory of 'Chinese society's inherent political resources' " (p. 27). This investigation leads to the conclusion that, although a democratic system is essential to the rule of law, the converse is not necessarily true. However, political changes are now accompanied by many legal reforms, which, although notoriously manipulated for the purposes of self-legitimation by the political regime, undeniably produce "systemic effects" such as the increasing empowerment of lawyers and the appearance of a kind of legal consciousness in the Chinese people (Stéphanie Balme, Chapter 14: "Law and Society in Contemporary

China”). The internationalization of law intensifies these systemic effects, but their political impact is not easy to predict, because the consequences of globalization multiply doubts about the limits of democracy and also reinforce Chinese scepticism about the liberal democratic “model”. Indeed, legal globalization, by creating virtual spaces with no borders, accentuates the current crisis of democracy and the rule of law. This crisis of Western democracies was provoked by the appearance of a form of participatory democracy, by the destabilizing power of judicial review giving judges the power to overturn laws voted by the legislature, and by the gradual enlargement of executive power by increasing the scope of executive “prerogatives” or “privileges” in the struggle against global terrorism. Mireille Delmas-Marty describes the great “paradox” of globalization: it promotes democratic openness even while exacerbating the crisis of the rule of law (Chapter 13: “Instituting the Rule of Law in China in the Context of Globalization”). This has repercussions in the Chinese debate about the relevance of democratic reform.

This thoughtful reassessment of Chinese traditions leads to the conclusion that a profound understanding of Chinese law rules out the (widely held) view that the very idea of law is alien to Chinese thinking. Indeed, Jérôme Bourgon asks whether the principle of legality in crime and punishment – Beccaria’s principle that no crime is punishable unless it has been previously defined, and its punishment expressly prescribed by law – was not actually a Chinese invention, indicating the presence of a true legal science. Publicly stated laws with predictable penalties and some control over judicial decisions were in fact better established in the Chinese legal system than in its counterparts in the old regimes in Europe. However, the idea of *renzhi* (government by men) – as opposed to *fazhi* (government by law) – risks veering into authoritarianism, since it is taken to mean that there are principles above the law. Furthermore, there being no separation of powers in the Chinese tradition, the judiciary is not independent, and the moral values and ethics of the rulers take precedence over the laws.

The analyses in this book also lead to the conclusion that, although the “seeds” of democracy that contemporary “neo-Confucians” claim to see are in the end rather difficult to find in the Chinese tradition (Anne Cheng, Chapter 2: “Seeds of Democracy in the Confucian Tradition?”), China can nevertheless boast a democratic past, as Pierre-Etienne Will argues. More than 2000 years ago, the *Mencius* and the *Book of Documents* elaborated the idea of the primacy of the people in relation to the sovereign. The people were conceived as the “foundation of the nation” (*guoben* or *bangben*), “that which is most precious” (*min wei gui*), with the right to rebel against a sovereign unworthy of his task. Under the Ming Dynasty (1368-1644), some scholar-officials dared to reassert these principles, as part of their critical reflections on the autocracy. They made much use of the theory of dual sovereignty – that of the prince and that of the people, masters of the master of men. Will argues that there were some legal controls on acts of the state and the sovereign, in which the sovereign’s duties took precedence over his rights, and that this was an outline of a system verging on constitutional checks. The explicit reassertion of this argument, accompanied by open demonstrations of opposition, made this moment at the end of the Ming Dynasty quite unique. Later on, the Manchu Qing regime, more disciplined and less tolerant of criticism, made a bogeyman out of this Ming experience, saying that the open debate caused the disorders that brought on the downfall of the Ming Dynasty.

In the twentieth century, Chinese democratic history was a series of disenchantments. At first, democracy was associated with modernization: to become more powerful, China must get rid of its cultural heritage, especially the Confucian bits, which were blamed for its

backwardness; and must import science and democratic institutions from the West. But later on, in the discourses both of power and of dissidence, democracy became in turn “Servant, Bogeyman, or Goddess” (the title of Michel Bonnin’s Chapter 12). Yves Chevrier and Xiaohong Xiao-Planes analyse with great precision the meandering institutional transformations of the state in the early twentieth century (1895-1949). Following the failures of the Hundred Days (21 September 1898), of the parliamentary democracy in 1913, and of the May 4th Movement in 1919, and the victory of the Kuomintang authoritarian state, Mao exploited the idea of democracy and “disposed of it after use”. The Cultural Revolution, a period of anarchical chaos and of violence seen more as “fascist” than as democratic, was such a good negative model that the idea of democracy spontaneously reappeared among young intellectuals during the 1970s, along with the ideas of law and legality. But in the 1980s the alien goddess once more became a bogeyman, equated with the anarchy and disorder of the Maoist “Great Democracy” of the Great Proletarian Cultural Revolution. This equation became a leitmotif in official propaganda, and it remains one to this day: according to the rulers, the backwardness of the people and the economy make it necessary for the moment to have a system that is more suitable than democracy. Paradoxically, the democratic system remains the ideal, and the current constitution is in theory democratic – so much so that Michel Bonnin can and does exhort Chinese governments to move on from rhetoric to reality. The fact is, the theory remains disconnected from the way the country really works. The Political Bureau of the Central Committee, not mentioned anywhere in the Constitution, rules China. The state is weak because it is devoured by the Party, and this is totally incompatible with modernization and commercialization. “The obvious increase of corruption, the private appropriation of the state’s property through simple administrative decisions, and the growing divide between the main beneficiaries of the reforms and those left to fend for themselves create a danger of explosion that only political reform can reduce” (pp. 565-566).

Moreover, Chinese society is becoming more and more independent. The campaigns of popularization and education that are geared to creating a society governed by law have certainly contributed to the development of a citizen awareness without which democracy is impossible. However, there is a worrying lack of actors, especially in the depoliticization of some intellectuals who concentrate on their research, and of new technocrats who remain statist, given that there is no proof of democracy’s effectiveness in continuing economic development and in guaranteeing social peace. However, the lukewarm reforms that have been implemented are so far proving to be inadequate for harmonizing relations among different social strata, and instability is increasing. The new rulers no longer benefit from the revolutionary, charismatic legitimacy of their predecessors. They are being judged on their results, and results are becoming more difficult in the context of the rapid development of worrying social tensions and of citizen awareness. According to the sociologist Zhang Lun (in a chapter in the French edition [p. 517] that is absent from the English edition, “China is destined to democratize”, even if that will be difficult. Democratic transition can be gradual: the Party could initiate profound political reform without having to push a reset button. As Bonnin writes, it “would be enough” just to have “real” elections to the People’s National Assembly and to the Provincial Assemblies, and not to restrict direct elections to the lowest level.

Is such reform feasible in the short term? The Party seems to have succeeded in gaining some time. It has been able to increase its strength in the countryside by a more transparent recruitment of its cadres, and the people perceive local elections as being fairer, even though they are filtered through the Party. They are also seen as being more democratic.

In these ways, these local elections, though clearly manipulated, nevertheless help improve social stability, administrative effectiveness, and the Party's political legitimacy. Introducing some democratic elements, however limited they are, can lead to a Chinese "Democracy Under One-Party Rule" (the title of Gunter Schubert's Chapter 17), which "might be just the right dose of democracy to balance the people's and the Party's diverging interests in terms of participation and control" (p. 762).

It emerges from this book that for the moment it is impossible to predict the precise evolution of the Chinese regime's democratization set off by the reforms. The articles collected here nevertheless help us to unravel the complexity of the discourse and the history of democratization in China, and therefore to draw up a list of the possibilities. We cannot simplify the situation by saying either that democracy is incompatible with Chinese tradition, nor on the contrary that China definitely has a democratic destiny. According to Mireille Delmas-Marty, there is little doubt that the most likely scenario is democratization through a juridical "fertilization" of "the political field" (p. 874).

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