
BOOK REVIEW

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Su Li (Author), Zhang Yongle, and Daniel A. Bell (eds.), Edmund Ryden (Translator), *The Constitution of Ancient China* (Princeton University Press, 2018) 16-210 pp. ISBN 9780691171593 (online)

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It is widely accepted that holding the exercise of government powers accountable to a State's constitution necessitates the protection of human rights and fundamental freedoms.¹ This has rendered constitutional studies popular with human rights and democratic movements burgeoning since the 1990s.² Meanwhile, public interest in the emerging powers have been growing as a result of the latter's rising economic and geopolitical preponderance. In this context, China's governance norms and practices are developing into a focus of academic inquiries across the globe.

Among the relevant studies, a recent book stands out by Professor Zhu Suli (pen-named Su Li), an influential Chinese jurist: *The Constitution of Ancient China*. This book contains nine chapters, five being the author's introduction, three topic-specific analyses and response to his critics, and the remaining four being others' critiques. In this review of that book, I focus on Su Li's own contribution, first introducing his non-conventional approach to the constitution, and then explaining how it illuminates constitutional aspects of ancient China. Finally, I briefly comment on the book's limitations.

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¹ The Office of the United Nations High Commissioner for Human Rights (OHCHR): *Human Rights and Constitution Making*, page 4, published in 2018, accessed via: https://www.ohchr.org/Documents/Publications/ConstitutionMaking_EN.pdf.

² Michel Rosenfeld and András Sajó (eds.) *The Oxford handbook of Comparative Constitutional Law* (2012 OUP), pp. 81-82.

WHAT DOES THE BOOK OFFER?

First and foremost, the book proffers a shift in perspectives for analysing constitutions. Most of us perceive the concept ‘constitution’ in a narrow sense, associating it with constitutional law or a constitutional text. In contrast, the book starts with its literal meaning — the process of *constituting* something, and treats the constitution as “a whole series of basic institutions and practices” that are necessary to form and maintain a State (pp. 19 and 28). In this light, the book delves into recurrent practices of major Chinese dynasties (usually lasting for over two hundred years). Its’ approach rectifies the stance of seeing a constitution as a set of basic norms upon which a State is founded and which regulates the exercise of State powers. The latter is not necessarily incorrect, but it inaccurately simplifies the intricate trajectory of maintaining a State.

Second, the book details three factors essential to the constitution of ancient China as a State (between circa. 1000 B.C. and the late 19th century): 1) the geopolitical basis; 2) standardized written and spoken Chinese; and 3) the exam-based selection of government officials. These are addressed in turn below.

1. GEOPOLITICAL BASIS: THE CENTRE-PERIPHERY BALANCE

What characterizes China’s governance culture *vis-à-vis* that of other major civilizations? This question is addressed in the context of what the book calls ‘a large State’. It was China’s enormous territorial size that restricted its early governments (contemporaneous with ancient city-states of Greece) from opting for oligarchy or limited democracy (p. 28). Although there is neither a sensible delimitation of the borders of the first three dynasties in China, nor a reliable estimate of their populations, the area and inhabitants in those times already exceeded those of the 13 colonies that formed the US in the 18th century (p. 34). By the 19th century, China encompassed an area of 13 million square kilometers and had a population of 450 million (p. 35).

So, how did China’s governments maintain such a large State? It was not through the military supremacy of the central ruler. For example, the Macedonian Empire created by Alexander the Great straddled the Eurasian landmass and North Africa, but split into several parts after Alexander’s death and “never again appeared in history” (p. 38). It was also not the product of “a wide and fertile land. Continental Africa is much greater and naturally richer than the plains of East Asia,” (p. 38) yet it has never given rise to a State comparable to China’s Han or Tang Empires. It was, rather, thanks to a system

of commanderies (higher local administration accountable to the central government) and counties (lower local administration accountable to the commandery) under which local executive and military heads were directly appointed by the central government (and could be removed in the same way at any time (p. 46)), that ancient China became a huge yet long-lived State.

2. AGENCY BASIS: UNIFIED WRITTEN AND STANDARDISED SPOKEN CHINESE

The second factor essential to the constitution of ancient China as a State relates to integrating social-political elites in order to support a centralized governance framework. In that process, what mattered most was how accurately central commands were communicated to local agents (p. 69). To that end, a unified script system (written Chinese) and standardised spoken Chinese were needed to form a functional bureaucracy. Standardised spoken Chinese (among the bureaucracy and social elites in particular) helped to prevent particularism or separatism of numerous linguistic communities across the territory (p 83). Furthermore, unified written Chinese was much more economical and effective for disseminating central decisions and documenting local records (pp. 68-72). More importantly, these mechanisms reduced the cost of training people to learn and apply the State's authoritative texts, which the book describes as enhancing the availability of technical bureaucrats (pp. 72, 75, 93).

3. EXAM-BASED SELECTION OF GOVERNMENT OFFICIALS: RATIONALISATION OF GOVERNANCE PRACTICES

The third factor essential to the constitution of ancient China as a State explains how China differed from ancient city-states in Greece or modern nation-states in the West in organizing its ruling meritocracy. With a large territory and considerable local variations, central authorities needed to keep many considerations in mind when choosing and promoting government officials, and, most importantly, selecting candidates through a rational system (pp. 100-101). China's ancient politico-cultural elites (or what the book calls the 'scholar-officials') came from countless locales and excelled through a series of highly selective screening procedures. These procedures normally consisted of village-, county-, and commandery-level exams, as well as the Capital exam where the monarch posed questions to final candidates and assessed their

performance. This selection system made scholar-officials belong “not only to their local villages and clans...but also to a nationwide cultural and political community,” which supported a centralized governance framework (p. 102).

WHAT IS MISSING?

The book chooses, however, not to cover some constitutional issues important to ancient China, including the role of the monarchy and Confucianism (p. 29). While this is reasonable as every study has to balance depth against width, it is regrettable. Downplaying the practices of monarchs and the applications of Confucianism is rather unfortunate, given their significance for legitimizing central authorities and checking and balancing local powers. Furthermore, the book sometimes addresses only principle and neglects practice. For example, in explaining the basic feature of the system of commanderies and counties, it reads that “it was forbidden to serve in one’s native district and to remain in any one post for a long time... In this way, ... government appointees had little interest in forming a tight network of personal relationships in their jurisdictions during their time in office” (p. 46). This explanation seems fallacious as in much of the ancient history, local corruption was rampant. What the appointment procedure meant to achieve was hindered by the fact that local elites had strong incentives to align with their governors (wherever they were born) through bribery and coercion.

CONCLUSION

Although the People’s Republic of China was founded in 1949 on the basis of what is now thought to be a provisional constitution, China as a State was virtually formed throughout history (pp. 18-19). Since the 1990s, China has played an increasingly important role in the international human rights system that, in turn, changed the geo-political context for China’s constitutional norms and practices. For instance, China adopted several reforms in the 2000s that were unprecedented in its history; notably, a clause that “the State shall respect and protect human rights” was added to the Constitution in 2004 and a national regulation on disclosing government records came into force in 2008. I hope that readers of this review will feel motivated to look through Su Li’s book and be inspired to take into account China’s geopolitical considerations and practicalities when analysing the form and substance of China’s contemporary constitutional reforms.