

mediation, judicial support for the arbitration process, and med-arb. The result is a truly global view that still manages to do justice to important context-specific nuances. The chapters relating to arbitration in particular are significant, as the literature on arbitration in China is comparatively sparse and Gu is already a recognized expert on the subject. Third, this book brings to light a variety of empirical metrics about caseloads and providers (some of which are difficult to access by non-Chinese-speaking audiences), thereby providing valuable insights about what is happening on the ground. Finally, this book contextualizes China's civil justice reforms in the past decade, both within broader legal, sociopolitical, and market developments, as well as within existing debates in the scholarly literature relating to dispute resolution and law and development. It skilfully draws out implications of the author's research for a number of conversations of interest to law and society scholars, comparativists, China experts, proceduralists, and scholars of arbitration and ADR.

The book raises many more interesting questions that the limits of space prevent me from considering in a meaningful way. For example, to what extent are private, informal processes such as mediation appropriate for disputes involving large numbers of plaintiffs or sensitive issues of a public nature, as they have been in China through the use of Party-led "grand mediation" in complex product liability and land seizure matters? Ever since Owen Fiss's *Against Settlement*, a dominant strand of scholarship holds that civil disputes with a "public policy dimension" belong in public courts rather than in ADR<sup>1</sup>—even though scholars have recently begun documenting the ways that informal dispute resolution are increasingly being preferred for certain divisive social conflicts.<sup>2</sup> US dispute-resolution scholars in particular will find Gu's comparative study a refreshing perspective on these issues.

Hiro N. Aragaki  
Loyola Law School, Los Angeles, USA

## References

- Aragaki, Hiro N. (2018) "The Metaphysics of Arbitration: A Reply to Hensler and Khatam." *18 Nevada Law Journal* 541–72.
- Cohen, Amy J. (2021) "The Rise and Fall and Rise Again of Informal Justice and the Death of ADR." *Connect. L. Rev.* (forthcoming).
- Hensler, Deborah R., & Damira Khatam (2018) "Reinventing Arbitration: How Expanding the Scope of Arbitration is Re-Shaping its Form and Blurring the Line Between Private and Public Adjudication." *18 Nevada Law Journal* 381–425.

## Rule of Law with Chinese Characteristics

*Law and Society in China*. By Vai lo Lo. Cheltenham: Edward Elgar Publishing, 2020. 235 pp. Hardcover \$120.00  
doi:[10.1017/als.2021.43](https://doi.org/10.1017/als.2021.43)

Despite the growing number of books on Chinese law and its relationship with Chinese society, studies of this subject for the entire Chinese history remain rare. In light of this,

<sup>1</sup> E.g. Hensler & Khatam (2018). But see Aragaki (2018).

<sup>2</sup> E.g. Cohen (2021).

Vai lo Lo's book *Law and Society in China* is both timely and applaudable. The book discusses the interplay between law and society in China from more than 2,000 years ago through the most recent judicial reforms. Lo divides such a long history into four periods: imperial China, transitional China, pre-reform China, and contemporary China. The author devotes one chapter to each of these periods and uses an additional chapter to illustrate the ongoing effort today to build "the 'rule of law' with Chinese characteristics."

The central research question that the author sets out to investigate is "what role the law has played in social governance in China at various historical times" (p. 22). To answer this question, she invites readers to a journey of different historical periods and along the way shows the differences and similarities in the interplay between law and society in different times. Here, Lo defines law broadly as an institution that includes the behavioural norms and informal practices observed by the populace as well as state-formulated legal rules. Given that the historical eras are essentially distinct from one another, it comes as no surprise that law in different periods performed somewhat different functions. In imperial China, for instance, the rulers used state-formulated laws mainly to consolidate their rule and safeguard a hierarchal society. And the hierarchal mode of social control was replicated in clans and families by non-state-formulated behavioural norms. However, this imperial legal system was reformulated in the late Qing Dynasty (the early stage of transitional China), when Western legal norms and institutions were transplanted in China as part of an effort to establish a legal order more similar to those in the West.

The differences notwithstanding, Lo finds that in all these periods the law played a significant role in social governance, as a means of social control and as an agent of social transformation, and societal changes, in turn, shaped and impacted the development of law in China. The demonstration of this reciprocal influence may not tell us much about how China is special, but it tells us that law did matter in China. More importantly, Lo shows us some salient features in the interplay between law and society throughout China's long history. Among other things, two phenomena are consistently observed in different historical times. The first is that the role of moral values in regulating behaviour has always been stressed. More specifically, the use of moral teaching tended to take precedence over the infliction of punishment. As a prominent example, in imperial China, the Confucian *Li*—which "prescribes varying types of behavior based on an individual's social and family status vis-à-vis another" (p. 33)—was invoked as the primary means of regulating behaviour while punishment was used as a secondary measure. Consequently, "*Li* was legalized, while law was moralized" (p. 43). In subsequent periods, law has been used conjointly with moral teaching, with the latter often taking priority over the former. In the pre-reform era, for example, education and persuasion were seen as more appropriate methods than law for the resolution of disputes. Even in contemporary China, "rule of law" and "rule of virtue" constitute two components of the mode of social governance.

Another common phenomenon that Lo identifies in different eras is the extensive use of mediation. In the imperial period, officials tried to conduct mediation for civil disputes and minor offences, using moral suasion instead of punishment to settle cases. Mediation was also conducted by non-government people such as the head of a clan or the gentry in the community. Like moral values, mediation is still stressed in present-day China to the point that the courts give priority to mediation instead of adjudication. From these similar features, Lo sees the historical continuity in China's legal developments.

Lo does not claim that the above features are particularly Chinese. One can certainly find morality-based norms and the use of mediation in other countries, but she contends that "the respective weights or importance accorded to these features and the overall legal landscape these features have painted 'personalize' or individualize each legal system" (p. 200).

In addition to the historical analysis, the book has a chapter on the current legal reforms. From this chapter, readers can see the views expressed by Chinese leaders

on legal reforms, such as why they think it is important for China to become a “rule-of-law country,” what they mean by “the rule of law with Chinese characteristics,” and how they think “the rule of law with Chinese characteristics” should be achieved. The chapter also outlines all the major reforms undertaken at present, such as organizational reforms of the courts, criminal justice reforms, judicial accountability, judicial independence, judicial competency, judicial transparency, and the system of people’s assessors.

Lo’s account of law and society in China points us to the importance of context. She argues that “the substantive contents of a legal system generally are the product of a society’s economic, historical, political and social circumstances” (p. 201). Furthermore, the author alerts us to the possible pitfall in adopting “a uniform approach to, or format of, ‘rule of law’,” because doing so “may prevent the creation of new models of the ‘rule of law’ or innovative modes of social governance” (p. 201). While Lo attaches primary importance to the interactive developments of a society’s particular culture, economy, politics, and geography, she is not against comparative approaches and she herself occasionally offers comparative perspectives in the book. What she takes issue with is the “application of the currently prevalent socio-legal theories to the study of Asian societies without reservations” (p. 20). In her view,

the formulation of research questions based on theories derived from the Anglo-American and European perspectives and the selection of social phenomena to corroborate the hidden assumptions and preconceived notions of a researcher are analogous to finding the desired objects and putting them in the pigeonholes or compartments of an analytical frame . . . . In this way the study of China will add another example to reinforce existing socio-legal theories. (p. 20)

In a nutshell, Lo produced a valuable introduction to the law and society in China, illuminating their interactive developments in history while showing their continuing roles through the ages in social control and social transformation.

As with almost any work of this cope, the book is not without blind spots. In explaining how the Chinese system works, the author occasionally employs commonly used concepts or terms to which English readers can relate, but this is not always successful. As an example, the author uses “branches” to describe China’s National People’s Congress, State Council, as well as other “state organs” as they are called in China (p. 141). Such descriptions may cause misunderstandings, especially for American students who may think that the branches of government are coequals. But in China these “state organs” were not coequals. Formally, State Council, Supreme People’s Court, Supreme People’s Procuratorate, and National Commission of Supervision are all responsible to National People’s Congress that has the power to oversee them.

Additionally, an important question that the book hardly engages with is whether, within China’s governance framework, the current reforms can surmount the obstacles in the path to “the rule of law with Chinese characteristics.” The author seems to assume the answer is yes, but barely does she address directly some of the key issues surrounding China’s legal institutions that much empirical research has identified—issues like the notable presence of non-legal factors in determining case outcomes. The issues deserve discussing because rule of law, however defined, is an ideal difficult to attain. For instance, an understanding of rule of law that the book embraces is that “society is governed by law, every person is equal before the law, every person is accountable under the law, and law is enforced impartially” (p. 192). This understanding does not involve conceptions of Western-style democracy, but this type of rule of law is still a tall order, for any society. Considering the many challenges that China’s legal system is facing, readers have reasons to question: How likely is it that China will make significant progress toward this ideal? Can one expect that the powerful and the powerless will be treated equally in the court of

law? Though it is useful to learn about China's official account of the goals of "the rule of law with Chinese characteristics" and the measures for achieving the goals, of which the book has a clear summary, an analysis of the author's own is still needed to address some of those questions.

Reviewed by Yi Zhao  
Grand Valley State University