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Review of Trial of Modernity: Judicial Reform in Early Twentieth Century China, 1901-37, by Xiaoqun Xu

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XIAOQUN XU, TRIAL OF MODERNITY: JUDICIAL REFORM IN EARLY TWENTIETH-CENTURY CHINA, 1901-1937 (Stanford University Press, 2008)

*Reviewed by Nicholas Calcina Howson**

In September 2008, Beijing-based legal historian and public intellectual Professor He Weifang issued two broadsides in the pages of China's relentlessly independent newspaper *Nanfang Zhoumou* (*Southern Weekend*) attacking a disturbing trend in official framing of China's judicial system. In these passionate essays he engaged directly with the rhetoric emanating from the PRC Supreme People's Court starting in the winter of 2007. That perhaps counter-intuitive rhetoric called for a "judiciary that serves the people" and decried "the alienation of the people from the judiciary," "loss of control by the people over the judiciary," and a judicial power neither "clean" nor "fair" but instead concerned only about "protecting its own interest." The solution proposed looked to "the unceasing struggle to rupture the monopoly of the judges clique over the judicial power, and use [of] all kinds of democratic procedural methods to allow effective control over the judiciary by the people."[1] Or, in the words of the top official of the Supreme People's Court, President Wang Shengjun, at an August 2008 study session for higher-level judges from across the nation:

> We must make the distance between the courts and the people/masses smaller, and not greater. We must fully rectify the alienation of the judiciary from the masses, and with our heads held high and in a forthright style truly embody a judiciary "for the people". . . . We are to emphasize acting in accordance with law, an objective and disinterested approach, and respect for the law, yet we cannot look on the masses with a cold eye, or engage in mystification, and we should act in a way that the masses find easy to accept, using the language of the masses in answering and handling problems—so as to allow the masses to understand clearly, listen with understanding, and understand in their hearts.[2]

In very broad strokes, the Supreme People's Court—or more accurately the Communist Party which directs it—has in this way been seeking to temper any inclination towards greater independence or autonomy by China's developing court system, and to re-assert so-

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1. *See* He Weifang, Sifa Gaige de Nanti Yu Chulu ("Difficulties and the Way Out for Judicial Reform"), *Nanfang Zhoumou* (*Southern Weekend*), Sept. 17, 2008: E31, quoting Professor He Bing, *Nanfang Dushi Bao*, Nov. 3, 2007.

2. *See* He Weifang, Sifa Shenmihua Gai Ru He Quchu ("The Way in Which We Should Eliminate Mystification of the Judicial Function"), *Nanfang Zhoumou* (*Southern Weekend*), Sept. 25, 2008: E30, quoting Wang Shengjun, Sifa Bu Yao Gao Shenmihua ("We Should Not Mystify The Judicial Power"), *Renmin Ribao* (*People's Daily*), Aug. 28, 2008.

called "democratic" or "mass line" principles in the functioning of the modern People's Courts. He Weifang, in the same fashion as other engaged lawyers and public intellectuals,[3] responded with immense feeling and coherence to promote a judiciary characterized instead by professional autonomy, technical competence (even if a little "mystifying" to the consumers of the judicial system), predictability and objectivity. Only a judiciary operating in this fashion, he said, can constitute the institutional basis for protection of a real "democratic" system via fair, consistent, and independent application of the law—the presumed product of a representative legislative function—in the aspired-to "rule of law state" (*fazhi guojia*).[4]

Observing these significant legal-political debates in the Chinese press and academy in the first decade of the twenty-first century, we might think they concern battles started only in the last decade and a half of Reform-era China. Now Professor Xu Xiaoqun reminds us that these struggles have a much longer pedigree, stretching back to the end of the nineteenth century and China's first fraught encounter with "the West" and one idea of "modernity." Further developing his own work,[5] as well as the prior scholarship of Alison Conner,[6] Kathryn Bernhardt and Philip Huang,[7] and others, Xu describes in great detail attempts at judicial "reform" and "modernization" in the critical late Qing and early Republican period of 1901-1937. Why "critical?" Because this is the period when China's last imperial dynasty fell and a new governance system was mooted, and when China attempted the creation of political and legal institutions to underpin a "modern" and democratic polity under some notion of the "rule of law." In his personal introduction, Xu points to the importance of that prior effort at legal construction for today's struggle in contemporary China, noting correctly that "[t]he project of striving for judicial modernity in Republican China and its ramifications offer clues to, and help an understanding of, the achievements and limitations in the similar project in post-Mao China, since many parallels between the two can be found" (p. xii). How very true, and vital, this introductory comment seems when we compare He Weifang's and Xiao Han's arguments on judicial independence, uttered in 2008, and the first Republican Minister of Justice's articulated reform aims from 1912: "Judicial independence is the key element of a constitutional state and the spirit of a country based on the rule of law; yet judicial inde-

3. *See, e.g.*, Xiao Han, Qunti Peichang: Quanyi Yu Jiuan ("Mass Compensation: Rights and Stability"), 222 *Caijing Magazine*, Oct. 13, 2008, 152-53.

4. *See* He, *supra* note 1, and He, *supra* note 2.

5. *See* Xiaoqun Xu, *The Fate of Judicial Independence in Republican China, 1912-1937*, 149 CHINA QUARTERLY 1 (1997); XIAOQUN XU, CHINESE PROFESSIONALS AND THE REPUBLICAN STATE: THE RISE OF PROFESSIONAL ASSOCIATIONS IN SHANGHAI 1912-1937 (2001).

6. *See* Alison W. Conner, *Lawyers and the Legal Profession During the Republican Period*, *in* CIVIL LAW IN QING AND REPUBLICAN CHINA 215 (Kathryn Bernhardt & Philip C.C. Huang eds., 1994).

7. *See* CIVIL LAW IN QING AND REPUBLICAN CHINA, supra note 6; PHILIP.C.C. HUANG, CODE, CUSTOM, AND LEGAL PRACTICE IN CHINA: THE QING AND THE REPUBLIC COMPARED (2001).

pendence can stand only after complete institutions are built" (p. 59). In effect, and perhaps rather sadly, the conversation in the near-century between 1912 and 2008 has changed very little—and it is that conversation which Xu Xiaoqun unpacks with immense skill in this minutely-researched new book.

The first third of Professor Xu's book is a summary of the formal, national, project of judicial reform in the period between 1900 and 1937, that phase of Chinese history which saw the fall of the Qing dynasty, the short-lived Republic, the Beiyang Government under Yuan Shikai, the descent into warlord chaos, and the partial unification of major parts of China under *Guomingdang* Party rule after 1927-8 and the "Northern Expedition" and "White Terror" led by Chiang Kai-shek. A good deal of this treatment follows Philip Huang[8] and other legal scholars and historians who have looked at this transitional period—in which civil and criminal codes used in the supposedly *post*-imperial era were actually the statutory product of last-gasp legal reform from the dying days of the Qing dynasty, and many poor and rather isolated counties continued with imperial-era institutions such as a local magistrate-like figure who combined administrative, fiscal, judicial, penal, state monopoly and infrastructure development functions.

The remainder of the book is rooted in Professor Xu's own recent research, and thus focuses on judicial institutions and practice at the county level in China's Jiangsu Province, the coastal area surrounding Shanghai and, with neighboring Zhejiang, a cradle of intellectual and material culture in second millennium CE China. The choice of Jiangsu Province is one of both the book's strengths and its weaknesses, and for exactly the same reason. As Xu says, "Jiangsu has been chosen because it was one of the politically more stable and economically more developed provinces, especially during the Nanjing decade" (p. 116). This is "good" because there is clearly abundant data and documentation from the 1920s and 1930s about this rich province adjacent to then-booming Shanghai and constituting a large part of the Yangtze River Delta, an area which had the relative luxury of being able to establish the full chain of judicial institutions called for in the formal designs of the time, and staffing them with qualified personnel, etc. This is "bad" because Jiangsu must be seen as utterly unrepresentative of how judicial reform was rolled out, or not, in many other areas of China—whether Peking, suddenly deprived of its capital city status; the depths of Sichuan Province; or similarly coastal areas like Shandong Province that were much poorer and where the national government exercised only an attenuated writ or influence. (Xu addresses this concern by noting that the Qing government created the Province of Jiangsu to include the poorer areas north of the Yangtze River so as to balance the richer areas south of the River, thereby providing Xu with a more diverse focus of study (p. 117).) Nonetheless, if we understand the limitations of a Jiangsu

8. HUANG, *supra* note 7.

Province focus, it is a superb place to investigate judicial reform and practice right down to the county level, as Professor Xu so ably does.

Professor Xu's book on China from 1900-1937 adopts a framework similar to that used by Vivienne Shue in her attempt to understand China between 1949 and 1988, in an inquiry on what she called "the reach of the state."[9] Xu focuses on early twentieth century China, examining (i) the reach of the central government into provincial and county levels within the "state" system, and (ii) the reach of the "state" itself, via provincial and county level agencies, into "local society." This focus, and data from Jiangsu, allow the author to really pick through *county*-level judicial functions, defined broadly to include the judicial, police and enforcement functions of *non-state* actors such as the local gentry and elites, the chambers of commerce, scribes (plaint-writers, not "professional" lawyers), and—after 1928—*Guomindang*[10] political cadres. He also describes power and influence going in the opposite direction, from the county gentry/local elite level to the nominally superior provincial and even central government authorities (when judicial functions affected their vital interests).

Trial of Modernity contains a wealth of both surprising and eternally interesting information and analysis. One surprise is Xu's strong demonstration of the corrosive effect the *Guomindang* had on the Chinese judiciary after 1927. Their policy of "*Partyizing* the judiciary" (under the broader constitutional structure of "ruling the country through the Party") is shown to have had a profoundly negative impact on the idea and practice of autonomous or independent judicial power, and to have been implemented in a fashion which makes later Communist Party policy orientations seem rather half-hearted. This hampering of the judiciary was only a part of the *Guomindang*'s "corporatist," in fact entirely "totalitarian," idea of governance (which took a good deal from the Italian and then German Fascists in the same period, and with the same effect as on their respective judiciaries). It is expressed in many examples in Professor Xu's book, including that Party's relatively decreased funding of provincial (and by implication county) judicial institutions, the use of the courts to punish political or "anti-Party" crimes, the placing of the Party and its cadres "above the law" (and the new courts), and the deprivation of due process and evisceration of the courts in the context of "anti-Bandit" campaigns—which once again make the similar Chinese Communist "Strike Hard" (or *Yan Da*) campaign of 1983, undertaken at the beginning of a subsequent judicial reform effort, look watered down. A second surprise comes when Professor Xu demonstrates that the oft-dismissed Beiyang Government under former

9. VIVIENNE SHUE, THE REACH OF THE STATE: SKETCHES OF THE CHINESE BODY POLITIC (1988).

10. This is the Chinese *pinyin* transliteration term for the Nationalist Party eventually led by Chiang Kai-shek, which developed in a different direction from the immediately post-imperial Nationalist Party created by Sun Yat-sen and Song Jiaoren out of the "Revolutionary Alliance." The Party in its post-1928 iteration is also known in English as the "Koumintang," the "KMT," or simply the "Nationalists."

Qing general and imperial Governor Yuan Shikai deserves a more complex evaluation. Certainly in 1914 that government dismantled early judicial institutions that had been set up at the county level in the initial Republic phase (1911-1912); yet that same government also proved a tough defender of judicial independence and the shallow roots of a functioning constitutional law system. For instance, the Yuan regime nurtured the establishment of an administrative review court (the *pingzheng yuan*), allowing citizens to sue the government. It took the *Guomindang* until 1933 to establish a similar judicial function, and that later iteration was deprived of the power to actually punish delinquent officials, a power owned—and used—by its 1914 counterpart (pp. 99-100). Xu shows convincingly that the much-analyzed Communist Party line on the Chinese judiciary is not necessarily determined by a *Chinese* tradition, or even a Chinese *imperial* tradition, but is certainly a style designed and implemented in the post-1928 *Guomindang*-built one-Party rule tradition.

The book provides a narrative and an analysis that are not just surprising, but deeply revealing. Professor Xu elaborates on the long-understood insight of Philip Huang and other modern China historians in describing how the earliest "Republican" judicial institutions were actually throw-backs to the end of the Qing "New Policy" (*xin zheng*) reforms *and even before*. Thus, in many regions the Chinese government was forced to implement institutions with a decidedly "imperial" bent, or which enlisted the social power of *existing* local functions. At the same time, the author shows where the real battle on judicial reform was in 1912, as it is in 2009—the attempt to separate the judicial and administration functions of the single imperial-era magistrate, and, once a stand-alone judicial function was created, to separate the state's interest in judicial administration from the judiciary's interest and function in adjudication. (This is one aspect of what remains at issue in the modern PRC, described as the "unhooking" of the legal profession from state judicial bureaus.) And Professor Xu is very fair in his recitation of the data, demonstrating how on occasion the judicial administrative side was absolutely justified in intervening in adjudication or police work—for instance, in stopping torture of civil and criminal defendants by county-level magistrate-type figures in 1929 (p. 206). The author also fully unpacks the age-old theme in China of variation and discord between "central" (national) and "local" (including the power of "local elites," not just local state institutions), and shows the immense difficulty national-level imperatives had in penetrating a local-level socio-political context which, like history itself, seemed like another country. Part of that problem was clearly tied to the lack of funding for local-level institutions, where judicial reform efforts led to rapidly accelerating expenses, and the only source of revenues became plaint fees and bribery, an invitation to corruption of the judicial power. The lack of money also meant that many policies and practices announced or just desired in national theory/policy—from appeals to proper prisons—could not be implemented in reality at the base level. Xu's very good point here is that the failure to create independent and autonomous

judicial institutions in early Republican China was not necessarily "political," or an effort by the state or any Party to minimize the power of an independent judiciary, but instead largely "economic" and directly related to the limited resources available. The negative implication of course is that, after the rise of the one-Party state under the *Guomindang*, the injury done to the Chinese judiciary was indeed political, and part of a unified and pernicious plan for the entirely politicized state.

Professor Xu makes two other deeply interesting points. The first is that judicial independence as implemented often led not to social harmony and pacification, but instead to local unrest. This was because local elites felt directly challenged by national, provincial or just "external" institutions that sought to penetrate their jurisdiction, using instruments—the "law" and formal legal institutions—about which the local elites were fully ignorant. The second interesting aspect is the fact that the PRC's "Strike Hard"-type campaign of 1983 and its criminalization of the *Falungong* sect, which have done so much to eviscerate judicial autonomy and the coherent application of (criminal) law, are actually contrary to imperial-era notions informing application of the dynastic penal codes. Such campaigns really only started—and were "legalized"—with the Beiyang Government's "Law on Punishing Robbers and Bandits" of June 1914 and the *Guomindang's* "Provisional Regulations on Punishing Robbers and Bandits" of November 1927 (pp. 283-88). While Professor Xu may oversell slightly the imperial-era differences,[11] he is certainly correct in noting that Republican-era state establishments inaugurated the open and self-proclaimed use of such damaging initiatives in earnest.

As implied by the foregoing, Professor Xu is at his best, and his book is marvelously valuable, when he culls through and analyzes primary sources, including archives describing the reality of judicial practice at the county level, and in particular the counties in Jiangsu Province where he has had access to archival material. On the other hand, he sometimes falls short when apparently relying too heavily on secondary sources, especially when trying to describe the elite-level discourse about rule of law, constitutional government, and judicial reform in China at the time. For instance, at one point he cites Liang Qichao's October 1910 comments on "rule of law," saying Liang's comments "helped start a discourse on the rule of law among educated Chinese" (p. 31). However, he cites not Liang's own writings, but a secondary treatment of Liang Qichao's thought,[12] without a page number. That writing, we can only guess, must have invoked Liang's huge 102-page essay "*Zhongguo Guohui Zhidu Si Yi*" ("A Personal View of China's Parliamentary System"), published in Tokyo in the fall of 1910, in which Liang really focuses not on "rule of law" but

11. *See* PHILIP A. KUHN, SOULSTEALERS: THE CHINESE SORCERY SCARE OF 1768 (1990).

12. Cheng Liaoyuan, *Qingmo de Fazhi Huayu (The Rule of Law Discourse in the Late Qing)*, *in* ZHONGXI FALÜ CHUANTONG (CHINESE AND WESTERN LEGAL TRADITIONS) (2002) (cited at p. 31).

on a very different notion of parliamentary democracy and parliamentary sovereignty—i.e., the absolute primacy of "law" or legislation promulgated by a sovereign representative assembly, certainly over the Emperor, but also over any kind of human or civil rights granted in a written constitution, or later "natural rights." This is a significant defect in Xu's otherwise cogent and well-informed introductory argument, as Liang's thinking at that stage served to the detriment of powerful or autonomous judicial institutions. (In a related puzzle, the reader wonders why Xu lists as "primary sources" a number of modern Chinese-language secondary sources, such as a potted 1994 Qing legal history by China's dean of Qing legal historians, Professor Zhang Jinfan. Certainly a standard history written fewer than twenty years ago in the PRC, probably by a committee under the esteemed Professor Zhang, is not a primary source?) If Xu was to rely so much on secondary sources to frame the intellectual, policy-maker, state and Party discourse on rule of law, institutional establishments, and "rights" generally, he might have done better to rely on Marina Svensson's encyclopedic and nuanced 2002 treatment[13] (which Xu includes in his bibliography but does not use enough). The reader also wishes that, in terms of substantive focus, Professor Xu spent less time describing and analyzing the formal prison system, which really should be separated from an inquiry on judicial reform and independence (noting here that China did not generally have prisons in the imperial era, but only magistrates' holding cells for the subjects of current proceedings, whence individuals would receive their punishment or depart for exile, etc.). Lastly, the reader yearns for an even fuller understanding of the educational, socio-economic, and experiential backgrounds of the national-to-local figures who were involved in judicial reform. This is something Andy Nathan brings off beautifully in his 1976 book on the failure of "constitutionalism" in late imperial and early Republican Peking, and does more than anything else to inform analysts about the choices reformers and resisters made in those difficult years of wholesale governance change.[14]

Professor Xu's fascinating and relevant story gives rise to a host of important questions. First and foremost is the notion of judicial system and legal "modernity" and/or "reform." What precisely is it? Is modernity captured and expressed in the qualifications of policy-making or institution-building personnel, or is it rooted in the equally difficult-to-evaluate ideas of independence, autonomy, competence, predictability/standardization, or is it simply being—or not being—like "the West"? Second, what was the key, and most effective, force behind judicial modernization and legal reform in China, and what might animate the same efforts today—is it external (in China's case in the twentieth century, the Western powers and their promise to

13. MARINA SVENSSON, DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY (2002).

14. ANDREW J. NATHAN, PEKING POLITICS 1918-1923: FACTIONALISM AND THE FAILURE OF CONSTITUTIONALISM (1976).

end "extraterritoriality"), internal (the Chinese state or ruling political force), or something wrought by indigenous technical experts? Does the identity of the key force working for reform and modernization, however construed, affect the success of the modernization effort itself? How best is the judicial modernization program sold to the ultimate consumers of the system, the governed citizenry? Professor Xu has done an excellent job in conjuring these questions, and also moving partway to a set of answers which are very useful in the twenty-first century analysis of the same set of problems. Perhaps better still, Xu outlines a self-defeating dynamic about judicial and state modernization itself—what he accurately calls the "paradox of modernity." For he convincingly demonstrates how expansion of the state and its institutions creates significant expectations for those who are governed and nominally protected by the state system, and those who would work the system (legal professionals). (This can be seen at work, with respect to the PRC, in the heart-breaking 2005 *Investigative Report on China's Peasants* by the husband and wife team of Chen Guidi and Wu Chuntao. In countless incidents of local oppression, rape, physical intimidation, corruption, and bullying at the hands of local state or Party actors in Anhui Province backwaters, the victims resort initially to the formal court system, even though many of them know that the local People's Court is an instrument of the same absolute power which oppresses them so completely.[15]) In the event, many of these expectations cannot be met, even partially, which in turn redounds to the detriment of the modernization project itself. And Xu shows how modernization, even without the failure to meet expectations engendered, can have detrimental if unintended consequences—which range from inefficient (compared to pre-modernization) case disposition, to the empowering of local tyrants who appropriate new judicial structures as an instrument of power, to stymieing the effective use of the police power against individuals who are out of society (criminal gangs, "bandits," etc.). In each case, the yearning for "modernity," and the implementation of modernization programs, contain within themselves the seeds of their own frustration and stubborn reversal.

The question of judicial independence in China during the period 1901-1937 raises a final irony for non-Chinese readers of Xu's book. As Xu notes repeatedly, and correctly, a good deal of the impetus for judicial and legal reform in post-Qing China came from Chinese efforts to lift the burden of "extraterritoriality" employed by foreign powers after the Opium Wars and pursuant to the Qing-era compacts universally known in Chinese as the "Unequal Treaties" (*bu pingdeng tiaoyue*). Each time a post-Qing government tried to abolish the system so harmful to China's sovereignty and self-conception, China was informed that its various systems of governance—from

15. CHEN GUIDI & WU CHUNTAO, ZHONGGUO NONGMIN DIAOCHAO BAO (INVESTIGATIVE REPORT ON CHINA'S PEASANTS) (2005), available in English as CHEN GUIDI & WU CHUNTAO, WILL THE BOAT SINK THE WATER?: THE LIFE OF CHINA'S PEASANTS (Zhu Hong trans. 2006).

the legal and judicial system to the company law system—had to be "modernized" or made to resemble more closely idealized Western systems. Yet, the Western powers and Japan for many years refused to eliminate extraterritoriality because, in the words of a 1929 U.S. State Department note replying to the newly-established *Guomindang* government's request for abolition of the same, "[t]here does not exist in China today a system of independent Chinese courts free from extraneous influence" (p. 82). One well-known judicial figure at the end of this period was John C.H. Wu (*Wu Jingxiong*). Surprisingly, Professor Xu does not invoke John Wu even though Wu was appointed by the Jiangsu Provincial Government to sit as a judge on the new "Shanghai Provisional Court" in 1927—a court with jurisdiction over all controversies in the Shanghai International Settlement, except those cases where the defendants were citizens of the Treaty nations[16]—and was later promoted to Chief Justice and then President of the same Court. Wu was in fact a well-known twentieth-century Chinese-origin legal scholar, lawyer, judge and law school dean, who engaged in a decade-long correspondence with Justice Holmes and composed the June 1933 draft of a Chinese Constitution which formed the basis of that nation's first Constitution in 1947. One chapter of his 1951 "spiritual autobiography" *Beyond East and West* has the grandiose title "Law is My Idol."[17] That title comes from a story John Wu loved to tell about his personal role in standing up for "judicial independence" in 1930s China—independence not from Chinese government or Party political pressure, but from the same foreign powers who constantly asserted that China's judicial institutions actors lacked the independence sufficient to permit the end of the Treaty Port system. John Wu recounts the genesis of the title, and his heroic role, in the following lovely fashion:

> In the summer of 1929, I tried the famous "Roulette Case" which stirred the whole population of Shanghai . . . . I will only reproduce an editorial from the British paper, the *North China Daily News*, on one of my remarks during the proceedings. The attorney for the defence, Dr. Fischer, had said that if I should be too severe with the foreigners, it would delay or impede the rendition of extraterritoriality. This argument sounded a bit too political to my judicial ears. My answer is embodied in the editorial: "JUDGE JOHN WU ON LAW THE IDOL . . . [O]ne cannot ignore a remark of Judge John Wu . . . Commenting upon certain remarks of Dr. Fischer, Judge Wu said: 'However, the facts you have outlined in your application may be taken into consideration as mitigating circumstances when the second charge is tried, but in my opinion your arguments, political arguments, if I may say so, are neither appropriate nor relevant. Law is the only idol of this court, not the rendition or abolition of extraterritorial-

16. As he exulted to Justice Holmes in a letter at that time, "I shall try to Holmesianize the Law of China!" JOHN C.H. WU, BEYOND EAST AND WEST 113 (1951).

17. *Id.* at 107.

> ity. I would rather do justice and by so doing constitute an obstacle to the rendition or abolition of extraterritoriality than perpetrate a miscarriage of justice which might expedite or favour the abolition of extraterritoriality.'"[18]

How deeply ironic, and yet deeply satisfying, to see a Chinese judge, a graduate of Shanghai's (American Methodist-established) Soochow Comparative Law School (1920) and the Michigan Law School (1921), and longtime correspondent of Oliver Wendell Holmes, throw back into the faces of the hectoring Western nations *their* heady idea of judicial independence. As Xu Xiaoqun demonstrates with such aplomb in his new book, this winning notion was a bedrock orientation perhaps forced by the Western powers, and certainly modeled on Western templates, but keenly desired by many purely *indigenous* actors intent on some identity of the "rule of law" in China. Between 1912 and 1937 judicial independence may indeed have been implemented at the behest of the Western nations as the price for removing "extraterritoriality"—but that independence was then, as it is in 2009, something transparently desired by the Chinese people as they work out their own legal, governance and political culture and institutions.

18. *Id.* at 118-19.