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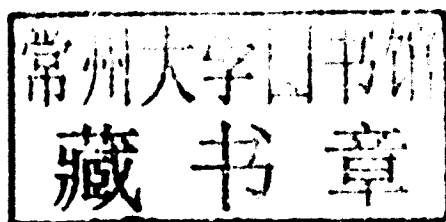
# Understanding China's Criminal Procedure

YI Yanyou

Tsinghua University Press

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## **Forewords**

In January 2003, after graduating from the University of Warwick with an LL.M. degree and from China University of Political Science and Law with a Ph.D degree, I joined Tsinghua University Law School as a Professor in Criminal Procedure Law. In 2005, Tsinghua Law School became the first law school in China to establish an LL.M. program for foreign law students and legal professionals. I was appointed as a Lecturer in Criminal Procedure Course of this program. This book is largely based on the contents I taught in my Criminal Procedure Course.

This book is also written in order to facilitate my teaching, and to give a concise introduction of Chinese Criminal Procedure to an English-language audience who are interested in knowing Chinese law. The foreign students in the LL.M Program in Chinese Law come from all corners of the globe, and with this in mind, this book discusses problems which are commonly examined and debated by Western scholars. In addition, a significant amount of Western criminal procedure laws concern citizens' constitutional rights. Therefore, this book focuses on the protections of citizens' constitutional rights in the context of criminal procedure.

In particular, this book seeks to address the following questions: In what extent does the contemporary Chinese criminal procedure law protect citizens' houses, papers, effects, privacy and personal freedom? Does the suspect have the right to remain silent when being interrogated? Shall the defendant be

presumed innocent when facing a criminal charge? In what extent does a defendant have the right to a fair trial? All these issues have been critically examined not only by Chinese scholars in relative fields, but also by Western scholars specializing in human rights, constitutional law and criminal procedure law. These questions will be addressed in turn in this book, providing detailed analysis and explanations for each of the issues identified.

Undeniably, in the eyes of the majority of Westerners, there are numerous problems underlying China's criminal procedure law. Despite many popular misconceptions, the elements of Chinese criminal procedure are admittedly, to a large extent, different from many Western countries. This can largely be explained by the fact that Chinese criminal procedure bears the distinctive characteristics of Chinese society. Therefore, learning Chinese criminal procedure is the best means of knowing about the Chinese society. I hope that, regardless of their impression of Chinese law, after reading this book they will come away with a more informed conception of Chinese criminal procedure and hopefully with a newfound interest to learn more.

Last but not least, I would like to acknowledge the help of Sally Lam Wui See, Charmaine Hoi Wan Tam and Sunny Pong Chiu Sun, who are students from Tsinghua Law School LL.M. in Chinese Law Class of 2011. They have taken the time to read various drafts, assisted in the editing and proofreading, and offered me thoughtful comments and suggestions. Their efforts have materially improved the style and precision of this book.

Notwithstanding the above-mentioned efforts, I would like to

apologize in advance for any errors in this book. All these errors are attributed to the author. It is a great challenge for me to write in English, and I decided to rise to the challenge.

YI Y Y

Beijing, January 3, 2011

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## **Part I**

# **An Overview of China's Criminal Procedure**





# **Chapter 1 Introduction to China's Criminal Procedure**

## **I. THE RELATIONSHIP OF CRIMINAL LAW TO CRIMINAL PROCEDURE**

### **A. Criminal Law and Criminal Procedure**

#### **1. Function of Substantive Criminal Law**

In the substantive sense, criminal law is a law that defines the framework in which society conducts deterrence and punishment.<sup>1</sup> Put it in another way, a criminal law is a law that seeks to classify whether a conduct is a crime and if so, what kind of punishment or criminal liability shall be imposed on such conduct.<sup>2</sup> As such, when we learn a substantive criminal law, we always tend to ask the questions: if A commits an act, does A's act constitute a crime? If yes, what kind of punishment should be imposed on A?

Certainly, many offences are committed in secrecy. Therefore it might be difficult for law enforcement to locate the criminal. However, the methods of tracing down a criminal and of ascertaining the facts are not the tasks of the substantive criminal law.

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<sup>1</sup> Joshua Dressler, *Understanding Criminal Procedure*, third edition, LexisNexis, 2002, p. 1.

<sup>2</sup> ZHANG Mingkai, *The Science of Criminal Law*, second edition, Law Press, Beijing, 2003, p. 23.