FOREWORD

It is an honor to be asked to introduce this collection of articles, written by some of France’s most talented China scholars. The occasion for this enterprise was a seminar conducted at the Collège de France under the direction of Pierre-Étienne Will and Mireille Delmas-Marty in 2002 and 2003. The theme of the seminar was that of the book before you: “Democracy in China,” a much broader and more difficult proposal than it seems. It is a provocative theme, to say the least, inasmuch as many readers will react with “What in China?”

But it is an occasion that doesn’t occur often: a challenge to open one’s mind, particularly in a historical direction, to see what might have been, and may yet become. Furthermore, it should lead the attentive reader to postulate what are the basic ingredients that constitute a “democracy,” without which it cannot be said to exist.

Professor Will offers us his *sine qua non* list:

Free elections, universal suffrage, and political pluralism; government accountability to the elected representatives of the people, themselves required to regularly and frequently submit their mandate to the voters’ verdict; separation of powers allowing for the role of law, i.e., review of the legality of governmental acts, judicial guarantee, and the protection of fundamental rights.

At the same time, his research reveals what might have been, had the Manchus been a different sort of conquerors, the Ming Chinese elite more steadfast in their reaction to despotism, and at least a few other desiderata along the way. Segments of the Chinese elite may have glimpsed the makings of a constitutional order, but history intervened.

Besides a number of other personal contributions to the text, Professors Will and Delmas-Marty have brought together a group of extremely capable scholars, including Jérôme Bourgon, whose essays on legal theory and comparative law stand out sharply. The role of law and lawyers in China’s modernization will be an eye-opener to many readers. “Where does law fit in the much broader analysis of the relationship between democracy and Chinese tradition?” Bourgon asks. “The question has been asked regularly, and is asked even more frequently now that China has a legal system worthy of that name.” Bourgon goes on to compare John Rawls with the major
premises of Chinese imperial law codes and finds syllogistic principles at work in both camps.

Professor Delmas-Marty, however, is more cautious. In a concluding essay entitled “The Chinese Laboratory,” she finds that “the internationalization of law” has had a “massive impact since China’s entry into the World Trade Organization.” This trend “contributes to the crisis of democracy and the rule of law: by leading to increasing tensions between the political, legal, and economic fields, it precludes predicting the future, which seems as uncertain inside China as outside.” By this she means that although “Chinese tradition contains certain elements of a genuine legal science, [and] ‘sprouts of democracy’ have been looked for and found,” “the issue of human rights is still unresolved.”

These are only a small sampling of the excellent group of authors who have contributed so much solid information and occasionally provocative ideas to the book. Others include Yves Chevrier (on politics and culture in the formation of the Chinese nation state); Jean-Pierre Cabestan et al. (on the renaissance of the legal profession in the post-Mao period); and many more. In fact, if the reader wants an acquaintance with the best of French Sinology in the “modern” period, this book cannot be surpassed.

But what about Democracy? How important is it, and how shall we know who has it? It is probably unavoidable to line up all the extant versions of that happy condition to make sure we have not done it an injustice. That is a way of saying that it cannot necessarily be achieved. I come to this unpleasant conclusion after some soul-searching, having in mind the many sides of “Democracy” that can be found within my own chosen homeland. Ask a sample of Americans today whether “Equality of Opportunity” is really available to every citizen, or only to those of appropriate complexion, language fluency, and level of education. We might then go on to ask about “Equal Justice Under Law,” and whether those poverty-stricken countrymen who inhabit our prisons in numbers far outweighing their numerical presence in society are there to investigate the housing amenities? Then there is “Education For All” (you get the picture). Pretty soon we begin to wonder. Of course, we could excuse all that by concluding that perhaps all democracies are imperfect, and leave it at that. It is troubling to think, though, that different “imperfect democracies” are imperfect for different reasons and at different times and just leave it there—a very unscientific conclusion.

Philip A. Kuhn