Does China’s first national Mental Health Law (MHL) (2012) take China a step closer to the UN Convention on the Rights of Persons with Disabilities (CRPD) requirements on mental health treatment decision-making? If not, why not? These are the vitally important questions posed at the start of Bo Chen’s informative exploration of the meanings and impact of the country’s first attempts at tightening up the legislation and guidance around mental ill-health, with a particular focus on involuntary interventions (specifically patient admission/detention and treatment).

As is to be expected of a book stemming from a PhD, there is much originality to be found here. To my knowledge, this is the first work of its kind (in English or Chinese) to delve into the implications of China’s legal developments around mental health in the post-CRPD period (China signed in 2008 and has been, subsequently, obligated to work towards improving these in line with the human rights expectations and standards set out therein). It is also the first to use a socio-legal approach to understand those implications from both doctrinal and practice perspectives. Chen builds his arguments here on an initial desk-based analysis of the reforms introduced by the MHL; this is then followed up by interviews with a range of stakeholders that help to reveal the MHL in action, accompanied all the while by analyses of judicial responses through associated case law.

The book’s first substantive chapter starts by setting out the CRPD requirements on treatment decision-making in mental health services, which currently call for an absolute ban on involuntary detention and treatment. This takes the CRPD beyond the “necessary but safeguarded” approach advocated by the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles, 1999) and European Convention on Human Rights (ECHR,
1953) to something described as a “radical and unrealistic” requirement of freedom from involuntary mental health interventions. What the book makes clear, however, is that the CRPD position is very much debated and that no State Party has yet met these standards as a result of its far-reaching nature. The question remains, then, how are we to assess any State Party’s progress towards maximising the decision-making autonomy of persons with mental health issues in treatment? For Chen, using China as a particular case study is the answer and he later complements this in Chapter 6 with a comparison with the Irish situation – an unusual comparison, to be sure, but one I can see was likely guided by his PhD institution (National University of Ireland in Galway).

Chapter 3 moves swiftly through the necessary context of mental health services and the legal system in China. Here, Chen lays out the historical and political explanations for the relative under-development of community-based mental health services and trained professionals that might better support local, home-based care for persons who experience mental health issues, and corresponding dominance of centralised psychiatric hospitals/institutions that work essentially to segregate such persons from their families. He also provides an explanation for the “conservative” approach adopted by the Chinese courts which is intended to balance “social stability” with the autonomy and human rights of mental health service users, but ultimately, as the rest of the study reveals in detail, works to the detriment of those service users in most cases. All of this is framed more broadly, he explains, by China’s traditional family-oriented model, which views mental ill-health as shameful and a responsibility to be borne by the family (both in terms of direct care in the absence of community care, and as decision-makers when it comes to treatment).

This all sets the scene, then, for the main analyses. First up in Chapter 4 is the doctrinal review of the new MHL, as well as relevant aspects of China’s adult guardianship law. We are given detailed discussion of the preceding health regulations and laws upon which the MHL was built, as well as an analysis of how the MHL (and associated elements of the Civil Law) have changed this landscape. Throughout the analysis is very balanced, highlighting both the ways in which the changes have made some movement towards a user-centred approach (such as narrowing the criteria for involuntary intervention), as well as the problems with implementation on the ground. And it is the problems that are really revealed through the next part of the study in Chapter 5, which moves to draw on evidence from 26 semi-structured interviews (including former service users, psychiatrists, eight lawyers or NGO workers, and two community workers) and several hundred judgments from MHL-related cases decided by the courts since 2013. The author is candid about the limitations of the participant sample and his unsuccessful attempt to include family members in the research (91), as well as his decision to elicit narratives relating to the use of force with either service users or psychiatrists (96).

While we might lament these missing perspectives and what they might reveal about the issues with the current system, the book still manages to showcase some truly shocking instances that demonstrate the lamentably low threshold for admission
and detention in China even with the new MHL in place. In one case that particularly caught the notice of this reader, a court supported the decision for a mother to be detained for treatment against her will after a disagreement with her son over his marriage choice and associated financial disputes (96). Throughout, Chen makes a persuasive case to demonstrate the power of these family members (or guardians) and psychiatrists (as authoritative experts) over the “service user”. Most of those interviewed complained that “their diagnoses were decided solely based on the meetings between their psychiatrists and their family members” (99) and, even where there were processes aimed at minimising abuse, the accepted understanding that service users were unlikely to have “insight” into their own condition, further marginalised their voices. The courts, too, are shown to have significant limitations (for example, only willing to intervene should a significant fault present), thus leading to a situation where there is essentially no independent oversight. All of this combined, Chen concludes in Chapter 6, silences the service user’s voice, thus telling us that the laudable principles of the MHL have yet to be translated into practice in any meaningful way.

As mentioned before, the book is based on his PhD thesis (and sometimes it does feel a little too close to that with too many summary sections, and then summaries of summaries). However, I feel that there is much to commend here, not least the way in which Chen starts with a strong foundation drawn from disability studies. All too often, legal studies of disability and mental health rights and case law are, well, overly legal – they overlook the social, political and historical dimension and the ways in which lived experience of disability and mental ill-health complicates legal frameworks and judicial interpretations. As a scholar of disability studies in China, I very much appreciated the new perspectives Chen was able to bring to his analysis because of his approach.

With my other hat on, as a Chinese area studies specialist, there was also much to learn. I can imagine that many others working on disability, mental health, rights, legislation and related policy areas in China will benefit greatly from the detailed unpicking of the MHL itself, as well as the vivid cases put forward as evidence of its “implementation” on the ground. However, also from this perspective, what was quite notable was the relative paucity of cited research literature in Chinese, particularly in the sections discussing the history of mental health and legal system where one would expect there to be a wealth of such sources. While we all must make decisions about what sources we should engage with and what sources are not so relevant, there should be some explanation as to why we make such decisions. If there are clear gaps in the Chinese research, drawing more attention to those gaps would only enhance the original contribution of the book. I would also note the absence of reference to Emily Baum’s excellent history The Invention of Madness: State, Society, and the Insane in Modern China (2018), which would have added some much-needed socio-cultural nuance to the claim that “institutionalisation has not been an issue in China for long” (48). Here Baum explores in great depth the history of asylums and the institutionalisation of madness over the first decades of the twentieth century,
and I would certainly recommend this book to fill some of the gaps in the historical contextualisation presented here.

None of this, however, takes away from the overall significance of the work. As Chen notes, there are over 170 million adults in China described as having at least one type of mental disorder and 16 million people identified as having severe mental illness (2). If China is to move away from involuntary detention and treatment (something that this research shows is hugely problematic for all sorts of reasons), towards a voluntary mental health services-first approach, then much more attention needs to be paid to understanding the ways in which surrounding conditions in China – identified from this research as power imbalance and guardianship – might be changed too. Only then, he argues, can the ‘silenced service users’ of China’s mental health system benefit from the new law developed to better protect them.