

Stéphanie Balme and Michael W. Dowdle (edited by), *Building Constitutionalism in China*, 2009, Palgrave Macmillan, 325 pp.

Constitutionalism “is a way of giving social meaning to the metaphor of the state,” write St. Balme and M. W. Dowdle in the introductory Ch. 1 of the book they have edited (p. 9). Such a statement explains the variety of its expressions along history and across the world. Constitutionalism, most often referred to the “judiciary’s power and effectiveness to enforcing constitutional norms” (p. 2), should not hide that a constitution is a cooperative phenomenon; court should not be seen as insular institution, but working in interdependence with other institutions.

About the conception of the state and its constitution, Balme and Dowdle remind the reader that, when, in the United States, the fear of excessive and arbitrary power of the government explain much of the American constitutional power, in France the state would represent the political “will” of the people, and so constitutionalism relies more on grass-root political mobilization. So what could be a constitutional state in China? Although the editors see potentials for an emergent constitutionalism in this country, they are quick to add that nothing is guaranteed in this line. The chapters of the book illustrate their hopes and caveats.

Zhu Suli, author of the rather polemical Ch.2 “Judicial Politics’ as state Building”, defends that a successful experiences cannot just be duplicated in another context. Reference to, or inspiration from other conception of the state and the rule of law are useful only insofar that a specific society or country lives its own history. For him, in China, despite many mistakes made by the communist party (CCP), that he had himself criticized, the CCP remains the major force for court reform. As for the future, says Pr. Zhu, it is more efficient, or probably for him the only reasonable way, to take in consideration the particularity of China past and present situation to pragmatically promote social and legal development in the country.

Jumping to Ch.5, and mentioning just in passing the rich chapters 3 and 4 which relate past experiences of constitutionalism in China during the Republican period and the 1950’, Peerenboom goes back to where Pr. Zhu concluded, speaking of an Asian model, in which China takes place. The author describes the situation as a priority of economic development over civil and political rights now. It would be all a question of sequencing. The author does not accept the East Asian model. The state cannot remain a tutor of the people but a reflection of a polyphony, with the new needs of middle-income development. Only then can appear what would help to go beyond what the very word of tutelage contains of temporary status.

Peerenboom has touched an important point if we follow descriptions of new

right consciousness. After He Xin has explained the role and result of administrative law (Ch.9), which is a political control, it is against stressed that constitutionalism requires the organic coordination of many forces or vectors. Fu Hualing (ch.10) shows that this is seen in the frequent recourse to justice nowadays in China. The very fact of judicial activism has the unintended consequence of a kind of popular constitutionalism.

In chapter 11, on the lowest level of rural judiciary, Balme describes how younger judges at the lowest level of the court, without great prestige, and no economic privilege, assert their identity as judge against all odds by promoting the rule of law and the protection of rights. She writes in the conclusion of her study that court are being more influential because of the mere fact that they have more work to do, which reflects easier access to the tribunals and reliance on their professional expertise.

The two chapters 13 and 14 present cases. The first, by K. Hand, relates the “Sun Zhigang incident”. What is important in the whole affair is that it reveals that citizens continue to file constitutional review proposals in spite of reluctant attitude of Chinese government structures. Well orchestrated actions by professionals, supported by media and Internet coverage, push reforms. The government simply cannot resist all pressures. And, if it admits necessary changes, citizen’s actions are acquiring their legitimacy. That this has to be well planned and conducted is explained in the unfortunate case of lawyer Gao Zhisheng (ch.14).

Among other debates, the most famous may be the nonjusticiability of the constitution in China, which was initiated by the Qi Yuling case in 2001. The People’s supreme courts first approved of taking the constitution as adjudicative norm (p. 139). Then, this was declared wrong in 2008 by the same supreme courts, but with another man as highest officer. To evaluate the scope of this and other debates, the chapters 6,7, and 8 give a good overview of constitutional discourse in China, with the presence of the field in the formation of lawyer, the western influence, and the intellectual activities in process, with greater diversification.

The book, which is a collection of studies (with an intriguing “Epilogue: Virtual Constitutionalism in the Late Ming Dynasty”, by P.-E. Will), is happily full of references from one chapter to another. For all the authors, China is evidently still very much in transition. A platitude, some would say. Or an excuse for imperfection in the legal system? No; it would be more an appeal to march at a quicker pace toward the end of so-called transition. To produce what kind of constitutionalism? No clear answer can yet be given. But the status of China as a major political and economic power within and outside its borders makes even more urgent to shorten delays to clarifications, and to answer the question.