

POLITICAL CILIZATION AND MODERNIZATION IN CHINA

Zhong Hua

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## The Political Context of China's Transformation

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Yang Zhong & Shiping Hua

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**edited by**

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Y.Z. and S.P.H.

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# Introduction

*Yang Zhong and Shiping Hua*

Westerners who travel to China these days are often puzzled by those Chinese who tell them that China needs to become a more civilized country. To Westerners, China is one of the oldest civilizations in the world; so what do the Chinese mean by "more civilized"? What is meant is that China is an ancient civilization that lacks the features of modern civilization. One dictionary definition of *civilization* is "an advanced state of human society, in which a high level of culture, science, industry, and government has been reached."[1] Apparently, in the minds of many Chinese people, China has not reached that "high level" in terms of culture, economics, and politics, for many Chinese equate modern civilization with the Western world. W*en ming,* the Chinese term for "civilization," tends to place more emphasis on the cultural aspects of human behavior. A civilized society is thus a culturally sophisticated one.

[1]See the Random House *College Dictionary* (New York: Random House, 1984), p. 246.

The term *political civilization* first appeared in the political report of the 16th Chinese Communist Party (CCP) Congress delivered by then Party Secretary Jiang Zemin in 2002:

> Developing socialist democracy and establishing a socialist political civilization are an important goal for building a well-off society in an all-round way. Adhering to the Four Cardinal Principles, we must go on steadily and surely with political restructuring, extend socialist democracy and improve the socialist legal system in order to build a socialist country under the rule of law and consolidate and develop the political situation characterized by democracy, solidarity, liveliness, stability and harmony.[2]

He went on to outline the specifics related to "socialist political civilization," including upholding and improving socialist democracy, improving the socialist legal system, reforming and improving the Party's style of leadership and governance, reforming and improving the decision-making mechanism, deepening administrative restructuring, and promoting reforms of the judiciary system.[3] Political civilization has much to do with reforming the political system in China and making China a country that follows the rule of law.

Handling the proper relationship between economic reform and political reform has been a thorny issue for the Chinese leadership during the reform era. China has made some progress in political reform in the last 25 years, though economics has always been at the top of the agenda. In fact, the drastic market-driven economic reform could not have been possible without first abandoning Mao Zedong's "continuous revolution" theme and abnegating the Cultural Revolution. Other political reforms include permitting individual freedoms, encouraging grassroots democracy in the rural areas, and reforming cadre management. These political reforms have noticeably facilitated economic reforms. However, post-Mao Chinese leaders have yet to adopt fundamental political-reform measures for fear of losing political control and creating destabilizing conditions for their economic-reform efforts, even though they have always proclaimed their interest in deepening political reform.

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[2]<http://www.china.org.cn/english/features/49007.htm>.

[3]*Ibid.*

China's limited political reforms largely occurred at the margins of the country's political power — that is, the legislature instead of the party, the lower level of the political structure instead of the top leadership, and the areas outside the major power centers of Beijing and Shanghai. For example, China has been trying to democratize its rural politics. Currently, out of the 930,000 villages nationwide, where about 75 percent of the Chinese live, over 90 percent now have multicandidate elections.[4]

In addition, China's people's congresses at various levels are beginning to play bigger roles in policy making and in supervising government agencies. Since 1979, provincial-level legislatures have promulgated more than 70,000 local laws.[5] The Intermediate People's Court of Shenyang, in Liaoning Province, found itself in an embarrassing situation on February 14, 2001, when its work report was vetoed by the Shenyang city legislature. That is, the legislature judged the court work performance as inadequate. In the southern province of Guangdong, more than 2,200 government officials and law enforcers have been asked to deliver work-performance reports to the legislature. As a result, more than 1,000 mishandled cases have been corrected and more than 100 officials prosecuted.[6]

There have also been some attempts at dividing the power among the party, the executive, and the legislature. In 1991, the Chinese government for the first time defined the law-making roles of the three major governing bodies: the Party, the legislature, and the State Council. Nowadays, the responsibilities among the three institutions of the CCP's Central Committee, the National People's Congress (NPC), and the State Council are much more clearly defined. According to Murray Scot Tanner, the Chinese leadership is a multi-arena now. This decentralization of power is being institutionalized.[7]

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[4]Li, Yahong, The Law-making Law: A Solution to the Problems in the Chinese Legislature, *China Perspectives*, vol. 2, no. 2 (2005).

[5]*Ibid.*

[6]*People's Daily*, "Local Legislatures Tighten Supervision," <http://www.peopledaily.com.cn>

[7]Murray Scott Tanner, "Erosion of Communist Party Control over Law Making in China," *The China Quarterly*, no. 138 (June 1994), pp. 381–403.

In 2001, 15 of the 16 laws made by NPC were based on bills and motions submitted by deputies instead of being initiated by the Party.[8] NPC deputies have also shown some independence in voting on policy proposals and personnel appointments. For instance, in the confirmation of Jiang Zemin's nomination as the chairman of the Central Military Commission at the 2003 NPC convention, 220 out of the 2,946 deputies, or 7.5 percent, refused to vote in favor of him.[9]

There is still considerable room for political reform in China. History and political science theories have shown that politics and economics are intricately interrelated, so postponement of fundamental political reforms by post-Mao Chinese leaders will not be without heavy political prices and risks. It is true that the Chinese economic reforms have achieved a great deal in transforming the Chinese economy from a centrally planned one to primarily a market economy, in improving Chinese people's living standards, and in making China an emerging economic power in the world. The economic reforms have also caused and produced major side effects and consequences, such as the widening gap between rich and poor, rampant official corruption, stagnation or even deterioration in peasants' economic conditions, proliferation of diverse and conflicting economic and social interests, and regional unbalanced economic development. Another trouble spot in China today is the lack of venues for social and economic justice and of venues for the disadvantaged and the poor for venting their frustrations. These problems, which have already caused social tensions and instabilities in many parts of China, have the potential to lead to a system breakdown if not confronted and handled properly.

The Hu Jintao and Wen Jiabao administration is facing today a China totally different from that of the previous administrations. The most significant change is the emergence of diversified social and

[8]Xinhua, March 13, 2002.

[9]Kevin J. O'Brien, "Agents and Remonstrators: Role Accumulation by the National People's Congress Deputies," *The China Quarterly*, no. 138 (June 1994), pp. 359–380. See also, Kevin J. O'Brian, "China's National People Congress: Reforms and Its Limits," *Legislative Studies Quarterly*, vol. 13, no. 3 (August 1988), pp. 343–374.

economic groups and classes, such as owners of new large- and medium-sized private businesses, small business owners, workers of state-owned enterprises, peasants, migrant workers, middle-class professionals, laid-off workers, the urban poor, real estate developers, and AIDS patients. The interests of these groups can be very different and may indeed conflict at times. In other words, China is no longer the monolithic society that once existed under Mao's socialist system. These groups, especially the poor and disadvantaged, have yet to find sufficient and viable institutions to channel their interests and voices. China's Gini coefficient reached 0.417 in 2004, and the richest 10 percent of urban Chinese residents control 50 percent of the total wealth, while the bottom 10 percent owns only 1 percent of the total wealth.[10]

Jiang Zemin's Three Represents theory has tried to include representation of the new entrepreneur class in the CCP at the expense of diminishing the CCP's ideological legitimacy. If these groups cannot find ways within the system to voice their interests, they will try extra-system measures and venues to get their views across and their needs met. Those who have money and resources can influence public policies with extra-system means such as bribery and private connections (or *guanxi*). Those who are less fortunate and do not have such resources will feel that they are shut out of the system and may also try extra-system and unconventional measures to express their interests, such as street protests and violence. Therefore, promoting political civilization or fundamental political-system reform is a must, not a luxury.

The new Hu–Wen administration has obviously realized the danger of social instability resulting from the problems mentioned above. From the beginning, the Hu–Wen administration has adopted the "people first" (*qin min*) approach in its governance of the country. A central theme and much-discussed topic at the 2005 annual meeting of China's National People's Congress was "constructing a harmonious society" (*hexie shehui*). Meaningful political reform or political

[10]<http://www2.chinesenewsnet.com/gb/MainNews/Opinion/2005_3_23_9_39_18_402.html>.

civilization and modernization should include (1) expanding intraparty democracy, (2) fully utilizing the people's congress system, (3) allowing greater freedom of the press, and (4) establishing a more independent judiciary system. These measures will provide a more stable political environment for continued economic growth in the long term. One of the most serious deficiencies in the current Chinese political system is the lack of oversight and supervision of Chinese governmental officials, which leads to rampant official corruption and social injustice. The four proposed political reform measures should significantly improve officials' behavior and reduce official corruption.

A multiparty, democratic political system has not emerged in China because the ruling elite fear that political chaos might result. However, the CCP has always proclaimed that it is interested in expanding intraparty democracy because it feels that it would not directly threaten CCP's ruling position in China. The principal CCP's party organization principle is democratic centralism. Unfortunately, in its practice, "centralism" is usually emphasized at the expense of democracy. This practice is manifested in the dominant power and authority bestowed to the Party Secretary at all levels, which are major sources and contributing factors to lack of oversight of party officials and to official corruption. Proposed measures to improve intraparty democracy include expanding the role of party congresses and making them better decision-making and supervising bodies; introducing true competitive electoral systems within the party; and creating a clearer division of power between the party committee and the party disciplinary committee.[11] Expanding intraparty democracy helps channel interests and voices of different societal groups and classes to decision makers since many of these groups and classes are also present inside the CCP.

The second possible political reform measure is fully utilizing people's congresses in China and making them true legislatures and

[11]For more on expanding intraparty democracy, see Brantly Womack's article in this volume and Gang Lin, "Leadership Transition, Intra-Party Democracy, and Institution Building in China," in Weixing Chen and Yang Zhong, eds., *Leadership in a Changing China* (New York: Palgrave-MacMillan Press, 2005), pp. 37–55.

supervising bodies. According to the Chinese Constitution, the People's Congress is the highest decision-making body for each level of government in China. The powers of people's congresses at all levels include passing laws; appointing governmental officials, judges, and procurators; and functioning as a mouthpiece of the people. In reality, however, people's congresses still lack independent legislative and oversight powers even though progress has been made in recent years.

The Chinese central government often lacks the information and ability to supervise lower-level party and government officials. Indeed, given the size of the country, it is almost impossible for the central government to monitor every move of every local government. However, if the people's congresses becomes true legislative bodies and are given real authority, they can become effective oversight organizations at each level of government from township/town to province. All deputies, who are democratically and competitively elected, will become voices for their constituencies, as well as ears and eyes for the central government to help prevent wrongdoings of local government officials. For the people's congress to become a genuine professional legislature, its size needs to be reduced and its members should become career or semicareer legislators. The reform of the people's congress can be done without much change in the current Chinese constitution.

The third political reform area concerns the press. As a result of recent press liberalization and commercialization during the reform era, there are hundreds of television and radio stations and thousands of newspapers and magazines in China today. However, reporting of political news is still greatly controlled by the government. Reporting of major political events and official corruption cases has to first be approved by appropriate authorities. Moreover, Chinese news reporters and editors often adopt self-censoring policies to avoid getting themselves into trouble with the government and being punished. As a result, the press in China still cannot fully perform the oversight function it should in a modern society. A press that has more freedom to air people's concerns and complaints can also serve as a valve to release societal pressures, thus

preventing people from using extra-conventional means to have their voices heard.

Finally, China needs significant changes in its judiciary system. Again progress has been made in this area in the last two decades compared with the Cultural Revolution era, when all the formal legal systems were abolished. But the judiciary system is still not an independent body, and there is too much interference from the Party and the government at all levels. A more independent judiciary system can more effectively check and prevent the abuses of power by governmental officials and provide social justice, which is sorely needed in China today. A fair and independent judiciary system can obviously channel people's grievances through the established institution rather than via extra-system means or even violence. In addition, judgeship positions should be filled with professionally trained judges, not retired military officers.

The ten papers selected for this volume are all connected with the central theme of the conference, that is political civilization and modernization, although they draw on a variety of perspectives: some are empirical, and others are theoretical. They also cover broad areas such as institution building, political culture, democracy theory, the legislature, the judiciary, and the media. The first two chapters deal with institution building. Weixing Chen argues that the essence of the regime's promotion of political civilization is a continuation of China's century-old efforts in institution building. While the new leadership under Hu Jintao and Wen Jiabao have made progress in this endeavor, it is still too early to tell whether their efforts have achieved the goal. Also focusing on China's institution building, Yufan Hao argues that one unexpected consequence of out-of-control corruption is that it helps China's institution building and may diversify China's sources of power, which used to be dominated by the Party alone.

Both Chapter 3 and Chapter 4 deal with political culture. Far-reaching and theoretically sophisticated, Baogang Guo's research provides an innovative model for studying Chinese political culture. He argues that China's new political culture will be a convergence of the three current, distinctive political

cultures: traditionalism, communism, and liberalism — blended together through modernization. On the basis of a survey in 12 southern Jiangsu counties in 2000, Yang Zhong found that, contrary to the conventional belief about Chinese peasants' conservativeness, peasantry support for key democratic values is strong and does not lag far behind that of people in the cities.

The next two chapters deal with the crucial question, Is democracy possible under one-party rule? Against the background of the CCP Fourth Plenum in September 2004, Brantly Womack considers the theoretical question, Is CCP-designated party-state democracy, which is drastically different from legislative democracies, possible? What are, theoretically, the criteria for the party-state democracy? Challenging the view that authoritarian regimes are fragile and easy to collapse, Sophie Diamant Richardson argues, using the case of China, that authoritarian regimes can be flexible, reallocation of power may not lead to the loss of control, and a slow transformation of rules may signal a shift in the essence of the regime.

In a departure from Womack's broader concern about whether democracy is possible in a party-state like China, Jean-Pierre Cabestan, in Chapter 8, looks at China's judiciary reform to see whether it is possible to have genuine "rule of law" as claimed by Beijing. In the last two decades, China has developed a system that differs from Brezhnev's Soviet Union, and under pressure from both international and domestic sources, China is likely to make more progress in its judiciary reform.

Discussing recent Chinese experience in public participation and its importance to the development of political civilization and socialist democracy, Jamie P. Horsley argues that in the absence of competitive elections, except at the grass roots level, mechanisms of public participation through hearings and comment procedures might turn out to be a real step toward greater democracy.

Xinsong Wang's study in Chapter 9 is based on empirical research in Shenzhen and Beijing in 2003 on the motives of those middle-class people who ran for the posts of district-level people's deputies. Wang found that although individual motives for running for people's deputies varied, the primary motivators seemed to be

advancing economic interests by protecting private property and defending election rights granted by law.

Based on a study of the Chinese media in the 1990s, especially the recently emerging "Public Forum" television programs, Junhao Hong's chapter argues that these programs have symbolized a meaningful evolution of China's media from a tightly controlled party-propaganda machine to a multifaceted institution, a situation that goes hand in hand with a less-controlled, more open, and more democratic China as a whole.

Chapter

1

# The Essence of Promoting "Political Civilization" in China: Institution Building

*Weixing Chen*

The term *political civilization*, like many other terms in Chinese politics, is ambiguous. Fashioned after *material civilization* and *spiritual civilization* to distinguish China's development from Western development and to avoid the sensitivity of such terms as *political reform* and *democratization*, the term *political civilization*, according to the Chinese press, refers to advanced political ideas and institutions and civilized political behavior. The essence of promoting political civilization in China, however, is institution building, which is a concomitance of decentralization, institutionalization, and new institution building. The smooth and peaceful transition of power from the third generation of Chinese leadership to the fourth generation at the 16th National Congress of the Chinese Communist Party (CCP) in Beijing on November 8–14, 2002, is a recent example of institutionalization, and the introduction of village elections and electoral mechanisms into the CCP and the establishment of citizen-petition

access to the CCP and rule of law are examples of new institution building.

The process of China's economic reform, to a large extent, is one of decentralization and institution building aimed at transforming China's planned economy into a market-oriented economy and raising the Party's ruling and governing capability in an environment of decentralization. In fact, no institution has been left untouched in China since the economic reform in 1978.[1] The CCP has not been as bold to democratize politically as it has been economically, but the CCP has not actively mounted a rearguard action against the growing demands and power of civil society either. If the process of China's economic reform is one of liberalization, the process of institution building is one of democratization, even though institution building, in practice, is aimed at enabling the CCP to muddle through and China's leadership to cope with the rapid pace of socioeconomic change.

Transforming China's planned economy into a market-oriented economy requires getting institutions right, and getting institutions right means empowering individuals and localities by decentralizing the power of the CCP and state. Getting institutions right paved the way for the successful transformation of China's economy under Deng Xiaoping, but institutionalization, new institution building, and the establishment of the rule of law are necessary for the maintenance of China's economic growth under the third and fourth generations of post-Deng Chinese leadership. Leaders after Deng are technocrats rather than revolutionaries. Deng's legitimacy derived from his reputation as a revolutionary veteran with political charisma as well as the power he inherited from Mao, whereas the legitimacy and power of technocrats like Jiang Zemin and Hu Jintao are largely based on their performance, and performance has undoubtedly become the new criterion of legitimacy for the CCP and the leadership of technocrats in post-Deng China. To perform is to maintain sustained economic growth. Yet the CCP's endorsement of capitalism as a means of economic development has not resolved the fundamental

[1]Tony Saich, *Governance and Politics of China* (New York: Palgrave, 2001), p. 52.

contradiction between a market economy and the CCP one-party rule. Institution building is therefore necessary to manage the serious social and political ramifications of the bewildering and sometimes contradictory combination of one-party state socialism with competitive capitalism. The CCP's effort to get institutions right for economic growth under Deng Xiaoping resulted in CCP decay as a political organization and the collapse of China's ideology-based social solidarity. In this context, institution building is essential not only to sustained economic growth but also to the legitimization of the CCP power under the third and fourth generations of Chinese leadership.[2]

Focusing on institution building since China's economic reform under Deng Xiaoping, Jiang Zemin, and Hu Jintao, this chapter discusses decentralization and its ramifications in the first part, politics of adaptation and the development of intra-party democracy in the second part, and the task of building a new political order in the third part.

## DECENTRALIZATION UNDER DENG XIAOPING AND ITS RAMIFICATION

Promoting economic growth and introducing market-oriented reform in China involved depoliticizing the Chinese polity, economy, and culture. The CCP under Mao from 1957 to 1976 was a party of politics because (1) the mission of the CCP for the Maoists was to realize the ideological goal of Communism; (2) politics, heavily colored by ideology, was in command; and (3) the Chinese polity, economy, and culture were highly politicized.[3] If the CCP ideology had been the linchpin around which economic and other policies revolved in the three decades before the 1978 economic reform in China, the Dengist reform changed that. It was evident to Deng that, after two decades of too much ideology, the priority for China after the Cultural Revolution

[2]Mao Zedong is the first generation, Deng Xiaoping the second, Jiang Zemin the third, and Hu Jintao the fourth.

[3]Weixing Chen, *The Political Economy of Rural Development in China, 1978–1999* (Westport, CT: Praeger, 1999), pp. 29–33.

was to develop China's economy at all cost. The fact that political power was monopolized by the CCP and an opposition party was not allowed in China did not necessarily mean that the CCP would not collapse, as evidenced by Russian and European Communist parties. Even as a monopolizing party in power, the CCP still must try to legitimize its power and leadership by answering the call of the times, meeting the demands of the population, and resolving problems. A regime whose legitimacy was based on ideology was legitimate only if its policy was successful and its promises were fulfilled. Few people were likely to challenge the CCP's legitimacy when they were sharing the Party's success. With deep grievances against the political chaos and economic loss, large segments of society were alienated from the Party and the state. The legitimacy of a new leadership was based more on successful policies after the Cultural Revolution, and economic development thus became the CCP's new priority.

The essence of Deng's effort to depoliticize the Chinese polity, economy, and culture was to transform China's planned economy and carry out different forms of the capitalist experiment in China, which was a process of getting institutions right. The "totalistic" functions of the Chinese state associated with Mao's party of politics must be changed in the process. As a result of Deng's reform effort from 1978 to 1992, "class struggle" was rejected, communist ideology was discarded, and the Chinese polity, economy, and culture were depoliticized. The CCP was transformed from a party of politics into a party of economics from 1978 to 1992 under Deng Xiaoping because (1) economic development became the new mission of the CCP during the reform; (2) economics was in command, reversing the relationship between politics and economics of the previous decades; (3) ideology was reinterpreted; and (4) the Chinese polity, economy, and culture were depoliticized. The official endorsement of capitalism as a means of development in China after Deng Xiaoping's Nanxun in 1992 marked the end of Deng's effort to depoliticize the Chinese polity, economy, and culture.

There should be no doubt that China's great economic success in the 1980s and 1990s was closely associated with Deng's effort to depoliticize the Chinese polity, economy, and culture. This

depoliticization later became an important part of the so-called Deng Xiaoping Theory, which was written into the CCP constitution at the 15th National Congress in 1997. The essence of Deng Xiaoping Theory is its political utility that endorses capitalist practice in China's economic development, on the one hand, and emphasizes the legitimacy of the CCP leadership in the reform, on the other. What underlines the political utility of Deng Xiaoping Theory is the process of institution building that serves to compromise both economic liberalism and political authoritarianism. The Chinese system before the economic reform was subject to chronic inefficiencies due, in part, to the preservation of an ideological discourse, but the functioning of the system in the absence of such a discourse depends on institution building.

Institution building first of all involved the transformation of the CCP as the sponsor and supervisor of China's economic reform. In organizational terms, a party of economics, in contrast to a party of politics, could not be a monolithic party. CCP politics under a party of economics became a politics of economics in which interests were defined in diverse economic terms. With interests diversified, power was naturally shifted from the center to the localities, which challenged the center's unified political leadership.

If excessive centralization was to blame for the economic stagnation before the reform, it became necessary to encourage local initiatives and innovations in policy and organizational terms. The necessary condition for local initiatives and innovations was autonomy and independence from higher party authorities. Promoting economic growth was a local endeavor, as nobody could depend on higher party authorities for one's own prosperity and for one's own organizational revenues and personal well-being. Economic activities such as mobilizing investment funds, targeting enterprises for growth, gathering and providing information about market opportunities, acting as brokers for contracts, and so forth were the individual efforts of local governments and government officials. As economic success was closely associated with market localism, the political attempts to secure private advantage challenged the Party's unified leadership. Deng's reforms acted to strengthen the regions at the expense of the

center and to solidify the political importance of economic capital and market position.[4] The central government was losing control[5] and becoming increasingly remote to the provinces in many ways. First, the center was losing its general regulatory capacity. According to one study, between 1978 and 1992, the central government's tax base had shrunk from 31.2 percent of GNP to 14.2 percent, even though China's GNP was growing at an annual rate of 9.5 percent.[6] Next, central government policies and regulations were often ignored. "Those who are supposed to have high authority cannot always command the actions of those who ultimately implement state policies," as Lucian W. Pye described.[7] Finally, the center could no longer regain the control over the provinces it had before the economic reform without severe economic consequences. The provinces, however, were facing the same rising demands from their localities within their provinces.

When economic growth became the criterion for evaluating the performance of party and government organizations and officials, party organizations increasingly came to resemble industrial corporations, and party officials started to behave as though they were hard-driving business executives vitally concerned with profitability and market share.[8] When party organizations and officials cannot depend on the higher party authorities for prosperity and revenues, the center naturally becomes increasingly unimportant and remote.

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[4]Jeremy Paltiel, "Jiang Talks Politics — Who Listens? Institutionalization and Its Limits in Market Leninism," *The China Journal*, no. 45 (January 2001), p. 113.

[5]For instance, the loss of fiscal control caused the decline of state capability. According to Wang Shaoquang and Hu Angang, between 1978 and 1992, the central government's tax base had shrunk from 31.2 percent of GNP to 14.2 percent, even though China's GNP was growing at an annual rate of 9.5 percent. See Wang Shaoguang and Hu Angang, *Report on China's State Capacity* (Hong Kong: Oxford University Press, 1994).

[6]*Ibid.*

[7]Lucian W. Pye, "Jiang Zemin's Style of Rule: Go for Stability, Monopolize Power and Settle for Limited Effectiveness," *The China Journal*, no. 45 (January 2001), p. 47.

[8]Andrew G. Walder, ed., *Zouping in Transition: The Process of Reform in Rural North China* (Cambridge, MA: Harvard University Press, 1998), p. 17.

And when officials and organizations have to compete with each other to promote their own interests on the market,[9] the Chinese party-state becomes increasingly uncoordinated politically. There could hardly be shared economic interests between provinces and regions or between higher and lower party authorities. Given the differentiation and diversity created since the economic reform, the center found it harder and harder to define the collective good for the whole country because provinces, regions, and locales were each becoming a "special zone" in their own way and terms. In such a context, party organizations and officials were all seeking more power and freedom from higher authorities to conduct their own business and pursue their own interests and fighting each other for opportunities and market shares. The development of "dukedom economies" (*zhuhou jingji*)[10] is evidence of this trend. In its extreme, various provinces, regions, and locales not only competed with but also "blockaded" one another.[11] Vertically, the more money the higher authorities got in terms of revenues, the less money the lower authorities would have left. Horizontally, the more market shares one province, region, or locale got, the less the others had. In this case, when politics became a politics of economics, party organizations and officials no longer had shared interests with the party authorities above and with each other. As a result, the CCP decays as a political organization in terms of its unified political leadership, political control, and mobilization capability.

Party decay is also reflected in party disintegration and the loss of the population's psychological attachment to the CCP. Communist

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[9]See Kenneth Lieberthal and David M. Lampton, eds., *Bureaucracy, Politics and Decision Making in Post-Mao China* (Berkeley: University of California Press, 1992).

[10]See Shen Liren and Dai Yuanche, "Formation of Dukedom Economics and Their Causes and Defects," *Chinese Economic Studies*, vol. 25, no. 4 (Summer 1992), pp. 6–24; and Christine Wong, "Central–Local Relations in an Era of Fiscal Decline: The Paradox of Fiscal Decentralization in Post-Mao China," *China Quarterly*, no. 128 (December 1991), pp. 691–715.

[11]Zhu Rongji, premier of China's State Council, issued an order prohibiting economic blockade in provincial, regional, or local economic activities on April 21, 2001. See Renmin Ribao (*People's Daily*) (April 30, 2001), p. 5.

ideology used to be an integrative force among the elites and between the elites and the masses. With the demise of communist ideology, the ideal of communism was replaced by the pursuit of immediate economic and materialistic interests, and the rules of politics and society based on ideology-related conventions gave way to the rules governed by material interests. Consequently, the party members' loyalty, commitment, dedication, and sacrifices were lost in the process. As party officials were no longer constrained by conventions and clearly stated ideological principles and were beginning to benefit materially and prosper from the economic reform, they tended to regard their institutional power as a tool for material interests and wealth. With the faith and conventions gone, corruption within the Party becomes rampant.

The impact of the demise of communist ideology and depoliticization on the population was also profound. The cohesion of Chinese society and the integration among elites and between the elites and the masses in China had always been contingent on an official ideology. A unique characteristic of traditional Chinese society was that order and unity had been maintained for 2,000 years by cultural conventions and virtues derived from traditional Chinese ideology rather than from religion or law.[12] The intellectual, psychological, and moral void that resulted from the demise of communist ideology and Deng's depoliticization once again generated a need for a new ideology for the post-Deng leadership. China fell into a severe and widespread "crisis of faith, trust, and confidence" after the Cultural Revolution, which could be attributed to the ideological excesses of 1957–1978 and to the failure in policies associated with the ideology during the same period. With the loss of the CCP's ideological appeal and the erosion of the moral fabric of the Chinese society in an environment of money worship, some found spiritual sanctuaries in Falungong and others in religion. Still others found temporary sanctuaries in the pursuit of money. The majority, however, have not yet found a spiritual sanctuary. With the collapse

[12]Xu Ming, ed., *guanjian shike jidai jiejuode 27ge wenti* (*Twenty-Seven Pressing Issues at a Crucial Moment*) (Beijing: jinri zhongguo chubanshe, 1997), p. 452.

of the Chinese welfare system in the 1990s, the Chinese population is neither psychologically nor materialistically attached to the CCP. The CCP has lost those who have found their own spiritual or monetary sanctuaries. Those without a sanctuary are alienated from the CCP, as they do not have any sense of social purpose.

The ideology-based social solidarity collapsed with the demise of communist ideology and depoliticization, but no new social solidarity was established in its wake. An ideology-based social solidarity under the party of politics was one in which there were shared beliefs, unchallengeable party authority, and tight political control. Individual differences developed in the process of the economic reform, opening up spheres of action that are not subject to collective control. Nevertheless, institutional linkage with the CCP became important under China's socialism with capitalism. First, exchange of services and pursuit of personal interest depended on linkage with the CCP apparatus. Next, the linkage with the CCP apparatus served as the main axis around which all economic and social activities revolve and on which the Chinese society operated. Finally, linkage with the Party and government apparatus constituted the core of connection networks that helped lubricate tensions and maintain the dominant position of the CCP. The exchange of services, pursuit of personal interests, the operation of connection networks, and Chinese society itself would all be disrupted without these institutional linkages. A body of new rules appropriate to the changing circumstances was to be established so that markets be regulated and workers given a sense of social purpose.

How shall we account for the fact that the Chinese system has continued to function with the CCP still at the helm of the reform — despite the fact that the CCP has decayed and new social solidarity has eroded? The answer is institution building and the transformation of the CCP.

First, the CCP has established new modes of control: punitive personnel management and punitive campaigns. Punitive personnel management involves removing and punishing lower-level party and government officials who fail to carry out the center's orders on crucial issues or are to blame for disasters and organized actions

from below. An example of "crucial issues" is the most recent effort by the CCP to control the spread of SARS. Some high-ranking government officials were removed due to their negligence to SARS, and party and government officials at any level who failed to carry out the orders from the center would be immediately removed. "Organized actions" refers to riots and protests by average citizens. Punitive personnel management serves three purposes: (1) enabling the center's policies on crucial issues to be carried out effectively; (2) trivializing major issues, dissipating minor ones, and localizing problems and crises; and (3) providing the population with an outlet for grievances, hence shifting the population's resentment and anger from the center and system to incapable, corrupt lower-level party and government officials. Fear of removal and punishment by the center can often make local party and government officials more sensitive to the population. Punitive personnel management is accompanied by punitive campaigns such as anticorruption "strike hard campaigns" aimed at cracking down on crimes in the society and corruption within the CCP.

Second, efforts were made to establish people's petition access to the power of the CCP. Village elections were introduced in rural areas. Correspondence and Complaint Offices were strengthened and Complaint (*jubao*) Hot-line Centers were established throughout China. It was the fear of chaos and sense of urgency to solve the political crisis that drove the case for the establishment of these offices and village elections. As corruption, civilian disobedience, and the collapse of root-level organizations in rural areas became evident, pressures mounted to reassert political and ideological control, which pushed the building of new institutions.

Third, "special interest groups" arising from the reform are benefiting enormously from the system and thus want to maintain it. As party officials and their families, individuals with connections to the CCP apparatus, and the new rich have become prosperous, the necessity to maintain and prolong the system become evident. These groups thus share this common interest. In the meantime, "interest" provides an exit for many average Chinese, for they transform people's "public action" (demands for political reform) to

"private interests" (economic activities).[13] For those within the system, opportunities depend on how well one can play the political game, while for those outside the system, opportunities are contingent on the links one has with those within the system. It seems to many that opportunities and the road to wealth through linkage with the CCP apparatus are accessible and open. Many people do not resent the system as much as their lack of connection and luck. They resent the privileges and unequal opportunities that those in power or those with connections have, but they do not mind those privileges and those unequal opportunities if they are able to get them. Many are in fact fighting hard for those special privileges and opportunities instead of against the system that creates them. Desperately trying to find access and opportunities, they assume that the cause for unequal opportunities and unnatural inequalities in China lies not in the system but in their inability to find access and opportunities.

## INSTITUTION BUILDING UNDER JIANG ZEMIN'S POLITICS OF ADAPTATION

The reality in post-Deng China was that the CCP must try to attune to the new conditions to remain powerful and strong. Jiang's effort was encapsulated in the "Three Stresses" (stressing politics, political study, and political moral spirit), the "Three Represents" (the CCP representing the most advanced culture, the most advanced forces of production, and the interest of the overwhelming majority of the Chinese population), and the combination of "rule by law" with "rule by virtue."

The "Three Stresses" was first advocated by Jiang Zemin before the CCP's 15th National Congress in 1997. Following the

[13]Zheng Yongnian, "Ideological Decline, the Rise of an Interest-Based Social Order, and the Demise of Communism in China" (p. 12), a paper delivered at the Conference on Deng Xiaoping's Nanxun Legacy and China's Development at East Asian Institute of National University of Singapore, Singapore, 11–13 April, 2000. See also, Albert O. Hirschman, *Shifting Involvements: Private Interest and Public Action* (Princeton, NJ: Princeton University Press, 1982).

15th National Congress, a political campaign of "Three Stresses" was carried out within the Party and government and did not end until 2001. The short-term political consideration for Jiang to put forward the Three Stresses was to use politics to consolidate his own power within the Party and strengthen his leadership by emphasizing institutions. Mao and Deng could govern and exercise power without institutional titles, but Jiang, who did not enjoy the charisma and image of paramount leaders like Mao Zedong and Deng Xiaoping, could not. Jiang was the general secretary of the Party, president of the People's Republic of China (PRC), and chairman of the Military Committee of the CCP Central Committee. Stressing politics was meant to place emphasis on institutions through which Jiang could govern and exercise power.

The idea of "rule by virtue" was advanced by Jiang Zemin on January 11, 2001, at a national conference where heads of propaganda departments participated. Jiang stressed at the conference that the CCP must govern the country by combining "rule by law" with "rule by virtue." "Rule by virtue" resembles the Chinese aphorism: *xiushen qijia zhiguo pingtianxia*. That is, cultivate oneself and make oneself useful to the society (*siushen*), look after the family and have strong sense of family responsibilities (*qijia*), look after the country (*zhiguo*), and promote peace and harmony under heaven (*pingtianxia*). China's economic reform started in an environment of moral and ideological decay following the Cultural Revolution, while the traditional Chinese culture, which had been severely devastated by years of revolution and political campaigns, was further devastated by money worship in the economic reform. The power of culture was important for the post-Deng leadership primarily because the old means of political control had almost been exhausted and codes of conduct for party members and for the population was still to be institutionalized. The "Three Represents" was formally put forward by Jiang Zemin in February 2000. The essence of Jiang's Three Represents involves the transformation of the CCP in the Party's search for intra-party democracy to "keep pace with the times." First of all, it was a response to the emergence of the wide gaps between the rich and the poor and between the privileged and

the unprivileged. Representing the interest of the majority of the people was not just a matter of letting wealth trickle down to the poor, which may or may not happen, but to make sure that the overwhelming majority of the Chinese population are the beneficiaries of China's economic growth. Second, it redefined the CCP's political base and tried to accommodate the demands of the intellectuals, entrepreneurs, and other emerging socioeconomic classes and incorporate them into China's political order. In his speech on the occasion of the CCP's 80th anniversary, Jiang Zemin voiced his intention that the emerging capitalists in China should be allowed to join the CCP. This idea turned out to be one of his legacies in terms of institution building.

Third, Jiang's "Three Represents" emphasized the importance of the traditional leading classes of the CCP — the workers and peasants — and the importance of reincorporating them into China's changed social and political order. "Representing the interest of the overwhelming majority of the people" was the core of the Three Represents, which redefined the CCP's mission and pointed the direction of development for China in the post-Deng era. Finally, it sought to increase the CCP's ruling capability.

Economically, "prosperity for the majority of the population" was a natural next step to Deng Xiaoping's "letting few individuals get rich first." Workers and peasants, especially those who were unemployed, had been left without any sense of social purpose since the 1990s, and to a certain extent they were becoming the victims of the current "socialism with competitive capitalism." To reincorporate workers and peasants, who comprised the majority of the Chinese population, into China's social and political order concerned the very legitimacy of the CCP. If "Socialism with Chinese Characteristics" emphasizes the CCP leadership and the role of the state in China's market economy, it was certainly a test for the CCP to improve the workers' and peasants' standard of living and social status through policies of redistribution and resource allocation. But the basis for "prosperity for the majority of the people" was sustained economic growth, for which the expansion of the private arena was a necessary condition. The CCP could not try to protect

and expand the private arena, on the one hand, and keep private property owners or capitalists out of the political order, on the other. To allow capitalists to join the CCP seemed to be the first step toward incorporating them into China's political order, which directly concerns the nature of the CCP as a "Communist Party." Jiang's vision to build a "*xiaokang shehui*" (comparatively well-off society) has both economic and political implications. Economically, it emphasizes even development between the coastal provinces and inland provinces and between urban areas and rural areas. Politically, it emphasizes "*xiaokang*" instead of "the middle class" in order to distinguish China's development path from other development paths, especially the Western path. To increase the representation of different interests within the Party and build a new political order in China through the transformation of the CCP is a case of institutional innovation and institution building.

Other than Jiang's institutional innovation, institution building was also occurring on other fronts during Jiang's tenure. First, age and term limits were further confirmed when Jiang relinquished the CCP general secretaryship after two terms and stepped down from the CCP Politburo as he was over 70 years old at the 16th CCP National Congress. All six of the previous seven members on the CCP Politburo Standing Committee stepped down as they reached the mandatory retirement age of 70. The average age of all Politburo members after the 16th CCP National Congress is 60.6. Second, rules regarding qualifications for party and government leadership positions were further formalized, and technocrats at all levels are taking over leadership positions. All members on the CCP Politburo are engineers, and the percentage of CCP Central Committee members having a college education is 98.6. Third, collective leadership was more emphasized due to the emergence of "interest groups" within the Party and power sharing among the party elites after Deng at the top. Other than Jiang's loyalists and the Shanghai group and Hu Jintao's, *tuanpai* (leaders with Youth League backgrounds), *taizidang* (offspring of party elders), and *defangpai* (primarily provincial leaders representing local interests) have increased their representation significantly at the top at the 16th CCP National Congress. Finally, electoral

politics further developed to involve elections of candidates to the Party and the People's Congresses at all levels and village committees. What should be repeated, however, is that institutional innovation and institution building are the Party's effort to attune itself to the new conditions of reform in post-Deng China in order to raise the Party's governing capability for performance and for addressing problems such as corruption that were eating away the Party's legitimacy.

## BUILDING A NEW POLITICAL ORDER IN THE TWENTY-FIRST CENTURY

The significance of the 16th CCP National Congress was not only that the fourth generation of Chinese leadership was produced at the Congress but also that it was the first-ever smooth and peaceful transition of power in the CCP history. Neither Mao Zedong nor Deng Xiaoping successfully transferred power to their chosen successors, and Jiang Zemin presided over the unprecedented transition of power to Hu Jintao, a candidate not of his choice. If the CCP transformation and changes in politics and policies have always been associated with leadership change, Hu's succession to Jiang would imply the coming of a new era of politics and policies. The ultimate challenge for the fourth generation of Chinese leadership is to build a new political order in China, which primarily involves institutionalization, the establishment of citizens' institutional petition accesses to the CCP, and the establishment of rule of law in the Chinese political context. Building a new political order may not be a clearly defined goal for the new leadership, and it should be understood in light of the new leadership's effort to consolidate power and establish legitimacy, but it is the direction to which post-Jiang politics is pointing.

China's economic reform and openness have created conditions for the development of personal differences, opening up spheres of action not subject to collective control. In the meantime, problems such as high unemployment rates, corruption, the fallouts of the welfare system, the widening gaps between the rich and the poor, unequal and unfair treatment, intolerable burdens on peasants, and

so on have contributed to widespread grievances and resentment in the Chinese society. It is therefore important for Chinese leadership to be flexible and sensitive to stability and popular pressures. "In order to create a stable economic and social environment for promoting all-round reform and development,"[14] it seems inevitable for the new leadership to try to build a new political order that can accommodate popular pressure on the basis of sustained economic growth.

The Chinese reception and perception of the new leadership is crucial to the new leadership's effort to consolidate their power and establish their legitimacy. The Chinese perception and reception of the new leadership are based primarily on the performance of the new leadership and the result of the new leadership's policy on specific issues, such as unemployment, the wealth gap, economic stagnation in rural China and heavy burdens on peasants, corruption, the fallouts of the welfare system, and so on that would require institutional innovations. Noticeable changes have occurred since the leadership succession in 2002, and the new leadership has widely publicized their "putting the people first" approach. Hu Jintao's frequent visits to poor rural regions of China and the transparency of the new leadership in handling SARS were reflections of "putting the people first" approach.

The Jiang leadership was already confronted with unprecedented challenges of governance.[15] The center is handicapped in its reach, and it is the local government that is exercising power in many ways in China today. Jiang did not enjoy Deng's reputation, image, and charisma, while Hu in the immediate post-Congress years will not be able to even enjoy the reputation and image of Jiang. If Jiang was much more dependent on Deng than Deng was on Mao, Hu is dependent on both Deng and Jiang. Hu depends on Deng because Deng appointed Hu as Jiang's successor. Hu depends on Jiang because Jiang's politics were legitimized constitutionally,

[14]New Year's editorial, *People's Daily* (January 1, 2002).

[15]David Shambaugh, "The Chinese State in the Post-Mao Era," in David Shambaugh, ed., *The Modern Chinese State* (Cambridge: Cambridge University Press, 2000), p. 162.

and Jiang did not disappear from the political scene after the Congress and still retains the chairmanship of the CCP Central Military Committee.

Hu must try to consolidate his power and establish his own legitimacy, but he must try to accomplish this under the theme of "unity and stability." This theme is determined by two developments in Chinese politics over the last decade: the end of paramount leaders and the increasing sources of social and political instability. With the death of Deng, more emphasis has been placed on collective leadership in post-Deng China, which involves power sharing among senior CCP leaders. In the immediate post-Congress years, collective leadership involves (1) the establishment of Hu's authority within the new leadership, (2) power sharing and deal making among the nine members of the Standing Committee of the new Politburo, and (3) the delicate politicking with the third generation of Chinese leadership, as Jiang Zemin is still the chairman of the CCP Central Military Committee.

Since the 1989 Tiananmen incident, order and stability have become the top concern of the CCP, as order and stability concern both the survival and legitimacy of the CCP and the process of reform and openness. In the context of CCP decay and the erosion of China's social solidarity, top CCP leaders have a common interest in maintaining order and stability. On the one hand, there cannot be disunity within the CCP on this issue because all will be losers when order and stability are disrupted. On the other hand, power struggles continue under the very premise of order and stability. Collective leadership provides both a form of politics for top CCP leadership to advocate their views and pursue their interests and a form of leadership for governance.

Unity revolved around the CCP Chief Jiang Zemin before the 16th CCP National Congress. Although Jiang failed to establish himself as a new paramount leader in post-Deng China, he was able to establish his dominance in Chinese politics. Hu may have a more difficult job to do than Jiang in this regard. In his address to the graduating class of provincial leaders at the CCP Central Party School on May 31, 2002, Jiang, other than reiterating his "Three

Represents," reemphasized the importance of unity and stability. This emphasis was understandable in terms of the forthcoming Party Congress and leadership change. Following Jiang, Hu, as the chair of the ceremony and president of the CCP Central Party School, also emphasized the importance of unity and stability.

To Jiang, unity and stability depend on whether his line will be followed, while to Hu, unity and stability is contingent on how smoothly power will be transferred to him and the fourth generation of Chinese leadership. Since nobody could afford to be blamed for disturbing unity and stability, it is important that the interests of individual leaders and institutions are balanced, which will further strengthen collective leadership. Collective leadership will revolve around three institutions: the Party, the National People's Congress, and the State Council plus other members of the Standing Committee of the Politburo of the CCP Central Committee. The power struggle surrounding the succession before the Congress involved deal making and compromises among the senior CCP leaders, whereas politics after the Congress is reflected more in bureaucratic turf wars.

According to Max Weber, there are three types of authority patterns: traditional, charismatic, and legal-rational legitimization.[16] China has a mixed pattern of all three kinds of authority. Without charisma, Jiang Zemin, the third generation of Chinese leadership, in contrast to Deng's informality regarding official titles, simultaneously held the positions of General Secretary of the CCP, President of the PRC, and Chairman of the Central Military Committee. Jiang still retains the chairmanship of the Central Military Committee after the 16th CCP National Congress. Obviously, Jiang's authority is more institutional than personal. Hu Jintao is currently the CCP General Secretary and PRC President. Legal-rational authority would certainly give him more legitimacy.

Under the theme of unity and stability, institutionalization and consensus building in policy making seem to be more important than ever before. However, to emphasize institutions, the ruling

[16]Max Weber, "Politics as a Vocation," in David Held, *et al.*, eds., *States and Societies* (New York: New York University Press, 1983), pp. 111–112. First published in 1919.

party must do the following: act within the framework of the Constitution and laws, establish a system of administration according to law that promotes the standardization of the exercise of the administrative power, and build a legal system that provides guidance for all aspects of social life. Legality will not grow unless the party-state fosters and maintains a commitment to it and alters the allocation of power between the courts and the rest of the party-state. This is where challenges and opportunities lie for the new leadership.

Economic growth was a way out of the difficult situation for Deng in post-Mao China. China's steady economic growth, its decision to join the World Trade Organization in 2001, its winning the bid to hold the 2008 Olympic Games in Beijing, and Jiang's institutional innovations have helped the third generation of Chinese leadership muddle through. The power and legitimacy of the fourth generation of Chinese leadership cannot be based solely on economic growth though sustained economic growth is a necessary condition. To rise to the challenges of globalization, it seems necessary for China to reform its economic system, adjust its economic and industrial structure, change the way the economy is regulated, and improve the competitiveness of its enterprises, which was on the agenda of the Third Plenary of the 16th CCP Central Committee convened in October 2003. Decentralization and privatization through institutionalization are the keys to reforming China's economic system and reducing the state's regulatory power. The state's involvement is indispensable to reforming China's economic system and adjusting China's industrial structure, while such effort would have significant social and political ramifications for the state and may have to be achieved at the expense of the state.

"Rule of law" is a critical link between political and economic reforms and is organically related to China's transition to the market economy. In China, the Party's legitimacy derives from its successful leadership and commitment to economic development. The rule of the Party is increasingly associated with the rule of law, which is the key to a viable framework of social and political stability and sustainable economic development. The Party is also increasingly

bound by legislation.[17] "Rule of law" has both a private and a public dimension — private in guaranteeing predictability for economic transactions and resolving private disputes; public in restraining the powers of officialdom and regulating the transfer of political power.[18]

"The struggle for the 'rule of law' originated in the politically inspired correlations between domestic stability and economic reform," states Ronald Keith.[19] Market economy must be legal economy, as a healthy market economy must be regulated by laws that require a high degree of regularity, predictability, and transparency. The traditional reliance on policies and individuals could ill suit the needs of a market economy. This perceived logical relationship between the requirements of a market economy and the rule of law, to a large extent, underlined the advocacy on the rule of law by the central leadership since late 1992, when the construction of a socialist market economy was made the target of future reform and development.[20] The need for more laws and a strong legal system to maintain political stability and good social order would serve three purposes: to restore equilibrium to the social order when that equilibrium has been seriously disrupted, to enable members of the society to calculate the consequences of their conduct, and to mold the moral and legal conceptions and attitudes of a society. To employ legislation and administrative rules as essential tools in governing China would require the new Chinese leadership to depart from their previous reliance on policy declarations and their disregard of formal legal rules and move to elevate such rules into primary sources of authority. Such actions would constitute the core of institution building for the fourth generation of Chinese leadership.

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[17]See Gabriel A. Almond and G. Bingham Powell, Jr. eds., *Comparative Politics Today: A World View* (New York: HarperCollins, 1992), p. 510.

[18]Kathryn Hendley, *Trying to Make Law Matter* (Ann Arbor: University of Michigan Press, 1996), p. 12.

[19]Ronald C. Keith, *China's Struggle for the Rule of Law* (London: St. Martin's Press, 1994), p. 21.

[20]Linda Chelan Li, "The Rule of Law Policy in Guangdong: Continuity or Departure? Meaning, Significance and Progresses," *China Quarterly*, no. 161 (March 2000), p. 213.

To establish the authority of law is also the key to China's structured corruption. Corruption is threatening the very survival of the CCP and eroding the moral fabric of Chinese society. Structured corruption in China results from the bad combination of market greed with the problems of the one-party system. Because it is inherent in the system, structured corruption could be more effectively addressed through the establishment of the rule of law rather than anticorruption campaigns. In the absence of rule of law, the CCP anticorruption measures have been used to strengthen patron–client relations within the CCP for political purposes. If the market economy can be taken for granted, the elimination of structured corruption in China must start with the concurrent restructuring of institutions and the establishment of rule of law. It is the system that must be trusted, not just a few *qingguan* (clean officials).

To respond to rising popular pressure and resentment, it is also essential for the new leadership to provide citizens with institutional petition accesses. The current three institutional avenues of access include the People's Congress system, Offices of Correspondence/Hotline Centers, and village elections. Democratization was not the CCP's objective in establishing these institutional accesses for citizens, but they do provide outlets for grievances and resentment. Other than showing his solicitude for the masses by visiting poverty-stricken areas since the 16th CCP National Congress, Hu Jintao made anticorruption within the CCP and Government the central issue at the Politburo meeting on January 28, 2003. He organized members of the Politburo of the CCP Central Committee to study the Constitution, which, by implication, emphasized the rule of law instead of rule by man. Hu also called for the promotion of democracy and citizens' political participation at the Politburo of the 16th CCP Central Committee before the National Day of October 1, 2003. The two resolutions adopted at the Third Plenary of the 16th CCP Central Committee, which concluded on October 14, 2003, were (1) reform China's economic system and (2) revise China's Constitution.

Given the challenges they face, it is hard to see the new leadership's effort simply as a top-down process. Great space and differentiation have been created in China over the last two decades;

individualism has developed, and Chinese society today is more diversified economically and pluralized politically than ever before. The biggest question mark for the new leadership is whether the Chinese population will accept the collective good defined by the new leadership. Effective tools of control and policy do not seem to be available. The CCP has been relying more and more on punitive measures and physical coercion to maintain its authority and order, and these means will continue under the new leadership. Yet the authority and legitimacy of the new leadership cannot be based solely on these. In the ultimate solution to the current search for answers to China's social, economic, and political problems, the organized force of the state will probably have to meet the unorganized and transformed citizen-masses halfway, either through institutions or on the street — even if the central government still has much clout vis-à-vis the provincial and local governments. It is essential under these circumstances that the new leadership stay close to public opinion, provide institutional petition accesses for the Chinese, and establish institutional channels of public participation. Hu's opportunity may very well lie in coalition building at the top and democratization within the Chinese political context at the grassroots. The political skills of the new leaders in the short run and their courage and willingness to meet the demands of citizen-masses in the long run are the key to China's transition under the Hu–Wen administration.

## CONCLUSION

New leaders do make a difference. Had Mao lived another ten years, the CCP would not have adopted the reform policies of the late 1970s. China has come along in terms of "political civilization" under Deng and Jiang since the economic reform. If institution building continues under the Hu–Wen administration, the question that observers of Chinese politics have is how this new leadership will break the institutional constraints to veer China toward the path of democracy through institutional innovations in the Chinese political context. So far, the Hu–Wen administration seems to fall short in

meeting these expectations. But given the various constraints they are confronted with, they should be given more time. New leaders do make a difference, but we should keep in mind that institution building in China has been an ongoing process of muddling through. In any case, it seems inappropriate to conclude this chapter with far-fetched conclusions about an ongoing process.

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Chapter

2

# Corruption and Institution Building in Transitional China

*Yufan Hao*

## INTRODUCTION

On January 22, 1999, the Chinese Communist Party proposed a constitutional amendment to the National People's Congress of the People's Republic of China. Among several recommended amendments, Article Five of the Constitution was to be amended as follows: "The People's Republic of China shall be run in accordance with the law, and the PRC will construct a socialist state under the rule of law." Although an effort to legalize and protect private ownership was also an important part of the proposed amendment, most observers agreed that promoting the status of law seems to be at the center of this constitutional change. Why do the Chinese Communist leaders want to strengthen law in China? Since when did the post-Deng leadership become interested in the rule of law? The answer seems to lie, to a large extent, in China's runaway corruption and the failure to cope with it effectively.

Corruption has become a hallmark for the People's Republic of China in the 1990s. While its economy is experiencing spectacular

growth under a market-oriented reform program, embezzlement, bribery, extortion, favoritism, nepotism, and smuggling have not only increased in frequency, scale, and variety but have also spread into every corner of society. According to Liu Liying, a recently retired deputy secretary of the Chinese Communist Party's Discipline Inspection Commission, there were more than 861,900 cases filed by the discipline inspection and supervision organs at various levels across the country from October 1997 to September 2002. As a result, 137,711 people were expelled from the party and 37,790 of them were punished in the courts. Among them, 98 were leading officials at or above provincial and ministry level, while 28,996 were senior officials at the county level.[1] Indeed, the perversion of government function (using an office for the purpose of private gain) has become so serious an issue that many have viewed it as undermining the Communist Party's political legitimacy, weakening social stability, and dampening the country's economic future.

However, few people have realized that corruption has also played some unexpected role in moving China away from a traditional authoritarian society ruled by man into a rational–legal society emphasizing the rule of law. China's pragmatic reforms since 1978 have unleashed powerful market forces into a nation that was so dominated by the party-state that basic boundaries and distinctions defining the limits of market and official power were weak or nonexistent. At one level, this has increased corruption and confusion about the meanings of the term. At another, it has produced a situation that requires building new institutions to handle the issue effectively. The examples of other market-oriented societies suggest that both the boundaries and distinctions essential to workable rules are forged through political contention among private interests and between private interests and the ruling elite. Such boundary building depends on the existence of a civil society with the capacity — and opportunities — to articulate views other than (and often critical of) those of the leadership. It also depends on the existence of an effective institution with the capacity to monitor legal abuses by

[1] *China Daily*, December 9, 2002.

officials. China, however, is ill prepared for such changes due to the lack of a civil society and effective legal institutions in such an era of rapid change. Ironically, corruption, or the need to check runaway corruption, in China has put the issue of defining workable rules on the agenda. In the Ninth National People's Congress convened in March 1999, Jiang stated, "We must regard the work of fighting corruption as a matter of utmost importance that can determine the fate of our nation, and make long-lasting and unswerving efforts to combat corruption."[2] His successor, Hu Jintao, went even further immediately after the 16th Party Congress, when he defined anticorruption as "a major political task of the whole Party." He warned that failure to combat corruption would seriously harm the flesh-and-blood ties between the Party and the people and could even deprive the Party of its ruling position and lead it to "self-destruction."[3]

However, before the 1990s, the Beijing leadership relied primarily on the traditional method of political campaigns to fight against corruption. After several high-profiled anticorruption campaigns failed to check the vice, corruption has become even more prevalent. It has become so serious that the Beijing leadership has finally realized the importance of addressing the root of the problem by defining the boundary issues, by reducing the administrative power, and by strengthening the legal system. This seeming shift of strategy may have profound implications for the prospect of institutionalizing the changes brought forth by the reforms of the last 20 years. This chapter discusses how corruption has affected institution building in China by helping to change the definition of public and private ownership, by redefining codes of conduct, and by demanding the power of law in a hybrid economy. Exploring the sources of corruption as well as the relationship between corruption and institutional development will reveal how corruption, especially the efforts to check corruption, is stimulating change in China's political process.

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[2] *RMRB*, March 6, 1999, p. 1.

[3] <http://english.peopledaily.com.cn/200212/09>.

## THE SOURCES OF CHINA'S CORRUPTION

Before examining the impacts of corruption on China's institution building, it would be helpful to have a brief look at the causes of corruption in China under reform since the source of corruption, to a great degree, has determined the government's later approach to eliminate it. The literature on corruption suggests that corruption tends to occur when there is an increase of government power, a prevalence of regulatory loopholes and ambiguities, and confusion over changing values. The main sources of China's rampant corruption since the 1980s lie in the very nature of China's hierarchical, Leninist state and the radical changes produced by Deng Xiaoping's reforms over government power and social values.

The Chinese state system had two salient features prior to 1978. First, there was a highly centralized power structure in which the party and state intertwined at all levels of the hierarchy. The party-state controlled all, reaching from the center outward and downward to all corners of the society, including neighborhoods and villages. People were organized into work units of all sizes (factories, agricultural production teams, schools, hospitals, banks, etc.), each of which was an all-inclusive political, economic, and social entity granting officials personal discretion over a wide range of goods and services necessary for everyday life.[4] The results were extensive patron–client networks through which the state maintained hegemony in almost every aspect of people's lives. This structure provided many opportunities for local officials to seek their own personal and institutional interests. Second, after the land redistribution and conversion of private into public property of the 1950s, the state replaced the decentralized market with hierarchical control over all significant economic activities, based on command-style planning and the public ownership of nearly all significant economic organizations. Bureaucrats set prices, distributed resources, and determined which crops to plant, which products to manufacture,

[4]Barrett L. McCormick, *Political Reform in Post-Mao China* (California: University of California Press, 1990).

where to ship them, and when. Industrial and commercial enterprises were little more than appendages of the state bureaucracies that administered them.

These two features made China's system hierarchical, political, and inefficient, which generated distinctive kinds of corruption. In China before 1978, individual preferences were supplanted by centralized planning, and the state directly controlled the relationships between consumption and production. Under such a system, the major determinant of resource allocation was bureaucratic influence, a situation that well-placed bureaucrats found it easy to exploit for their own benefit.[5] *Guanxi* (connections) and *houmen* ("backdoor" practices) thus were the main forms of corruption prior to 1978. Yet corruption was not a major problem in Mao's era, mainly thanks to a well-defined communist value system and the repeated political movements orchestrated by Mao and his immediate followers to check corruption and bureaucratism. Periodic rectification campaigns and the *xiafang* movement (sending cadres down to lower levels to remold bureaucrats' attitudes) afforded the center considerable control over local officials' behavior.

Starting in 1978, the post-Mao leadership began to abandon Mao's radical policies. Aware of the serious problems of bureaucratic rigidities, inefficiency, and irrationalities imbedded in the central planning system, Deng Xiaoping decided to adopt the policies of decentralization, reliance on market forces, and encouragement of private economy to reform the Chinese economic system. All three features of Deng's reforms contributed to changes in the behavior of bureaucrats. First, the decision-making power was delegated to regions, to major cities, and even to individual industrial enterprises, with the goal of promoting greater autonomy in enterprise management. However, administrative decentralization did not reduce official power so much as it changed the power distribution: the exercise of authority was more localized, while the power of the

[5]Barbara N. Sands, "Market-Clearing by Corruption: Political Economy of China's Recent Economic Reforms," *Journal of Institutional and Theoretical Economics*, vol. 145 (1989), p. 122.

center to detect the behavior of the local officials was substantially reduced. This situation bred corruption, as the changing power structure provided corrupters and corruptees more opportunities to pursue their own interests in the name of decentralization.[6] Indeed, reform yielded two conflicting trends. One was resistance by bureaucrats against the introduction of market forces since this threatened their roles as planners and supervisors. But at the same time, bureaucrats were the ultimate beneficiaries of reform, since they had information and administrative power that could be exploited to enrich themselves.

Second, efforts to modify the price system to give market forces a greater role were implemented in the early 1980s. State-owned factories were allowed to produce for the market as long as they fulfilled state quotas, and they were given the freedom to purchase raw materials through the market rather than remaining dependent on central allocation. Thus the prices of many products, especially those produced above state quotas, were allowed to fluctuate according to market conditions. In theory, this dual-track price system reserved state-listed prices for materials and products distributed or produced under the mandatory plan, and market prices for transactions not subject to state control. In reality, it created a situation that would tempt a saint, for goods produced above (or off) the plan quickly began to sell at two to three times their planned prices. Many enterprises and governmental organizations thus found it profitable to engage in speculation without even seeing the goods in question. In Nanjing of 1989, for example, 1,000 tons of steel were purchased and resold among 83 companies and working units, a total of 223 times over several months, with the price rising from 1663 to 4,650 yuan per ton.[7]

Meanwhile, the government encouraged the collective and privately-owned sectors to compete with the state enterprises in production and services. Since the early 1980s, private shops, family-run

[6]Ting Gong, "The Politics of Corruption in Contemporary China," a paper prepared for the CSPCIS Conference, July 31–August 4, 1992.

[7]*RMRB*, July 21, 1989, p. 2.

restaurants, and individual vendors have sprung up all over China's cities, offering services superior to those of their state-run competitors. In 1979, 140,000 small private enterprises were operating in cities. The total increased to 3.4 million in 1987, 15.3 million by the end of 1992, and about 36 million by the end of 1999.[8] This development has produced dramatic changes, not only making life much more convenient for urban residents but also legitimizing private wealth and creating a rich new class. The ostentatious lifestyles of many private businesspeople have made this class the target of both admiration and envy. It has triggered an entrepreneurial fever, with people from all walks of life "jumping into the Business Sea." Many such companies were formed by officials or their relatives, who were in a position to distribute state goods at market prices, issue production and foreign trade licenses, obtain bank loans, and otherwise use their offices and connections to do business in a kind of gray area neither wholly public nor private.

Thus, while the old system has been weakened by reform, it has not been completely eliminated. The plan was sufficiently eroded for it to no longer sharply constrain decision makers, but enough official power remained to prevent the market from working in an effective fashion. Increasingly, officials and managers operate in a no man's land between plan and market, with their dealings following the logic of neither. China arguably began to get the worst of both worlds, lacking the dynamics of the market and the discipline of the plan. After a decade of reform, China has a partially dismantled planned economy and an uncoordinated and imperfect market existing here and there for individual goods. The dual-price system, semi-private companies, and increased administrative power at local levels have created a situation ripe for speculative corruption.

The Party's economic reform happened at a time of widespread disillusionment among the Chinese people, a natural reaction to the tragedy of the Cultural Revolution. Many, especially among the

[8]Thomas B. Gold, "Urban Private Business and China's Reform," in *Reform and Reaction in Post-Mao China*, Richard Baum, ed., (New York: Routledge, 1991). See also, *Beijing Review*, February 15–21, 1993, p. 4.

young, lost their confidence in communist ideals, turning instead to money as an outlet for emptiness and frustration and as a symbol of status and success. This "morality vacuum" blurred the boundaries between legitimate and illegitimate behavior and led to what Andrew Nathan called "an increasing sense of normlessness."[9] Party leaders appealed to a sense of "spiritual socialist civilization" and "lofty ideals," but with little effect. In this money-first atmosphere, bureaucrats and officials have new opportunities (and fewer disincentives) to put their influence up for hire. Those who can offer large bribes can buy state land cheaply; officials and well-connected individuals who are willing to share the proceeds with the bankers can borrow large sums of money from state banks that need never be repaid.[10] The medium-sized and small state-owned enterprises were sold at far below asset value to those who can bribe well-positioned officials.[11] While leading officials are cashing in their power for big money, middle-level functionaries solicit bribes to perform their duties. Many enterprises report that functional department personnel are rude and arrogant; if they are not "gratified," they make it difficult for enterprises to gain access to certain services, raw materials, and markets.

Indeed, corruption has become a regular fact of life in China. Many bureaucrats in agencies such as the bureaus of finance, foreign trade, industries, material supplies, commerce, and construction projects and land approval accept bribes and engage in speculation in raw materials and finished products through the dual-price system. Officials supervising economic activities through the party apparatus, the bureaus of personnel, taxation, and price, the economic crime courts, the police departments, and the public prosecutors' offices have also used their administrative power to solicit "fees" for their services. Even reporters, lawyers, and traditionally less-corrupted professionals such as teachers and doctors can be caught up in the

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[9]Andrew Nathan, *China Crisis: Dilemmas of Reform and Prospects for Democracy* (New York: Columbia University Press, 1990).

[10]*RMRB*, October 17, 1993, p. 2.

[11]*RMRB*, February 24, 1999.

epidemic. In order to increase their income, elementary school teachers have reportedly forced pupils to buy commodities they were selling as moonlighting businessmen.[12] In China's hospitals, people cannot obtain basic services without paying extra money in "red packets." With this mind-set of materialism, doing anything has a price. It was reported that one visitor asked for directions in Canton and was told, "Sure I'll tell you — if you pay me."[13]

## THE CHANGING CONCEPTION OF CORRUPTION

One of the most intractable problems in the literature on corruption has been its definition. One school contends that definitions of "corruption" based on laws and other formal rules are best by virtue of their relative precision and stability.[14] Critics reply that at times the law enjoys little legitimacy, that legalistic conceptions of corruption miss the question of its social and political significance, and that cultural standards offer ways of building more realistic and subtle definitions.[15] Still others contend that both approaches, by focusing on the classification of behavior, ignore the fundamental issue of morality and justice in society at large. Most scholars, however, tend to treat corruption as the illegitimate use or appropriation of public roles or resources by public or private parties. However, much of China's corruption is hard to fit into a clear-cut Western definition. Corruption violates rules; but in China, rules are ambiguous. For example, in 1985, a professor of electric engineering who had helped an enterprise solve a technical problem was arrested by the Liaoning provincial public security bureau for the fee he received from the factory.

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[12] *Guangmin Ribao* (GMRB), May 24, 1993, p. 1.

[13] *Wall Street Journal*, December 10, 1993, p. R1.

[14] Joseph S., Nye, "Corruption and Political Development: A Cost–Benefit Analysis," *American Political Science Review*, vol. 61, no. 2 (June 1967), p. 417.

[15] Kenneth M., Gibbons, (1988). "Toward an Attitudinal Definition of Corruption", in Heidenheimer, Johnston, and LeVine, eds., *Political Corruption: A Handbook* (New Brunswick, NJ: Transaction Press), pp. 165–171; John G. Peters, and Susan Welch (1978). "Political Corruption in America: A Search for Definitions and a Theory", *American Political Science Review*, vol. 72, no. 3 (September 1978), pp. 974–984.

In the same year, another engineer who provided similar assistance to an enterprise in Guangdong province was given an economic reward.[16] Not surprisingly, many people are not so sure what rules apply in the new economy. Was this the kind of professional moonlighting that is familiar in any market economy, or a violation of socialist spirit and the law? The meaning of "corruption" was very much in flux throughout the 1980s and the 1990s. The line between corruption and market activities becomes further blurred when the activities in question are not purely for the purpose of personal gain but for the interests of the local community. The state encouraged officials and party groups to "create income" for themselves and their offices (*chuangshou*), accelerating official profiteering (*guandao*) that, while intensely controversial, was defended as an aspect of economic reform in the late 1980s. As a reform experiment, some local governmental agencies (such as Bureaus of Industry and Commerce) were half-contracted to the officeholders, and what these offices needed to do was to submit certain amounts of revenue to their superior agencies and to divide whatever was left among officials, after leaving a certain percentage to the office, just like a profit-making enterprise. Legitimate market activity for some is corruption in the eyes of others. If corruption is the illegitimate use or appropriation of public roles or resources by public or private parties, how are notions such as "illegitimate or "public" and "private" defined in a transitional China?

China's state of uncertainty about these terms is illustrated by the new terms in the vocabulary of corruption and by the extreme range of activities being termed corrupt. Conceptions of corruption have been affected in the past by official campaigns, but in the late 1970s official corruption still broadly meant three things: *tanwu*, *shouhui,* and *tequan. Tanwu* (malpractice) was the misappropriation of public property by state officials through embezzlement, theft, or swindling. *Shouhui* referred to the use of official positions to extort or to accept bribes. *Tequan* (privileges) encompassed a

[16]Su Ya and Jia Lusheng, *Heimao baimao:Zhongkuo gaige xianzhuang toushi* [Black Cat and White Cat: An Analysis of Current Reform in China] (Changsha: Hunan Wenyi Press), p. 76.

range of privilege-seeking activities by officials. By the early 1990s, however, the term of corruption had broadened to include *fubai* (decay and putrefaction) and official speculation or profiteering (*guandao*). The forms of conduct labeled "corrupt" have multiplied. A collation of corruption reports in the Chinese press between June 1993 to January 1999, for example, included not only embezzlement and bribery but also all the following: offenses against financial and economic discipline, swindling, indiscriminate collection of fees, blackmail, smuggling, black-market currency exchanges, establishing illegal businesses by governmental agencies, resale profiteering, substitution of defective or counterfeit goods; excessive housing; illegal price increases, indiscriminate issuance of bonuses, malpractice in assigning jobs and promoting cadres, work units' "small treasuries" (*xiao jinku*), illegal transfer of public assets, gambling, ticket scalping, visiting prostitutes, decadent behavior, usury, outright piracy, insider trading in the new security markets and future markets, ignoring laws, perverting justice for a bribe, imposing fines and making unjustified financial levies at random, deceiving superiors and deluding subordinates, vocational misconduct, and so on.[17] Obviously it is dubious to view some of the above-listed behaviors as corruption since power was abused not purely for private gain but, in many cases, for the benefit of one's institution or work unit. Many participants in corruption hold both public and private roles (or roles that do not fit neatly into either sphere) and operate in economic gray areas where clear-cut rules and expectations do not exist. China's corruption practices are unique in the sense that some are due to the nature of an inefficient and irrational economic system undergoing rapid changes. To a certain extent, corruption is used by many as a means of breaking the old, rigid system and of surviving within the half-reformed system during the historical transitional period.

Also, this clearly indicates the shifting perceptions of corruption that accompany new relationships between wealth and power, and the new problems created by the market-oriented reforms. Some

[17] *RMRB*, June 28, 1993, November 12, 1993, February 7, 1996, and September 11, 1997.

scholars question whether corruption has actually increased or suggest that it is instead the *perception* of corruption that has expanded to include a wider range of behavior.[18] Just when China needs stable standards, "the reforms created a crisis of institutionalization by turning existing official norms upside down (getting rich was now "glorious", etc.) and changing the rules to permit new economic activities. In this context it was frequently unclear just which activities were legal and which illegal."[19]

China's surge of corruption is not only a consequence of market reforms but also of the system of order that preceded them. That system was built on revolutionary ideology, a charismatic leader, and party-state dominance. What it lacked were several critical boundaries and distinctions that mark the domain and draw on the vitality of a viable civil society compatible with a market economy. These were boundaries and distinctions between public and private domains, between individual and collective rights and interests, between politics and administration, and between state and society. If a society is to have an active market economy yet hold corruption to tolerable levels, these boundaries and distinctions must be reasonably clear and legitimate. But they were fused within the pre-reform structure of party-state dominance, and a viable civil society was nonexistent.[20] As a result, China would prove to be unable to contain either market forces or official exploitation once reforms began. More power — and opportunities for exploitation — has been conferred upon local officials and cadres.[21]

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[18]Barbara Sands, "Decentralizing an Economy: The Role of Bureaucratic Corruption in China's Economic Reform," *Public Choice*, vol. 65 (1990), pp. 86–91.

[19]Connie Squire Meaney, "Market Reform and Disintegrative Corruption in Urban China," in Richard Baum, ed., *Reform and Reaction in Post-Mao China* (New York: Routledge, 1991), pp. 129–130.

[20]Johnston and Hao, "China's Surge of Corruption," *Journal of Democracy*, vol. 6 (October 1995), pp. 80–94.

[21]Jean Oi, "Partial Market Reform and Corruption in Rural China," in Richard Baum, ed., *Reform and Reaction in Post-Mao China*, pp. 144–145; Ting Gong, "Corruption and Reform in China: An Analysis of Unintended Consequences," *Crime, Law and Social Change*, vol. 19, no. 4 (June 1993), p. 324.

## DRAWING THE LINE BETWEEN THE PUBLIC AND PRIVATE

In societies where government and markets coexist in relatively orderly fashion, the decision not to engage in corruption rests not just on cost/benefit calculations but also on an acceptance that a certain behavior violates rules that matter. It is clear to many that something is wrong, but there is much less consensus about what rules to apply. In fact, it is difficult even to draw a line between the public and private.

Stable relationships between wealth and power rest, in market-oriented societies, on an institutionalized separation *between state and society* — a prerequisite for any notion of *public and private* roles, resources, and interests. The coexistence of legitimate private interests and a bounded state in turn raises the question of relationships *between market and authoritative mechanisms of allocation.* It further implies a distinction between *politics*, with its personal or group agendas and incentives, and impersonal principles of *administration* and legality. The idea of limits on what may be done to enrich oneself rests on an accepted distinction between *individual and collective* interests, and raises the question of proper relationships between the two. In China, however, market-oriented reforms have led to a proliferation of entrepreneurs, public, private, and in the extensive gray area between.[22] The fastest-growing category of firm since 1987 has been that of those owned or operated by officials, their friends, or their families — the "new moneyed elite" — or by government agencies themselves, and the most controversial corruption issue has been *guandao* by officials and private partners through "*laissez-faire* socialism." Public–private distinctions became unclear, and the notion of service or merit has become confused in the new partially reformed system. Corruption violates rules; but in China, rules are ambiguous.[23]

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[22]Solinger, vol. 128 (1992), pp. 123–125.

[23]Yufan Hao, "From Rule of Man to Rule of Law: An Unintended Consequence of Corruption in China in the 1990s," *Journal of Comptemporary China*, vol. 8, no. 22 (1999), pp. 405–423.

To a certain extent, reforms have contributed to a pervasive consciousness of corruption and helped to bring to the official agenda the issue of drawing distinctions between private and administrators' behaviors. In the last several years, many township and village enterprises have been created by local governments rather than private individuals, and many of the local officials acted as company executives.Without retiring from their positions, some high-ranking officials in the central ministries also manage big profit-making companies established by the governmental agencies.[24] The Chinese military also established many profit-making enterprises to make money in the unregulated market to supplement the insufficient military budget. In 1992, in an attempt to legalize official speculation and power-backed businesses and to downsize administrative agencies, the Party Central Committee issued Document No. 5, which encouraged institutions to run various economic entities to "make a profit." This policy turned out to be a disaster. After serious confusion and a new wave of registering companies, including an enormous number of companies run by the military, armed police, and political-legal institutions, official corruption became even more severe. The policy was quickly revoked in December 1993. The directives were issued to forbid official involvement in commercial business and ban companies run by party and governmental institutions for profit-making purposes. In the summer of 1997, the Party also banned the procuratorial, judicial, and public-security organizations from engaging in business activities. This, in fact, was the first serious effort by the government to define what was public, what was private, and what rules should apply. A consensus has gradually emerged among Chinese leaders that official profiteering is detrimental to the reform and to the society in general. The boundary began to be drawn.

In addition, the government also realized the importance of distinguishing between administrative and market activities, which

[24]Vice Premier Zhu Rongji criticized vice ministers and deputy bureau chiefs who became managing directors of economic enterprises without retiring their positions. See Hilton Root, "Corruption in China," *Asian Survey*, no. 8 (August 1996), p. 748.

have largely contributed to the increasing number of bankrupt state-run enterprises. The need to separate profit-making (or money-losing) enterprises from the administration has been painfully realized through the increasing debt of the state-run enterprises. In the 15th Party Conference in 1997, the party chief, Jiang Zemin, elaborated the urgent need to define the boundaries:

> "The power and responsibilities of the state and enterprises will be more clearly defined. The state will enjoy the owner's equity according to the amount of capital it has put into the enterprises and bear limited responsibilities for the debts of enterprises while enterprises will operate independently according to law, responsible of their own profits and losses. The government should not directly intervene in the operation of enterprises, and the enterprises have to be restrained by the owner and shall not harm the owner's equity. China will adopt all kinds of possible means … to push the separation of administrative functions from enterprises management and change the way enterprises operate."[25]

In the summer of 1998, the newly elected Premier, Zhu Rongji, began to separate the People's Liberation Army and People's Armed Police from the profit-making business. Although there was strong resistance from the military, the process seemed to go smoothly. According to preliminary estimates, by the end of 1998 the military, armed police, and law-enforcement agencies had dissolved a total of 19,241 enterprises, handed over ownership of 6,491 enterprises, and disconnected themselves from 5,557 enterprises.[26] These are efforts to check corruption by striking at its root. Because of the government's efforts to define more clearly public and private ownership and the notion of ethics in China, endemic corruption and political reactions to it have led to gradual changes in the perception of private and public interests as well as in the codes of conduct for governmental officials. These changes are slow and uneven and far from complete. However, through continuous and sometimes uneasy debate, a consensus on certain issues has been gradually reached, although others await. By the middle of 1998, almost all the official

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[25]Jiang Zemin's Political Report at the 15th CPC National Congress. *China*, FBIS Daily Report, September 12, 1997, downloaded from <www.fedworld.gov>.

[26]Wei Jianxing, "Report on Discipline Meeting," *China*, *FBIS*, January 15, 1999.

profiteering companies had been, at least in theory, disconnected from their mother institutions, although many still operate illegally. It has also become clear that no one in China still doubts what constitutes legal moonlighting: a moonlighting job for a professor is okay, while for an officeholder it is not.

## CORRUPTION AND LEGAL RESPONSES

The traditional anticorruption method in the PRC was the political campaign based on Mao's mass line. Since corruption was perceived as individual wrongdoing rather than as an institutional or systemic problem, people were mobilized to participate in periodic rectification campaigns, to report wrongdoing, and to criticize decadent thoughts and behavior. Corruption was attributed to feudalistic influences, bourgeois money worship, and out-and-out egoism, and corrupted officials were punished in public to shame other "law-breakers" and to educate the masses. Examples of this strategy are the "Three-Antis" (corruption, waste, and bureaucracy) and the "Five-Antis" (bribery, tax evasion, theft of state property, cheating on government contracts, and stealing economic information) movements in the early 1950s and the "Four Cleans" campaigns (investigating how cadres determined workpoints, kept accounts, distributed supplies, and handled warehouses and granaries) in the early 1960s. This deviance-control approach was combined with ideological and political education and with thought reform. But these were neither institutionalized nor directed at systemic causes of corruption. The legal system was politicized and widely disregarded, especially during the Cultural Revolution.

Since corruption mainly took the form of perks and privileges in Mao's time, the political approach was relatively effective. But despite the changes that have occurred since 1978, the post-Mao leadership still relied on ad hoc campaigns to control deviance, such as, the anticorruption rectification during 1982–83 and the anticorruption campaigns of 1988–89 and 1991–93. However, there is little evidence that corruption has abated significantly. Market economics depend on compatible legal systems for standardizing relationships

among private parties and between them and the state. Yet China, after four decades of command economics under one-party rule, and a much longer tradition of skepticism about extensive legal codes, was unprepared in this respect, and its hybrid socialist system lacks clear-cut ethical, legal, and commercial codes to regulate market-driven activities. While China's bureaucracy is gigantic, its internal checking systems have never been fully developed. In fact, many corruption cases involved bureaucrats exploiting inconsistent procedures and deficient supervision for private gain. Weak enforcement mechanisms and sporadic campaigns were simply insufficient to control the spreading corruption in the new situation. [27] The leaders have realized the urgent need to control corruption and official arbitrariness through legal devices. This apprehension among Chinese leaders has helped accelerate the administrative and legal reforms, and in this way corruption has indirectly contributed to the rise of a new legalistic culture.

In fact, Deng Xiaoping first initiated China's legal reconstruction for a broad political purpose. After the exposure by the media of appalling accounts of the lawlessness during the Cultural Revolution, Deng discovered that the law could play an important role in stabilizing the social order and at the same time serve as an instrument for rationalizing state administration.[28] With official commitment to the laws and predictability of the state, the post-Mao leadership hoped that the people's confidence in the party and the state could be restored. Meanwhile, the reform-minded leaders also realized that "a market economy means economy operated under a legal system."[29]

The past decade witnessed a legislative explosion in China. The laws aimed at regulating the market economy include the following: the Company Law, the Advertising Law, the Arbitration Law, the Law

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[27]For the latest example, see "How China Managed to Lose $25 Billion On Its Grain Program," *Wall Street Journal*, January 26, 1999, p. 1.

[28]Deng firmly believed that the party's principle and guidelines should be molded into a legal form if they are to enjoy the highest authority and people's support.

[29]*FBIS*, May 12, 1994, pp. 14–16.

Against Improper Competition, the Foreign Trade Law, the Bills Law, the Insurance Law, the Security Law, the Chartered Accountant Law, the Budget Law, the Audit Law, and the Contract Law. Other important laws include the Criminal Law, the Law of Criminal Procedure, the General Principle of Civil Law, the Civil Procedure Code, and the Administrative Procedure Law. It is estimated that the National People's Congress has passed 333 pieces of legislation related to law, an average of 16 annually, and the State Council has enacted more than 800 administrative regulations, an average of 40 per year.[30] The local legislative bodies in provinces and municipalities have also enacted more than 6,000 laws and regulations concerning local matters, averaging 300 pieces of legislation per year. The ministry and commissions under the State Council and municipal and local governments have also drafted more than 30,000 administrative regulations. From 1980 to the end of 1995, people's congresses in provincial and autonomous regions in 159 national autonomous areas nationwide have approved and put into effect 129 autonomy-related regulations, 195 specific regulations, and 59 flexible provisions.[31] This is an impressive effort in building new institutions, and there is some real, if limited, progress in the political process. Even critics in the New York-based Lawyers Committee for Human Rights found some meaningful improvements in China's legal development — in the areas of pretrial detention, the right to counsel, prosecutorial determination of guilt (the "presumption of innocence"), and conduct of trial proceedings.[32] The U.S. State Department's 1998 annual report on human rights also acknowledged that the Chinese "government launched new efforts to reform the legal system and widely disseminated information about new

[30]According to Tian Jiyun, 300 laws were enacted by the National People's Congress and 800 regulations were issued by the State Council since 1982. See *People's Daily*, September 12, 1996, p. 4. See also *Beijing Review*, November 20–26, 1995, pp. 11–12, and "China: 20 Years of Legal Development," in *Quishi*, December 1998, pp. 12–15.

[31]"China: 20 Years of Legal Development," in *Quishi*, December 1998, pp. 12–13.

[32]James Feinerman, "The Rule of Law … With Chinese Socialist Characteristics," p. 278.

legislation. It also initiated a highly publicized campaign to 'rectify' endemic problems such as corruption and abuse of power on the part of judges, prosecutors, and police."[33]

The National People's Congress has begun to exercise something more than a "rubber-stamp" function. Specialists have begun to participate in the law-making process, which is "more hospitable to relatively innovative policy ideas, and more accessible to a wide variety of nonbureaucratic groups and interests."[34] During the past several years, the NPC has made considerable initiatives — sometimes with a sizable number of negative votes — in originating legislation and providing oversight to the nation's administrative and legal work. After Li Peng came to chair the NPC, the Chinese legislature became more assertive than before and is now asking for the right to supervise the administrative work of the State Council. In March 2000, about 700 of over 2,700 NPC deputies voted against or abstained when the work reports of the Supreme People's Court and the Supreme People's Procuratorate were voted on in the NPC session.[35] The courts, although still under the Party's control, have begun to exercise interpretative functions of the law, and there has emerged an aggressive and creative Supreme People's Court that can issue implementing regulations for some laws.

The Party even applied its traditional campaign method to promoting juridical and legal awareness, initiating three five-year plans for the dissemination of legal knowledge in China (*pufa*), the first during the period of 1986–90 and the second during the period of 1991–96.[36] The goal of these *pufa* (law-popularization) movements was to abolish official despotism, to replace the supremacy of persons by the supremacy of law, and to create a socialist government

[33]1998 Human Rights Report, downloaded from <http://www.state.gov>.

[34]Murray Scot Tanner, "How a Bill Becomes a Law in China: Stages and Process in Lawmaking," *The China Quarterly*, no. 141 (March 1995), p. 64.

[35]*People's Daily*, March 16, 2000.

[36]For an interesting analysis of the Chinese legal education campaign, see, Mechthild Exner, "Convergence of Ideology and the Law: The Functions of the Legal Education Campaign in Building a Chinese Legal System, *Issues & Studies* (August 1995), pp. 68–102.

based on the rule of law with Chinese characteristics; of course the authority of the party should not be challenged. It was reported that 700 million of the 810 million people eligible for the law popularization effort nationwide received legal education in the *pufa* movements over the last ten years; this effort may have contributed to the public awareness of the law and legal enforcement.[37] It is estimated that 30 provinces, autonomous regions, and municipalities directly under the central government, as well as 45 percent of the local municipalities and near 50 percent of the counties (cities, district) and administrative villages have launched efforts to manage local affairs based on laws. Influenced by the special features of their profession, the military and the armed police have also instituted the policy of running matters based on law and have pushed legal education within their troops.[38] The "Third Five-Year" *pufa* movement began in 1996 and is now spreading throughout the country. The People's Procuratorate at various levels has repeatedly organized week-long publicity campaigns, during which prosecutors at various levels have staged street consultations and handed out leaflets to encourage the public to take an active part in preventing corruption.[39]

China's runaway corruption has created a situation in which both the rulers and the ruled acknowledge the need for institutional actions for coping with the problem. Since 1988, the People's Congress has passed a series of laws dealing specifically with bribery, speculation, profiteering, and abuse of power,[40] and judicial organizations have stepped up the processing of corruption allegations through the legal system, with over 215,000 graft and bribery cases being investigated by supervisory organizations nationwide in 1992. Although the Party's Central Commission for Discipline Inspection at all levels has remained the main checking force for corruption within the party and had handled over 630,000 cases from 1993 through March 1997, more and more cases involving

[37] *Ibid*., p. 97.

[38] "China: 20 Tears of Legal Development," p. 11.

[39] *People's Daily*, July 4, 2002.

[40] *Zhenli dezuiqiu* (Seeking Truth), March 1992, p. 29.

party members were later handed over to the state's procuratorial organizations. From 1998 through March 2003, a total of 207,103 cases of corruption were handed over to the Procurator for investigation, according to Procurator-General Han Zhubin in his report on the work of the Supreme People's Procuratorate delivered to the annual session of the Tenth National People's Congress, in which 84,395 people were found quilty.[41] The CCP's decision in September 1997 to handle Chen Xitong's corruption case through court highlighted this effort, since corrupt high-ranking officials traditionally remained outside the reach of the law and were only disciplined within the party.

The government has also created new institutions to deal with corruption. Besides the Party Discipline Inspection Committee created earlier, the Ministry of Administrative Oversight (*Jianchabu*) was created in 1982, which has grass roots offices in most of the public institutions at all levels and has the power to investigate the abuse of power by governmental officials. The National Audit Office (*shenjishu*) was also created after the reform started to monitor compliance with state budgets and accounting procedures. It has discretionary power to check the accounts of any public institutions and state-owned enterprises when necessary. In most regions, the National Audit Office has set up an economic auditing system for officials working at township and county organizations. Statistics indicate that during the 2000–01 period, 44,081 officials, including ten former ministers, vice ministers, and key state firm executives, were audited. About 1,500 of them were found to have problems. As a result, 500 were removed from their posts, and 1,000 were forwarded to judicial departments.[42] A public monitoring system, the Center for Reporting Economic Crime, was established in 1988, with local offices nationwide. Several special agencies were also established to oversee the compliance of public and private enterprises with taxing, pricing, and bookkeeping. In the first 11 months in 1998, the discipline inspection and supervision departments across

[41] *People's Daily*, March 3, 2003.
[42] *People's Daily*, August 7, 2002.

the country had handled more than 1,612 million cases of letters, complaints, and reports on economic crime and corruption from the people, placed more than 142,000 cases on file for investigation, wound up more than 120,000 cases, and prosecuted had more than 124,000 people. Among those who were punished were 3,970 cadres at the county level and 304 officials at the prefecture (department) level and above.[43]

In terms of checking corruption within the government, the central government issued provisional regulations for public servants in August 1993 (which took effect on October 1, 1993). They are aimed at establishing a public service system based on strict assessment and selection of recruits by public examinations. The party monopoly over personnel management has been loosening.[44] Rewards and punishments, training, promotion, wage increases, and work assignments are to be based on well-defined procedures and assessments. Not only are embezzlement, bribery, and the abuse of power explicitly barred; public servants are also forbidden to operate enterprises or to participate in any other business activity. There is also a so-called "stand-off" system providing that married couples, direct or blood relations, collateral relations within three generations, and individuals related by marriage should not hold posts in an institution where both sides are directly subordinated to the same administrative leader.[45] Obviously, this is another commendable effort to regulate the code of conduct in the government.

As an effort to check the arbitrary imposition of charges and penalties by police, the government introduced a system of "separate management for revenue and expenditure" for law enforcement in May 1998. There have been many reports about offices of public security, procuratorates, courts, and industrial and commercial administration "making money" by imposing illegal charges and penalties on the public. The money was then used to make up for

[43]Wei Jianxing, "Report on Discipline Meeting," *China*, *FBIS*, January 15, 1999.
[44]Suisheng Zhao, "Political Reform and Changing One-Party Rule in Deng's China," *Problems of Post-Communism*, vol. 44, no. 5 (September/October 1997), pp. 13–20.
[45]*Beijing Review*, September 6–12, 1993, pp. 4–5.

insufficiencies in administrative expenses and improve the welfare of their staff. Obviously, there much irregularity and abuse of power as the law enforcement agencies tried to fill their own coffers. By separating the collection of penalties and their spending into two separate institutions, this "separate management system" may eliminate one of the major sources of corruption in Chinese law enforcement.

Beijing also passed the State Compensation Law in December 1995, which was supposed to protect the legal rights of all Chinese citizens, corporations, and organizations to demand and receive compensation from the state whenever their legal rights or interests are violated by the government's executive and judicial bodies.[46] Although strong resistance from the gigantic bureaucracy has hindered its implementation, the passage of the law can be viewed as an advance for both Chinese lawmakers and the public. It, for example, recognizes the individual as an important factor affecting social development, compared with China's history, where for thousands of years, governments were immune from any legal investigation and punishment even when they were clearly guilty. Since the implementation of this law, people's courts at the intermediate level and above nationwide have settled a total of 870 cases involving compensation by the state, of which 364 resulted in verdicts in favor of compensation. During the same period, procuratorial organs handled 762 cases involving criminal compensation requests, with a final ruling of 179 cases of compensation by the state.[47] Wu Guanzheng, a newly elected member of the Standing Committee of the Political Bureau of the CCP, called for institutional innovation to prevent and control corruption at the roots. For this purpose, he views it necessary to step up reform of the administrative approval system, the financial management system, and the personnel management system so as to create a mechanism that will control the financial resources effectively, use officials appropriately, and at the same time prevent corruption.[48] The government has recently allowed and even

[46] *Beijing Review*, December 4–10, 1995, p. 20.

[47] "China: 20 Years of Legal Development," p. 12.

[48] *People's Daily*, March 16, 2003.

encouraged press coverage of legal abuses in the form of police brutality.[49]

This shift from the old mass-mobilization approach based on the infallibility of the Party toward legal and institutional mechanisms requires increasing numbers of legal staff. In 1995, there were about 60,000 lawyers representing 140,000 enterprises and institutions. By the end of 1997, there were about 100,200 lawyers and 8,441 law agencies representing more than 210,000 enterprises and institutions. However, there are about 5 million enterprises across the country, of which only 4 percent has legal advisors. Also many Chinese lawyers are ill prepared to work as independent lawyers, and barely one-fifth of them have earned law degrees.[50] There is also the difficult task of transforming the mentality of "state legal workers" into that of an independent profession and the equally difficult task of "policing the police." Currently there is a tendency among lawyers, judges, and the officials who regulate the legal profession to get involved in bribery and in a variety of corrupt practices. On May 15, 1996, the Chinese "Lawyers Law" was passed by the NPC and went into effect on January 1, 1997. This law changes the definition of lawyer from "state legal worker," as defined in the previous regulations (the Provisional Regulations on Lawyers passed in 1981), to "legal personnel who provide legal service to society" and "legal workers for society." It has also changed state cadres who receive governmental salaries into self-employed people who set up business on their own or form firms as a partnership and are responsible for their own profits and losses.[51] These changes obviously represent important progress in China's legal development, since the separation of legal personnel from the state administration is a prerequisite in creating an independent judicial system in China.

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[49]"Police Abuses Start to Get Attention In China," *The New York Time*, March 8, 1999, p. A1.

[50]William Alford, "Tasselled Loafers to Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers," *The China Quarterly*, vol. 141 (March 1995), pp. 31–33.

[51]See "Positive Signals" in *China Right Forum*, p. 15.

In early 1999, on the eve of the second session of the Ninth NPC conference, it was reported that some related departments had been working on the "Judge Law," which aimed to speed up judicial reform by introducing such means as a graded judicial evaluation and building a relatively independent judiciary to ensure impartial justice, reduce local interference, and curb corruption.[52]

Therefore, the legal system has begun to evolve into a distinct body of rules and institutions in China, although the achievements are so far limited in number and represent only the first step of a very long journey. Indeed, so many laws have been enacted that implementation and enforcement in the legal process have become a serious problem. Many laws are grossly neglected, and, in many cases, the courts simply lack the power to enforce their decisions. As Luberman correctly pointed out, many forces — political, economic, and cultural — presently contend in the arena of law reform: "the ideal of the rule of law, the desire for bureaucratic regularity; adherence to Marxism–Leninism and the doctrine of Party supremacy; central–local tensions; the rise of the familial network; Western influence; and the influence of the overseas Chinese — in the midst of declining state power, the diminishing legitimacy and authority of the CCP, and a broad crisis of values. Most of these forces thrust against the growth of the rule of law."[53]

In fact, what the current Chinese leaders are trying to achieve is to exercise the "rule by law" rather than "rule of Law"(as it is understood in the West).[54] In his comparative analysis of law in modern society, Roberto Unger made an important distinction between three kinds of law: the customary (or interactional) law based on the accepted moral standards and practices of a community, a bureaucratic (or regulatory) law based on explicit rules of the government, and

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[52]*FBIS*, *China*, February 28, 1999, downloaded from <wnc.fedworld.gov>.

[53]Stanley Luberman, "Introduction: The Future of Chinese Law," *The China Quarterly* , vol. 141 (March 1995), pp. 12–20.

[54]Richard Baum, "Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality," *Studies in Comparative Communism*, vol. XIX, no. 2 (Summer 1986), pp. 69–103; James Feinerman, "The Rule of Law … With Chinese Socialist Characteristics," *Current History* (September 1997), pp. 278–281.

an autonomous (or pluralistic) law protecting various social–economic classes and strata against each other and against the arbitrary tutelage of government.[55] This pluralistic law is the rule of law, as the law is institutionally autonomous to the extent that its rules are applied by specialized institutions whose main task is adjudication. If the difference between customary law and bureaucratic law is similar to that between Confucianism and legalism in Chinese political philosophy, the difference between the bureaucratic law and pluralistic law lies in the fact that the latter "exists not to protect the state from the unrestrained impulses of its citizens, but precisely the reverse — to protect citizens against the predation (real or potential) of the state."[56] Therefore, the rule of law requires a further distinction between state and society, which is complemented by a contrast within the state itself among legislative, administrative, and independent adjudication.[57] We have reason to believe that the post-Mao leadership has been trying to perfect the Chinese legal system in the line of the bureaucratic law. The law should not limit the power of the Party and the state but rather serve as an instrument for the state power and the Party's interests. Just as Lenin stated after Russian communists took power in 1918, "the proportion as the fundamental task of the government becomes not military suppression but administration, the typical manifestation of suppression will be not shooting on the spot but trial by court."[58] The 15th Party Conference, which convened in September 1997, underlined the post-Deng leadership's determination to develop and perfect a law-based system to handle various domestic problems. Jiang Zemin stated that "the deepening of economic structural reform and the development of the entire society's modernization … require us to continue pressing ahead with political structural reform, further expand socialist democracy, perfect the socialist legal system,

[55]Roberto M. Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: The Free Press, 1976), pp. 51–52.

[56]Richard Baum, "Rebirth of Socialist Legality in Post-Mao China," pp. 70–71.

[57]Unger, p. 52.

[58]Cited from Richard Baum's "Rebirth of Socialist Legality in Post-Mao China," p. 72.

administer the country according to law, and build a socialist country ruled by law."[59] Jiang used the unusual length of his political report to elaborate why and how the CCP should perfect China's legal system:

"We should administer the country according to law, which means that under the party's leadership, the broad masses of the people manage state affairs and economic, cultural, and social affairs in accordance with the Constitution and stipulations of the laws and through various ways and forms and ensure that the state's work in various fields is carried out according to law, gradually realize the institutionalization and legalization of the socialist democratic system so that the system and laws will not change along with the changes in leadership and with changes in leader's views and their focus of attention…. Adhering to the principle of going by laws, of the need to absolutely abide by laws, of strict enforcement of laws, and of punishing those who break the law are the premise for the party and the state to smoothly carry our their undertakings. Legislative work will be stepped up and legislative quality will be raised to bring about a socialist legal system with Chinese characteristics by the year 2010. There is a need to safeguard the dignity of the Constitution and other laws. We must see to it that all people are equal before the laws and no individuals or organizations shall have the privilege to overstep it. All government organs must manage their affairs according to law and protect citizens' rights in an earnest manner. There is a need to implement a responsibility system with regard to law enforcement and enforce an appraisal system. Judicial reform needs to be promoted so as to institutionalize judicial organs' independent and impartial exercise of their jurisdiction rights according to law."[60]

It seems quite encouraging to hear that a Communist Party Chief (though recently semi-retired) called for the whole party to use legal means to provide greater predictability and accountability in its governance. This not only represents a major progress from the lawlessness of the Red terror under Mao, but also symbolizes a step forward to further the transition from a party-state domination to the rule by law first and eventually to the rule of law. Deng's view of law is the classic example of statist instrumentalism: the law, although useful, must be subject to the four cardinal principles. What Jiang stated in the late 1990s implied a beam of hope that the

[59]See *FBIS China Daily Report*, September 12, 1997, p. 10.
[60]*Ibid.*

law in China may be developed to shield against the arbitrary action of the state (rule of law). What is more encouraging is that Hu Jintao, the new party and state leader, is determined to put his own stamp on China's social and economic development by passing or overhauling an array of laws aiming at transparency. It is widely expected that in the October meeting of the Third Plenary, the post-Jiang leadership will call for the passage of a raft of laws, including measures addressing bankruptcy, anti-monopoly, banking, and comprehensive company practice, crucial to the workings of a market economy.[61]

This change can be viewed largely as a direct result of the runaway corruption in China, and the domestic and international pressures to cope with it, as the leaders realized that they could not check corruption in a market economy without adequate legal mechanisms. To a great extent, corruption is playing an important role in giving birth to a law-based bureaucracy and a law-based culture in public institutions in China. Although it is reasonable to doubt if the post-Deng leadership could have the will and capability to implement fully what was said in the political report, some scholars argue that the law has its peculiar, if limited, capacity to stimulate and consolidate change, and legal reform may be an agent that accelerates social change by creating a vocabulary of concepts that can be employed by the Chinese to give a new definition and predictability to their relationship with each other and with the state.[62]

## CONCLUSION: PROSPECT FOR INSTITUTIONALIZING THE CHANGES

It is highly likely that China will remain a Leninist dictatorship in the year 2010, but with certain pluralistic features. The post-Deng leaders will continue the current policies of market-oriented economic reform and the opening of China to the world. The politics will remain authoritarian with the CCP still in power, but a market economy

[61] *The Wall Street Journal*, August 13, 2003, p. A8.
[62] *Ibid.*, p. 20.

may be further established. As the Chinese market economy is further integrated into the world economic system, the Chinese legal system will surely be developed and strengthened. This legal development will not only be pushed by the need for a market economy and the need to create a hospitable environment for foreign direct investment but also by a need to address severe corruption. Without popular indignation, as revealed in public opinions and demonstrated in the 1989 student's movement, the central leadership would have never taken corruption issues so seriously.

In some ways, corruption in China is a result of, and contributes to, progress in the form of the partial shift from party-state dominance toward a market economy. It is perhaps also the first step away from a totalitarian regime as rapid economic growth strengthens groups and interests in society. Official responses to corruption, in the form of the control measures discussed above, will contribute to a new institutionalization in the next ten years, aiding the transition from ideological and collective to legalistic and individualistic norms. It is likely that the current trend of legal reforms will continue. Such reforms, and the pre- and post-1989 political grievances that necessitate them, may in time more clearly delineate the limits of the state and of the political realm, weakening the bureaucratic monopoly over day-to-day power. Corruption and anticorruption efforts will contribute to the momentum of reform by disrupting the still-considerable remnants of the old bureaucratic order and by creating both incentives to economic change and the need for new values and institutions for containing those changes.[63]

But there are reasons for serious concern that corruption may get out of control in China. Deng Xiaoping's gradualist approach to reform may give rise to the possibility of developing an administratively managed economy like that of India, which is designed to enrich the gatekeepers at the expense of both consumers and producers. Some have already begun to worry that China's corruption

[63]For a similar argument with respect to Poland's political and economic transition, see Jacek Tarkowski, "Old and New Patterns of Corruption in Poland and the USSR." *Telos*, vol. 80 (Summer 1989), pp. 55–61.

may become systematized into an intermediary form of bureaucratic capitalism[64] and may become a "giant Thailand — wealthy, corrupt, and regionally powerful."[65] Indeed, to corporatize state enterprises is an effective step for rescuing those near-bankruptcy enterprises, but to corporatize governmental agencies would be a disaster awaiting the PRC. So far, PRC leaders seem to have a clear understanding of the danger and have taken concrete steps to prevent it from happening.

The current anticorruption efforts are to change the structure and management of public institutions as well as the rules governing their contacts with private interests. Although there still exists a large and active "gray area" in which public and private concerns, individual and collective interests, politics and administration — indeed state and society themselves — intermingle, the situation seems to be improving. What is needed now is the effort to further define them and the changes that may institutionalize the new relationships between the state and a viable civil society. China has taken steps to work out a "vocabulary" of reform — relatively clear and accepted distinctions between the public and private realms, politics and administration, collective and individual interests, and state and society. But these have yet to emerge in the ways they are found in many other nations. Economic reform and growth cannot draw those boundaries; if anything, they have made them less distinct. An extensive and relatively open process of political contention among competing values and interests will be essential to working out those basic elements of lasting reform (as it has been, historically, elsewhere[66]). If people can argue over where boundaries should be drawn, they may reach settlements that engage their interests and enforce them by keeping watch over officials and each other. And corruption, after all, is an expensive and risky form of

[64]Hilton Foot, "Corruption in China: Has it Become Systemic?" *Asian Survey*, no. 8 (August 1996), pp. 749–750.

[65]Ken Jowitt, "Dizzy with Democracy," *Problems of Post-Communism* (January–February 1996).

[66]Michael Johnston, "Political Corruption: Historical Conflict and the Rise of Standards," *Journal of Democracy*, vol. 2 (Fall, 1991), pp. 48–60.

influence, while accepted rules can foster more orderly competition. To agree that private parties should not bribe officials may make it more difficult for those officials to demand payoffs through extortion.[67] It is not such a great leap from accepting that there are public domains where market forces may not intrude to agreeing that there are private affairs from which public power is similarly barred. Different societies draw these boundaries in different ways; conflict will not always lead to settlements, and settlements are rarely permanent. China's corruption has only put the issue on the agenda.

Of course, China has a long way to go. The development of boundaries and distinctions entails not just changing official structures but also strengthening groups and interests in society. Political development in many market-oriented societies was marked by the emergence of "intermediary groups" with interests of their own and the political resources to advocate them. At times their activities made for more corruption, but they also helped define the working rules of politics and business. They did this less out of reformist zeal than from a desire to protect their own interests. There are opportunities at this level for outside groups — businesses and nongovernmental organizations such as trade associations and citizen's organizations — to establish their presence in China's new economy. Many of them have already begun to work on questions of how to deal with official agencies (and what sorts of treatment to hope for in return) and on the limits of what their groups can do (or be asked to do) to advance their own interests. The more fundamental task will be to make those groups better able to articulate and defend their interests, which will be essential to drawing clearer boundaries between state and society.

Meanwhile, it is essential for the courts and bureaucracy to develop further the sense of property.[68] The market-oriented reforms

[67]Norman, Givant, "The Sword that Shields," *China Business Review* (May–June 1994), pp. 29–31.

[68]Helena Kolenda, "One Party, Two Systems: Corruption in the People's Republic of China and Attempts to Control It," *Journal of Chinese Law*, vol. 4, no. 2 (Fall, 1990), pp. 196–197.

of the last 20 years have already posed this issue, whether it is officially recognized or not. Official and social recognition of private as well as social property is essential to a stable conception of corruption and can help solidify the distinction between individual and collective interests and rights. The proposed constitutional amendment for legalizing and protecting private ownership is an important step in this direction. The incentive system that would thereby be ratified would energize the social groups and interests, and the contention among them, essential to democratic reform. Moreover, a sense of "mine" would seem essential to the creation of an accepted sense of "not mine," which is integral to countering corruption.

One major step to institutionalizing the changes is encouraging greater independence for the bureaucracy, which will take political pressures off decision makers and be a step toward more predictable, less arbitrary treatment of (and access by) citizens. This will encourage the growth of a distinction between politics and administration and a new *esprit de corps* among bureaucrats. The economic miracles in Japan, Taiwan, and South Korea depend, to a large extent, on credible bureaucracies being neutral. The bureaucracies in these countries have been constitutionally protected from political interference so that they can enforce contracts and function in an impartial manner.[69] In China, however, the Party, through the nomenclature system, tightly controls the civil service.[70] A distinction should be made between political appointees and career civil servants, and bureaucratic neutrality should be protected in the policy process. A genuine autonomy for enterprises should also be encouraged since it may differentiate between public and private roles and resources and between market and authoritative allocation in place of the current hybrid system. It could begin to remove politics from enterprise decision making, and economic self-interest from

[69]See Edgardo Campos and Hilton Root, *The Key to the Asian Miracle: Making Shared Growth Credible* (Washington, DC: Brookings Institutions, 1996).

[70]See John P. Burns, *The Chinese Communist Party's Nomenklatura System* (Armonk, NY: M.E. Sharpe, 1989).

official policy making and implementation — further strengthening the distinction between politics and administration.

Of course, the most effective method of controlling spreading corruption is developing an independent third-party enforcement in China. This requires the most fundamental and the most difficult political change. It means subjecting the Party to independent oversight and distinguishing the interests of the Party from those of the state. For the rule of law to develop, there must be a situation in which no group permanently occupies a dominant position or is credited with an inherent right to rule.[71] A gradual independence for the courts could be the first move toward this direction and might provide an institutional foundation for individual as well as collective rights. Difficulties abound with any scenario for political reform; apart from the fundamental unwillingness of the Party to tolerate challengers and disorder, it may be difficult to transfer legitimacy from the monolithic old order to the many forces of a new one. The persistence of traditional values adds to this problem and poses real obstacles to distinctions between individual and collective interests. A more codified system of rules will be a major change in a nation with a culture that has generally not conceived of order in terms of legalism. For these reasons, any new system of order will be distinctively Chinese in many respects, and corruption control will be essentially a political reform.

In conclusion, China's corruption is linked both to its heritage of party-state dominance and to its new mixed economy. Economic reforms in the past 20 years have unleashed market forces in a nation so dominated by the party-state that it has produced a chaotic situation of corruption that requires the construction of new institutions based on law to handle the pressing social issues effectively. Out of the corrupting chaos, a new order seems to be on the horizon. The fundamental dilemma China faces is its aim of developing a market economy and at the same time maintaining the current rule of a Leninist party. To a certain extent, these goals determined that China's path to a society governed by the rule of

[71]Under, p. 66.

law would be exceptionally difficult and uneven. Corruption may trigger a dynamic process that moves China further toward rational and institutional government — or it could disrupt social progress and wipe out the remarkable economic accomplishments of the last two decades as with what happened in Indonesia in 1998. It all depends on whether the government has the capacity and the will to confront the political aspects of the corruption crisis. The third and fourth generations of the CCP leadership seem to have a clear understanding of the urgent need to build legal institutions in the political process to avoid the catastrophe and have taken laudable steps in that direction.

Chapter

3

# From Conflicts to Convergence: Modernity and the Changing Chinese Political Culture

*Baogang Guo*

## INTRODUCTION

China is currently undergoing two fundamental transitions simultaneously. One is the transition from a traditional society to a modern one, and the other, from a Stalinist–Maoist communist society to a market-oriented socialist one. Values, beliefs, and attitudes that originated from the traditional and Maoist societies no longer dominate. Economic modernization has rapidly changed the way people live, think, and act. The rise of a consumer society, the mentality of an affluent middle-class society, rapid urbanization and industrialization, the emerging information age, and the influx of massive migrant laborers have dramatically altered the economic foundation on which traditionalism and Maoism rested. The march toward modernity is not only narrowing the gap between China and the West economically but also culturally. The influence of liberal values, such as humanism, individualism, the rule of law, and limited

government, will have a major impact on China's future political development.

Three distinctive political-belief systems exist in China today: traditionalism, communism, and liberalism. The coexistence of these three systems has generated a great deal of perplexity, and conflicts and tensions among them have generated new waves of social and intellectual movements. This chapter takes a closer look at one particular aspect of each belief system and investigates the tension between the need for continuity on the one hand and the pressure for change on the other. This chapter will argue that China's new political culture will not be traditional, Marxist, or Western-liberalist but instead partake of all three systems. The blend of traditionalism, socialism, radical communism, and liberalism may indeed produce a political culture with Chinese characteristics.

The methodology used in the study on which this chapter is based is primarily historical and comparative in nature. Some of the ideas discussed in this chapter have already been included in one of my papers published recently by the *Journal of Chinese Political Science*.[1] The discussion in this chapter goes beyond my original research by providing a more in-depth analysis. Part 1 presents the state of Chinese political culture by synthesizing some of the existing research. Parts 2 through 5 are three case studies that compare and contrast the similarities and differences of the three cultural systems. It takes a look at one key aspect of the belief system, namely, the different kinds of political support for a stable political system. Part 6 develops an analytical framework that can be used to further the study of China's current political culture.

## THE STATE OF CHINESE POLITICAL CULTURES

Yang Xuegong, a researcher at the Chinese Academy of Social Sciences (CASS), provided the best synthesis thus far on the

[1]B. Guo, "Political Legitimacy in China's Transition," *Journal of Chinese Political Science*, vol. 8, nos.1–2 (2003), pp. 1–25.

complexity of the status of Chinese belief systems.[2] According to Yang, four value systems coexisted in China: the traditional, the Western, the Leftist–Marxist, and the new. This classification provides us with a good starting point. But limits in his analysis require many clarifications and redefinitions.

Yang's first category is the traditional culture. Describing it in a rather negative tone, Yang singles out "power-worship" and the patron–client relationship as the main influence of traditional culture. This seems to be a very narrow account of the presence of traditional values. Many Western scholars have researched various aspects of the traditional Chinese value system, which is largely strange to the West.[3] Traditional Chinese politics is driven by morality, hierarchical order, and reverence for authority. Righteousness and self-cultivation are the foundation of political legitimacy.[4] It is based on the assumption that human nature is essentially good and through education the political elite will acquire the political virtue and wisdom that are essential to good governance. Confucius believed that people would follow the rulers without being ordered and act in accordance with moral principles as long as the rulers were virtuous. They become disobedient, even vicious, only if the rulers are immoral. Although laws are needed, they are used to maintain order instead of limiting rulers' power.[5] The political authority is paternalistic and authoritarian in nature. The central values of Chinese political behavior are sincerity, loyalty, reliability, and steadfastness, and "the entire thrust of traditional Chinese politics was upon the having

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[2]X. Yang, "Luelun Woguo Shehui Zhuanxing Shiqi de Jiazhi Guan (The Value Systems in China during the Transitional Period), *Jinzhou Shifan Xueyuan Xuebao* (*Journal of Jinzhou Normative College*), no. 1 (2001). Retrieved on June 25, 2005, from: http://www.siwen.org/lunli/llwgshzxsqdjzg.htm

[3]C.P. Fitzgerald, *The Birth of Communist China* (Baltimore: Penguin Books, 1964).

[4]L.W. Pye, *The Dynamics of Chinese Politics* (Cambridge, MA: Oelgeschlager, Gunn & Hain, 1981).

[5]X. Zhang, "On Two Ancient Chinese Administrative Ideas: Rule of Virtue and Rule by Law," *The Culture Mandalay: Bulletin of the Centre for East-West Cultural and Economic Studies,* vol. 5, no. 1 (2002), pp. 131–144.

and holding of office and the seeking of favor from an all-powerful bureaucracy."[6] Conformity with the official ideology is the essential norm of political life in itself. Dissenting and partisanship are always considered to be subversive and dangerous, and there is no independent or autonomous individuality. Not surprisingly, many of these values remain the defining elements in China's national character. One can easily identify and observe many similar behavior patterns in today's political life. Reverence to authority and politics-avoidance is still the silent behavior norm for common people.

Yang's second category is Western values, which he also discussed in rather negative and contradictory tones. He viewed "money-worship," rationalism, and individualism as undesirable capitalist influences, but at the same time he regarded these values as a part of historical progress and thought they should be studied with rigorous efforts. His association of liberal values with Westernization is problematic, and a separation between the two is needed in order to solve the moral dilemma Yang faces. Liberalism, for example, existed in China historically. Lao Zi's Daoism contained many ideas similar to those developed by John Locke and others in the West during the 17th century. Culturally speaking, the modernized West has its unique features, but many of its norms and values are products of a modern economy and complex society. Apparently if China is to turn itself into a modern society, it will have to replace ascription with achievement and the rule of man with the rule of law.

It is easy to be nationalistic and to blame the sprouting of liberal ideas as "Westernization." Indeed, that was exactly what Chinese political leaders in the second part of the 20th century had done. They waged several anti-Westernization campaigns aimed at containing the alleged evil or threat. These efforts nevertheless proved to be fruitless and counterproductive. Gambling and prostitution, for instance, were denounced by reform leaders as "Western evils" and "bourgeoisie influence." The truth is that gambling and prostitution have existed throughout China's own history, long before the existence of many Western civilizations. Even if these activities come from the West, they

[6]Pye, *The Dynamics,* 15.

may still not be all negative. Some may have forgotten the fact that China's recent history has been a history of Western learning. Many ideas have been introduced from the West, including Marxism and Leninism. Liberal ideas such as individual freedom, human rights, constitutionalism, the rule of law, separation of power, and checks and balances are common assets of the global community; they are not confined by a country's borderlines and do not belong exclusively to the United States or Western European countries.

Yang's third category is the Leftist–Marxist value system. He seems to focus only on the ideology that prevailed during the Cultural Revolution. In fact, I would suggest a broader persepctive and include the entire values system prior to the reform era as a Stalinist–Maoist one. Yang's last category, "the value system with Chinese characteristics," refers to the new values and consensus that emerged during the reform era, synthesized by the Chinese Communist Party (CCP) as Deng Xiaoping Theory. Yang believes that this new value system, which is characterized by humanism, will be the value system of the future. This view is optimistic, to say the least. It is true that humanism has replaced the Maoist class struggle in modern-day China. Building a harmonious society has become the state's highest goal: thus declared Hu Jintao, the new leader in Beijing.[7] But it is unclear whether the future value system will be entirely based on current consensual values.

So far we have redefined four value systems in China, illustrated in Fig. 1. The model depicted in Fig. 1 is a somewhat accurate description of the current state of Chinese political culture, but it is limited in its utility because it does not reveal the interaction and the dynamics of the hybrid cultural system. The strength of this analysis is that it tells us that there is no consistent set of widely shared values that are commonly defined as political culture in China today. Different groups of people, particularly elite groups, embrace

[7]Jintao Hu, "Speech on Building a Harmonious Society," speech made to the Seminar on Building Socialist Harmonious Society for the Key Provincial Leaders, Retrieved on February 29, 2005 from <http://www.ce.cn/xwzx/gnsz/gdxw/200502/20/t20050220_3113993.shtml>.

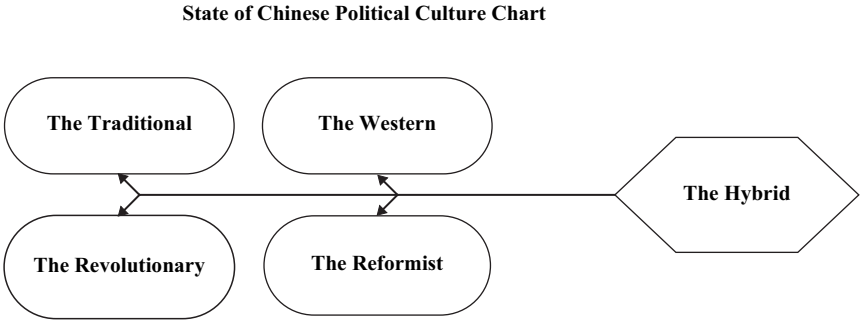



**Figure 1.** A static model of hybrid Chinese political cultures.

different belief systems based on their own needs. What is required is a collection of empirical evidence to reveal the inner structures of these value systems, and an analytical model that is dynamic enough to explain changes.

In the following discussion, we will examine one key component within each political culture, namely, the Chinese beliefs regarding political legitimacy. Since all politics is about the quest for legitimacy, the focus on political legitimacy will enable us to compare each value system easily. Throughout history people have always sought answers to a fundamental political question, Who deserves to govern and why? There is no shortage of research on this subject due to the practical nature of the issue. The concept of political legitimacy in those studies is defined in a variety of ways. Seymour Martin Lipset, for example, defines legitimacy as "the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society."[8] David Beetham defines the concept as "a power relationship justified in terms of people's beliefs."[9]

Scholars, however, disagree on what constitutes the basis of political legitimacy. In general, their analyses tend to focus on the

[8]S.M. Lipset, *Political Man: The Social Bases of Politics* (Baltimore: Johns Hopkins University Press, 1960, p. 77.

[9]D. Beetham, *The Legitimation of Power* (Atlantic Heights, NJ: Humanities Press, International, 1991), p. 11.

following two issues: What makes people believe in the ruler's right to govern? How can a ruler continue to maintain such a belief? The first question deals with a normative issue, and the second, an empirical one. I have used the concepts of original justification and utilitarian justification to deal with these two questions.[10] In brief, original justification refers to the origin of the ruling authority, and utilitarian justification refers to the rulers' staying power or capacity to maintain people's belief in their ruling authority. Original justification, as Max Weber suggested, derives from a divine being, or a leader of moral character or unique quality, or simply the will of the people. It deals with the issue of who should govern and provides the moral capital for those who govern. Utilitarian justification derives from the capacity of the rulers to meet people's needs, such as material well-being or physical security. It deals with the process and outcome of achieving happiness or satisfaction.

The coexistence of different systems of political legitimatization causes tensions. Conflicts therefore are unavoidable. These conflicts, however, will sooner or later produce congruence and fine-tuning and will result in a more stable political culture in China. In the following discussion, I apply this analytical framework to the study of the three coexisting value systems of traditionalism, communism, and liberalism. This analysis will allow us to develop a dynamic model of the current political–cultural system in China.

## THE TRADITIONAL BELIEF SYSTEM OF POLITICAL LEGITIMATIZATION

Chinese traditional understanding of original justification shares insights similar to those of Weber's classification and can be articulated by using four Chinese concepts: mandate of Heaven (*tian ming* 天命), rule by virtue (*ren zhi* 仁治), popular consent (*min ben* 民本), and legality (*fa li* 法理).

1. *Mandate of Heaven:* Ancient Chinese rulers, like rulers elsewhere, had a propensity to use abstract and religious ideas to claim absolute authority. Beginning in the

[10]Guo, "Political Legitimacy."

West Zhou (西周) Dynasty, Chinese emperors always legitimized their political power by claiming a connection with the divine power, the *tian* (天) or Heaven.

2. *Rule by Virtue:* For centuries, legitimacy was not only a theocratic issue but also an ethical one. The moral teaching of Confucius had a profound influence on Chinese rulers. In the Confucian paradise of the Great Harmony (*da tong*), there was a system of moral hierarchy in which an emperor was supposed to be the most virtuous man on earth. Since virtue could be nurtured through education, all government officials should be recruited from "gentlemen" (*jun zi*) or learned scholars.
3. *Popular consent:* Mencius pushed this virtue-based political idealism even further. He believed that government was primarily an exercise of ethics. The rule of a truly moral king, according to him, was characterized by his benevolence toward his people. With that quality, people would give their consent to his ruling, even though it was a tacit consent. This understanding is reflected in Mencius's *min ben* ideas. *Min ben* can be translated as "regarding the people as the roots of the state." This concept resembles the concept of popular consent without its legalistic tone.
4. *Legality:* Legality in the Chinese context is more often based on family rules, clan norms, community customs, and social traditions. Even emperors must observe certain rules set up by their ancestors. The right of primogeniture, for example, was usually, though not always, observed to determine the succession order of the emperorship. Beginning in the Qin Dynasty, Chinese legalists began to emphasize the rule by law, mutual obligation, and responsibilities. But the use of law was only considered to be a means of strengthening a ruler's power, not to limiting it.

Chinese Confucians and legalists also agree that common people are motivated primarily by profit and self-interest. To strengthen the mandate of Heaven, Confucians believe, rulers must make decisions on behalf of the people or *wei min zuo zhu* (为民作主), and those decisions must not do harm to the well-being of the people. This belief in the government's role as a benefit provider has enabled Chinese governments to assume a more assertive role in managing the economy.[11] Overall, Chinese have used the following concepts when dealing with utilitarian justification: fairness and equality (*jun fu* 均富) and benefiting people (*li min* 利民).

1. *Fairness and equality*: The idea of equality is deeply imbedded in Chinese political thoughts. China has been the most populated country on earth for the past two millennia. Scarcity of land, food, and resources caused chronic problems of

[11]L.W. Pye, *The Mandarin and the Cadre: China's Political Cultures* (Ann Arbor, MI: Center for Chinese Studies, University of Michigan, 1988).

famine and peasant uprisings. Peasants always dreamed of land ownership and equal economic outcomes. Justice was always understood as a fair share of economic wealth.

2. *Benefiting people*: *Li min* means asking rulers to give primary consideration to the welfare of the people, or *min sheng* (people's livelihood). A good ruler should not be preoccupied with benefiting himself and indulging in personal luxury and comfort; instead, he should first be concerned with the welfare of his subjects. Among the good deeds mentioned in the classics are that rulers should not tax people heavily; should make sure people have enough food, shelter, and clothing; and should do such deeds as controling floods and relieving poverty.

Based on the proceeding discussion, we can summarize the Chinese cognitive pattern of political legitimacy as follows: a ruler who has the mandate of Heaven, possesses the quality of virtue, shows respect to his subjects, follows the rules of the ancestors, and tries to win the hearts and minds of his subjects will be regarded a just and legitimate one. A just ruler will strengthen his legitimacy by promoting policies that will benefit the people, not himself, by ensuring a relatively equal distribution of these benefits and by allowing people to do what they do the best. See Fig. 2 for a model of Chinese political legitimacy.

The model depicted in Fig. 2 is consistent with David Easton's system of theory of political support.[12] Original justification and utilitarian justification are somewhat similar to his concepts of "diffuse support" and "specific support," but the core values and beliefs are drawn from Chinese political thoughts and tradition. Jie Chen's recent empirical study of popular support in urban China confirmed the continued presence of this traditional system of political legitimacy.[13]

## THE COMMUNIST BELIEF SYSTEM OF POLITICAL LEGITIMACY: FROM REVOLUTION TO REFORMATION

Marxism as a revolutionary ideology is for all intents and purposes antitraditional and anticapitalist. The Chinese Communist leaders

[12]D. Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965).

[13]J. Chen, *Popular Political Support in Urban China* (Washington, DC, and Stanford, CA.: Woodrow Wilson Center Press and Stanford University Press, 2004).

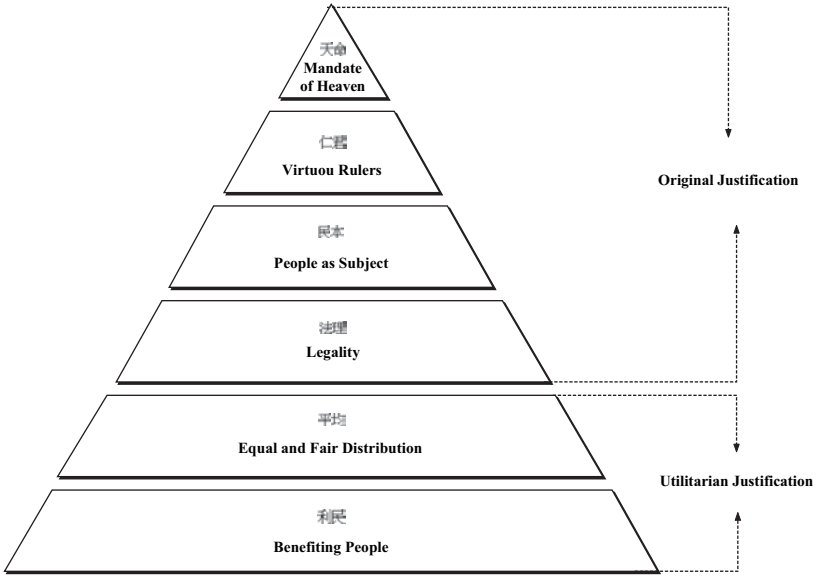



**Figure 2.** Chinese model of political legitimacy.

and the revolution they led have made their own contribution to the ideology. In contrast to some who believed otherwise, they have had some success in creating a political culture to sustain their political and economic systems.[14] The influence of the values, beliefs, and attitudes instituted after the revolution is profound and far reaching, and these cultural elements are most likely to continue to sway the Chinese belief system years from now.

## Revolutionary Legitimacy

After a prolonged military struggle, the CCP came to power in 1949 and established a Stalinist party-state. It relied heavily on revolution as a basis for political legitimacy in the pre-reform era (1949–79). However, the leftists soon took control of the government. They did great damage to the CCP's political legitimacy in the failed Great Leap

[14]G.A. Almond, "Communism and Political Culture Theory," *Comparative Politics,* vol. 15 (1983), pp. 127–138.

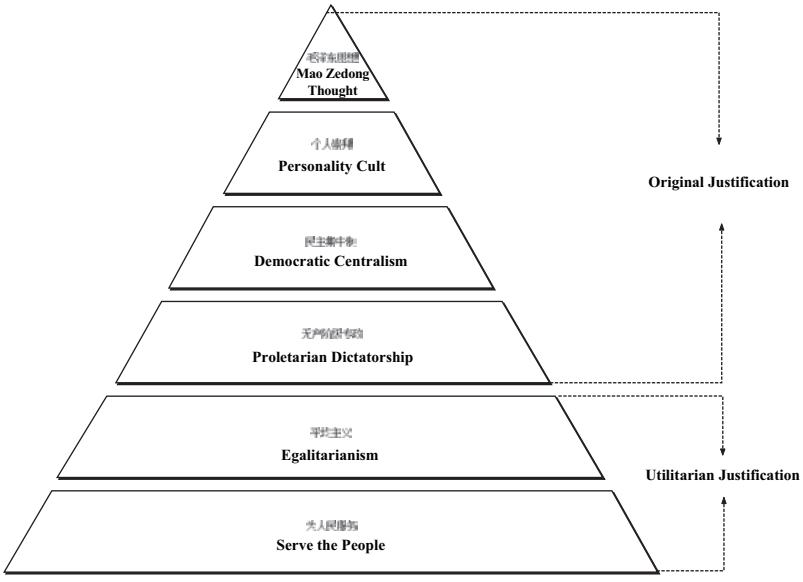



**Figure 3.** The revolutionary system of legitimacy.

Forward campaign and the Cultural Revolution, and the communist base of support eroded. During Mao's era, the legitimacy of the party-state was based on the following justifications (Fig. 3):

1. *Historical mission.* Marxist ideology prescribes a mandate of history and a mission for the proletarian class: to end capitalism and build communism. According to Marx's theory of scientific socialism, the industrial working class, organized and conscious, is certain to overthrow capitalism and to create a society of abundance with universal brotherhood and true freedom.[15]
2. *Charismatic leadership.* The CCP also relied on Mao's personality cult as a source of charismatic legitimacy. Mao, in particular, was enshrined as the never-setting sun and a great savior of the Chinese people. The worship of Mao reached its peak during the Cultural Revolution. Mao's own writings became sources of wisdom. As a god-like figure, he was considered infallible, and his words became the ultimate truth.
3. *Democratic centralism.* Mao was a strong believer of the traditional *min ben* idea. He became a master of the "mass line" — a term used by Mao, meaning all

[15]I. Shapiro, *The Moral Foundations of Politics* (New Haven, CT: Yale University Press, 2003).

decisions must be "from the mass and to the mass." Mao, however, did not like spontaneous popular actions. He believed that people must be organized and controlled. For this purpose, the Chinese communists embraced state corporatism to put all mass organizations under the umbrella of the CCP.

4. *Proletarian dictatorship.* Marxists consider laws to be the will of the ruling class. For many years, the People's Republic of China paid little attention to the need for the rule of law. The majority waved its muscles at their enemies the relentlessly with no concerns over rights of individuals and the due process of the law.
5. *Serving the people.* On utilitarian grounds, the Maoist era was heavily dependent on the following justifications: national independence, liberation, modernity, social–economic equality, and fraternity.[16]

## Reform and Rationalization

After the death of Mao, Deng Xiaoping gradually emerged as China's paramount leader, with little opposition. Deng acknowledged openly that the decades of political chaos and the failure to improve people's standard of living had weakened the Party's legitimacy. Faced with a stagnated economy and eroded public confidence, Deng decided to put an end to the pursuit of class struggle and the mass political campaigns. He redirected the people's energy and attention to economic development. Economic growth and achievement substituted ideology to form a new basis of political support. As economic reform gradually took a strong hold, efforts were also made to redefine the regime's original justification (Fig. 4):

1. *Redefined ideology: from Deng Xiaoping Theory to the Theory of Three Represents.* The first attempt to revise the theory of socialism was made in the early 1980s. The party formally proposed the theory of primary-stage socialism, which held that China was still in the initial stages of socialism. According to this new interpretation, China still lacked a strong economic foundation to support a full-fledged socialist society. Therefore, private ownership instead of public ownership must be accepted, protected, and promoted to further advance China's economic development. While still holding onto the fundamental core of Marxism, the new theory makes a significant adjustment in its instrumental principles to reinterpret the nature of the current task.[17] Deng's programmatic re-interpretation of

[16]Y. Zhong, "Legitimacy Crisis and Legitimation in China," *Journal of Contemporary Asia,* vol. 2, no. 2 (1996) pp. 201–220, quote from 205.

[17]Chua-Eoan and Walsh (1997).

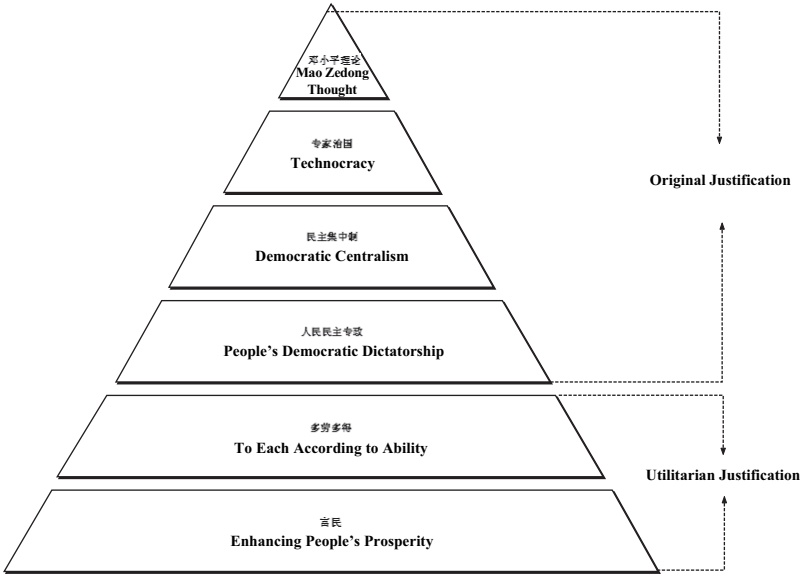



**Figure 4.** The reformist model of legitimacy.

Marxism was later enshrined as the "Deng Xiaoping Theory." Deng's successor Jiang Zeming also made his contribution by putting the so-called "Theory of Three Represents" into PRC's Constitution. This effort was aimed at bringing the official ideology even more in line with the rapidly changing political and economical reality.

2. *From strongmen to technocracy.* Deng Xiaoping is probably the last strongman in the PRC's history. Most of the new leaders succeeding him are either trained engineers or career bureaucrats. They must now rely more on their own achievement and merits.
3. *Economic democracy.* The reform and open-door policy has liberated China's productive forces. In the rural area, the reforms began with the abolishment of the people's communes and the establishment of the household responsibility system. The reform successfully stimulated the peasants' enthusiasm for increasing agricultural production. Millions of peasants were soon out of poverty and raised themselves above a subsistence-level standard of living. In the urban areas, the free-market economic system based on economic freedom and market competition was gradually introduced. The labor-contract system gradually replaced the lifetime-employment system in urban areas. State-run enterprises were made accountable for their own profits and losses. The stock market was reopened. Private businesses began to grow rapidly. Foreign investment poured into China to take advantage of China's low-cost labor force and the huge market.

4. *Rule by law.* The legal system was also restored. The lawlessness of the Mao era and the experience of the Cultural Revolution helped foster a consensus that a socialist legal system must be established. The Constitution of 1982 was a major breakthrough in PRC's legal history. It recognized the principle of popular sovereignty, reestablished the principle of the supremacy of laws, and restored a system of limited separation of power and checks and balances. A large number of statutory and administrative laws were enacted during this period. The system of administrative supervision was established to monitor state agencies and personnel. A law passed in 1989 allowed citizens to sue administrative agencies and to hold public officials accountable for their actions. Although these efforts have not truly established a society based on the rule of law, progress is evident in terms of moving China to a society of laws.
5. *Rising inequality.* The economic success also has its cost. Not everyone has benefited from the reforms in the same way, and growing economic inequality has become a major social concern. According to Chinese official statistics, the Gini coefficient of China rose from a low level of 0.33 in 1980 to 0.40 in 1994 and 0.46 in 2000. China has now joined those countries that have the worst records of unequal distribution of wealth.[18] The main cause of this dismal statistic has a lot to do with the widening income gap between the rural and urban areas. After a decade of agricultural recovery as a result of the initial rural reform, peasants have been once again left behind. Over 90 million rural peasants have now become migrant workers floating between cities, seeking jobs. To reduce the employment pressure, the government has called for the acceleration of the urbanization process and the reform of the household registration system. It also plans to rely more on redistributive policies to alleviate poverty.
6. *Rising social antagonism.* As more and more people have lost their jobs and suffered from a harsh market environment, the relationship between the CCP and the industrial workers has deteriorated. The foundation of communist rule used to be based on a socialist contract between the party-state and the working class. At the end of Jiang's tenure this contract was essentially nonexistent. The equal relationship between enterprise cadres and workers was long gone. A wage labor system was restored, and over 50 million workers of state-owned factories were either laid off or forced to retire. The fate of migrant workers who work in the private enterprises was even more miserable. In some of the worst cases, intimidation, physical violence, corporal punishment, and control of bodily functions are reported.[19]

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[18]G. H. Chang, "Cause and Cure of China's Widening Income Disparity," *China Economic Review,* vol. 13 (2002), pp. 335–340.

[19]A. Chan, *China's Workers under Assault: The Exploitation of Labor in a Globalizing Economy* (Armonk, NY: M.E. Sharpe, 2001).

In summary, the basis of the party-state's legitimacy during the Deng–Jiang era differs significantly from that of the Mao era. Under Mao's leadership, the CCP relied on orthodox Marxism, the personality cult, the appeal of modernization, egalitarianism, and state corporatism. In the Deng–Jiang era, the CCP relied heavily on utilitarian justification and ideological pragmatism. Some efforts have been made to revise the communist ideology. But the reform also generates new challenges to the regime's legitimacy. The CCP feels the need to redefine its social basis of support in order to stay in power since it has alienated its traditional political alliance, the working class.

## MODERNIZATION AND LIBERAL CHALLENGES

Both traditional and Marxist belief systems face serious challenges in light of the rapid progress in China's drive to modernization. Modernization is the single most important event going on in China today; in no other period of Chinese history has the country witnessed such a massive scale of transformation. Industrialization, urbanization, commercialization, informationalization, and the coming age of mass consumption and education are all happening at the same time. Chinese scholar He Chuanqi has proposed a theory of second modernization that emphasizes the importance of knowledge and information.[20] According to this theory, the second modernization includes the process and changes that occur during the transition from an industrial society to a knowledge society, from an industrial economy to a knowledge economy, from an industrial civilization to a knowledge civilization, and from an industrial age to a knowledge age.

Modernization theories offer many clues regarding the inner dynamics of such social and political transformations. Samuel Huntington believed that modernization involves a fundamental shift in values, attitudes, and expectations. "These changes," writes Huntington, "typically require the broadening of loyalties and identifications from concrete and immediate groups (such as the family, clan,

[20]C. He, *Second Modernization* (Beijing. Higher Education Press, 1999).

and village) to larger and more impersonal groupings (such as class and nation)" and "with this goes an increasing reliance on universalistic rather than particularistic values and on standards of achievement rather than of ascription in judging individuals."[21] W.W. Rostow believed that modernization is a homogenizing and linear process and that tendencies exist toward convergence among societies. Modernization, in his view, is a transformative process in which traditional societies must drop traditional structures, cultures, and values and adopt those of modernized societies today.[22] Can China be an exception to this process? Will China become convergent with the overall political cultures of the West? Traditional Chinese political culture is idealistic, authoritarian, paternalistic, elitist, moralistic, and China-centric. Like any other political culture, it is a condition as well as a product of the traditional society.[23] The transition toward a modern society and democracy will require and generate a new political culture that is compatible with the modern market economy. In the process, the traditional values and belief system will be drastically altered, if not be replaced entirely. Although China has some liberal traditions that can be traced to Daoism, significant differences exist between Chinese traditional liberalism and Lockeian liberalism. Locke's classical liberalism is based on a society of atomized individuals who are engaged in fierce competition with one another, protecting the sanctity of their private property and believing in an egalitarian ethic.[24] The social basis is the presence of a strong middle class. What is the Lockeian liberal belief system of political legitimacy (Fig. 5)?

1. *Natural law tradition.* Natural law is a law that is normative and different from divine law and human law. It is universal in that it applies to all of humankind.

[21]S.P. Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), p. 32.

[22]W.W. Rostow, *The Stages of Economic Growth: A Non-communist Manifesto* (Cambridge: Cambridge University Press, 1971).

[23]G.A. Almond, and S. Verba, *The Civic Culture Revisited: An Analytic Study* (Boston: Little Bron, 1980).

[24]J. Locke and J.W. Gough, *The Second Treatise of Civil Government and A Letter Concerning Toleration* (New York: Macmillan, 1947).

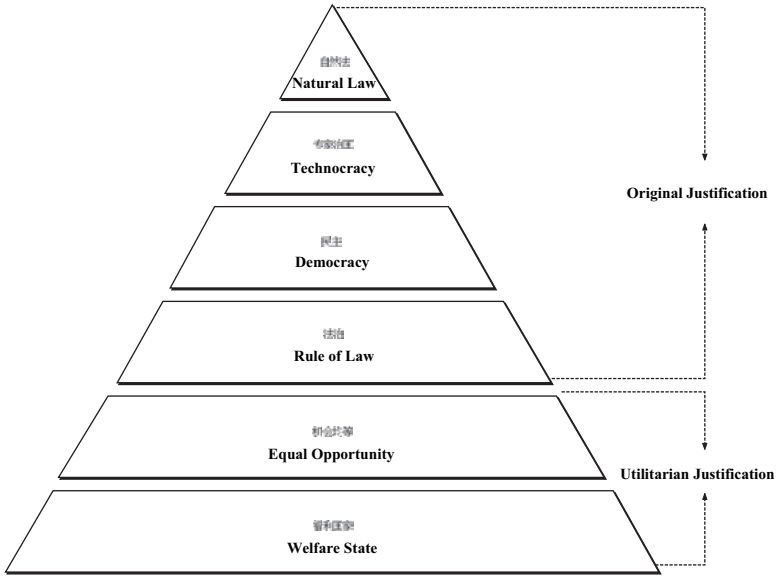



**Figure 5.** Liberal system of legitimacy.

Natural law comprises those precepts of the eternal law that govern the behavior of beings possessing reason and free will. The first precept of natural law, according to St. Thomas Aquinas, is the somewhat vacuous imperative to do good and avoid evil.[25] Natural rights, such as life, liberty, and property, are rights permitted by natural law for the purpose of self-preservation.

2. *Rational–legal authority.* Separate from traditional and charismatic authority, Max Weber's rational–legal authority is an ideal type of hierarchical organization that exists to carry out specific ends. It is one in which office holders are there not because of personality, family, or status but because they are matched to the office in terms of the ability to carry out its responsibilities. The aim is to maximize performance through specialization. There are subordinates and superordinates in a pyramidal system. Authority is constrained by explicit rules and procedures.
3. *Majority rule and democracy.* Lockeian liberalism is based on the explicit and tacit consent of the people. Majority rule is believed to be the best way to reflect moral equality.
4. *Constitutionalism and rule of law.* Based on social contract theory, the government has only limited power. A constitution consists of a set of rules or norms creating,

[25]St. Thomas Acquinas *et al.*, *On Law, Morality, and Politics,* 2nd edn (Hackett Publishing Company, 2003).

structuring, and defining the limits of governmental power or authority. The practice of the rule of law is based on the principles of supremacy of laws, due-process protection, independent judiciary, and prospective instead of retrospective law. These features are always considered to be critical aspects of modernity.[26]

5. *Equality.* The liberal concept of equality first emphasizes the equality of intellects and morality. It is translated into political equality and "one person, one vote." It is this belief that leads to the faith in democracy and the majority rule. Equality also means equal justice or equality before the law. In economics, the concept is limited to equal opportunity but not to actual results.
6. *Welfare state.* Clearly, the polarization of economic benefits anticipated by Karl Marx has caused the near death of capitalism. Without exception, modern capitalism has established a welfare system to solve the issue of inequality and to provide an income safety net.

## FROM CONFLICTS TO CONVERGENCE WITH MODERNITY

The three mainstream belief systems regarding political legitimacy reflect the pluralistic nature of the current state of Chinese political culture. The differences and similarities are summarized in Table 1.

Clearly, one can see from Table 1 that these three belief systems are not totally compatible with each other. The competition among the three results in conflict and clashes. For the most part, however, these conflicts are not conflicts between "Asian values" and Western values; instead, they are between tradition and modernity, a type of conflict that the West went through earlier. These clashes, according

**Table 1.** A Comparison of the Three Political–Cultural Systems

| | Traditional | Marxist | Liberal |
|---|---|---|---|
| Human nature | Good | Good | Bad |
| Moral authority | Mandate of Heaven | Law of history | Natural law |
| Order | Hierarchy | Egalitarian | Equal opportunity |
| Law | Rule by law | Majority dictatorship | Rule of law |
| Popular consent | Tacit | Tacit/explicit | Explicit/tacit |

[26]A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London and New York: Macmillan and St. Martin's Press, 1959).

to D. Senghaas,[27] are "clashes within a civilization" rather than clashes between civilizations, as suggested by Samuel Huntington.[28] Talcott Parsons also used the phrase "evolutionary universal in society" to describe the foreseeable march towards democratization, since democracy is the essential social structure of the modern society.[29] If we look at it this way, the convergence to modern political culture is inevitable. Convergence theory maintains that the process of industrialization and urbanization will gradually weaken and eventually break down the traditional social and political institutions and values that are customary to an agrarian and traditional society, such as the guild, the village community, and the extended family. A new institutional-and-values system compatible with modernity will soon emerge.[30, 31] However, unlike Rostow's convergence thesis about the clash of the two camps during the Cold War,[32] the convergence we are dealing with here is internal. But it does follow the same patterns. The communists will become less communistic and convert to social-democrats; capitalism will become less capitalistic and convert to state-guided capitalism; and the traditional will be less traditional and convert to modernism.[33] This is precisely what makes China's transition so unique.

Some of the Chinese traditional beliefs will fade as modernization renders them obsolete. Others will be redefined and preserved. Confucian norms and concerns with preservation of harmony and obligation and general orientation toward family and community are

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[27]D. Senghaas, *The Clash Within Civilizations: Coming to Terms with Cultural Conflicts* (London and New York: Routledge, 2002).

[28]S.P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

[29]T. Parsons, *Societies, Evolutionary and Comparative Perspectives* (New York: Prentice-Hall, 1966).

[30]T.H. Marshall and T. B. Bottomore, *Citizenship and Social Class* (London and Sterling, VA: Pluto Press, 1992).

[31]T. Parsons, *The System of Modern Societies* (Englewood Cliffs, NJ: Prentice-Hall, 1971).

[32]Rostow, *The Stages*.

[33]J. Kneissel, "The Convergency Theory: The Debate in the Federal Republic of Germany," *New German Critics,* vol. 2 (Spring 1974), pp. 12–24.

likely to survive. The rich tradition of normative and institutional safeguards against any abuse by the government will also continue to be utilized.[34] Many examples demonstrate this cultural continuity. For instance, the newly adopted Chinese Elderly Protection Law give the elderly the right to sue their children if they fail to provide necessary care or financial assistance, should the parents be in such desperate need. Most Americans would not agree to such a codified legal obligation for parental support.

Marxism is also still the official ideology. Nevertheless, the reform of the past two decades had rendered many of the Marxist orthodoxies out of date as well. The CCP has realized that, in order to preserve Marxism, there must be creativity and new thinking. The idea of "new three people's principles" is a good example of such efforts. After becoming the Party's new General Secretary, Hu Jintao has delivered several major speeches that have gradually revealed his governing philosophy. Like his predecessors, Hu holds strong *min ben* and *li min* ideas. Hu reinterprets the essence of Jiang's "three represents" as "three peoples," namely, "use our power for the people, link our feelings to the people, and focus our heart on the pursuit of public welfare."[35] In addition, the importance of the Constitution, the rule of law, and the supremacy of laws are reemphasized. In a speech given to a meeting celebrating the 20th anniversary of the 1982 Constitution, Hu made it clear that all parties must live within the confines of the Constitution and respect its authority. He acknowledged that the existing Constitution had not been observed adequately and that the Constitution itself was also in need of amendment.[36] The addition of the provisions on the protection of private property as well as human rights was considered by many a milestone.

Under Hu's leadership, the new administration promised new styles and new thinking to win over people's hearts and minds. For example, the official ceremony for leaders' foreign visitations has

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[34]K. Buhmann, *Implementing Human Rights through Administration Law Reforms: The Potential in China and Vietnam* (Copenhagen: Dojf Publishing, 1974), p. 23.

[35]*People's Daily (PD)*, February 18, 2002.

[36]*People's Daily,* December 4, 2002.

been simplified, and the size of the delegations reduced. The annual informal meeting and gathering in Beidaihe was cancelled in 2004. New efforts were made to humanize public policies. The incident of Sun Zhigang, a college student who was beaten to death by lawless public security personal, for example, caused public outrage over how people were treated under the system of urban detention of homeless people. The State Council acted quickly to issue a new decree to abolish the system of detention for people who are homeless or those without proper identification documents and replaced it with a new system of homelessness assistance. All former detention centers now have been converted to Public Assistance Stations. The mission of the new stations is to render assistance to people in need on a voluntary basis rather than chasing them and sending them back to their homes. These types of day-to-day and incremental changes will not only create an image of a kinder and gentler government but also expand individual freedom and citizenry rights, which the West has advocated. These changes may, however, have little to do with outside pressures. One study found that implementing universal human rights will be institutionally sustainable only if these efforts are based on a high degree of national ownership and indigenous normative foundation.[37] This indigenous foundation is rooted in the traditional and existing belief systems and cannot be an artificial insemination from the West.

Figure 6 illustrates the interaction of the three cultural systems.

In additional to the pluralist core, three subcultures exist within this hybrid system:

## Revolutionary Subculture (b)

The revolutionary culture the CCP helps create is still widely shared among working-class people. The idea of anticapitalism, antiexploitation, equality, and state welfare in society was responsible for many of the social unrests. Many so-called new-Left intellectuals are still challenging the legitimacy of the economic reform.

[37]Buhmann, *Implementing Human Rights,* p. 237.

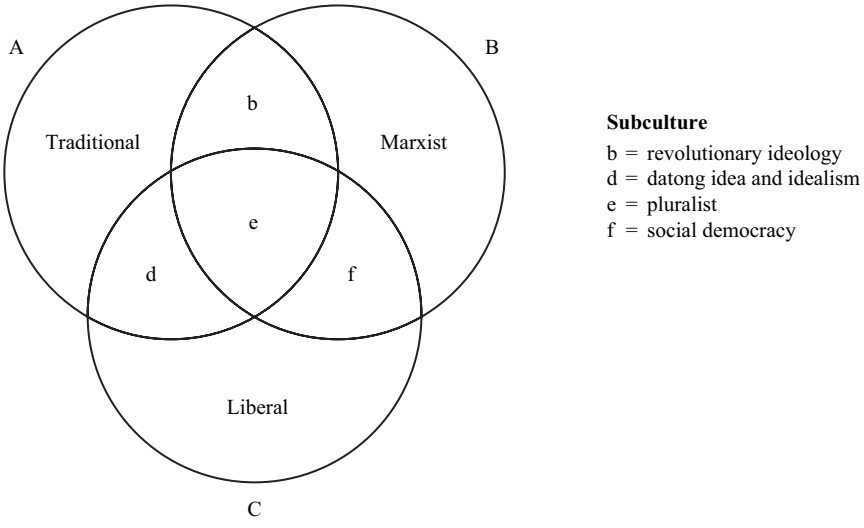



**Figure 6.** A dynamic model of Chinese political cultures.

## Idealist and Utopian Subculture (d)

A recently published book by an overseas writer, Xie Xunjun, one of the authors of the controversial TV series *He Sang*, claimed that Chinese culture, centered on the rule of ritual (*li*), will eventually unify the world and provide an alternative to the Western civilization that has dominated and also literally destroyed the world.[38] This certainly is not the first of such bold claims. The famous Chinese reformer Kang Youwei, after launching the failed Hundred-Days Reform, dreamed of the creation of a unified world with Confucian ideas of ritual and morality.[39] Sun Yat-sen also believed in Chinese messianism. He assumed that the Chinese could create a unified world based on Chinese morality and that they had an obligation to promote the formation of a world commonwealth.[40] These proclamations

[38]X. Xie, "Using Chinese Civilization to Unify the World" (2004). Retrieved on February 20, 2005, from <http://www.chinesenewsnet.com>.

[39]L.G. Thompson, *Ta T'ung-Shu: The One World Philosophy of Kang Yu-wei*. (London: George Allen & Unwin Ltd., 1958).

[40]Y.-S. Sun, *Three Principles of the People*, Taipei. China Cultural Services (1992).

may generate within Chinese readers a sense of nationalist satisfaction, yet this type of utopian thinking is essentially too idealistic and China-centric. Many Chinese political thinkers, ancient or modern, shared Confucius's idea of *datong* or a "one-world philosophy" and wanted to unite the world into a global community with harmony and peace. Many endorsed an egalitarian society in which all existing distinctions between people would disappear. To achieve this goal, they supported the abolishment of private property and the establishment of public ownership. Implied was a strong emphasis on the role of the state and a strong rejection of some of the prevailing features of capitalism, such as competition and individualism.[41] Such Chinese idealism indeed formed the basis of traditional Chinese political culture.

Xie's book also contributes to the new cultural restoration movement that has surfaced in the 1990s.[42] An independent magazine, *Yuan Dao,* calls for new studies of Chinese cultural tradition and promotes China's own cultural identity, which is based on the rule of virtue and of ritual. The neo-Confucianists advocate transforming psychological Confucianism into political Confucianism and using its political wisdom and principles as guidance for transforming China's political reality. Kang Xiaoguang's "cultural nationalism" echoes a similar aspiration. He goes even further by calling for a reconstruction of Confucianism, making it a universally accepted modern religion.[43] Conceptually speaking, what these scholars and thinkers have in mind when they talk about "Chinese culture" is really Chinese political culture. It is unimaginable that these authors are calling for people all over the world to wear Chinese clothes and speak Chinese. Instead, what they are asking for is the justification of the Chinese way of governing the community, state, and universe.

The cultural-restoration movement is a reaction to several developments. First, it is a rejection of the anticultural tendency of the

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[41]B. Guo, "Chinese Modern Utopianism: from Hong Xiuquan to Mao Zedong," *Journal of Contemporary Asian Development,* vol. *2,* no. 2 (2004), pp. 197–210.

[42]F. Han, "Tameng Chongxin Shenshi Chuantong (They Reexamine Chinese Tradition)." *Chinese Newsweek,* vol. 178 (May 3, 2004).

[43]X. Kang, "Wenhua Minzhu Zhuyi Lungang (An Outline of Cultural Nationalism)," *Strategies and Management,* vol. 2 (2003), pp. 9–27.

May Fourth Movement and the Cultural Revolution. Second, it is a response to the invasion of Western influence or "spiritual pollution" in recent decades. Finally, it is intended to be a solution to moral decay and the decline of orthodox communist ideology in China. The cultural restoration movement is also a result of modernization. The rapid economic development in recent years has transformed China physically and economically. The cultural restoration is an inevitable ingredient in a much larger attempt to regain China's greatness in the world. But it fails to take into consideration the influence of other belief systems in China.

## Social Democratic Subculture (f)

Deng Xiaoping's market socialist theory bears a resemblance to a lot of arguments made by European and American social democrats. Indeed, the practical and theoretical changes engineered by the Chinese reformers have narrowed the differences between the Marxist–Leninist socialist movement in the East and the democratic–socialist movement in the West. This poses at least three theoretically and empirically challenging questions: (1) Will the two socialist movements merge in the near future? (2) What is the likelihood such a conversion will ever take place? (3) Under what conditions will it happen?

Democratic socialism originated from the Socialist International Movement when Edward Bernstein, one of the first right-wing German social-democratic revisionists of Marx, challenged Marx by proposing that socialism could be developed within capitalism. Karl Kautsky made similar arguments. He asserted that socialism was the culmination of capitalism as well as its transformation, and it was defined by that fact rather than by the socialists themselves. The socialists' task, according to Kautsky, was not to organize a socialist revolution but to organize for the revolution; it was not to make the revolution but to take advantage of it.[44] He was the first socialist who defined socialism by using the term "socialization." For him, socialization was the ownership by the democratic state of large-scale industry, which was an inevitable outcome of capitalist development.

[44]M. Harrington, *Socialism: Past and Future* (New York: Arcade, 1989), pp. 49–59.

The Congress of the Socialist International in the Frankfurt Congress of 1951 accepted the Kautskian definition of socialism:

> Socialism is a system that features a mix of public and cooperative ownership of essential industries, and private ownership in agriculture, handicraft, retail trade, and small and middle-sized industries. Under socialism, cooperative ownership is preferred whenever possible.[45]

American socialist Michael Harrington defined socialization as the democratization of decision-making processes in the everyday economy; state guarantee of essential human rights, such as health and education; and new modes of social ownership, such as Employee Stock Ownership Plans (ESOPs). Even the nationalized industries, according to Harrington, also had to be socialized to allow self-government and the producer's participation in the decision-making process.[46] In addition to advocating social ownership, European and American social democrats also emphasize the continuity of bourgeoisie democratic institutions. Rosa Luxembourg, the left-wing revisionist of the German Communist Party, once pointed out that "[i]t is the historical task of the proletariat, when it comes to power, to replace bourgeois democracy with socialist democracy, not to abolish democracy itself.[47] The *Frankfurt Declaration* of the Socialist International also claims that "[s]ocialism can be achieved only in a democratic system by democratic means."[48]

The CCP has criticized European social democrats for years. Now suddenly it finds itself gradually endorsing most of their ideas. For instance, Bernstein's analysis of the neutrality of the stock ownership has been widely accepted in China.[49] The need for a theory

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[45]N. Thomas, Appendix I, "The Frankfurt Declaration," *Socialism Reexamined* (New York: W. W. Norton, 1963).

[46]Harrington, *Socialism: Past and Future.*

[47]*Ibid.*, ch. 7.

[48]Thomas, "The Frankfurt Declaration."

[49]C. Han, (1998). "Gufenzhi Bingfei 'Diguo Zhuyi De Jinji Jichu' — Lenin Yu 'Xiuzheng Zhuyi' Lunzhan Xinshuo" (The Stock System is not ' the Essential Feature of Imperialism' — A New Interpretation of the Debate between Lenin and the Revisionists)," *Henan Shekejie Henan Social Science Circle*, 12, (1998). Retrieved on December 20, 2003, from <http://www.hnssa.org.cn>.

of democracy has been given a high priority. The Communists may reject "the peaceful revolution" advocated by its European counterparts by pointing out the brutality of its political enemies in its prolonged struggle against the Nationalists. The differences between Chinese socialists and European democratic socialists, however, have increasingly been reduced as both the militant and moderate wings have suffered major setbacks. The CCP's use of revolutionary means only necessitates the need for the transition of the CCP from a revolutionary party to a developmental one in the post-revolution phase.

## CONCLUSION

In this chapter, I have established an analytical model of Chinese political culture. The new culture blends the three existing values systems, namely traditionalism, Marxism, and liberalism. It is dynamic and pluralistic in nature. Within the new cultural system exist three subcultures: the Left, the social democrats, and the idealist utopians. They all agree with some of the core values, such as modernization and social stability, but they disagree on others, such as who gets what, when, and how. These differences can only be resolved through the political process. In our efforts to advance China's political civilization, we must first understand the complexity of the new political–cultural system that is emerging. Political tolerance must be established to allow peaceful political competition.

Chapter

4

# Democratic Values Among Chinese Peasantry: An Empirical Study*

*Yang Zhong*

## INTRODUCTION

Historically, the Chinese peasantry in the Confucian tradition has been viewed as a conservative social and political force. The popular view among intellectuals and the general population in China is still that Chinese peasants are one of the main obstacles to Chinese democracy, despite the fact that meaningful villager committee elections have been taking place in many Chinese villages and that Chinese peasants are very conscious of their rights and willing to protect them through "rightful resistance."[1] In fact, some scholars

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[1]Kevin J. O'Brien and Lianjiang Li, "The Politics of Lodging Complaints in Rural China," *The China Quarterly*, no. 143 (1995), pp. 756–783.

even suggest that the Chinese countryside may end up bringing democratization to the rest of China.[2]

Is the popular negative view about the Chinese peasantry with regard to democratic values valid? What is the current status of democratic values among Chinese peasants? How are Chinese peasants compared with Chinese urban residents in terms of their democratic values? What are the factors that possibly affect the support or lack thereof for core democratic values among Chinese peasants? Answers to these questions are crucial in understanding and predicting political developments in China. Unfortunately, there have been few empirical studies on this subject in contemporary Chinese scholarship. This chapter attempts to provide some answers to these questions by drawing findings from a unique survey conducted in southern Jiangsu province.

It is not the author's intention to generalize the findings from southern Jiangsu province, which is one of the most developed rural areas in China, to the rest of China's rural population. Findings from this study in fact demonstrate that the Chinese countryside is more stratified than many people think and that support for key democratic values among Chinese peasants is fairly strong and does not lag far behind that of their counterparts in the cities. As rural areas in the Chinese hinterland become more economically developed, Chinese peasants in those regions will acquire the democratic values found among today's Jiangsu peasants, which will provide a brighter future for further democratization in rural China.

## DATA

This research is based on a random public opinion survey conducted in the summer of 2000 in 12 southern Jiangsu counties. I chose southern Jiangsu as my survey site for the following three reasons: First, Jiangsu is one of the more populated provinces and one of the most economically and culturally developed areas in China.

[2]See Tyrene White, "Reforming the Countryside," *Current History*, vol. 91, no. 566 (1992), p. 277.

Southern Jiangsu is historically known as *yu mi zhi xiang* or "land of fish and rice." Jiangsu's economic development has accelerated since the economic reforms in the late 1970s because of its successful rural industrialization drive led by the collective economy of township and village enterprises (TVEs).[3] Due to the province's long-held respect for knowledge and education and its recent economic development, the educational levels and literacy rates of the rural population in southern Jiangsu are much higher than those in most other rural areas in China.[4] If we accept the positive linkage found in the Western literature between economic development and democratization/development of democratic political culture, it seems that southern Jiangsu offers one of the best sites for studying how far democracy can go in rural China.

My second reason for choosing this site is that it is easier to conduct a random survey in southern Jiangsu due to its high level of economic development and low illiteracy rate. And finally, I found a reputable and reliable collaborator in southern Jiangsu for this survey project.

The survey, conducted in cooperation with a Chinese research institute,[5] draws from the literate rural adult population (with rural residency status or *hukou*) over 18 years of age residing in 21 towns and townships in southern Jiangsu.[6] Our sample obtained 1,162 valid

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[3]The southern Jiangsu economic development model is often differentiated from the Wenzhou development model that emphasizes private enterprises and the Pearl River delta development model that is based on massive foreign investment.

[4]The illiteracy rate in Jiangsu is 9 percent while the national average is around 19 percent. See *Suzhou Statistical Yearbook 1998*, p. 85; *Wuxi Statistical Yearbook 1998*, p. 92; *Changzhou Statistical Yearbook 1998*, p. 152; and Suzanne Ogden, *Global Studies: China* (Sluice Dock, Guilford, CT: Dushkin/MaGraw-Hill,1999), p. 4.

[5]By mutual agreement we must maintain the anonymity of this organization.

[6]The reason we decided not to include illiterate peasants in our survey is based upon the results of a pre-test conducted prior to the survey. Our experience with the pre-test is that most of the illiterate peasants had so many cognitive problems in comprehending the questions that we had to explain the entire question. In fact, we observed that when the interviewers tried to explain the questions to the respondents they tended to inject their own opinions or biased examples. To avoid such biases and induced answers, we decided to eliminate the illiterate population

responses of 1,270, using multistage random sampling procedures.[7] We employed advanced and trained undergraduate and graduate students as fieldworkers to conduct the survey. A fieldworker brought the questionnaire to the randomly chosen, individual respondent, who filled out the questionnaire; then the fieldworker brought the questionnaire back to the survey center. As a result of this survey method, the response rate is close to 92 percent. Care was taken to minimize respondent effects and linguistic misinterpretations. The original wording of our questionnaire, first designed in the United States, was reviewed by our cooperating research institute in China to fit the Chinese social and cultural context. Respondents were assured of absolute confidentiality and encouraged to provide answers that best captured their true feelings.

## SUPPORT OF CORE DEMOCRATIC VALUES AMONG JIANGSU PEASANTS

It is assumed that the development of stable and effective democratic institutions depends heavily on the citizens' support of core democratic values. It is hard to imagine that democratic institutions would survive in a political culture where there is a serious lack of support for some key democratic values. As indicated earlier, there has always been serious debate about whether traditional Chinese political culture is inherently authoritarian and incompatible with modern democratic

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from our survey. Fortunately, only 9 percent of the rural population in the areas we surveyed is illiterate. We don't think this elimination should have major impact on our findings about peasants' participation behavior in VC elections in Jiangsu. Also, even though all the respondents have rural residency status, they do not necessarily work on farms. Many work in factories or TVEs.

[7]A multi-stage sampling procedure was used to conduct the survey. Twenty-one towns and townships were randomly chosen after the first stage of sampling. Four villages were randomly chosen from each town or township after the second stage of sampling. The third stage of sampling produced approximately 16 households from each randomly chosen village. One individual adult was randomly chosen from each randomly chosen household as the respondent at the final stage of sampling in our Jiangsu rural survey. A total number of 1270 respondents were randomly chosen; 1,162 responded to our surveys.

values.[8] Chinese peasants in particular are suspected to be carriers of authoritarian culture. In fact, the lack of democracy in China is often blamed on the Chinese peasants, who are believed to have a low level of democratic political culture and to lack democratic traditions. On the other hand, some China scholars have predicted that marketization of the Chinese economy will inevitably lead to a gradual process of political democratization, if one believes in the linkage between economic development and democratization.[9] Over the years, scholars of political science have identified the following core democratic values: political tolerance, appreciation of liberties and freedoms, consciousness of civic/political rights, and support for competitive elections.[10] These are the values we tapped in our survey among Jiangsu peasants, and measures of these values became the dependent variables in the study.

Findings presented in Table 1 show that peasants in our survey strongly endorsed democratic elections. An overwhelming majority of our respondents supported the concept that township and county officials, who are currently not directly elected by voters, should be popularly elected to their positions. Close to 60 percent seemed to support the idea that state leaders should also be promoted through elections. In another survey question, we asked whether all village party secretaries should be popularly elected. An overwhelming majority of our respondents (82 percent) favored popular election of village party secretaries. A major constraint and drawback in current village self-government in China, as mentioned earlier, is the fact that the village party secretary is the most powerful cadre (or the "first-hand"), and the elected village committee chairman is usually a deputy to the party secretary. Yet the party secretary is not popularly elected. The lack of power of the villagers' committee chairman

[8]Merle Goldman, Merle, *Sowing the Seeds of Democracy in China* (Cambridge, MA: Harvard University Press, 1994), p. 1.

[9]See, for example, Gordon White, "Democratization and Economic Reform in China." *Australian Journal of Chinese Affairs*, vol. 31 (1994), pp. 73–92.

[10]James L. Gibson, Raymond M. Duch, and Kent L. Tedin, "Democratic Values and the Transformation of the Soviet Union." *The Journal of Politics*, vol. 54, no. 2 (1992), pp. 329–371.

**Table 1.** Selected Democratic Values I (%)

| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
|---|---|---|---|---|---|---|
| All county and township/ town officials should be elected to their positions | 59.8 | 33.6 | 2.6 | 0.3 | 3.4 | 1156 |
| It is better to appoint state officials | 9.6 | 23.6 | 39.1 | 18.3 | 9.0 | 1156 |
| If village elections do not solve village problems, it is then unnecessary to hold village elections | 12.9 | 23.4 | 34.8 | 18.5 | 10.0 | 1156 |
| Elections should be abandoned if they create chaos and instabilities | 9.9 | 22.3 | 36.9 | 20.1 | 10.4 | 1156 |
| It would not be necessary for ordinary people to be involved in the decision-making process if the officials are capable and trusted by the masses | 8.8 | 24.3 | 37.8 | 23.0 | 5.7 | 1156 |
| It would be best that ordinary people are involved in the decision-making process, regardless of their knowledge of the issues | 18.3 | 34.3 | 29.5 | 8.9 | 8.7 | 1156 |

Source: Jiangsu Rural Survey 2000.

significantly reduces the meaningfulness and effectiveness of village elections in China.

It is even more surprising to find that a majority of our respondents were not willing to give up on democratic elections even if elected officials did not solve their problems. Often people tend to take a utilitarian approach toward democracy, believing that democracy provides the means to solve specific problems. Yet most of the

respondents in the survey seemed to insist on democratic elections even if they may not solve village problems. Findings for the question concerning potential chaos and instabilities resulting from elections are also telling. A majority of the respondents disagreed or strongly disagreed with the statement that elections should be abandoned if they created chaos and instability. It should be noted that the Chinese people have a special fear of chaos, or *luan*. after experiencing centuries of upheavals, revolutions, and instability. The chaotic Cultural Revolution is still fresh in people's minds. Therefore, the survey findings are especially interesting, given the Chinese people's traditional concern for stability. Moreover, we also found a strong sense of popular participation. Over 60 percent of people in our survey did not believe in elite politics, and over 50 percent supported a citizen's right to participate regardless of one's knowledge and educational levels. These findings contradict the negative perception of low political democratic culture among Chinese peasantry.

Table 2 presents findings on attitudes toward freedom of the press, tolerance, and political efficacy. Freedom of the press seems to be strongly favored by our respondents. An overwhelming majority of the peasants in our survey believed that the press should be given more freedom to expose wrongdoings, such as official corruption. A majority of our respondents also think that a nonofficial press should be allowed to exist along with the official press. Close to 90 percent of our respondents agreed that one is entitled to the same right of free speech as everyone else, regardless of his/her political beliefs. In addition, most people disagreed with the statement that demonstrations and assemblies should be banned because they may cause chaos and instability. Again, these findings seem to defy the conventional wisdom that Chinese peasants are socially and politically conservative and hold values incompatible with democracy. In fact, on most of these questions, our peasant respondents in Jiangsu fared equally well or even better than the urban residents in our Beijing surveys.[11]

[11]On the two Beijing surveys conducted among Beijing residents in the 1990s, see Yang Zhong, Jie Chen, and John Scheb, "Mass Political Culture in Beijing: Findings from Two Public Opinion Surveys," *Asian Survey*, vol. 38, no. 8 (1998), pp. 763–783.

**Table 2.** Selected Democratic Values II (%)

| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
|---|---|---|---|---|---|---|
| The press should be given more freedom to expose wrongdoings such as official corruption | 62.5 (66.7)* | 28.4 (26.5) | 3.5 (6.0) | 0.3 (0.7) | 5.1 | 1157 |
| Nonofficial media should be allowed to coexist with official state media | 32.3 | 42.9 | 7.3 | 2.0 | 15.0 | 1157 |
| Regardless of one's political beliefs, he or she is entitled to freely express his or her views | 57.6 (40.8) | 32.0 (45.5) | 5.1 (11.9) | 0.4 (1.8) | 4.4 | 1157 |
| Assemblies and demonstrations can cause social chaos, and therefore they should be banned | 14.0 | 24.5 | 36.1 | 14.8 | 10.3 | 1156 |

Source: Jiangsu Rural Survey 2000.
*Figures in parentheses are combined findings from surveys conducted in Beijing in 1995 and 1997.

Answers to the questions cited above by the survey respondents were combined and tallied to form an additive index to capture a collective profile of a respondent's level of support for core democratic values. This index is used as the dependent variable in the multivariate analysis in this study.

## SOCIOPOLITICAL AND ECONOMIC FACTORS INFLUENCING DEMOCRATIC VALUES

I included several sociopolitical and economic factors as independent variables to potentially explain the formation and degree of support for the core democratic values held by peasants in our survey. Specifically, the independent variables are as follows: socioeconomic satisfaction, income, political satisfaction, free market values, political

efficacy, perceived need for political reform, and several key sociodemographic variables.

## Socioeconomic Satisfaction

Many scholars have identified individual satisfaction with socioeconomic conditions as a key factor for the development and maintenance of a stable democratic system.[12] However, a study conducted by Finifter and Mickiewicz in the former Soviet Union in the late 1980s showed that "higher satisfaction with one's own life resulted in decreased receptivity to [democratic] change."[13] In other words, they found that people who were more satisfied with their socioeconomic conditions tended to be more conservative in their political orientation. Even though there appears to be a difference between the established democracies and authoritarian societies-in-transition with regard to the relationship between personal life satisfaction and support for democratic values, the difference may not be real. The key is change or status quo. The proper hypothesis to be proposed for both situations is probably that those people living in any society who are more satisfied with their personal socioeconomic conditions are less supportive of social change and more prone to maintaining the status quo. This is probably true with people living in democracies as well as with people who live in authoritarian countries.

Based on the above analysis, I suspect that our respondents' life satisfaction influences their support for democratic values in a negative way. Evidence has shown that the new rich and people whose life has significantly improved in recent years in China have indeed

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[12]Ronald Inglehart, "Values, Objective Needs and Subjective Satisfaction among Western Publics," *Comparative Political Studies* 9 (1977), pp. 429–458; and Samuel Barnes, Barbara G. Farah, and Felix Heunks, "Personal Dissatisfaction" and "Political Dissatisfaction," in Samuel H. Barnes and Max Kaase, eds., *Political Action: Mass Participation in Five Western Democracies* (Beverly Hills, CA: Sage Publications, 1979), pp. 384–407 and 409–430.

[13]Ada Finifter and Ellen Mickiewicz, "Redefining the Political System of the USSR: Mass Support for Political Change," *American Political Science Review*, vol. 86, no. 4 (1992), pp. 857–874.

become politically conservative. The Chinese Communist Party's strategy of raising the living standard (or eudemonism) to improve its legitimacy, which has declined due to its departure from orthodox Marxist ideology and due to official corruption, has worked to a certain degree.[14] I therefore hypothesize that peasants in the survey who felt more satisfied with their individual socioeconomic conditions are less supportive of the core democratic values that could lead to a potentially drastic political change, such as democratization.

I measured individuals' satisfaction with their socioeconomic conditions by asking respondents to score two statements: "My living conditions have improved in the reform era" and "My social status has improved noticeably in the reform era." For both questions, we asked out respondents to register their levels of satisfaction on a four-point scale in which "1" (or "strongly disagree" with the statement) stands for "very dissatisfied" and "4" (or "strongly agree" with the statement) stands for "very satisfied." (Then numbers were tallied to form an additive index for each respondent that became the independent variable socioeconomic satisfaction.) The results (see Table 3) are not surprising. An overwhelming majority (close to 90 percent) of our respondents agreed with the statement that their living standard had noticeably improved in the reform era, while about 66 percent of them felt that their social status had likewise improved in the same period. In fact, compared with survey data gathered from Beijing in the late 1990s, more people in southern Jiangsu province strongly agreed with the statement that their living conditions had noticeably improved in the reform era. It should be pointed out, though, that southern Jiangsu province is one of the most developed rural areas in China.

## Income

Closely related to life satisfaction is income. In the Western literature, one's income has long been considered an influence on one's

[14]Yang Zhong, "Legitimacy Crisis and Legitimation in China," *Journal of Contemporary Asia*, vol. 26, no. 2 (1996), pp. 206–212.

**Table 3.** Levels of Socioeconomic Satisfaction (%)

| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
|---|---|---|---|---|---|---|
| My living conditions have noticeably improved during the reform era | 41.7 (36.7)* | 47.5 (51.7) | 6.8 (9.8) | 0.8 (1.8) | 3.2 | 1149 |
| My social status has noticeably improved during the reform era | 22.3 (19.1) | 43.3 (46.1)) | 18.4 (27.6) | 4.43 (7.2) | 11.0 | 1149 |

Source: Jiangsu Rural Survey 2000.
*Figures in parentheses are combined findings from surveys conducted in Beijing in 1995 and 1997.

political behavior and orientation. For example, there is a strong linkage between higher income and conservative political orientation and preference for status quo due to one's vested economic interest in the existing system. Following the same logic regarding the relationship between life satisfaction and support for democratic values explained previously, I hypothesized that people with higher income would tend to be less supportive of core democratic values since the latter may lead to drastic social and political changes in China.

## Political Satisfaction

Political satisfaction is another independent variable used in this study to count for the support of core democratic values. Political satisfaction refers to respondents' satisfaction with the political situation and government performance in their locale. As with the relationship between socioeconomic satisfaction and support for democratic values, people who are satisfied with the current political situation and government performance in China are probably less likely to support democratic values that have the potential to lead to fundamental changes in the political system, while people very unsatisfied with the political situation and government performance are more

likely to support those values. Three questions were asked regarding political satisfaction (i.e., respondents rated the seriousness of (1) the problem of local officials' misusing public money for extravagant dining and receptions, (2) the level of "clean" local government, and (3) the responsiveness of local officials to local residents' complaints and suggestions).

The findings in Table 4 are also not surprising. It seems that the majority of our respondents are not satisfied with local Chinese government and government officials. Using public funds for private

**Table 4.** Levels of Political Satisfaction (%)

| | Quite serious problem | Serious problem | Not quite serious problem | Does not exist | Hard to say | *N* |
|---|---|---|---|---|---|---|
| To your knowledge, is there a serious problem among your local authorities of using public funds for private dining and receptions? | 8.0 | 36.3 | 33.4 | 2.7 | 19.5 | 1150 |
| | Very good job | Good job | Not good job | Bad Job | Hard to say | *N* |
| What kind of job have your local authorities done with regard to establishing a clean government? | 1.6 | 21.2 | 42.8 | 11.0 | 23.2 | 1149 |
| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
| People's complaints and suggestions to the government are often ignored | 26.8 | 45.7 | 15.9 | 2.9 | 8.7 | 1154 |

Source: Jiangsu Rural Survey 2000.

dining and receptions is a serious problem in China and has been a major source of public discontent in Chinese rural areas. Our survey shows that close to half of our respondents felt that the problem was either very serious or serious in their locale. A high percentage (close to 20 percent) of our respondents, however, were reluctant to express their opinion on this sensitive question. When our respondents were asked what kind of job their local authorities had done with regard to establishing clean government, over 50 percent did not think their local authorities had done a good job. Again, a high percentage of our respondents were reluctant to answer the question. A much higher percentage agreed or strongly agreed that local government rarely reacted to their complaints and suggestions. Overall, the picture is that there is a high or modest high degree of public discontent with local government and local government officials among our peasant respondents. The answers of respondents to these questions were tallied and added to form an additive index to be used as the independent variable of political satisfaction in the multivariate analysis.

## Free Market Values

Many scholars have long argued that there is a strong correlation between the free-market economic system and democracy.[15] Not only does the positive relationship between free-market economy and democracy exist at the institutional level, the strong connection between a preference for free-market economy and democratic values is also found at the individual level.[16] Given that connection, it is interesting to discover how Chinese peasants feel about the ongoing market-driven reforms that started in the late 1970s and whether

[15]See, for example, Gabriel Almond, "Capitalism and Democracy." *PS: Political Science and Politics*, vol. 24, no. 3 (1991), pp. 467–474.

[16]James L. Gibson and Raymond Duch, "Emerging Democratic Values in Soviet Political Culture," in Arthur H. Miller, William M. Reisinger, and Vicki L. Hesli, eds., *Public Opinion and Regime Change: The New Politics of Post-Soviet Societies* (Boulder, CO: Westview Press, 1993), pp. 69–94.

their views on the free-market economy affected their belief in democratic values. I thus hypothesize that individuals who have embraced such free-market values as free competition and private ownership are more likely to support core democratic values.

It is apparent that the economic reforms have dramatically changed the face of China, making it one of the fastest-growing economies in the world. These reforms have markedly improved the standard of living for ordinary Chinese. Yet these reforms have also brought negative consequences, such as inflation, declining social welfare programs, corruption, a widening gap between the rich and the poor, and job insecurity. In the two surveys conducted in Beijing in the 1990s, we found lukewarm support for the adoption of a complete or predominantly market economy.[17] These economic reforms started in the rural countryside, where they received strong initial support from the peasantry, who benefited from the rural reforms in the 1980s. However, since the late 1980s the economic situation in rural China has deteriorated, and the income gap between urban residents and peasants has widened, to the disadvantage of the peasants. This is due to declining prices for agricultural products, the rising cost of farming, and excessive fee collection by local governments. Given the new peasants' circumstances, do Chinese peasants still support free-market-driven reforms?

The responses to our questions on preferences for economic systems and ownership structures showed an interesting pattern. With regard to economic systems, very few preferred a total central-planning economy, or CPE, or a predominantly CPE (see Table 5). Also, not many people (only 9.8 percent) preferred a genuinely mixed economy. Compared with data from our Beijing surveys, these figures are much lower. Instead, around 56 percent of our respondents preferred either a mostly market economy or a total market economy. This figure is much higher than in our Beijing surveys. A quarter of the people in our Jiangsu rural survey had a hard time deciding which system would be best for them. It seems that a

[17]Yang Zhong, Jie Chen, and John Scheb, "Mass Political Culture in Beijing: Findings from Two Public Opinion Surveys," p. 773.

**Table 5.** Attitudes toward Economic Reforms (%)

| | Total planning economy | Predominantly planning economy | Half planning half market | Predominantly market economy | Total market economy | Hard to say | *N* |
|---|---|---|---|---|---|---|---|
| What kind of economic system do you prefer? | 0.4 (2.9)* | 6.9 (14.3) | 9.8 (26.9) | 54.1 (38.0) | 2.4 (2.7) | 26.0 (18.3) | 1152 |
| | Total public ownership | Predominantly public ownership | Half public, half private | Predominantly private ownership | Total private ownership | Hard to say | *N* |
| What kind of ownership system do you prefer? | 0.5 (3.2) | 41.8 (52.7) | 14.5 (20.0) | 14.3 (7.1) | 0.4 (1.9) | 28.1 (15.6) | 1152 |
| | Too fast | Fast | Appropriate | Slow | Too slow | Hard to say | *N* |
| What do you think of the pace of economic reform? | 2.2 (6.3) | 17.6 (20.6) | 39.0 (42.6) | 14.7 (9.7) | 5.6 (1.7) | 20.6 (19.1) | 1152 |

Source: Jiangsu Rural Survey 2000.

*Figures in parentheses are combined findings from surveys conducted in Beijing in 1995 and 1997.

market economy, which has been favored and promoted by the government since the early 1980s, is more acceptable and more supported by rural peasants in Jiangsu than among urban residents in Beijing. This is probably due to the fact that Beijing urban residents have been affected more negatively than Chinese peasants by market-driven reforms that have led to layoffs of state-owned enterprises. Also, Chinese peasants are more economically independent and do not receive much in the way of state welfare and subsidies.

When it comes to ownership of the means of production, most of the peasants in our survey still preferred predominantly public ownership, even though the figure is lower than that in our Beijing surveys. Close to 15 percent supported an evenly mixed ownership system, with very few favoring totally private ownership. The support for a predominantly public-ownership system among our respondents can be attributed to two factors. The first is the official policy of maintaining a predominantly public-ownership system in the economy, even though private businesses (including foreign investments) have made tremendous strides and have been playing an increasingly important role in the Chinese economy during the past two decades. The second factor is the predominant position of collective township and village enterprises (TVEs) that existed in Jiangsu. In fact, southern Jiangsu is well known for its successful collective TVEs, which have been referred to as the "Sunan model" of rural economic development in China. TVEs were still predominantly collectively owned when the survey was taken.

When asked about the pace of economic reforms, close to 40 percent of our respondents seemed satisfied with the current pace. However, around 20 percent thought the reforms have been moving fast (17.6 percent) or too fast (2.2 percent). Interestingly, about an equal number of the respondents believed that the economic reforms have been moving either slowly (14.7 percent) or too slowly (5.6 percent). Once again, around 20 percent of the respondents had difficulty answering the question. These findings show that there is no consensus among our peasant respondents on the pace of economic reform, even though most people seemed content with the current pace.

## Political Efficacy

According to Angus Campbell, Gerald Gurin, and Warren Miller, political efficacy is the "feeling that individual political action does have, or can have, an impact upon the political process."[18] Democratic values are all about public participation in the decision-making process and the belief that individual citizens can have an influence on politics. Therefore I hypothesized that those who have higher degrees of confidence in their ability to influence politics (i.e., higher degrees of political efficacy) would also tend to support core democratic values. To measure the level of political efficacy, we asked our respondents in the survey to assess two statements: "The well-being of the country is mainly dependent upon state leaders, not the masses" and "In general, I don't think I should argue with the authority even though I believe my idea is correct." Our findings are mixed. Close to 60 percent believed that the well-being of the country should depend on the masses instead of on state leaders (see Table 6). The number is actually higher than that of our Beijing surveys conducted in the mid 1990s. However, on the question about challenging the authorities, just over 50 percent of our respondents were reluctant to argue with the authorities even if they thought they were correct. However, more people in our Beijing surveys (over 60 percent) were reluctant to challenge the authorities. A summary variable of political efficacy was derived from the respondents' sum of the scores on both statements and was used as the independent variable in the multivariate analysis.

## Support for Political Reform

China has made great strides in economic reforms, and the reforms since the late 1970s have been fairly successful. Yet China has made little progress in political reform. However, it is erroneous to say that China has never engaged in political reform since Mao's death.

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[18]Angus Campbell, Gerald Gurin, and Warren Miller, *The Voter Decides* (Evanston, IL: Row and Peterson, 1954), p. 187.

**Table 6.** Levels of Political Efficacy (%)

| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
|---|---|---|---|---|---|---|
| The well-being of the country is mainly dependent upon state leaders, not the masses | 12.4 (37.0)* | 24.0 (34.4) | 27.6 (21.8) | 30.9 (6.8) | 5.1 | 1153 |
| In general, I do not think I should argue with the authority even though I believe my idea is correct | 16.0 (22.5) | 38.5 (41.0) | 26.1 (28.7) | 13.0 (7.8) | 6.3 | 1153 |

Source: Jiangsu Rural Survey 2000.
*Figures in parentheses are combined findings from surveys conducted in Beijing in 1995 and 1997.

Rather, Chinese political reform has emphasized political rationalization and legalization.[19] Specifically, the post-Mao leaders abandoned Mao's practice of class struggle and continuous revolution and rebuilt the party and governmental apparatus with the aim of improving bureaucratic efficiency. Post-Mao leaders such as Deng Xiaoping, Jiang Zemin, and Hu Jintao have yet to adopt fundamental and systematic political reforms. Political reform is understood to be further liberalization and democratization of the Chinese political structure by making the decision-making process more transparent and holding public officials more accountable to the general public. I therefore hypothesize that people who favor political reform are more likely to support core democratic values. The statement used in the survey to measure support for political reform is fairly straightforward. We asked our respondents to agree or disagree with the statement as to whether China urgently needs more political reform. Table 7 shows over 55 percent of them agreed or strongly agreed that what China currently needs most is political reform. Scores for individual respondents are used as the independent variable for support for political reform in the multivariate analysis.

[19]Yang Zhong, "Legitimacy Crisis and Legitimation in China," pp. 206–212.

**Table 7.** Support for Political Reform (%)

| | Strongly agree | Agree | Disagree | Strongly disagree | Hard to say | *N* |
|---|---|---|---|---|---|---|
| Currently what China needs most is political reform | 23.1 | 33.6 | 16.7 | 3.6 | 23.0 | 1153 |

Source: Jiangsu Rural Survey 2000.

## KEY SOCIODEMOGRAPHIC VARIABLES

There is a widespread, theoretical consensus linking key demographic factors with the support of democratic values. Drawing on previous studies, I expected that demographic factors influenced our respondents' attitudes toward democratic norms. Specifically, I focused on the impact of age, education, and gender on one's support of core democratic values.

### Age

In their study, Finifter and Mickiewicz found stronger support for democratization among young people in the former Soviet Union.[20] They credited this phenomenon to the fact that the youth in the former Soviet Union tended to be associated with "modern" ideas and were more open-minded than the older people. Similar findings were also claimed in China.[21] For example, Chan and Nesbitt-Larking argued that youth in China tended to be more critical of the government and more protective of their individual rights.[22] Based

[20]Ada Finifter and Ellen Mickiewicz, "Redefining the Political System of the USSR: Mass Support for Political Change," pp. 857–874.

[21]See Alfred L. Chan and Paul Nesbitt-Larking, "Critical Citizenship and Civil Society in Contemporary China," *Canadian Journal of Political Science*, vol. 28, no. 2 (1995), pp. 293–309; and Yongnian Zheng, "Development and Democracy: Are They Compatible in China," *Political Science Quarterly*, vol. 109 (1994), pp. 235–259.

[22]Alfred L. Chan and Paul Nesbitt-Larking, "Critical Citizenship and Civil Society in Contemporary China," pp. 293–309.

on these observations I hypothesized that younger respondents would be more supportive of core democratic values and norms.

## Education

Education has long been used as a predictor for people's political attitudes. In their seminal work *The Civic Culture,* Almond and Verba conclude that "educational attainment appears to have the most important demographic effect on political attitudes" and that the more educated one is, the more he or she is inclined to possess the "civic culture."[23] Other scholars have in particular argued that regardless of official ideological norms, education contributes to the support of democratic values because "education broadens perspectives, increases stores of information, and … contributes to respect for diversity and difference."[24] It is a fact that Chinese intellectuals and students always stood at the forefront of liberal and democratic movements in the 20th Century. A survey conducted in 1990 in China shows that education had a positive impact on political tolerance.[25] Thus, in this study I expected that higher levels of education would lead to stronger support for core democratic values and norms.

## Gender

Although sexual equality has been officially promoted in China since 1949, women in China have never achieved an equal status with men. In fact, women's social status has arguably declined in the reform era due to the market-oriented reforms. Employers openly discriminate against women in the job market due to their perceived "women problems," and Chinese authorities are ineffective in enforcing gender-equality laws. As a result, women are often given

[23]Gabriel Almond and Sidney Verba, *Civic Culture: Political Attitudes in Five Nations* (Princeton, NJ: Princeton University Press, 1963), pp. 379 and 380–384.

[24]James L. Gibson, Raymond M. Duch, and Kent L. Tedin, "Democratic Values and the Transformation of the Soviet Union," p. 355.

[25]Andrew Nathan and Tianjian Shi, "Cultural Requisites for Democracy in China: Findings from a Survey," *Daeldalus*, vol. 122, no. 2 (1993), p. 112–114.

traditional jobs, such as that of a secretary, waitress, teacher, or nurse. Women's social status in the Chinese countryside is even worse than that of their counterparts in the urban areas. Most women in rural China stay home and play the traditional roles of mothers and wives.[26] It is reasonable to assume that women tend to be more traditional in values and culture and are more obedient to authorities. Evidence from the former Soviet Union suggests that there is a connection between gender and attitudes toward democratic values and democratization.[27] Specifically, women were found to be less supportive of democratic values due to their traditional female roles in society.[28] Therefore, I hypothesized that female respondents in our survey would be less supportive of core democratic values than men.

## MULTIVARIATE ANALYSIS

Table 8 presents the results of a multivariate analysis (ordinary least squares multiple regression) of support for core democratic values in our Jiangsu survey. Altogether, the independent variables (socioeconomic satisfaction, income, political satisfaction, support for free market economy, political efficacy, support for political reform, age, education, and gender) explain 13 percent of the variance in support for core democratic values and norms.

Earlier I hypothesized that people who are satisfied with their socioeconomic conditions would be less likely to support core democratic values since the realization of these values would definitely lead to major changes to the status quo in the current Chinese political system. The finding from our multivariate analysis, however, rejects this hypothesis. In fact, it shows that people who felt that their socioeconomic conditions had improved are more supportive

[26]Jean Robinson and Kristin Parris, "The Chinese Special Economic Zones, Labor, and Women," in Donna Bahry and Joel Moses, eds., *Political Implications of Economic Reform* (New York, NY: New York University Press, 1990), pp. 131–161.

[27]Samuel Barnes, Barbara G. Farah, and Felix Heunks, "Personal Dissatisfaction" and "Political Dissatisfaction," pp. 384–407 and 409–430.

[28]James L. Gibson, Raymond M. Duch, and Kent L. Tedin, "Democratic Values and the Transformation of the Soviet Union," pp. 329–371.

**Table 8.** Multiple Regression of Support for Core Democratic Values

| Independent variables | Support for core democratic values | |
|---|---|---|
| | Unstandardized coefficient | Standard error |
| Socioeconomic satisfaction | 0.132** | 0.047 |
| Income | 0.019 | 0.021 |
| Political satisfaction | –0.092* | 0.040 |
| Support for market reform | 0.323** | 0.063 |
| Political efficacy | 0.115** | 0.041 |
| Support for political reform | 0.714** | 0.078 |
| Demographic attributes | | |
| Age (natural log) | –0.499** | 0.187 |
| Education | 0.147* | 0.074 |
| Gender (female = 0; male = 1) | 0.302** | 0.112 |
| Constant | 23.621** | 0.939 |
| Multiple $R$ | | 0.364 |
| $R^2$ | | 0.132 |
| Adjusted $R^2$ | | 0.125 |

*$p < 0.05$; **$p < 0.01$.

of core democratic values. In addition, levels of income are also positively related to the support of democratic values even though the association is not statistically significant. It seems that improvement in people's material and social life has not reduced the people's desire for democracy. It should be pointed out that this finding is in accordance with a generally held proposition that improvement in living conditions or material life facilitates democratization. This proposition has also been proved true by evidence from the past three decades.[29] Abraham Maslow's theory of "hierarchy of needs" is often cited to explain the positive relationship between life improvement and desire for democracy and liberties. As Larry Diamond notes, "While the satisfaction of lower-order needs does not automatically

[29]Larry Diamond, "Economic Development and Democracy Reconsidered," in Gary Marx and Larry Diamond, eds., *Reexamining Democracy* (Newbury Park, CA: Sage Publications, 1992), p. 125.

increase the salience of individual needs for political freedom and influence, it makes the valuing of those needs more likely."[30] This finding points to a brighter future for democratization in China since economic reforms are continuing to improve people's material life and living conditions.

Table 8 also shows that people in our survey who are less satisfied politically tend to be more supportive of democratic values and norms. Our factor of political satisfaction was measured primarily in terms of satisfaction with clean government. There is no doubt that corruption is a serious problem in China and is one of the top issues on people's minds. The negative relationship between political satisfaction and support for democratic values and norms suggests that people expect to use democracy to eliminate or lessen the problem of official corruption.

I also hypothesized that people who support a market economy are more likely to support core democratic values. This is confirmed by the multivariate analysis (see Table 8). This finding contradicts the theory of "neo-authoritarianism," which advocates a transition to a market economy while withholding democratic reforms. It also confirms that there is a positive relationship between a market economy and democratic values and systems. In the current Chinese context, both marketization and democratization involve shifting power from the state to individuals. This positive relationship points to a brighter prospect for democratization in China since the market-driven reforms are still continuing and may facilitate the democratization process. Thus we can only expect that further market reforms will positively contribute to the establishment of a more democratic system in China.

The multivariate analysis also indicates, not surprisingly, that people who have higher levels of political efficacy are more likely to support core democratic values. In addition, Table 8 shows that the perceived need for political reform is positively related to the support of core democratic values, as was hypothesized earlier. Thus, people who desire political change are likely to support

[30] *Ibid.*, p. 126.

potential democratization in China. In particular, the types of political reform that our respondents look for are more freedom of the press, meaningful and competitive elections, and equal protection of rights for all citizens, regardless of their political views.

Finally, all three key demographic factors in our study are strongly related to the support of democratic values. Our multivariate analysis shows that young people, men, and people with more education tend to be more supportive of core democratic values and norms. These findings are in accordance with empirical evidence discovered in other countries. The findings on age and education point to a brighter future for democratic changes in China since the future belongs to the young, and people's educational levels are improving.

## CONCLUDING REMARKS

The Chinese peasantry has been traditionally blamed for the lack of democracy in China because peasants are perceived to be backward in culture and political orientation, lacking in education, and obedient to authorities. Findings from survey data collected in southern Jiangsu province, however, contradict the conventional wisdom and perception about the Chinese peasantry. I certainly do not want to generalize our descriptive findings to the rest of the Chinese countryside, as southern Jiangsu province is one of the most economically developed rural areas in China. However, our multivariate analysis can be generalized to the whole country because the analyses were done at the individual level.[31] This is the same rationale used in the "most different system" design advocated by Adam Przeworski and Henry Teune.[32]

Descriptive data show that the peasants in our survey expressed relatively high levels of democratic values and political efficacy. They overwhelmingly endorsed elections as the means of official

[31]Melanie Manion, "Survey Research in the Study of Contemporary China: Learning from Local Surveys," *The China Quarterly*, no. 139 (1994), pp. 741–765.

[32]Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (New York: Wiley-Interscience, 1970), pp. 34–39.

promotions and appointments; they were extremely supportive of freedom of the press; and they showed relatively high levels of political tolerance. Our findings show that southern Jiangsu peasants have higher levels of democratic culture than do the urban respondents in our Beijing surveys conducted in the 1990s. In addition, the findings indicate high levels of socioeconomic satisfaction in the reform era. Yet most of our respondents were not happy with the corruption situation in their local area. Moreover, peasants in our survey did demand more political reforms. These findings indicate that it may be premature and incorrect to say that all Chinese peasants are not ready for democracy. It seems that the peasants in our survey area are quite ready for democratic change.

On the economic front, it seems that the government's efforts to develop a market economy while maintaining a primarily public ownership system enjoy a high degree of support among the peasants in our survey. In fact, more people in our Jiangsu rural survey supported a market economy than the respondents in our surveys in Beijing. It is probably due to the fact that market reforms (e.g., decommunization) occurred fairly early in the reform era (in the late 1970s and early 1980s) and there are no state-owned enterprises in rural China.

The multivariate analysis is even more revealing. First, I found that improvement in socioeconomic conditions has not prevented people from believing in democratic values and norms. In fact, the more people are satisfied with their socioeconomic lives, the more they tend to be supportive of core democratic values and norms. I also found that higher levels of political efficacy, lower levels of political satisfaction, and free-market values are conducive to democratic values among the peasants of Jiangsu. In addition, a perceived need for political reform positively contributes to the support for democratic values. Finally, the findings show that young people, men, and peasants with higher educational levels tend to be more in favor of democratic values and norms.

Overall, these findings point to a bright future for democratization in the Chinese countryside. Over the past decade there has been a general and steady deterioration of stability in the Chinese rural

areas due to a combination of factors: misbehavior of and corruption among the local government officials, misguided government policies, and the lack of improvement in peasants' living conditions. Peasant riots and disturbances are not uncommon these days in China. Fortunately for the Chinese government, these riots and disturbances are seldom well organized and tend to be spontaneous and incident-driven. The stability and economic development of China depend much on the situations in the vast rural areas. How to accommodate the political demands of the peasants while maintaining a steady economic growth is still a huge challenge for the Chinese government. Realizing that democracy can be an effective means of solving, in part, China's rural problems, the Chinese government has started experimenting with democratic practices in rural China, and it remains to be seen how far the democratic practices will go.

Chapter

5

# Democracy and the Governing Party (执政党): A Theoretical Perspective

*Brantly Womack*

In the past few years the leadership of the Communist Party of China has been developing a political guiding ideology to sustain and justify the Party as a governing party (*zhizheng dang* 执政党, also translated as "ruling party") on the basis of its capacity to serve the current needs and interests of China as a modernizing and prosperous country. In September 2004, the Central Committee adopted a major guideline for political reform, the "Resolution on Developing the Party's Governing Capacity" (*Zhong gong zhongyang guanyu jiaqiang dang de zhizheng nengli jianshe* 中共中央关于加强党的执政能力建设的决定).[1] The Resolution stresses that the fate of Chinese socialism, the fate of the Chinese people and the fate of the Communist Party of China hang upon the successful adaptation of the Party to the leadership challenges of being a governing party for a relatively prosperous country.

Restructuring the Party as a governing party is not considered an easy task. As the Resolution puts it, "It was not easy for a proletarian

[1]Xinhua Newsnet (新华网), September 26, 2004.

political party to achieve power, but to handle power over the long term — and especially to handle it well — is even more difficult."[2] The task as described by the Resolution is not to continue the revolution but to adapt the party-state structure created by revolution to a complex environment in which the only expected transformations are economic. Adaptation involves some features common in other forms of modern government, such as rule of law, encouragement of economic development and equity, and citizen institutions. However, the purpose of the Resolution is not to provide guidance for a transition to a modern government similar to other modern governments but rather to preserve China's unique form of party governance under modern conditions.

The formulation of the problem of the governing party began with Jiang Zemin in the second half of the 1990s and is best known by the label of his "Three Represents" (*san ge daibiao,* 三个代表). The Three Represents attempt to provide an ongoing legitimation and policy guidance for Party rule without relying on the historical justification of the 1949 revolution or even on Deng Xiaoping's "second revolution" and without relying on the future promise of the achievement of a communist transformation of society. The Three Represents promise stability on the basis of the Party's inclusive and effective promotion of popular interests within a framework of a rule of law administered by the state and guaranteeing the appropriate autonomy of individuals and groups. In effect, the Three Represents attempt to preserve the existing political structure by binding its governance to popular interests. The goal is thus party-state democracy, the achievement of the effective power of the people within the framework of a single political party that cannot be challenged by other political parties.

The historical reasons for the Party's shift toward the idea of a governing party are clear. First, the party-state has remained the central institution of the reform era, and any change to a different political system might be profoundly disruptive. The example of the former Soviet Union is quite convincing in demonstrating that transformations of political systems can be harmful. The problem is not

[2] *Ibid.*

unique to communist regimes. As the philosopher David Hume pointed out in 1752:

> "It is not with forms of government, as with other artificial contrivances; where an old engine may be rejected, if we can discover another more accurate and commodious, or where trials may safely be made, even though the success be doubtful. An established government has an infinite advantage, by that very circumstance of its being established; the bulk of mankind being governed by authority, not reason, and never attributing authority to any thing that has not the recommendation of antiquity. To tamper, therefore, in this affair, or try experiments merely upon the credit of supposed argument and philosophy, can never be the part of a wise magistrate, who will bear a reverence to what carries the marks of age; and though he may attempt some improvements for the public good, yet will he adjust his innovations, as much as possible, to the ancient fabric, and preserve entire the chief pillars and supports of the constitution."[3]

Second, the Party's success in managing reform since 1980 compares quite favorably with other political systems. Clearly the Party has acquired the "performance legitimacy" that the European communist parties lacked in the 1980s. Third, however, the political assets of the Party have shifted during the reform era. Although successful efforts have been made to recruit younger and better-educated leaders, the movement of economic activity away from state-owned enterprises and collective farming toward privately organized businesses has eroded the Party's presence in new and important areas of Chinese society. Finally, just as the 1956 uprisings in Poland and Hungary led to a realization that "contradictions among the people" were possible even under socialism, the disturbances of 1989 have led the Party to reconsider its mechanisms for maintaining its leadership of the people. Continuing problems of corruption and of popular alienation indicate institutional weaknesses toward abuse of power and insensitivity to popular concerns that might endanger the party-state if they are not corrected.

Although the rationale for the governing party is clear, party-state democracy is quite different from legislative democracy, and

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[3]David Hume, "Idea of a Perfect Commonwealth," in Charles Hendel, ed., *David Hume's Political Essays* (New York: Liberal Arts Press, 1953), pp. 145–158.

there is no existing model for its success in the long term. Therefore the chief theoretical question posed by the goal of establishing a governing party is quite simple: Is party-state democracy possible? But this question is neither as important nor as simple as it seems.

Regardless of whether party-state democracy is an achievable or sustainable goal, it could be argued that the governing party is the best feasible policy direction for the Party. Even if legislative democracy is the only stable form of democracy, the continued liberalization of the party-state might minimize the trauma of transition, and if no transition occurred then a soft authoritarian state could still be preferable to a less soft one. Lastly, it has been argued that China's most basic political need is the rule of law rather than democratic rule. The Three Represents contribute directly to the rule of law by stressing the importance of controlling corruption. More generally, the emphasis on a governing party rather than a revolutionary party places greater emphasis on laws and their administration (*yi fa zhizheng,* 以法执政). Thus it is possible to justify the measures suggested by the Fourth Plenum as a step forward without answering the question of a step toward what goal.

The question of the theoretical possibility of party-state democracy is less simple than it might appear because essentially it is an abstract question of the compatibility of the minimum conditions of a democratic system and of the minimum conditions of the party-state. If party-state democracy is impossible in theory, then of course it should be impossible in practice. On the other hand, even if party-state democracy is possible in theory, there may be circumstances in which it cannot be realized in practice. Just as a legislative democracy may be too weak to provide effective governance, a party-state democracy might be too strong to permit the power of the people to have any real effect on the decisions or behavior of the leadership. Another possibility is that the population can be too alienated from the party-state to utilize the new mechanisms of party-state democracy.

Despite these cautions concerning the practical consequences of theoretical discussions of party-state democracy, the topic remains significant and in need of serious consideration. There are fundamental

differences between a party-state and a legislative democracy, and all existing modern democracies are legislative democracies. The "governing party" that Hu Jintao has in mind is not simply a Chinese version of the Japanese LDP or the Singapore PAP because these parties operate within the framework of contested elections. The fate of the LDP demonstrated that Japan did not have a governing party but rather a legislative democracy under the long-term control of a single political party.

The argument for a governing party cannot be that party-state democracy is a new form of legislative democracy. It must be argued that modern democracy is a broader category than legislative democracy. As we will see, such an assertion contradicts the assumptions of a half-century of Western democratic theory, and there is at present no broader democratic theory that can encompass both legislative democracy and party-state democracy. In order to argue for the possibility of party-state democracy, one must also assert that legislative democracy is not the essence of democracy but rather one path of democracy, and that there exists the possibility of other paths.

Since the identification of democracy with legislative democracy is so entrenched in contemporary political thought around the world, the first task of this essay is to explore the limitations of legislative democracy as a comprehensive democratic theory. We will then consider the relationship between people and public authority in China. Finally we will consider whether the party-state democracy implicit in the Fourth Plenum's idea of the governing party could possibly fit within a more general notion of modern democracy, and what its prerequisites would be.

## THE LIMITS OF LEGISLATIVE DEMOCRACY

By "legislative democracy" I am referring to what is often called "parliamentary democracy" or "liberal democracy." Most often in the contemporary West, however, it is simply called "democracy." It refers to a system of government in which the formulation of laws for society is the highest political act, and the legitimacy of the

legislative process is secured by the free formation, articulation, and aggregation of citizen interests, and electoral control of representatives by the citizenry. For the citizenry to exercise its rights are required freedom of expression and information, freedom of political organization, and decisionmaking processes based on majority rule but limited by the vital interests of minorities and by the limits placed on the state by society. The most basic law is the constitution, which defines the functions and limits of the state within the larger interests of society.

Legislative democracies differ in their selection of chief executives (hence the distinction between "presidential" and "parliamentary" democracies), but regardless of the amount of attention lavished on the chief executive, the core political function is the authoritative formulation of the will of the people by the legislature. The executive operates not only in accordance with the laws but also primarily to make the laws effective. The judiciary provides authoritative judgments of disputes arising under the laws, including conflicts between ordinary legislation and the constitution.

Of course, when the term "democracy" was coined in Athens, it did not have this meaning. It referred to the direct power of the people to decide public matters, and it was distinguished from "aristocracy" (rule by the nobles) as well as from "monarchy" (rule by the king). The claim that legislative democracy merits the name "democracy" was made by John Locke, who argued that a legislative process based on majority rule was necessary for controlling and displacing the abuses of privilege by the monarch and nobility.[4] The power of the people and the protection of society from state excesses required a powerful elected legislature. Essentially the justification for the procedures of legislative democracy was founded on the substantive claim that this would secure the real power of the people. The classic claim for legislative democracy was expressed most famously by Abraham Lincoln in 1863 as "government of the people, by the people, and for the people," and by John Stuart Mill

[4]John Locke, *Two Treatises of Government,* in Peter Laslett, ed. (New York: Mentor Books, 1965, original 1698).

as "the government of the whole people by the whole people, equally represented."[5]

Even before the 20th Century, contradictions were evident between the substantive claim that legislative democracy guaranteed the power of the people and the procedural outcomes of legislative democracy. Thomas Jefferson, the author of the immortal line that "all men are created equal," was himself a slave owner. Abraham Lincoln preserved the unity of the United States of America despite the votes of the southern states to secede. John Stuart Mill worried about the "tyranny of the majority," that is, the power of the legislative state to interfere with the private behavior of citizens.[6] Moreover, according to Mill, democracy required a high level of civilization, and savage peoples had to be enlightened by their colonial masters before legislative democracy could be effective.[7] In general, the 19th Century democrats saw democratization as a work in progress and the imperfections of democracy as signs that the job was not yet finished. Before the extension of the right to vote to the entire populations of Western countries and the completion of the education of the savages elsewhere, the shortcomings of legislative democracy could be attributed to its incompleteness rather than to inherent structural problems.

Although the classic notions of democracy inspired the transition to legislative regimes in Europe and the extension of the franchise to the whole citizenry, by the end of the 19th Century serious doubts had been raised regarding the capacity of legislative democracy to serve as the mouthpiece for the voice of the people. Besides the radical critiques of capitalist democracy offered by Marxists and anarchists, the failure of the growing strength of the social democratic parties in Europe to make much difference in European politics led to a disillusionment regarding political parties and elections. Gaetano Mosca argued in *The Ruling Class* that in any large state

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[5]John Stuart Mill, *Considerations on Representative Government* (Chicago: Henry Regnery, 1966; original 1861).

[6]John Stuart Mill, "On Liberty" (1869).

[7]John Stuart Mill, *Considerations on Representative Government.*

there would always be a minority political class who actually ran things.[8] Robert Michels strengthened the argument for an inevitable elitism in electoral politics by carefully analyzing the incorporation of the rising leaders of the social democratic parties into the existing political arrangements. In his *Political Parties* he suggested that there was an "iron law of oligarchy" by which the leadership of all groups would have more in common with their fellow members of the elite than with their followers.[9] Meanwhile Walter Lippmann in his classic *Public Opinion* (1922) emphasized the shaping of public opinion by elites and the stereotyping of public choice by the very limited set of alternatives that can be presented for a vote.[10] Given the inevitable elitism in democracies and the shaping of the public mind by the government, it is not surprising that fascism would dismiss legislative institutions and attempt to build a direct, one-way relationship between the leader and the nation or that communism would dismiss bourgeois democracy as a political facade for class rule.

Victory in the Second World War gave a new confidence to Western democracy, but it did not answer the questions raised about its efficacy as a means of rule by the people. Joseph Schumpeter in his work, *Capitalism, Socialism and Democracy,* began a new line of defining democracy by shifting attention away from the general question of the "power of the people" and toward the most prominent institutional features of modern Western democracy.[11] Schumpeter explicitly rejected "the classical notion of democracy," with its normative emphasis on the role of the people and redefined democracy in terms of the empirical political processes of legislative states. Schumpeter's redefinition of democracy as electoral competition for power was developed into a calculus of party competition for votes by Anthony Downs in *An Economic Theory of*

[8]Gaetano Mosca, *The Ruling Class*, tr. H. Kahn (New York: McGraw Hill, 1939; original 1895).

[9]Robert Michels, *Political Parties,* tr. C. Paul. (New York: Free Press, 1962; original 1911).

[10]Walter Lippmann, *Public Opinion* (New York: Free Press, 1922).

[11]Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Row, 1950).

*Democracy.*[12] Downs argued that the logic of two-party electoral competition drives both candidates to the center of the political spectrum and leaves voters with little choice, but he presented this as a basic logic of democracy, not as a questioning of the democratic character of competitive elections. In various writings in the 1960s and 1970s Robert Dahl developed a comparative theory of democracy based on a generalization of the characteristics and prerequisites of legislative majority rule, and by the time of Samuel Huntington's *The Third Wave: Democratization in the Late Twentieth Century*, it was out of the question that a form of government that did not conform to the legislative democratic model could still be considered democratic.[13] Moreover, despite the institutional definition of democracy, the assumption was that any government that did not meet the standards of legislative democracy would necessarily be authoritarian or worse. To be sure, democratic theorists were often critical of democratic politics, and Robert Dahl hesitated to rank any existing democracies above "polyarchy."[14] However, with few exceptions (C. P. MacPherson being the most impressive),[15] the critics did not expand the notion of democracy beyond legislative democracy.

Regardless of the questions that can be raised about the relationship of citizen power and public authority in legislative democracy, the popularity of this form of government is profoundly impressive. While it can be argued that the people do not really get what they want in legislative democracy, it is clear that they want what they get. The legitimacy of legislative democracy is certainly enhanced by habituation, and in countries like the United States it is further enhanced by a sense of prosperity, power, and superiority that is

[12]Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957).

[13]Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991).

[14]Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971).

[15]C. P. MacPherson, *The Real World of Democracy* (New York: Oxford University Press,1975).

attributed to its political structure, but it is also robust when it is challenged, as in India by Indira Gandhi, or overturned, as in the Philippines by Ferdinand Marcos, and it is attractive to people living under other political systems. The American presidential election of 2000, in which more people voted for Al Gore than for George W. Bush and in which election irregularities occurred in Florida, did not lead to a general alienation from the political system. Many would agree with Winston Churchill's joke that democracy is a terrible form of government except when compared with the alternatives. Thus, to doubt whether legislative democracy is in fact democratic is itself an undemocratic act — it clearly goes against the will of the people.

Why is legislative democracy so popular? It would be difficult to argue that it selects the most competent candidates for office. To take an American example, anyone who would argue that George W. Bush is the best possible president is unlikely to have thought that Bill Clinton was the best possible president, and yet they were both elected by the same system. More generally, despite the popularity of the democratic system, politicians are usually held in low regard, and electoral participation is often quite low.

Ultimately, legislative democracy is popular not because it expresses the will of the people or because it produces the best political leadership but because it is a participatory system in which the current leadership appears to be at risk to popular opinion, and it is also a system that does not threaten the complex society of developed nations. Because legislative democracy is inclusive and participatory, and citizens are free to make up their own minds and to participate as much as they want, there is a sense that the system is fair even if the results are unsatisfactory. If a citizen does not approve of an elected representative, the citizen should have tried harder to elect someone else. In any case, because the elected officials remain at risk to the electorate in the next election, it is unlikely that they will threaten overtly the interests of a significant part of the electorate. Thus democratic politics tends to be cautious. The middle of the political spectrum predominates, and while people like to hear grand proposals during election campaigns, politicians rarely risk the political costs of transformative new programs.

Before concluding the discussion of legislative democracy, it should be noted that the process of transition to legislative democracy has been considerably more volatile than the settled politics of developed democracies. The political shifts in European communism that began with the election of Solidarity in Poland on June 4, 1989 were anything but cautious, and subsequent democratic politics in former communist states has moved around the political spectrum, including back to reconstructed democratic rebirths of former ruling communist parties. The key problem in post-communist states has not been the conservative caution characteristic of developed democracies but rather the weakening of state capacity in a situation of economic and political disorder. Hence, even if legislative democracy is accepted as the most desirable form of government and the only form of modern democracy, the transition to democracy might reasonably be viewed as a perilous passage with no guarantee of success.

The importance of this brief, critical look at legislative democracy for our consideration of party-state democracy is two-fold. First, the common assumption that legislative democracy is synonymous with democracy, or at least with modern democracy, must be questioned. Although legislative democracy can be a popular and effective form of government, it is not simply "the power of the people." Thus the characteristics of legislative democracy should not be used as an unquestioned standard for judging the relationship of popular interests and power to public authority in another form of government. Second, if legislative democracy — with all of its problems — is still considered a democracy, then the standard of what is a modern democracy should be reconsidered. Either the standard can be set for a pure democracy that is unattainable in a large modern state — full, direct participation of the citizenry in public affairs — or the standard should take into account the satisfaction of the people with their system of government and their confidence that their interests are served.

Even though legislative democracy is a very interesting and impressive system of government, and many of its features might provide useful lessons for other forms of government, I think that it

is important to bring the people back into the definition of democracy. The question of the relationship of the people to government is too important and too complex to be reduced to a shopping list of legislative characteristics. Moreover, questions about democracy as "the power of the people" are most properly endogenous questions. They are about the power of this particular people in this particular state. All politics is local, and therefore democracy without Chinese characteristics is not Chinese democracy.

## A CHINESE PATH?

Legislative democracy has never played a major role in Chinese politics. Ch'ien Tuan-sheng (Qian Duansheng 钱端升) provided the classic narration and critique of China's constitutional history during the Republican period,[16] and Mao Zedong in 1949 clearly affirmed a Marxist critique of bourgeois democracy and a party-state model of governance in "On the People's Democratic Dictatorship," issued on the 28th anniversary of the founding of the CPC.[17] Although laws, constitutions, and the system of People's Congresses have played a role in the politics of the PRC since 1949 and especially in the reform era, they do not play the central role that they enjoy in legislative democracy, and they do not operate in the institutional configuration of competitive political parties. Moreover, even with the political reforms of the past 20 years, a transition to legislative democracy would involve a political transformation more profound than anything China has experienced since 1949, and such a transformation is not envisioned in the idea of a governing party.

While legislative democracy may have been peripheral to China's politics over the past century, the power of the people was central to the success of the protracted rural revolution. As Mao argued in "Be Concerned with the Well-Being of the Masses," the

[16]Ch'ien Tuan-sheng, *The Government and Politics of China 1912–1949* (Stanford: Stanford University Press, 1950).

[17]Mao Tse-tung, "On the People's Democratic Dictatorship," *Selected Works of Mao Tse-tung* (Beijing: Foreign Languages Press, 1967), vol. 4, pp. 411–424.

only strength that the CPC could rely on against militarily superior enemies was the support of the people.[18] Through trial and error Mao and the CPC developed the mass line and mass-regarding habits of leadership (Tsou, 1986). The key mistake to be avoided was alienation from the masses, *tuoli qunzhong* 脱离群众.[19] Because the rural revolution transformed the village structure and mobilized the masses, it created a political and military power that eventually overwhelmed the Guomindang and its allies. In effect, the rural revolution was a quasi-democratic system[20] because the CPC pursued mass-regarding policies without democratic institutions in the context of a life-and-death struggle with the Guomindang.

After victory in 1949, the situation became more complex. On the one hand, Mao Zedong and the CPC remained committed to the people's welfare, and mass mobilization remained the major technique for accomplishing economic and political goals. On the other hand, the goals of socialist transformation were not as immediate or obvious to the masses as the earlier goals of land reform and fighting the Japanese, and the CPC now controlled the state. Revolutionary transformation remained the goal of the party-state, but, in contrast to the base area period, the top-down authority structure was not conditioned by a powerful domestic opponent. The people's democratic dictatorship was indeed a dictatorship, however democratic its intentions.

It is unquestionably true that Mao Zedong bore personal responsibility for the catastrophes of the Great Leap Forward and the Cultural Revolution. Without his initiative, the Great Leap Forward would not have been launched, and if launched it would have terminated at the Lushan Plenum. The Cultural Revolution was even more dependent on Mao's personal intervention and authority.

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[18]Mao, "Be Concerned with the Well-Being of the Masses," *Selected Works of Mao Tse-tung* (Beijing: Foreign Languages Press, 1967), vol. 1, pp. 147–252.

[19]Brantly Womack, *Foundations of Mao Zedong's Political Thought, 1917–1935* (Honolulu: The University Press of Hawaii, 1982).

[20]Brantly Womack, "The Party and the People: Revolutionary and Post-Revolutionary Politics in China and Vietnam." *World Politics* , vol. 39, no.4 (July 1987), pp. 479–507.

Even if another Party leader or group had wanted to launch such a movement, no one but Mao had the personal authority to "bombard the headquarters." Nevertheless, the excesses of these movements depended on systemic weaknesses as well. Just as the rest of the Party leadership could not question Mao's directives, there were no institutions within the Party or state that permitted alternative viewpoints or provided for the defense of basic interests. Although Mao provided a theoretical justification for acknowledging contradictions among the people[21] and argued for democratic centralism and self-criticism by leading cadres,[22] he did not provide mechanisms that would protect individuals from possible abuse of power. Democratic centralism was a matter of the work style and moral responsibility of leading cadres.

Even if Mao had died before 1957, the Chinese party-state would still have faced major challenges of political structural reform. The problems of bureaucratism, of official corruption, and of unrealistic political demands would have been severe even without the catastrophes of the Great Leap Forward and the Cultural Revolution. Indeed, it is possible that without Mao's leftism the party-state would have been less open to structural reform. The Cultural Revolution laid bare the structural problems of party-state dictatorship and united the people and the leadership behind the "second revolution" of the reform era.

In the 1980s Deng Xiaoping boldly addressed the substantive mistakes of the leftist period. The importance of material welfare, individual incentives, and markets was acknowledged, and the dogmatic inhibitions that had stifled the emergence of a modern economy were removed. The need for changes in the political system was also articulated and progress was made, but essentially the new direction of the second revolution was guaranteed by the Party's new general line and its improved work style rather than by

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[21]Mao, "On the Correct Handling of Contradictions Among the People," *Selected Works of Mao Tse-tung* (Beijing: Foreign Languages Press, 1977), vol. 5, pp. 384–421.
[22]Mao, "Speech at the 7000 Cadre Conference," *Peking Review*, July 1, 1977 (original 1962).

major systemic changes. Individual freedoms expanded and the realm of public discussion improved, but only because the Party now permitted it. The Party did not adopt suggestions for political structural reform made in 1986–88 because it felt that they were unnecessary. The political structure of the second revolution remained similar to that of the first revolution, even if the content of the two revolutions was quite different.

The events of the spring of 1989 were profoundly traumatic for Chinese politics. Besides the vivid trauma of June 4, there was the more general question of how the party-state would relate to the new economy and society that arose in response to the reform era. Neither permissiveness nor control addressed the basic challenge of the integration of new societal forces into the political structure. After the death of Deng Xiaoping, Jiang Zemin articulated the political challenge facing the party-state as the Three Represents.

The purpose of the Three Represents was to shape the CPC into a governing party that could maintain the current party-state system indefinitely by providing inclusive, effective and responsive political leadership. As Jiang Zemin put it,

> "...all Party members should strengthen and improve the Party-building work according to the requirements of the 'Three Represents' so that our Party can remain forever in an impregnable position with great support from the people of all ethnic groups and lead them to go forward steadily."[23]

Jiang also emphasized the central importance of popular support:

> "...our Party, as a party in power, must pay close attention to the relationship between the Party and the masses, and the feelings of the people. Whether the people are for or against it is the basic factor deciding the rise and fall of a political party or a political power."[24]

Jiang goes on to give the example of the Qin dynasty, which defeated itself through its unpopular policies.

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[23]Jiang Zemin, "Strengthen the Training of Cadres" (2000), in Jiang Zemin, *On the "Three Represents"* (Beijing: Foreign Languages Press, 2002), pp. 38–58.

[24]Jiang, "Promote the Building of a Clean Government" (2000), in *Ibid*., pp. 119–147.

The Three Represents is not a complete program of political reform, but it does address some fundamental problems facing the CPC today. The first of the Three Represents, that the Party should represent the advanced productive forces, addresses an important problem of inclusiveness. The second, that the Party should represent advanced culture, is possibly a commitment to cultural diversity, though it is most often interpreted to mean that the Party should inculcate socialist morality and Marxist ideology.[25] The third, that the Party should represent the fundamental interests of the overwhelming majority of the population, reiterates the most basic commitment of the CPC, but in the context of current politics it is used to emphasize anticorruption measures and Party openness to mass concerns.

The Three Represents remain the theoretical banner of reform, but the measures suggested by the Fourth Plenum include greater attention to the rule of law and to inner-Party democracy. Perhaps the best authoritative statement of this trend is the following paragraph from President Hu Jintao's address on the 110th anniversary of Mao Zedong's birth:

> "We must continue to actively and steadily promote reform of the political structure and vigorously build socialist political civilization. To build a well-off society in an all-around manner and open up new vistas for the cause of socialism with Chinese characteristics, we must develop socialist democracy; fully arouse the enthusiasm, initiative, and creativity of the broad masses of the people; enhance the vitality of the party and state; and consolidate and develop the political situation marked by ethnic unity, liveliness, dynamism, stability, and harmony. We must integrate adherence to the party's leadership, the people's status as the masters of their own affairs, and governance of the country according to law into the practice of reforming the political structure, building socialist democracy, and achieving socialist modernization; develop inner-party democracy to promote the development of democracy among the people; and systematize, standardize, and prescribe procedures for practicing socialist democracy. We must proceed from China's conditions; further improve the democratic system; focus on improving the system of people's congresses, the system of CPC-led multiparty cooperation and political consultation, the system of autonomy for ethnic minority regions, and the system of grassroots democracy;

[25]Jiang, "Speech at the Publicity Directors' Conference" (2001), in *Ibid.*, pp. 148–165.

> expand citizens' political participation in an orderly manner; promote scientific and democratic decision-making; and ensure that the people exercise their rights according to law in democratic elections, democratic decision-making, democratic management, and democratic supervision. We must bring into play the characteristics and strengths of our country's socialist party system and increase cooperation and collaboration with democratic parties. We must comprehensively implement the party's policy of religious freedom, manage religious affairs according to law, uphold the principle of independent administration, and actively guide religion in adapting to the socialist society. We must further strengthen the socialist legal system, strengthen and improve legislative work, tighten supervision over law enforcement, do a better job in implementing the strategy of governing the country according to law, and build a law-governed socialist country. We must further reform and improve the party's style of leadership and governance, uphold the principle of putting the party in charge of the overall situation and having the party coordinate all areas of work, exercise the reins of government according to law, and improve the party's leadership over the country and society. We must further deepen reform of the administrative management system and reform of the judicial system, improve administrative efficiency, promote fairness and justice in all sectors of society, and do a better job in serving the people."[26]

If Hu Jintao's expectations regarding political reform are fulfilled, then the Chinese political path in the future will parallel modern legislative democracy in many respects. Representative institutions and the rule of law will be strengthened, popular participation will be encouraged, especially at the grassroots, and religious freedom will be respected. Just as important are the increasing similarities in political perspective, values, and tasks between China and the noncommunist world. The leadership's actions during the SARS epidemic in 2003 showed a pattern of response as well as a concern for public opinion and the media familiar in democratic states. Although China is much more goal-oriented in its policies than developed countries, policy content reflects common values. For instance, the "five balances" outlined by Premier Wen Jiabao in his Government Work Report to the Second Session of the Tenth

[26]Hu Jintao, "Speech at a forum in commemoration of Comrade Mao Zedong's 110th birth anniversary" (2003), translated in *Foreign Broadcast Information Service*, December 26, 2003 (FBIS-CHI-2003-1226).

National People's Congress,[27] balancing urban and rural development, balancing development among regions, balancing economic and social development, balancing development of man and nature, and balancing domestic development and opening wider to the outside world, would resonate with the concerns of the leadership of any developing country. Wen's general goal of "all-round, sustainable, and balanced socio-economic development" is one that no one could reasonably dispute, even if the concrete trade-offs involved in specific plans were open to question.

Likewise, although China's political path has been unique, it has not been a rut. No country's political path over the past 55 years has seen more fluctuation and changes in direction. Even though China's basic political structure has not changed since 1949, its politics has been determined more by the dynamic flux of policies than by institutional continuities. One of the ideological postulates of the idea of the governing party is that Marxism must adjust to changed circumstances and that the world of a prosperous China requires theoretical reorientation.

Perhaps the most basic reorientation has been from a vanguard role of leading China from socialism to communism to a more complex leadership role. On the eve of victory in 1949, Mao Zedong was confident that a people's democratic dictatorship was necessary, that the Soviet Union provided a model for the transition to socialism, and that eventually the state would wither away as the goal of communism came closer. For Jiang Zemin, the fundamental challenge that gave rise to the Three Represents was how to preserve the Party's leadership position "forever" by including new societal forces and directions while remaining faithful to mass interests. Leadership is determined by present interests rather than by a future transformation. The path is now infinitely long, and the goal has faded away.

Despite the critique of leftism and the Cultural Revolution and profound differences from Mao's politics, China's present political horizons are still shaped by its past, and by a past different from that of the West. Three basic types of path dependence can be

[27]Wen Jiabao, "Government Work Report," *People's Daily Online*, March 5, 2004.

differentiated, one relating to the momentum of success, one relating to the correction of mistakes, and finally one relating to the context of leadership. The most obvious form of path dependence concerns previous successes. The CPC is justly proud of the success of the rural revolution, of China standing on its own feet, and of the amazing economic growth during the reform era. These accomplishments shape its identity and its internal sense of legitimacy. Insofar as future policies and leaders can be plausibly related to these past successes, they will be preferred. There will of course be constant discussions of what policies were actually responsible for success and how the present situation has changed, but such discussions are themselves a blend of past and present, and thus are the essence of continuity.

Even the admission of past mistakes and their correction involves a kind of path dependence. Certainly a failure, if serious enough, can lead individuals to a complete rejection of their previous thinking and a sudden acceptance of a radical — and even a foreign — alternative. The best example might be the rejection of Confucianism after the fall of the Qing Dynasty and rise of radical ideologies among the "new youth." Even in such cases, however, a society cannot simply jump off of its own track and on to another. First, the failure usually creates a practical situation of chaos that must be dealt with. History is not a video tape. A society cannot simply back up, erase, and try again; it must cope with the ruins of its failures. Second, the attempted transfer of political institutions and ideas is at best a difficult process. Democracy in the West, for instance, grew slowly, and it emerged as an indigenous reaction to indigenous challenges. Transplanting democracy involves reducing its reality to a formula and then institutionalizing it in a traumatized society that is unfamiliar with it.

The last aspect of path dependence is leadership context. Leadership continuity is by no means absolute — new leaders feel constrained to distinguish themselves from their predecessors — however, especially in a political system in which the new leadership is designated by the old, the prerequisites for becoming a successor preclude a dramatic shift. In contrast to Genghis Khan, who conquered China from the saddle, a new leader must now be adept at running along beside the stirrup of the current leader. And

in contrast to Genghis Khan, who had to learn to get out of the saddle in order to rule China, a new leader faces the difficult task of getting into the saddle. To put the problem less metaphorically, the formal transfer of power is encumbered by continuing informal relationships.

None of these path dependences prevent change, especially over time, and sometimes they can have the unexpected effect of encouraging radical initiatives. For example, the Guangxu Emperor's hundred days of reform in 1898 and Mikhail Gorbachev's *perestroika* and *glasnost* were radical precisely because the initiators were hemmed in by their governing structures. However, the outcome of both these innovations suggests that the limitations imposed by the existing context of leadership are real.

## PARTY-STATE DEMOCRACY

I use the term "party-state democracy" rather than "socialist democracy" with some hesitation, since, "socialist democracy" is the official term and the one used by President Hu in the above quotation. However, from a broader perspective of world politics, socialist democracy is an ambiguous term. Social democratic parties compete in many legislative democracies, and "socialist" is often used to refer to the public ownership of the means of production rather than to a state in which a revolutionary party has a leadership role. We could call party-state democracy "communist democracy," since all of the states so described are led by communist parties, but we must respect Marx's description of a communist society as one that no longer needs politics and the state. The term "party-state democracy" highlights the chief characteristic of the political system, namely, that the communist party holds the prerogative of political leadership and the state is the administrative organ of public affairs. Political leadership and state administration can be distinguished but not separated, and therefore the hyphenated term "party-state" is appropriate. It would appear to fit all remaining communist countries, although only Vietnam is sufficiently similar to China in its current political situation for this discussion to be relevant.

Just as we have been cautious about the term party-state, we need also to be cautious about the term "democracy." On the one hand, we have already argued that party-state democracy is fundamentally different from legislative democracy. On the other, it would be difficult to deny that the measures outlined by President Hu and detailed in the Resolution of the Fourth Plenum would make China more democratic rather than less democratic. If a party-state can move in a more democratic direction, then the criteria for more and less democracy must be broader than whether or not a system is or is not a legislative democracy. If the influence of the people becomes stronger and more effective in a party-state, one can say that it has become more democratic. If the influence of the people becomes less, then it has become less democratic.

We have not addressed the question of whether party-state democracy can be a stable democratic system, but before we do so, it is worth pausing to reflect on the significance of the trend of party-state democratization. Even if party-state democratization is only transitional to a legislative democracy, it could be considered an essential path to a feasible democracy. Moreover, even if rule of law rather than legislative democracy is considered more important for China,[28] party-state democratization may be a prerequisite for rule of law.[29] So regardless of whether Hu Jintao's goal of a permanent governing party can be attained, party-state democratization can be considered valuable in its own right.

Now the key theoretical question of the prerequisites for a stable party-state democracy can be addressed. Stability requires that party-state democracy be a democratic system rather than a temporary condition, and the requirements for a system are that it be complete, indifferent to its concrete content, and not self-destructive. By "complete" I mean that it is not a subsystem whose relevance is determined by external, higher considerations. If a democratic

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[28]Pan Wei, "Toward a Consultative Rule of Law Regime in China," *Journal of Contemporary China*, vol. 12, no.34 (February 2003), pp. 3–44.

[29]Randy Peerenbohm, "A Government of Laws," *Journal of Contemporary China*, vol. 12, no. 34 (February 2003), pp. 45-68.

system is a tool for some other purpose, and it is suspended when it conflicts with the higher purpose, then its proper functioning would not determine its real functioning: it would be an incomplete system. Another important illustration of incompleteness would be a system that did not cover all citizens. It would be incomplete in the obvious sense of not including everyone, but it also would presuppose a higher authority with the power to exclude some and thereby limit the system.

Secondly, if a system is not indifferent to its concrete content, it is not functioning as an abstract procedure. If a system stipulates a specific requirement or right for a category, for instance "all employees," "all citizens," or "all representatives," then everyone fitting that category should be treated equally. If not, there are either implicit subfunctions affecting the application of the democratic system, for instance "all employees (on good terms with their employers)", "all citizens (of acceptable class background)", or "all representatives (of some groups but not others)," or the system is simply weak and ignored in practice. The requirements of completeness and indifference are complementary in that they require that the system have independent significance above and below, above towards restrictions by higher authorities and below towards inequalities and exceptions in application.

The third system criterion, non-self-destructiveness, is different from the first two in that it is oriented toward an internal problem rather than external ones. Basically, this criterion requires the definition of the system to be compatible with its abstractness. For instance, a system that stipulated "all those who get here first shall rule the world" is not really a system because it self-destructs after the first person arrives. Similarly, if democracy permitted the redefinition of citizens by authorities the system would lose its abstract identity over time. To be a system, democracy must be indifferent as to point in time.

It is also necessary to define "democracy" in terms more basic than the characteristics of legislative democracy. I propose that the most basic characteristic of democracy is consensus, that is, the unforced general acceptance of the legitimacy of the system.

Consensus has three prerequisites, the expectation of benefit, the decisive influence of the majority, and the protection of the minority. If people do not expect to benefit from being in a system they will be indifferent to it, regardless of its structure. Majority rule in some form is necessary because any other system presumes a basic inequality. In any large state the number of people actually in power is small, but democratic legitimacy requires that the ultimate foundation of political power be majority rule. The leadership and its policies must be at risk to the interests and opinions of the majority. Protection of the basic interests of the minority is also necessary because any member of a current majority might at some time be a member of the minority, and in any case mistreatment of a minority is self-destructive for the system.

Can China's party-state be a democratic system? Let us consider the democratic prerequisites first. The first, expectation of benefit, is obvious. The party-state has provided impressive benefits, from the basic ones of social order to rapid and broad-based economic growth. In general, party-states are executive political structures that are powerful in pursuing policy objectives. As long as the other prerequisites are met, the expectation of benefit is a strong point for party-state democracy.

Majority rule is more problematic. If democratic centralism in the party-state is understood as the unquestioned command of higher authorities, and the democratic moment of democratic centralism is only a matter of the work style of the leader, then there is no majority rule but rather only a concern for majority interest on the part of the leadership. Of course, such concern is good, and it might be called a democratic sentiment, but it is not a democratic system. On the other hand, it would be naïve to think that decisions can always be questioned in a democracy. In any state, binding decisions must be made, and leaders must be obeyed. The key question is whether the routines of the system allow the popularity or unpopularity of leaders and their policies to determine their fate.

But, outside of a legislative democracy, what would a majority be? Could the masses be a form of the majority? Certainly it would be a mistake to identify a majority with "50 percent plus 1;" that

would be a sufficient but not necessary condition, a minimum definition of a majority. If the masses are the overwhelming majority of the population, they are certainly a majority. The problem is not with there being too many people, but rather with how their interests and opinions are known and articulated, and the mechanism for mass rule.

To what extent could inner-Party democracy serve as a link in majority rule? Certainly it would be meaningless to talk of party-state democracy without inner-Party democracy. The idea of the Party as the vanguard of the working class suggests that it might represent the majority, but majority rule implies control from below. If greater inner-Party democracy meant more transparency of leadership, more collegial decision-making, and a greater deliberative role for Party congresses, then inner-Party democracy could play a major role in party-state democracy. However, the Party itself would remain a minority of the population, and so its own comprehensiveness of membership and political openness would be essential to a broader democratic function. Moreover, the citizen institutions of the state, especially the people's congress system and the rule of law, would have priority.

The most difficult aspect of party-state democracy is the protection of the interests of the minority. At a minimum this requires recognition and protection of basic rights. The party-state's noninterference with the proper autonomy of individuals and groups cannot simply be a matter of current policy. Autonomy must exist in a law-based zone of immunity from improper interference, not in a fluctuating zone of indifference subject to policy changes and administrative style. Beyond the minimum, a culture of respect for diversity and for personal autonomy needs to be cultivated.

For party-state democracy to be a democratic system, the prerequisites of a system must also be addressed. The first system requirement is completeness, and here the first of the Three Represents is particularly important. The Party must be inclusive of all productive elements in society. If groups are excluded from the Party, then whatever rule is used to exclude them is higher than democracy, and so democracy cannot operate as a system. The second system

requirement is indifference to content. In part the second of the Three Represents corresponds to this since it implies an openness of policy content. More importantly, indifference implies rule of law. Rule of law is the operating system of any democratic system because otherwise the discretion of the powerful is not controlled by public regulation. Corruption is one symptom of inadequate rule of law.

The final system requirement, non-self-destruction, implies that the party-state cannot redefine itself in a way that excludes part of the public. An example of such exclusion would be class struggle.

The above discussion of party-state democracy as a democratic system is only a brief sketch of its theoretical possibility. There are many fundamental issues that are not addressed, such as the ethos and functioning of a noncompetitive democracy, the role of state consultative institutions such as the people's congress system, and the relationship of legal institutions to the Party. The point here, however, is not to present a complete theory of party-state democracy but to open up the question of its theoretical possibility in the context of contemporary Chinese politics.

## THE FEASIBILITY OF PARTY-STATE DEMOCRACY

Even if the theoretical possibility of party-state democracy is accepted, the question of its feasibility remains to be addressed. Here the question of feasibility will be discussed only from a theoretical standpoint. The questions of what specific policies must be adopted, or whether or not the current political reforms associated with the Three Represents are adequate, are beyond the scope of this paper. The fundamental conditions of feasibility relate to the nature of democracy, that is, to the power of the people. Feasibility is not primarily a matter of the correct policies, in an abstract sense, but rather popular political consensus.

The first criterion of feasibility is that the process of party-state democratization should have broad credibility. The people must consider the process as their own, rather than as top-down policy. This is particularly difficult for a party-state because the

public's involvement in decision-making is consultative rather than deliberative. In legislative democracies many people disagree with the government's policies but accept the political system as their own. In party-states it is not uncommon for people to agree with policies and to have a high regard for the abilities of current leaders and yet to be alienated from the political system. A feeling of significant participation must be developed in the democratization process; otherwise, regardless of the policies, the people will not regard the system as their own. The processes of broad consultation in the writing of the 1954 and 1982 constitutions are good examples of public processes that help to establish a broader sense of policy ownership. By contrast, the process of developing the Resolution of the Fourth Plenum was extensive within leadership circles, but it was not public.[30] It is crucial, however, that popular involvement with democratization policies be more than window-dressing for Party decisions.

The second criterion is committed leadership by the Party. This might seem to be in some tension with the first criterion, but in fact they are complementary. If party-state democracy is to be achieved, then certainly the Party must act as the vanguard of the people in the democratization process. If it appears to act only as the rearguard of its own interests as an elite in power, then party-state democratization might serve as a transition to legislative democracy, but it would not be credible as a permanent system. If the Party responds only to crises and does not move toward democracy on its own, then the question can be raised as to why it should have a special role in a democratic system. If the Party talks about democratization but makes slow and half-hearted practical moves in that direction, it would frustrate the public and alienate it from the eventual political outcomes. If the Party is to have a special role in a democratic system, it must earn that role not by defending its power

[30]See "'*Zhong gong zhongyang guanyu jiaqiang dang de zhizheng nengli jianshe de jueding' de yansheng ji*"中共中央关于加强党的执政能力建设的决定》诞生记 [A record of the emergence of the Resolution on Developing the Party's Governing Capacity], *Remin wang* 人民网 [*People's Daily Online*], September 28, 2004.

but by leading China to democracy. It must be clear to all that public interest is more important than leadership convenience.

A final criterion is the emergence of what might be called domestic multipolarity. As the autonomy of individuals and groups receives more recognition and encouragement, the diversity of Chinese society and culture will increase and will express itself. Just as in foreign affairs multipolarity requires respect for the autonomy of all states and criticizes unilateral action by the most powerful, democratization requires an increasing broad public sphere in which all feel at ease in expressing themselves. Democratization is not a narrow path but an increasingly broad road, and, given the role of the Party in a party-state democracy, broadening must occur within the Party as well as in its tolerance of other views. Similarly, relations between the center and localities must respect the autonomy and situation of the localities. The creation of the Hong Kong SAR and the "one country, two systems" policies toward Taiwan are impressive steps in this direction.

Beyond the problems of the theoretical feasibility of party-state democracy are problems of practical and political feasibility that are beyond the scope of this paper. There is a long way to go between the present initiatives in political reform and the goal of party-state democracy. However, the CPC began as a small group of young urban revolutionaries, and it has traveled a long way in its time. One characteristic of the early CPC that is needed for democratization is the collective courage to take risks. Before 1949, participation in revolution was a risky business, and reliance on the masses was necessary for survival. At the present time, the need for political forms suitable to a modern and prosperous China presents the party with a new challenge, that of institutionalizing a close and interactive relationship with the people. As Mao Zedong said to his revolutionary comrades in 1927, the task is to march at their head and lead them.

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Chapter

6

# Self-Reform Within Authoritarian Regimes: Reallocations of Power in Contemporary China*

*Sophie Richardson*

## INTRODUCTION

Regime scholars have difficulty explaining more than five decades of Chinese government rule.[1] The subset of comparative politics literature devoted to exploring regime type in general and authoritarian rule in particular provides little insight because it assumes that

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[1]This paper attempts to adhere to the definition of a regime as the type of constraints on power (democracy versus dictatorship), of a state as the locus of infrastructural power, and of a government as those who occupy offices that make decisions about the uses of that infrastructural power. In the Chinese case, however, the boundaries between state and government are often blurred. Lecture notes, GFCP 814, Democracies & Dictatorships, Professor David Waldner, University of Virginia, January 2002.

that type of rule is inflexible and unlikely to endure.[2] Scholarship on regime transitions is also unhelpful. It predicts that intraparty splits, economic development, changing class structure, and/or pacts will lead to a regime transition. China has experienced most, if not all, of the transition-inducing phenomena, yet that outcome has not eventuated: the state retains the same basic structure, the same ruling party, and the same rhetorical commitment to an authoritarian ideology.[3] And while China has clearly not become a democracy, it is far less of a dictatorship than it was a few decades ago. Too consistent to merit the label of transitional and too altered to be considered static, the Chinese case demands a fresh approach to the study of regimes.

How can the durability of Chinese Communist Party (CCP) rule be explained? It is tempting to focus on dramatic events that illustrate the power of the central state — mass mobilization campaigns in the 1950s and 1960s, the struggle for power after Mao's death, the Tiananmen massacre in 1989, the government's ongoing battle against dissidents and religious movements — but to do so is to overlook the more telling transformations in the properties of the state and its means of interacting with its people. The same government

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[2]See, for example, Guillermo O'Donnell, Philippe Schmitter, and Laurence Whitehead, *Transitions from Authoritarian Rule: Prospects for Democracy* (Baltimore: Johns Hopkins University Press, 1986); Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968); and Gerard Alexander, *The Sources of Democratic Consolidation* (Ithaca: Cornell University Press, 2002).

[3]See, for example, Larry Diamond, "Economic Development and Democracy Reconsidered," in Gary Marks and Larry Diamond, eds., *Reexamining Democracy* (Newbury Park: Sage, 1992); Stephan Haggard and Robert Kaufman, *The Political Economy of Democratic Transitions* (Princeton, NJ: Princeton University Press, 1995); Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *American Political Science Review*, vol. 53 (1959); Dietrich Rueschemeyer, Evelyne Huber Stephens and John D. Stephens, *Capitalist Development & Democracy* (Chicago: University of Chicago Press, 1992); Ruth Berins Collier and David Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America* (Princeton, NJ: Princeton University Press, 1991); and Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge, NY: Cambridge University Press, 1991).

has ruled the country since 1949, yet the effects of economic and political reforms undertaken in the late 1970s and early 1980s suggest continuity in little more than name.

This paper will argue that efforts to rehabilitate the rural economy and the CCP have not only improved the government's relationship with its people and minimized the likelihood of organized opposition, those reforms have also helped shift power away from the central state. If the initial reforms can be likened to pebbles thrown into a pond, the power relationships institutionalized in laws and bureaucracies in the 1980s and 1990s can be seen as the ripples spreading outward. This has not necessarily created the possibility of organized dissent, but of the ability to either have greater input into state decisions or to effectively opt out of the state without penalty.[4]

At a theoretical level, how should scholars understand a government that has consciously begun to redistribute power — likely an irrevocable change — but that has not yet experienced a corresponding change to a wholly different type of regime? It may simply be the case that regime analyses have not been sufficiently sensitive to the properties of the state and its relationship to sectors of the population, particularly as those properties have changed incrementally over time and as they have helped to minimize opposition to the state. It is also possible that in trying to explain wholesale shifts from democracy to dictatorship and vice versa, little attention has been paid to cases that seem to experience only a partial transition.

## CHINA AND THE REGIME LITERATURE

Given that the theoretical literature on regimes is not applicable to China for the reasons already given, it is more helpful to derive potential sources of change from comparisons of China with other socialist states. Those other states' experiences with authoritarianism help provide clues to understanding China's regime durability.

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[4]A rough schematic diagram of these changes can be found at the end of the chapter. See also Albert Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

The decreasing number of socialist states around the world would appear to suggest an inherent pathology, a perception perhaps reinforced by the rapid demise of the Eastern bloc states. Indeed, Valerie Bunce's analysis of the former Soviet Union, Yugoslavia, and Czechoslovakia argues that, "the very institutions that had defined these systems and were, presumably, to defend them as well, yet they ended up functioning over time to subvert both the regime and the state."[5] Bunce argues that these states effectively "deregulate" themselves out of existence by gradually allocating power to non-state actors, primarily for the purpose of ensuring economic growth to maintain government legitimacy. This loosening of central control in turn triggers conflict among the elite, which sharply bifurcates the options available for maintaining power: advance reforms and destroy the socialist system, or delay reforms for short-term stability.

Yet this chain reaction has clearly not taken place in China, and this illuminates a serious flaw in Bunce's argument. By comparing "socialist dictatorships with other kinds of dictatorships,"[6] rather than with *other* socialist dictatorships, Bunce cannot make generalizable statements about all socialist dictatorships. As a result, Bunce has come to the clearly unsustainable conclusion that reforms in socialist states will invariably undermine the government in power. While the CCP has indeed granted a greater degree of autonomy to sectors of the state and society since 1978, it appears no more likely to relinquish power. It is even possible that such a transfer of power may have helped stave off some of the most serious challenges. Nor can Bunce argue that the Chinese political elite have pursued the second option of delaying reforms for short-term stability, given that the dramatic political and economic changes have now been under way for more than two decades. Thus it is difficult to accept Bunce's argument that socialist institutions are innately self-destructive.

Steven Solnick's analysis of institutional longevity provides more insight into the relative flexibility of the Chinese state. Solnick

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[5]Valerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State* (Cambridge, NY: Cambridge University Press, 1999), p. 2.
[6]Bunce, *Ibid.,* p. 16.

sought to explain why decentralization in the former Soviet Union led to collapse, while the same did not hold true for China. Solnick attributed the difference in the two outcomes to the manner in which the CPSU and the CCP restructured themselves. Co*ntra* Bunce, it is not the inherent nature of socialist institutions but rather how those institutions manage reforms that accounts for divergent results. Solnick likened the Soviet process to a bank run. Between 1985 and 1991, Soviet decentralization allowed local officials to seize state resources on a grand scale, largely due to their ability to "exacerbate information asymmetries" with the center and due to the lack of incentives to maintain the system.[7] In China, on the other hand, decentralization reforms in the 1980s, which focused primarily on property rights and taxation, created incentives for local agents to provide the center with *better* information, thus decreasing both their ability to and interest in expropriating local state resources.

Pei Minxin provides another way of understanding the differing outcomes of the former Soviet bloc countries and China and Vietnam. Pei argues that "state-socialism" was never as pervasive in the Asian cases, thus sparing China the extreme centralization and sclerotic bureaucracies of the former USSR and Eastern Europe and creating instead a system that was "'cellular' in character, with a high level of self-sufficiency and lower level of interfirm and interregional interdependence."[8] This kind of institutional flexibility, particularly at the local level and in terms of good economic performance, has actually created more support for the government.

Brantly Womack and Marc Blecher also suggest critical ways in which China's experience has been different from, and more successful than, that of other socialist states. Womack argues that because the reforms in China were begun relatively late in that government's life, China "had had longer experience with and better

[7]Steven L. Solnick, "The Breakdown of Hierarchies in the Soviet Union and China: A Neoinstitutional Perspective," *World Politics*, vol. 48, no. 2 (1996), p. 237.

[8]Pei Minxin, "Microfoundations of State-Socialism and Patterns of Economic Transformation," *Communist and Post-Communist Studies*, vol. 29, no. 2 (1996), p. 137.

control of the discarded policies, and the reforms have been expanded as they have proved successful."[9] Blecher complements this view, arguing that relinquishing a linear path to development has allowed the government to "incorporat[e] elements from different historical moments in a new synthesis that did not simply reproduce the past."[10] These analyses suggest that the government is both flexible and adept at not repeating past errors, particularly ones that could create a backlash.

Taken together, these arguments narrow the scope of analysis for the stability of the Chinese regime. Accepting Pei's explanation will require a closer examination of how economic reform may have strengthened support for — or minimized opposition to — the government. Following Solnick, it will be important to understand how and why the CCP has reformed and begin to inquire what larger consequences those efforts and the influence of economic reform may have had on the government and, in turn, on the state. I argue that the decisions to pursue economic reform in the countryside and to attempt to renew the relevance of the CCP in managing the state have had unintended consequences. As a result of these choices, far less power is concentrated in the central government's or Party's hands. Greater political representation for individuals is not necessarily the result, but the increasing institutionalization of decision-making is. At the same time, the government managed to sustain economic growth and continuously minimize any significant opposition to its continued dominance.

Before exploring the changes of the reform era and their effects on regime durability, it is worth remembering what China looked like to its leaders on the eve of that period:

> The Chinese political system Deng Xiaoping inherited in 1978 resembled a Hobbesian world. No norms governed elite politics. Its key governmental

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[9]Brantly Womack, "The Party and the People: Revolutionary and Postrevolutionary Politics in China and Vietnam," *World Politics*, vol. 39, no. 4 (1987), p. 505.

[10]Marc Blecher, *China: Politics, Economics and Society: Iconoclasm and Innovation in a Revolutionary Socialist Country* (London and Boulder: Lynne Reinner Publishers, Inc., 1986), p. 93.

> institutions, especially the legal system and the bureaucracy, had been seriously damaged by the economic and political turmoil of the Great Leap Forward of 1958 and the 1966–76 Cultural Revolution. There were no institutions of political participation; under Mao Zedong, mass political campaigns and mob violence had been the main forms of participation. Deng was faced with rebuilding China's wrecked political system and reforming its backward economy at the same time.[11]

## MECHANISMS OF CHANGE

### Economic and Political Reforms in the Countryside

Almost all significant challenges to Chinese regimes throughout history have come from the countryside, and no regime faced with widespread rural turmoil has survived. The role of the countryside in outcomes is the pivotal issue for Samuel Huntington and Barrington Moore.[12] Moore argues that regime type is a function of the urban–rural relationship that evolves in the context of commercialized agriculture. Huntington, less concerned about the potential value of cross-class coalitions, suggests that the durability of a given regime can be determined by control of the countryside. Given these emphases, and the historical role of rural areas, analysts of the contemporary Chinese regime should consider not only the status of the relationship that carried the CCP to power but also the consequences wrought by economic reform in the countryside. To anticipate the conclusions of this section, the state has been careful to retain — or at least not further alienate — its mass base in the reform era by promoting growth and institutionalizing mechanisms of debate regarding the use of local resources. This provides credence to Pei and Solnick's explanations.

Life in rural China has always been brutal, but the political, economic, and agricultural trauma wrought by forced collectivization, centralized planning, and experiments like the Great Leap Forward had by 1978 brought the countryside to a virtual standstill. Daniel

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[11]Pei Minxin, "Is China Democratizing?" *Foreign Affairs*, vol. 77, no. 1 (1998), p. 69.
[12]Barrington Moore, Jr., *The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966).

Kelliher argued that the initial focus on rural reform was driven by an ideological commitment,[13] which is plausible and compatible with Jean Oi's explanation. By 1979 the state was not only almost bankrupt financially but was also faced with widespread food shortages. Desperate for peasants to increase production, the state implemented the first of a series of decisions that came to have much larger consequences: it relaxed its controls on the harvest. For the first time in three decades, peasants themselves were allowed to define the "surplus" of local agricultural production and keep it.[14] Within a few years, agricultural production had surged as the state's ability to manage centralized procurement declined, such that the incentive for further reform became clear. In 1982, a second and equally significant change followed when the "household responsibility" system effectively put an end to collective agriculture and created a moderately free market in which peasants could sell their surplus for individual profit. After decades of state intervention that had been highly disadvantageous, peasants abruptly found themselves with an unprecedented degree of control over what they produced.

Yet these initial reforms were not without a cost to the rural areas. The central state, still impoverished by its recent past and the lack of taxable income, could not continue to deliver to rural areas the services it had ostensibly provided in exchange for the right to the surplus. The price of de-collectivization in the rural areas was assuming self-sufficiency in wide-ranging areas that in the past had been subsidized by the state. In other words, a new "bargain" was struck between state and society. Local self-sufficiency included greater control over predictable local tax revenues but also entailed decreasing access to centrally dictated and annually reduced allocations of credit and material resources.

Why did these pressures not push in opposite directions to create a polarized relationship between the central state and rural

[13]Daniel Kelliher, "Chinese Communist Political Theory and the Rediscovery of the Peasantry," *Modern China*, vol. 20, no. 4 (1994), pp. 387–415.

[14]Jean C. Oi, *State and Peasant in Contemporary China: The Political Economy of Village Government* (Berkeley and Los Angeles: University of California Press, 1989), p. 168.

areas? Although it had been a risky strategy, there had been few other choices for the central government, and the reforms had been moderately successful. As Oi notes, "China's development strategies represent compromise solutions that 'satisfice' competing interests, with consideration given to resources, opportunities, and costs."[15] The official relinquishing by the state of its right to the surplus had already given peasants a few seasons' "head start" in building up stores of grain, and these were likely augmented by reserves that had gone unreported in the waning years of the Cultural Revolution. While this probably did not entirely eliminate the increased vulnerability of the peasants in the new realm of self-sufficiency, it is highly plausible that another element of the 1978 reforms did. For the first time since the 1940s, overseas Chinese were allowed to send money to family members inside the PRC,[16] a new source of personal revenue that could help provide enough security to allow an initial foray into collective, entrepreneurial activity. For the central state, rural economic reform had to have been an optimal solution: too weak to enforce any other form of regulatory system[17] and too desperate to feed its population, it allowed external funds to subsidize the initial phase of rural industrialization without having to surrender political control. To the central government, these changes meant cutting costs, remaining true to its ideological origins, and answering to demands from the countryside. From the peasants' perspective, this may not have been a uniformly optimal solution, but it at least minimized the intervention that had in the past impoverished them.

One of the "compromise solutions" to which Oi referred is the township and village enterprises. The initial fiscal success of decollectivization, coupled with the need to increase self-sufficiency,

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[15]Jean C. Oi, *Rural China Takes Off: The Institutional Foundations of Economic Reform* (Berkeley and Los Angeles: University of California Press, 1999), p. 60.

[16]Zheng Yongnian, "Development and Democracy: Are They Compatible in China?" *Political Science Quarterly*, vol. 109, no. 2 (1994).

[17]See Kiren Aziz Chaudhry, "The Myths of the Market and the Common History of Late Developers," *Politics & Society*, vol. 21, no. 3 (1993), on the relationship between government ownership and weak administration.

created incentives for small, local enterprises. Geared towards producing consumer goods and housing materials, TVEs filled the "…many empty niches [created by]…lasting shortages induced by the inefficient command economy."[18] The surpluses at the local level, the active encouragement of the central state, and the leadership of local officials who had every incentive — and every resource — to be entrepreneurial created the basis for a kind of economic activity unprecedented in scope. Between 1978 and 1986, agricultural employment in rural areas never exceeded an annual growth rate of more than 1 percent, while in that same time period and in the same areas, employment in TVEs had grown at approximately 20 percent.[19] By the mid-1990s, TVEs were generating approximately half of China's industrial output value.[20]

The TVE phenomenon has not only been economically significant. It has helped minimize opposition or increase loyalty to the government in several ways. First, it has helped to reduce considerably the number of unemployed or underemployed workers moving out of agriculture. Second, the dual role of local cadres as entrepreneurs is emblematic of Pei's suggested incentives to strengthen the system rather than find opportunities to defect from it. Looking at this issue from a different angle, Oi and Walder argue that without this engine of rural growth, the role of local government would not have been strengthened to the extent it has been.[21] Third, collective enterprises necessitated a reformulation of property rights, such that a spectrum from wholly state-owned enterprises to wholly privately-held enterprises now exists. Finally, the financial success of the TVEs has also allowed the state to concentrate scarce resources on efforts other than welfare services for rural areas. It is

[18]Enrico C. Perotti, Sun Laixiang, and Zou Liang, "State-Owned versus Township and Village Enterprises in China," *Comparative Economic Studies* (1999), p. 10.

[19]Jeffrey R. Taylor, "Rural Employment Trends and the Legacy of Surplus Labour, 1978–86," *The China Quarterly*, no. 116 (1988), p. 756.

[20]Perotti, *et al*., p. 2.

[21]Jean C. Oi and Andrew G. Walder, eds., *Property Rights and Economic Reform in China* (Stanford: Stanford University Press, 1999).

true that there are serious problems with corruption and fraud in the TVE system that may create new targets of resentment, but the depth and breadth of these changes provide compelling evidence of the state's interest in maintaining peaceable relations with the countryside.

The success of rural economic reform has also helped pave the way for the growing autonomy and political independence of provincial and local-level government. Although Oi is speaking of the role of local officials in the process of advancing economic reform when she states, "The incentives offered up to the localities to pursue rapid growth have had unintended political consequences,"[22] it is difficult not to connect that same imperative to the establishment and spread of local level elections.[23] It is possible that village elections have been for political autonomy what TVEs were for economic autonomy: a structured opportunity at the local level for people to have some degree of choice in their daily lives, yet one that does not fundamentally challenge national-level authoritarian power.

In the immediate post-Mao period, the CCP struggled to revitalize not only its rural economy but also its rural administrative capacity. As Whyte notes, "…the country's rural institutions were breaking down…and skittish party leaders in Beijing began to worry about the prospect of rural unrest."[24] By the late 1970s, village cadres were politically weak and poorly paid, while rural hostility towards these representatives of the central government rose over unpopular policies, such as high tax rates and the one-child policy. Although reliable statistics are not available, a wave of cadre resignations in the early 1980s indicated to the central government the magnitude of its institutional weakness in the rural areas.

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[22]Oi, *Rural China Takes Off*, p. 15.

[23]China's Constitution actually allows all citizens to vote, but in practice this has been restricted to Party members electing leaders and congressional members from within their own ranks and indirectly. Although villages are below the lowest level of formal state organization, these are the first direct elections China has ever allowed. Indirect elections at higher levels, including townships and municipalities, have been held sporadically since the 1950s.

[24]Tyrene White, "Village Elections: Democracy from the Bottom Up?" *Current History*, vol. 97, no. 620 (1998), p. 263.

Although few chose at the time to perceive the economic reforms of the late 1970s and early 1980s as harbingers of political change, it is in retrospect hard to see them as anything less. As noted above, the shift of economic responsibility away from the practices of central planning and toward local responsibility for administration and state services significantly empowered all subnational levels of government. The economic growth spurred by decentralization created greater demand for local autonomy, particularly with regard to community resources and their allocation — a profoundly political issue. From the state's perspective, granting greater political autonomy served three critical purposes: reinforcing economic growth, decreasing its responsibilities to rural areas, and creating an opportunity to recruit popular local people into its ranks. This is perhaps the best example of mutual interests, generated by economic reform, leading to formal political change in a manner that once again strengthened the center–rural relationship.

Although the debates within the CCP and the National People's Congress (NPC) about political decentralization had begun in the early 1980s and in conjunction with the economic reforms, the Organic Law on Village Autonomy was not formally adopted until 1987. It "declar[ed] villages to be autonomous and self-managing… through election."[25] The goal of these elections was to grant authority to the best managers of local development, not to provide an opportunity to elect national leaders from multiple parties. The basis of elections is often an individual candidate's ability to "deliver the goods" that can be extracted from higher levels of authority. Rough estimates indicate that, by the late 1990s, between 300 and 600 million people had participated in local elections and that by 2001 more than half of China's villages had held at least two elections.[26] The half-dozen scholars currently writing on village elections suggest that there are considerable discrepancies in the quality of elections, the number of candidates allowed to stand relative to the number of

[25] *Ibid.*, p. 264.

[26] Barrett McCormick, "Introduction," in Edward Friedman and Barrett McCormick, eds., *What if China Doesn't Democratize?* (Armonk and London: M.E. Sharpe, 2000).

open positions, and the requirements of Party membership for candidates. And, although the elections have now expanded to the township level, there is no indication that they will extend to the provincial or national level of government.

How has the relationship between economic and political autonomy evolved in the countryside? Despite initial enthusiasm, O'Brien suggests that, as of the mid-1990s, "comparatively few villagers derive clear benefits from exercising bureaucratically-imposed democratic rights that arrive packaged with increased state penetration and reinvigorated extraction."[27] In addition, some local incumbents have resisted elections because the pressures of "balancing demands both to complete state tasks and to increase popular participation have frequently impinged on the interests of cadres and villagers."[28] This suggests that the degree of actual political autonomy and the ability to shed unpopular central policies may be lower than initially envisioned. In addition, problems arise when elected officials take policy stances that are unpopular with local Party officials, leading in some cases to the imprisonment of the elected officials.[29]

Taken together, these views indicate that the village elections may at best be an institutionalized mechanism for debate over local growth and resource management, and an opportunity for the Party to "field test" local candidates. While these elections clearly remain far below the standard of competitive electoral democracy, that they are taking place at all and that there is official support for their expansion indicates an organized means of giving rural residents a degree of political control unprecedented in Chinese history. This renegotiated relationship reflects the importance of rural support — or at least nondissent — to the government. Institutionalizing channels to manage popular opinion is obviously still subject to Party

[27]Kevin J. O'Brien, "Implementing Political Reform in China's Villages," *The Australian Journal of Chinese Affairs*, no. 32 (1994), p. 59.

[28]O'Brien, "Implementing Political Reform," p. 34. See also Shi Tianjian, *Rural Democracy in China* (Singapore: Singapore University Press/East Asian Institute Contemporary China Series, 2000).

[29]Eric Eckholm, "China's Party Bosses Thwart Local Leaders," *The New York Times*, April 25, 2002, p. A8.

interference, yet it is unlikely they could be abandoned without objection. A direct township election involving open nominations and non-Party candidates took place in Sichuan in January 1999 at the instigation of senior Ministry of Civil Affairs officials.[30] Although such elections were at the time still illegal, the results were allowed by the central government to stand, though it is unclear whether that decision was due to the wide margin of victory, the winning candidate's being the local Party representative, or both.

To underscore the state's emphasis on center–rural relations, it is worth noting what reforms have not been extended to urban areas. Employment in cities often entails as direct a relationship with the state as collectivized agriculture used to have. Millions are employed in state-owned enterprises (SOEs), the massive industrial complexes constructed in the 1950s and 1960s. It is through these SOEs that food coupons, health care, education benefits, and housing are provided, tying the workers' welfare directly to the enterprise itself. During the first decade of the reform era, Chinese industry remained highly protected and subsidized, but as the country enmeshed itself in an international economy in the 1990s, the massive inefficiencies of the SOEs could no longer be hidden, and at least half were declared bankrupt.

The first few years of the 1990s saw a decisive change in the state's economic focus as it de-emphasized industry and promoted the nonstate sector. As Elizabeth Perry notes, "With this shift in the control of economic resources out of state-owned firms and into collective and private hands, a principal pillar of central party/state domination is being dismantled."[31] In the abstract, this sounds like a significant change with regime-altering potential, yet in reality there are two serious problems. There has been little demand — from collective or private hands — to buy these industrial dinosaurs, and while the state has tried to avoid layoffs and has relaxed the rules

[30]Michael Laris and John Pomfret, "Ssshh! This is a Secret Election; Chinese Quietly Test Democratic Waters," *The Washington Post*, January 27, 1999, p. A15.

[31]Elizabeth J. Perry, "China in 1992: An Experiment in Neo-Authoritarianism," *Asian Survey*, vol. 33, no. 1 (1993), p. 15.

governing individuals' ability to move to other sectors or cities, it has undertaken minimal efforts to encourage other means of productive and revenue-generating employment as it did in rural areas. There is no urban equivalent of TVEs to absorb excess workers, and obtaining credit to start small businesses is notoriously difficult. Although the state has not formally renounced its role in providing welfare services to these workers, the state is not subsidizing those services to the extent it once did. The central government has extended no rights of political enfranchisement comparable with the village elections to urban workers, and all these factors have contributed to a rising resentment in that sector. The state has in the past relied on corporatist unions to manage relations with industrial workers, but even those unions are going bankrupt.[32] The government's failure to pay pensions to former SOE workers brought 30,000 protesters onto the streets in Liaoning in April 2002, following months of labor protests in Sichuan, Jiangxi, and Beijing.[33]

The manner in which the government and state have incorporated popular opinion, prevented the rise of a serious challenge to its rule, promoted growth, and minimized its own obligations to the rural areas is a stark contrast to these protests. This is not to suggest that the government does not face ongoing challenges from the rural areas. It is that the initial economic reforms have contributed to a shift of power away from the center and into new institutions — collective enterprises, property rights, elections — that would be difficult to reverse.

## The Chinese Communist Party

The decision to grant rural areas greater autonomy was one of two reforms that proved to have profound consequences for the government's ability to remain in power. The other change set in motion in the late 1970s and early 1980s was that of transforming the CCP

[32]Anita Chan, "Revolution or Corporatism? Workers and Trade Unions in Post-Mao China," *Australian Journal of Chinese Affairs*, no. 29 (1993).

[33]"Protests but no bullets," *The Economist*, April 6, 2002.

itself into a more inclusive and less ideological entity, a process Solnick suggests is partly responsible for the regime's survival. It would be irresponsible not to speak of the CCP's willingness to use violence to repress challenges to its dominance — a tendency that sadly persists — yet the Party has also radically changed in ways that have likely helped decrease opposition to its rule and helped circumvent the rise of challenges. The Party is not concerned with legitimacy, as O'Donnell and Schmitter would suggest, but with its role as the director of economic growth and rejuvenation.

Womack argued that, "the politically and militarily competitive environment of the revolutionary period in China and Vietnam constrained the communist parties to be 'mass-regarding' in policy and behavior despite their authoritarian internal structures."[34] Yet the end of the revolutionary era and the establishment of the PRC created a new context within which the Party had to operate. Cloaked in the mantle of revolutionary victory, the Party defined its purpose not as an institutionalized means of making state decisions based on mass demands but as the sole interpreter of Marxism, Leninism, and Maoism. As Womack emphasized, during the revolution, "a good cadre was one who was effective because he was close to the masses. In the environment of postrevolutionary authoritarianism, the practical meaning of a 'good cadre' is one who fulfills his tasks."[35]

But the failure to maintain a connection to popular opinion, and the emphasis on unquestioningly carrying out "tasks," led to disastrous postrevolutionary state initiatives, including the Great Leap Forward and the Cultural Revolution. The consequences of these programs were equally devastating for the Party itself, as thousands of its members were purged, imprisoned, or murdered for their perceived disloyalties. How could the CCP continue to maintain the right to rule — to have any relevance in politics at all — when its culpability in destroying the country was so clear? Moreover, given the zeal with which particularly educated members of the Party had been purged, how would the Party manage these complex economic

[34]Womack, "The Party and the People," p. 480.

[35]*Ibid.*, p. 501.

reforms? By the time Deng assumed power in 1978, the CCP had little choice but to assume a more pragmatic and less ideological role. Within a decade, being a good cadre was defined not by one's zeal for Marxism but by one's entrepreneurial[36] or technocratic skills.

The Party's first visible step toward change focused on strategies to prevent future self-purges. In 1980, the CCP adopted a series of laws requiring that all national and local Party officials be chosen solely through the lower ranks of Party organizations. This simultaneously weakened the Party leadership's ability to either incorporate or dismiss specific individuals from its ranks and represented a step toward institutionalizing broad-based national participation. The Party also established two committees devoted to policing members' abuses of their status.[37] Given the overlapping membership of Party members in other government structures, these laws also indirectly contributed to strengthening the newly resurrected Provincial and, eventually, National People's Congresses. Lyman Miller and Xiaohong Liu attribute the changing membership in the Congresses to the new Party regulations.[38]

Having secured a greater sense of security from purges and undertaken new recruitment drives, the Party then sought to reinvigorate its role as the director of state reform in the 1980s. This proved to be difficult, partly due to uncertainty over whether the reforms would progress and partly due to the lack of expertise in most of the issues relevant to an international, capitalist market. Although factional infighting was obviously not new to the Party, the nature of the issues dividing those factions was. As the Party struggled to simultaneously educate itself, maintain economic growth, and reestablish its relevance, the factional infighting created an ongoing "feedback process"

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[36]Oi, *Rural China Takes Off*, p. 114.

[37]Bruce J. Dickson, "Conflict and Non-Compliance in Chinese Politics: Party Rectification, 1983–87," *Pacific Affairs*, vol. 63, no. 2 (1990), pp. 170–190.

[38]Lyman H. Miller and Liu Xiaohong, "The Foreign Policy Outlook of China's 'Third Generation' Elite," in David M. Lampton, ed., *The Making of Chinese Foreign and Security Policy in the Era of Reform, 1978–2000* (Stanford: Stanford University Press, 2001), p. 130.

between policies and their factional sponsors.[39] The "synchronization of the business and reform cycles" created "wide policy fluctuations driven by a politics of blame."[40] But as difficult as they may have been, such politics had to have been preferable to the not too distant purge tactics, and as polarized as the positions may have been, each faction experienced a degree of policy success during this time.

These factors appear to have combined to institutionalize channels of debate within the Party — channels that, at the time, were presumed to be impossible. Dittmer and Wu argue that a 1984 split within the Party over whether to emphasize economic growth or stability created a significant and persistent divide. Others have pointed to enduring differences along generational and regional lines. Regardless of the substance of the split, each of these analyses implies that there are effectively multiple parties within the CCP.

Altering its means of self-management and national role has in turn meant seeking different membership. As Dickson and Rublee suggest, it is a common misconception that the Party was ever representative of the population as a whole in terms of income and educational background. Its past anti-intellectualism had obviously discouraged participation by those with an education, and its past rejection of capitalism had literally driven the entrepreneurial class out of the country. It is thus not surprising that the recruitment drives over the past two decades indicate a greater premium placed by the Party on education than on ideological convictions. Survey data indicated that, by the mid-1990s, not only had the average age of Party members decreased, the value of higher education could be positively linked to the most senior, and best-paying, official jobs.[41]

The Party not only seeks younger and more educated members but also has made concerted efforts to recruit entrepreneurs and thus defuse another potential source of opposition. Although Andrew

[39]Lowell Dittmer and Yu-Shan Wu, "The Modernization of Factionalism in Chinese Politics," *World Politics*, vol. 47, no. 4 (1995), p. 483.

[40]*Ibid.*, p. 494.

[41]Bruce J. Dickson and Maria Rost Rublee, "Membership Has Its Privileges: The Socioeconomic Characteristics of Communist Party Members in Urban China," *Comparative Political Studies*, vol. 22, no. 1 (2000).

Walder cautioned that Party membership continued to serve as a key means of achieving different socioeconomic status or accessing privilege,[42] the economic reforms have created sufficient economic opportunities that can be pursued outside the realm of Party control. But it is not yet clear that the business sector will develop interests that are contradictory to those of the state and therefore challenge its dominance. Margaret Pearson argues that although that community is increasingly liberal and autonomous it has already been co-opted by the state through "clientelism and corporatism."[43] In 2001, the Central Party Academy began to offer courses for entrepreneurs that offered little in the way of actual business training but rather maximized opportunities for senior Party officials and rising entrepreneurs to form alliances.[44] This effort culminated in a July speech to the NPC in which Jiang Zemin declared that the Party would welcome the membership of "big capitalists," emphasizing the Party's willingness to sacrifice ideological cohesion for political concerns. At the same time, such a move risks increasing the hostility of non-Party members who already hold CCP cadres responsible for financial, legal, and social inequality, as recently evidenced by violent outbursts in several provinces.[45]

It is worth recalling Valerie Bunce's prediction that single-party systems cannot accommodate factional infighting or complex reform, such that the collapse of socialist states is inevitable. The CCP's experience contradicts this, suggesting instead that single parties may well be able to accommodate a far higher degree of disagreement and self-reform than might have been expected. Some may even institutionalize channels of debate within the Party, creating an effect similar to that if there were multiple parties. While pluralization

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[42]Andrew G. Walder, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry* (Berkeley and Los Angeles: University of California Press, 1986).

[43]Margaret M. Pearson, "China's Emerging Business Class: Democracy's Harbinger?" *Current History*, vol. 97, no. 620 (1998), p. 272.

[44]"Chinese Capitalists Get Tutored for Entry to Communist Party," *The Straits Times*, December 5, 2001, p. A7.

[45]Joseph Kahn, "China's 'Haves' Stir the 'Have-Nots' to Violence," *The New York Times*, December 31, 2004, p. A1.

and professionalization within the CCP should not be confused with actual democratization, these trends indicate a noteworthy step away from ideologically driven rule and toward a knowledge-based, growth-oriented, and somewhat circumscribed role for the Party. It appears that the CCP will be able to defend its relevance as long as it continues to deliver economic growth.

## THE CONSEQUENCES OF REFORM

Three changes in the relationship between the state and society flow from the rural economic and CCP reform. Each reflects a gradual movement toward nonpersonalized, institutionalized politics, and each again illustrates a transfer of power away from the state elite and into bureaucracies. The policy-making process now involves a far greater diversity of political actors than at any point in history; moreover, the venue in which policies are formally adopted has changed considerably. Finally, the legal system strengthened as a result of economic growth has also afforded greater opportunities for input into the political system.

The 1954 Constitution created a legislative system consisting of Provincial People's Congresses (PPCs) and the National People's Congress (NPC), but these institutions ceased to meet regularly by the 1960s and failed to meet at all during the Cultural Revolution. The 1982 Constitution, a hallmark of the reform era, not only revived the Congresses but also strengthened them by reinstating a regular schedule of meetings, making congressional positions full-time jobs, and mandating that all members be elected from lower levels.[46] Kevin O'Brien's explanation of legislative reform meshes with the reasons advanced to understand the CCP's self-reform. The government wanted "a deliberative institution that most often symbolized reason and caution, procedural regularity, and moderate, paced reform…an institutional consensus to minimize risk."[47]

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[46]Blecher, *China: Politics, Economics and Society,* p. 115.

[47]Kevin O'Brien, "Is China's National People's Congress a 'Conservative' Legislature?" *Asian Survey*, vol. 30, no. 8 (1990), pp. 782–794.

From the mid-1980s to the present, the PPCs and NPC provide a particularly interesting vantage point on institutionalized political change in China. The PPCs obviously maintain a closer tie to their localities and, as such, appear to have experienced considerable change in membership in part as a result of the ascent through the village and township elections of new representatives. Roderick MacFarquhar has speculated that as a result a struggle for control over legislation will in the future be waged between the PPCs and the NPC in a manner similar to that of federal systems.[48] The NPC, meanwhile, is shedding its reputation as a rubber-stamp legislature and is increasingly becoming the venue in which the state's and Party's policies and nominees for senior positions are not only challenged but rejected.[49] NPC members are now assisted by full-time professional staff and are holding hearings that are increasingly open to the public via television and radio. Both scholars and journalists have recently described the Congress as the arena through which popular objections to government policy can be aired.[50]

The changing nature of the legislature is therefore not just a function of normalizing the institution itself. It is that a greater range of opinion is now an increasingly common feature of debates regarding new laws and policies, a dramatic difference from the era of CCP mandates that more closely resembled imperial fiat. Joseph Fewsmith has written extensively on the role of "informal small groups" in Chinese politics — communities of intellectuals, and, increasingly, "think tanks" and private research institutions that provide input into the deliberative process. It is increasingly common for experts to be asked to comment either in writing or at meetings on the content of draft laws. The role of these groups and individuals has not been formally integrated or institutionalized, so concerns

[48]Roderick MacFarquhar, "Provincial People's Congresses," *The China Quarterly*, no. 155 (1998), pp. 656–668.

[49]Pei Minxin, "China's Evolution Toward Soft Authoritarianism," in *What if China Doesn't Democratize?*, pp. 82–83.

[50]See, for example, Cao Siyuan, "Enliven China's Parliament," *Chinese Law and Government*, vol. 33, no. 5 (2000), pp. 47–68; and Erick Eckholm, "Congress in China: No Teeth, Strong Jaws," *The New York Times*, March 4, 1998, p. A10.

persist that positions critical of policy will result in some form of retribution.[51] Nevertheless, the government's dependence on the expertise of those outside its membership has also helped create greater transparency.

Recent attempts to incorporate public opinion into the policy process appear to constitute a new form of "mass-regarding" behavior. Over the past decade, the Chinese Academy of Social Sciences, the NPC Research Office, and the State Council Policy Research Office have conducted public opinion polls on domestic and foreign policies with increasing frequency. In 1998, six PPCs conducted pilot programs in which proposed policies were announced in local newspapers, and readers were encouraged to call a survey research office with their opinions. By 2000, at least five major municipalities had adopted similar programs and reported higher compliance with local regulations that had been developed in conjunction with the public than with those that had not.[52] Fewsmith and Stanley Rosen suggest that it is still difficult to ascertain which imperative is stronger: a genuine desire to "serve the people," as Mao would have it, or creating an early warning system for mass discontent. If the channels for public opinion become institutionalized, it can be seen as another step away from the personalized or Party-dominated rule of the past.[53]

Finally, the changes to the legal system since the beginning of the reform era have also shifted power away from the central state. Blecher, noting the importance of a reliable legal system to commercialization, reports that, "by mid-1985, law offices had been established in over 20,000 townships, to notarize and help write contracts and to settle contractual disputes."[54] By 1990, the government had

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[51]Joseph Fewsmith, "Institutions, Informal Politics and Political Transition in China," *Asian Survey*, vol. 36, no. 3 (1996).

[52]Panel discussion, Beijing University Law School-National Democratic Institute for International Affairs conference on the role of legislatures, Beijing University, May 18–22, 2000.

[53]Joseph Fewsmith and Stanley Rosen, "The Domestic Context of Chinese Foreign Policy: Does 'Public Opinion' Matter?" in *The Making of Chinese Foreign and Security Policy in the Era of Reform, 1978–2000*, p. 155.

[54]Blecher, *China: Politics, Economics and Society*, p. 117.

adopted the Administrative Litigation Law, which by a mere seven years later had allowed over 90,000 suits to be filed against the government — 40 percent of which were won by the plaintiffs.[55] Throughout the 1990s, legal aid organizations grew up to support these and other cases, demonstrating to a broader audience that state decisions and officials can be successfully challenged.

The changes to the legislative infrastructure, to the avenues for popular input into policy, and to the legal system are meant to illustrate some of the longer-term, and unforeseen, consequences brought about by the reforms of the late 1970s and early 1980s. It remains possible for the state to maintain a high degree of control, but reversing or weakening these changes would have costs that are now quite high for the government. Moreover, the state has, as Pei, Solnick, and Womack suggested, created means of reform that are actually mutually beneficial to the state and its population.

## CONCLUSION

This paper provides evidence of significant within-regime, government-initiated change. Although the causal mechanisms remain primarily inferential, the changes suggest that the regime has lasted for several interrelated reasons. Abandoning its interventionist role in the countryside had a profound effect on the government, as financial and administrative obligations and benefits were transferred to the rural areas. This relaxation made it possible to prevent the relationship with those who had borne the brunt of failed central planning from deteriorating further.[56] In some cases, the relationship actually improved, largely through the successful TVE experience; in others, the transfer of power has made it possible for disaffected communities to effectively sever relations with the central government. At the same time, the CCP has altered its membership

[55]Pei, "China's Evolution Toward Soft Authoritarianism," p. 85.

[56]One question that has, unfortunately, remained outside the scope of this paper is why there has not been more organized opposition to the state, particularly at moments of weakness, such as 1978–1979.

and operational style to ensure broader representation — again, with the goal of if not actually improving its standing with the population, at least not allowing that relationship to worsen. Both these changes have in turn contributed to the institutionalization of politics, creating a kind of cohesion and predictability the Chinese have not seen in centuries.

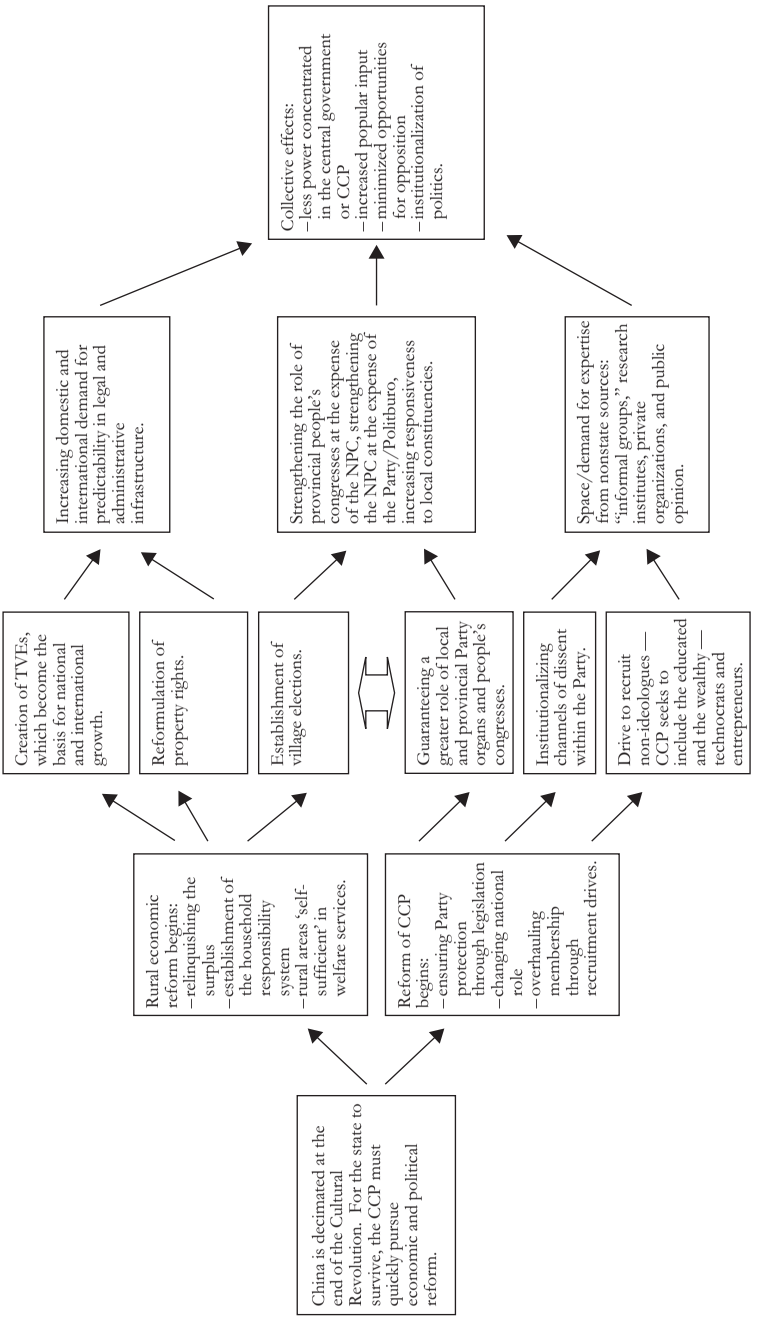
Most scholars, however, remain tentative about the trajectory of Chinese government and regime change. Blecher wrote in 1986 that the future of stronger legislatures was unclear, while Pei commented a decade later that the consequences of TVE growth were not yet certain. The uncertainty is warranted, given the rather slow rate of change and the surprising success of the reforms. The slow progress toward nonpersonal, institutionalized politics is reversible, in much the same way that Gerard Alexander argues that the consolidation of democracy in western Europe was not an inevitable outcome.

The decentralization Pei described has created Womack's "market place of regimes" inside the country, such that for some people China effectively is a democracy while for others it actually remains a harsh, authoritarian dictatorship. What if any forces create pressure for greater uniformity? Where will those forces come from? And which of the regimes will ultimately prevail? Employing Robert Dahl's decision-theoretic model may begin to help answer these questions. To the government, the costs of tolerating *some* public opinion on *some* issues have been lowered through institutionalization and reform, but the costs of tolerating organized groups that aspire to share power, such as the China Democracy Party, are still seen to be quite high. At the same time, the costs of repression, defined primarily as international opinion and the likelihood of radicalizing a population, also remain high.

Given its success in repressing organized challengers, it is the incompleteness of reforms that will likely serve as the catalyst for further change. What happens, for example, if rural areas that have been unsuccessful in collective enterprise, and are further economically marginalized by China's accession to the World Trade Organization, form alliances with former SOE workers? If the recently opened channels of public opinion, ranging from village

elections to local hotlines, do not actually result in the desired policies? If the polarization within the CCP results in paralysis rather than productive debate? Having allowed greater freedom and avenues for influence on state decisions to some groups will likely create demand from those who do not see equal benefits for themselves. The government's past success in shifting the burden of reforms from one group to another is not likely to last, particularly as those groups begin to blur together and gain greater access to the state itself.

What does this particular case reveal about the study of regimes in general? First, it suggests that authoritarian regimes can be much more flexible than the existing literature implies, and that their capacity for self-reform is also far greater than Bunce would have us believe. Second, it argues for a more in-depth analysis of how governments can reallocate power without necessarily relinquishing control. Moreover, it suggests that the process of reallocation may actually increase support for the government, rather than decrease it. Finally, it reveals that a slow transformation of rules and decision-making procedures — the overt manifestation of a regime — may be signaling a commensurate shift in the essence of the regime.


China is decimated at the end of the Cultural Revolution. For the state to survive, the CCP must quickly pursue economic and political reform.
Rural economic reform begins:
–relinquishing the surplus
–establishment of the household responsibility system
–rural areas 'self-sufficient' in welfare services.
Reform of CCP begins:
–ensuring Party protection through legislation
–changing national role
–overhauling membership through recruitment drives.
Creation of TVEs, which become the basis for national and international growth.
Reformulation of property rights.
Establishment of village elections.
Guaranteeing a greater role of local and provincial Party organs and people's congresses.
Institutionalizing channels of dissent within the Party.
Drive to recruit non-ideologues — CCP seeks to include the educated and the wealthy — technocrats and entrepreneurs.
Increasing domestic and international demand for predictability in legal and administrative infrastructure.
Strengthening the role of provincial people's congresses at the expense of the NPC, strengthening the NPC at the expense of the Party/Politburo, increasing responsiveness to local constituencies.
Space/demand for expertise from nonstate sources: "informal groups," research institutes, private organizations, and public opinion.
Collective effects:
–less power concentrated in the central government or CCP
–increased popular input
–minimized opportunities for opposition
–institutionalization of politics.

Chapter

7

# Political and Practical Obstacles to Reform of the Judiciary and the Establishment of a Rule of Law in China*

*Jean-Pierre Cabestan*

Under the terms of its classical and liberal definition, the rule of law is not something that you cannot slice up piecemeal like salami: either you have it all or you have none of it, to some extent similar to sovereignty. Of course, the rule of law is always perfectible. But at the same time, as long as the basic conditions for allowing the rule of law to emerge are not met — among these conditions the establishment of a political democracy; thus a set of laws *legitimately* approved by a truly elected and pluralistic parliament and an *independent judiciary* are usually regarded as three key and *related* prerequisites — the chances of witnessing such a rule taking shape remain slim.[1]

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[1]That is the approach that I developed in particular in the article "Chine: Un Etat de lois sans Etat de droit," *Revue Tiers Monde*, vol. XXXVII, no. 147 (July–September

Yet, for some decades, this approach to the rule of law has been questioned by some Western and non-Western jurists.[2] More importantly for our subject, the Chinese authorities have since 1979 embarked on a profound legal reform that is clearly aimed at establishing a "rule by law state" or a "state ruled in accordance with law" (*yifa zhiguo*) without jeopardizing the political foundations of the communist political system, e.g. one-party rule. This ambition became a major priority following the suppression of the democratic movement in 1989 and more specifically after Deng Xiaoping relaunched the economic reforms in early 1992. In the early 1990s, the People's Republic of China (PRC) entered the second phase of its legal reform, a much more comprehensive plan to draft laws and regulations more in line with Western norms than the old and dying Soviet model, not only in the realm of economic and foreign trade law but also in other, more sensitive areas such as criminal and administrative law. This second phase constitutes the background and the basis of Jiang Zemin's new policy (*tifa*), adopted in 1996, of "ruling the country in accordance with law and establishing a socialist country ruled by law" (*yifa zhiguo, jianshe shehuizhuyi fazhiguojia*).[3] The acceleration of this reform has of course been

1996), pp. 649–668. On the relation between the rule of law, legitimacy and an autonomous judiciary, cf., for example, Max Rheinstein, ed., *Max Weber on Law in Economy and Society* (Cambridge, MA: Harvard University Press, 1954).

[2]Cf., for example, Randall Peerenboom's discussion of the thick and thin conceptions of the rule of law, "Let One Hundred Flowers Bloom, one Hundred School Contend: Debating Rule of Law in China," unpublished manuscript presented at the Law and Society Conference in Budapest, 2001, and his book, *China's Long March Toward Rule of Law* (Cambridge, MA: Cambridge University Press, 2002). In his view, the "thin conception" of the rule of law includes in particular the following features: procedural rules of law-making; transparency; law applicability, clarity, non-retroactivity, stability, and consistency; laws must be enforced, and enforced fairly; and laws must be reasonably acceptable to a majority of the society or people affected by the law. However, curiously, the independence of the courts is absent from this list; cf. Peerenboom, "Let One Hundred Flowers Bloom…," op. cit., pp. 6–7.

[3]*Renmin Ribao* (People's Daily), February 9, 1996 (Internet edition). The Chinese characters used (依法治 國建設社會 主義法治國) in this new wording as well as the official translation of its latter part — a "socialist rule of law state" — raise a major issue.

closely linked to China's intention to join the World Trade Organization (WTO). But it has also pursued more global and ambitious goals: since Tiananmen, legal reform has become a substitute for political reform, aiming both to accompany and to organize the new economic freedoms that society has gradually been granted and to provide the necessary mechanisms and recourses to stabilize, or maintain the stability of, the state–society relationship. In this respect, reform and modernization of the judiciary have been regarded both as the "weak link of the legal chain" and a top priority.

This new policy has not been without its successes. Many new laws and regulations consistent with international norms have been promulgated, the courts are settling a rapidly growing number of cases, and the Chinese authorities have trained a large quantity of judges and lawyers, leading to a gradual improvement in the quality of judgments and legal advice. And legal reformers in China are now willing to take advantage of their country's accession to the WTO — and the stronger outside pressure brought by that — to speed up the Chinese legal system's adaptation to international — and Western — rules and practices.

Does this not mean then that, thanks in particular to the reform of its judiciary, the PRC is on the verge of establishing a rule of law, as Beijing's official propaganda in English claims? That this country is about to prove the compatibility of a rule of law and an independent, fair, and professional judiciary with an authoritarian political system? That China is showing, by the sheer legal reality and modernization that it is nurturing, the inanity of the liberal approach to the rule of law?

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They both give the illusion that China is building a rule of law while it is only trying to establish a rule by law. On this point, cf. Yuanyuan Shen, "Conception and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China," in Karen G. Turner, James V. Feinerman, and R. Kent Guy, eds., *The Limits of the Rule of Law in China* (Seattle and London: University of Washington Press, 2000), pp. 24–27 and Jianfu Chen, *Chinese Law, Towards an Understanding of Chinese Law, Its Nature and Development* (The Hague. Kluwer Law International, 1999), pp. 361–363.

It is hard to deny that the PRC's political and legal institutions have remained highly authoritarian and repressive. At the same time, it is difficult to ignore the *legal modernization* that has been taking place in China — as in other nondemocratic political entities — favoring greater respect for legal norms as well as a larger independence and professionalization of the judiciary in less politically sensitive or non-sensitive areas, such as economic, labor, and civil law.[4] Nevertheless, this paper will argue that (1) the emergence of a rule of law that would be restricted to economic or non-sensitive relations — what the Chinese government's discourse (both in Chinese and in English) has called a "socialist rule of law" (actually a rule by law under the leadership of the Communist Party) and what I would qualify as a Bismarckian "*Rechtsstaat*" or a "rule by law state" — still faces many obstacles; (2) whether cultural, economic or political, these obstacles have much to do with the difficulties of establishing a truly independent and professional judiciary; and (3) although the PRC authorities will continue to fight to improve the legal system without questioning the Chinese Communist Party (CCP) rule, only dramatic political and institutional reforms can favor the emergence in China not only of a genuine rule of law but also a *Rechsstaat* or a rule by law understood as an autonomization of the law within an authoritarian political environment.

## AN AUTHORITARIAN AND REPRESSSIVE POLITICAL–LEGAL SYSTEM

Despite the legal modernization alluded to above, we must recognize that the politico-legal environment in which this modernization is taking place has remained highly authoritarian and repressive. Ironically, the politicians and jurists who have turned themselves into the architects of legal reform have maintained or continue to

[4]I use on purpose the concept of "legal modernization" to qualify the process going on in China because it is both neutral and rather vague; the idea is that legal modernization doesn't necessarily bring not only a rule of law but also a Bismarckian rule by law.

live with politico-legal institutions that, overall, are still designed on the Soviet model. Some of them have even argued that retaining an authoritarian political system is the only guarantee of success for legal reform.[5] However, and notwithstanding the important changes in the legal system observed in the last two decades, this institution model based on the leading role of the Communist Party has continued to thwart major and dramatic legal reforms.

Firstly, in spite of the successive revisions of the constitution approved since 1982, constitutional law remains the least developed area of Chinese law. This is actually an understatement: most of the formal rules enshrined in the constitution are not implemented and are frequently rendered meaningless as they are circumvented by more powerful political and Party norms.[6] And for political reasons, it has not yet been possible to set up an independent body responsible for reviewing the constitutionality of the law. The Standing Committee of the National People's Congress (SCNPC) has problems fulfilling this task for the reason that it is also the main enactor of national laws (bills submitted to the annual plenary session of the NPC are always *de facto* approved beforehand by the Standing Committee). True, some Chinese jurists have argued that the control of the constitutionality of laws precedes their adoption by the NPC or the SCNPC. However, not only has this supervision been superficial in most cases, because it is exerted by unelected and

[5]Cf., for example, the various contributions to Ministry of Justice, ed., *Zhonggong zhongyang fazhi jiangzuo huibian* (Discussing the Legal System), no. 127, 1998; Pan Wei, "Democracy or Rule of Law? — China's Political Future," unpublished manuscript presented at the University of Hong Kong Conference on "The Responses of Intellectuals to the Challenges of the 21st Century in China and Eastern Europe — A Comparative Approach," organized by the French Centre for Research on Contemporary China, Hong Kong, December 15–16, 2000. Pan Wei thinks that only an authoritarian political system can favor the emergence of a "consultative rule of law" in China.

[6]On the achievements and the limits of constitutional revisions, cf. Chen Jianfu, "The Revision of the Constitution in the PRC: Conceptual Evolution of 'Socialism with Chinese Characteristics'," *China Perspectives*, no. 24 (July–August 1999), pp. 66–79; "The Revision of the Constitution in the PRC: A Great Leap Forward or a Symbolic Gesture?" *China Perspectives*, no. 53 (May–June 2004), pp. 15–32.

nonindependent legislators but such an institutional arrangement also restricts to a large extent the possibility of legal recourse against laws perceived as unconstitutional by a group of citizens or their official representatives, the delegates to the NPC, before an independent and specialized jurisdiction.

Secondly, the leading and coordinating role played by the CCP's political and legal commissions (*zhengfa weiyuanhui*) over every security and judicial organization (public security, state security, justice, procuratorate, and court) at every level is another obstacle to the emergence of independent courts and administration of justice. This does not mean that the secretaries (or heads, who are usually deputy secretaries of the local CCP committee) of these commissions interfere in every case judged by the courts. The rapid increase in judgments actually prevents them from doing this. But they are empowered to intervene, by themselves or under the pressure of other members of the commission, in the major and most sensitive cases. And, for obvious reasons (primarily because most, if not all, of them are CCP members and often sit on these commissions), court presidents and, perhaps more importantly, adjudication committee leaders are still tempted to consult with them before making difficult decisions. Though they more often "work independently", as the constitution prescribes, Chinese courts are therefore far from being independent.

Thirdly, one-party rule continues dramatically to restrict the implementation of and respect for public freedoms and civil rights enshrined in the constitution — since March 2004 human rights (*renquan*) are specifically protected by the constitution — and in the United Nations covenants or agreements that China has acceded to. For instance, although the PRC authorities have signed (in 1997) and ratified (in 2001) the UN Covenant on Economic, Social and Cultural Rights, it has made official reservations on Article 8, which nullifies the basic right to set up independent trade unions. The right to strike is also not guaranteed, though strikes do take place and are tolerated more often. And in spite of Beijing's decision in 1998 to sign the more sensitive UN Covenant on Civil and Political Rights, it has so far refrained from ratifying it, mainly because of the

difficulties of reforming the reeducation-through-labor system (*laojiao*), an institution that allows the administration and in particular the Public Security to imprison anyone up to four years without judgment. And if the NPC were to approve this covenant tomorrow, which is likely, the Chinese regime would not feel any more besieged than, say, the Soviet regime in the 1970s into embarking on the profound but dangerous political changes that will permit Chinese citizens to enjoy the fundamental political rights listed in this international convention (right of association and in particular to form political parties, press freedom, religious freedom, and minority rights). Any Chinese trying to enjoy these rights are still condemned to heavy jail sentences, no longer for having committed "counter-revolutionary crimes" — this notion was scrapped in 1997 — but still too often as "criminals endangering the security of the state".[7] Finally, criminal justice nationwide remains highly repressive, given not only the large number of death sentences handed out (still kept secret though estimated between 10,000 and 20,000 a year), in spite of a fresh willingness to gradually decrease the number of executions, but also the great difficulties in implementing the new penal code and code of penal procedure, in particular when it comes to defense rights, lawyers' access to their clients and their clients' files, and legal restrictions imposed by these new codes upon the Public Security bureaus.[8]

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[7]Cf., for example, the US State Department Report, February 25, 2004, <www.state.gov/g/drl/rls/hrrpt/2003/27768.htm>. Though China's ratification of the latter covenant will lead to a "judiciarization" of the *laojiao* system, it will probably not alter very much an institution based on the idea that the state is empowered to "re-educate" citizens it regards as "bad elements."

[8]The Report of the People's Supreme Court presented to the NPC in March 2002 indicated that 150,913 persons were sentenced to life imprisonment or death in 2001 <www.law-lib/com/>; Chen Jianfu, "Legalism with Chinese Characteristics: The Revision of the Criminal Law in the PRC," *China Perspectives*, no. 21 (January–February 1999), pp. 5–14. Cf. also, "Human Rights Watch World Report 1998: China" (December 8, 1998) <www.hrw.org/hrw/campaigns/china-98/chn-wr98.htm>; Jonathan Hecht, *Opening to Reform: An Analysis of China's Revised Criminal Procedure Law*, New York, Lawyers' Committee for Human Rights, 1996, p. 87. In March 2004, a NPC delegate admitted that the number of executions was

The situation prevailing in the most politically sensitive areas of China's law and briefly mentioned above seems light years away from the perception that many Chinese and foreign jurists have of the gigantic steps made by this country's legal system in particular in the realms of economic and foreign trade. Is this just a question of (wrong) perception and discourse (or propaganda)? Or are we witnessing a growing gap and a gradual disconnection between the most repressive and political aspects of Chinese law, in other words the Soviet (and imperial) legacy, on the one hand and the more modern, outward looking and Western inspired areas of this legal system on the other?

## TOWARD AUTHORITARIAN LEGAL MODERNITY AND JUDICIAL FAIRNESS?

There is not merely one single type of politico-legal modernity. Indeed, political entities such as Bismarck's Germany, Singapore, and Hong Kong have managed to reconcile an authoritarian or non-democratic political setting with a legal system and in particular a judiciary that is modern, efficient, and on the whole reliable and fair, if not totally independent from political power.[9] And one can speculate that Beijing's plan to "Singaporeanize" Hong Kong goes beyond its desire to enjoy better control over this former British colony. Some PRC reformers are interested in testing, through the

around 10,000 a year. At the same time a government source quoted by *Reuters* (March 9, 2004) indicated that 5,000 criminals had been executed in 2003. It is hard to tell which figure is the most accurate since the number of executions remains a state secret in China today. Also, in March 2004, both Luo Gan, secretary of the CCP Central Political and Legal Commission, and Xiao Yang, president of the People's Supreme Court, indicated their willingness to diminish step-by-step the number of executions. *Reuters*, March 10, 2004.

[9]Katharina Pistor and Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development 1960–1995* (New York: Oxford University Press, 1999). Cf. also Randall Peerenboom, "Social Networks and Their Relation to Civil Society, Democracy, Rule of Law and Economic Growth in China," unpublished paper presented at a City University of Hong Kong Conference on "Social Networks and Civil Society: A Comparative Approach," April 1–4, 2002.

Hong Kong case, the possibility of establishing in the mainland a rule of law that, while stabilizing the society, stimulating the economic development, and favoring China's integration in the world economy, would not jeopardize the leading role of the Communist Party.[10] Why should they not succeed in establishing if not a rule of law at least a *Rechsstaat*? Numerous changes that have occurred in the Chinese political and legal spheres in the last 20 years tend to provide evidence to the contrary.

Firstly, the Communist Party is far from being an omnipotent monolith. Closely integrated in the state apparatus, it has always been divided along the same lines of interests and opinion as the government — the center–province opposition is the best illustration of this. Moreover, the rehabilitation of the law as well as the restoration of legal and judicial institutions have favored a professionalization of the personnel of these institutions and created new bureaucratic rivalries. Judges and lawyers may be CCP members or heed the pressures exerted by their supervisors, the politico-legal commissions and the departments of justice, respectively, but their interest lies in working for the strengthening and the aggrandizement of their own institutions, the courts and their law offices, respectively. And the growing number of cases as well as the greater autonomy of lawyers, better guaranteed by the new 1997 law governing this profession, and law firms — more and more of them are cooperative or private organizations — have also contributed to turning these two professions into new "power centers".[11] Of course, as we have seen earlier, these power centers are recent phenomena and generally still weaker than the CCP organizations or the Public Security bureaus. But at the same time, their sheer existence and the steady development of their activities have gradually forced the "traditional" communist institutions to enter into new types of bureaucratic disputes and adjust, show occasional restraint, bargain, or even reform. And since 2004, the diminishing official role of the

[10]For instance, Pan Wei, "Democracy or Rule of Law?. . . ," op. cit.

[11]Li Yuwen, "Lawyers in China: A 'Flourishing' Profession in a Rapidly Changing Society?" *China Perspectives*, no. 27 (January–February 2000), pp. 20–34.

CCP politico-legal commissions in judicial affairs as well as the better recognized autonomy of the lawyers' associations vis-à-vis the justice departments have deepened these trends.

Secondly, the interest of the current CCP leadership lies in making the legal reform, and in particular the modernization of the judiciary, a success or at least giving it some credibility. Since, as we have indicated above, they do not want (or not yet, some of them) to democratize the political system, the Chinese authorities are keen to push forward the establishment of a rule by law and a professional and autonomous court system, albeit of "socialist" texture, aimed both at enhancing the regime's political legitimacy and at stabilizing society and relations between state and society by opening new avenues for the presumably more reliable settlement of disputes. This task is very important, if not critical, in the current circumstances, where inequalities and feelings of injustice are growing and where socioeconomic interests have become so diversified and sometimes contentious that they can only be solved or at least alleviated by impartial institutions located outside the government. In other words, though it has been spurred by China's plan to join the WTO (cf. below), the legal modernization of the country is part of a more ambitious reform pursuing dramatic domestic objectives. Among these, the perpetuation of the CCP rule, some may argue, is a crucial one. However, in initiating these legal changes, the Chinese authorities have unleashed new forces and new demands in society, the final impact of which is hard, if not impossible, to assess — and keep in check.

Thirdly, the legal reforms have, in any event, contributed to a change in Chinese society's so-called traditional and negative approach to law and justice. The new possibilities of legal recourse as well as the powerful legal propaganda developed by the government have revived the no less "traditional" need for justice (*zhengyi*) and equity (*gongping*) of the Chinese, two notions that very much existed in imperial China.[12]

[12]On this question cf. Isabelle Thireau and Wang Hansheng, eds., *Disputes au village chinois, formes du juste et recompositions locales des espaces normatifs*,

It is true that in imperial China these ideas of justice and equity did not take shape, as in Europe, *with* the emergence of a judicial power — the courts in England, the *parlements* in France — independent from, and sometimes in rebellion against, royal power. In the hands of government officials who enjoyed both administrative and judicial prerogatives and mainly dealing with criminal cases, imperial justice was avoided as far as possible by Chinese society.

Nevertheless, these traditions must be placed in a historical perspective. Since the middle of the 19th Century, Chinese law has been influenced by and gradually reformed along the lines of Western law, in particular the German continental legal tradition partly transmitted through Japan. Though this process of legal acculturation was stopped by the communist regime and in particular Mao Zedong for 30 years, it was resumed more than two decades ago, allowing various foreign legal models to compete for influence. In this competition, though the American and common law system has made headway in a number of areas such as trade arbitration, Chinese law has remained closer to the continental model (*dalu faxi*), heavily influenced by German, European, and Taiwanese (an Asian application of the German model) legal experiences.

This is to say that the place occupied by law and justice in Chinese society has changed fundamentally in the last 150 years. And the rapid and profound legal reforms that China has been set on in the last 25 years have both deepened this metamorphosis and narrowed the gap between traditional Chinese and Western legal values and norms. True, the consideration given to personal relations or the occasional clientelism still influences the settlement of many disputes: their resolution often remains based as much on the principle of reason (*heli*) or even human feelings or sympathy

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Editions de la Maison des sciences de l'homme, Paris, 2001, pp. 23–26; Isabelle Thireau and Linshan Hua, "Le sens du juste en Chine: En quête d'un nouveau droit du travail," *Annales, Histoire, Sciences Sociales*, no. 6 (November–December 2001), pp. 1283–1312.

(*renqing*) as on that of justice (*zhengyi*, *gongzheng*) or fairness (*gongping*).[13] But for all the reasons indicated above, the demand within Chinese society for impartial justice has been increasing. And many examples tend to show that the Chinese society is more aware of its rights and demands the government and the courts to better guarantee them.

One of the best indicators of this profound evolution is the steady increase in litigation. In 2001, nearly 6 million cases were handled by the Chinese courts, as opposed to 4.5 million in 1995 and less than 2 million in 1987. In 2003, the total number of cases handled by Chinese courts went down to 5.68 million from 5.93 two years earlier, probably underscoring a willingness to concentrate on improving the quality of judicial awards. Of course, most judgments are related to civil and indeed family matters (1.35 million in 2001) or debts (1.3 million cases in 2001). But within this category, a gradual diversification of cases has taken shape. For instance, the number of "economic disputes" first rapidly increased up to 1999 (over 1.5 million cases) before decreasing sharply (600,000 in 2003). And administrative cases, in other words legal procedures against the government, have gradually become less exceptional (Table 1).[14]

Finally, the foreign or transnational dimension of the legal reform should not be underestimated. The growing number of foreign interests in China (enterprises, banks, insurance companies,

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[13]Thireau, *Disputes au village chinois*, op. cit. pp. 27–28. Cf. also Fu Hualing, "A Bird in a Cage: Police and Political Leadership in Post-Mao China," *Policing and Society*, no. 4, 1994, quoted in Randall Peerenboom, "Social Networks . . . ," op. cit.

[14]*Zhongguo tongji nianjian 2002* (China Statistical Yearbook 2002), Peking, Zhongguo tongji chubanshe, 2002, pp. 802–803; 2003 Report of the People's Supreme Court (March 2004), <www.court.gov.cn/work/>; the decrease in economic cases since 2000 can be explained by two factors: the enactment of a new contract law effective since October 1, 1999, which has substantially improved the legal protection of contractual relations, and the concomitant merging of civil and economic law. On administrative cases, cf. Pei Minxin, "Citizens vs. Mandarins: Administrative Litigation in China," *The China Quarterly*, no. 152 (December 1997), pp. 832–862.

**Table 1.** Number of Cases Handled by the Chinese Courts at First Instance (a)

| | 1987 | 1995 | 2003 |
|---|---|---|---|
| Civil | 1,579,675 | 3,997,339 | 4,834,350 |
| Marriage and family | *** | *** | 1,266,593 |
| Economic | 366,110 | 1,275,959 | 632,719 |
| Labor | *** | *** | 137,656 |
| Criminal | 289,614 | 495,741 | 735,535 |
| Administrative | 5940 | 52,596 | 114,896 |
| Total | 1,875,229 | 4,545,676 | 5,687,905 |

Source: Various People's Supreme Court Work Reports, <www.court.gov.cn/work/>.
Note: Economic disputes have recently been included in the civil category following the gradual merger of the two legal frameworks. Maritime law cases are included in the category of economic disputes.

representative offices, and individuals) has exerted a constant — and positive — pressure on the legal reformers and the judicial system. Actually, many laws and regulations were first drafted at the request of or for foreign investors and later extended to every Chinese legal person (*faren*) or individual. That has been the case, for example, with the company law of 1994 and the contract law of 1999. The drafting of the latter is a very interesting and revealing example of the gradual merging of domestic laws, applied to Chinese entities and individuals (the totally outdated 1981 law on economic contracts), and foreign-related laws only applied to foreign enterprises or individuals (the no less *passé* 1985 law on economic contracts involving foreign interests).[15] Bringing together Chinese and foreign

[15]For a bilingual edition of the company law, cf. *Zhonghua renmin gongheguo falü huibian/Laws of the People's Republic of China*, Peking, Falü chubanshe, 1996, pp. 542–641. For a bilingual edition of the contract law, cf. *The Contract Law of the People's Republic of China/Zhonghua renmin gongheguo hetongfa* (Peking: Foreign Language Press, 1999), 224 pp. Cf. also Jianfu Chen, *Chinese Law*, op. cit., p. 300. Pitman B. Potter, "Law-Making in the People's Republic of China: The Case of Contracts," in Jan Michiel Otto, Maurice V. Polak, Jianfu Chen, and Yuwen Li, eds.,

arbitrators in its work, the China International Economic and Trade Arbitration Court (CIETAC) is also a good example of cooperation and cross-fertilization between Chinese and foreign commercial legal practice.[16]

China's application and accession to the WTO in December 2001 has naturally speeded up this process of the unification and standardization of Chinese laws. The process has forced the PRC authorities to translate the many multilateral commitments made to the WTO into their own legal texts. Though this task is far from completed, it has already contributed noticeably to narrowing the gap between Chinese and Western legal norms and, more generally, modernizing Chinese law.[17] For instance, the principles of "national treatment" as well as of "transparency" (in other words, the publication of every applicable legislation or regulation) or "independence of justice" will, without any doubt, increase the pressure on the Chinese legal system as a whole and the courts in particular.

But clearly, this outside input has been much more visible and efficient in economic and civil law than in criminal and administrative law, not to mention constitutional law, confirming both the discrepancy between these two large areas of the Chinese legal system and the instrumentalist approach to law favored by the CCP

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*Law-Making in the People's Republic of China* (The Hague: Kluwer Law International, 2000, pp. 189–203; *The Chinese Legal System, Globalization and Local Legal Culture* (London and New York: Routledge, 2001).

[16]Stanley B. Lubman and Gregory C. Wajnowski, "International Commercial Dispute Resolution in China: A Practical Assessment," *The American Review of International Arbitration*, 1993, vol. 4, no. 2, pp. 107–178. China Law and Practice ed., *Dispute Resolution in the PRC: A Practical Guide to Litigation and Arbitration in China* (Hong Kong: China Law & Practice, 1995).

[17]In 2001, 177 laws and regulations were rescinded to bring them in line with WTO requirements, *Hong Kong iMail*, March 11, 2002, p. 7. It was indicated in 2000 that over 1,300 laws as well as central and local regulations were not in conformity with the WTO rules. Cf. Leïla Choukroune, "Implementing a Rule of Law Through Internationalization: The Objective of the Reforms?" *China Perspectives*, no. 40 (March–April 2002), pp. 7–20.

leadership.[18] Of course, we can assume that these new principles and norms, largely inspired by the West, will unevenly but gradually irrigate the Chinese legal system, allowing first business organizations and people and then less influential or more controlled segments of society (workers, peasants, minorities, journalists) to enjoy legal rights and guarantees in particular before the court. This is the evolution that many Western nations followed in the 19th Century after the first modern legal codes were drafted. And this is to some (a large?) extent the process that is taking place in China today.

As a matter of fact, in other sectors of social activities, we can perceive a parallel evolution: whether in nongovernmental or media organizations, autonomy is more easily tolerated or accepted by the CCP authorities and even sometimes protected by the central leadership in non-sensitive (or not too sensitive) areas or areas where society is asked to complement the inadequate action of the state. Hence, business associations, NGOs involved in education, and women's rights or even environmental protection and economic magazines such as *Caijing* (Economics and Finances) and *Ershiyi shiji guangcha baodao* (21st Century Economic Report) are enjoying greater freedom than are organizations active in other sectors.[19]

Nonetheless, this dichotomy may very well remain stable and persist for quite a long time in the legal domain as well as in the other fields[20] with the risk of being less easily accepted by 21st Century Chinese than by 19th Century's Europeans. Moreover, and despite the indisputable progress described above, numerous obstacles are still slowing down the institution of an independent judiciary and a "rule by law" restricted to nonpolitical and non-sensitive matters.

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[18]R.C. Keith, *China's Struggle for the Rule of Law* (New York: Saint Martin's Press, 1994), pp. 218–221; Pitman B. Potter, *The Chinese Legal System, Globalization and Local Legal Culture* (London and New York: Routledge, 2001), pp. 10–11.

[19]On NGOs, cf. Tony Saich, "Negotiating the State: The Development of Social Organizations in China," *The China Quarterly*, no. 161, pp. 124–141.

[20]That is actually one of the main arguments of Randy Peerenboom's paper, "Let One Hundred Flowers Bloom . . . ," op. cit.

## THE MAIN OBSTACLES TO THE ESTABLISHMENT OF AN INDEPENDENT JUDICIARY AND A SOCIALIST RULE BY LAW

Obstacles to the establishment of an independent judiciary and a socialist rule by law are of two kinds. Some result from (mostly local) bureaucratic or personal resistance to the new legal rules approved and judicial institutions established by the center because these rules and institutions directly undermine the interests of those concerned. Others ensue from the rules, procedures, and restrictions imposed by the political system in China. The latter seem trickier to overcome, but it is actually difficult to draw a clear line between these two types of impediments for the very reason that, in China as in other countries, legal practice and justice are strongly dependent upon the political, economic, social, and cultural environment in which they develop.

Among these obstacles, three appear prominent because no easy and rapid solution can be found to them: the lack of financial and human resources, corruption, and local protectionism.

### The Lack of Financial and Human Resources

Still a developing country, China can only allocate limited financial and human resources to the modernization of its legal system and in particular its judiciary. This is not to deny that much has been done in the last two decades to rehabilitate the law and the legal professions: many new and modern court and procuratorate offices have been built in every province; law firms have mushroomed in every city; the number of legal personnel, be they judges, procurators, or lawyers, has rapidly increased, in particular since the early 1990s; and more and more Chinese jurists have been trained abroad, mainly in the USA or Europe. In 2004, there were 220,000 judges (against 70,000 in 1988), including 30,000 senior judges, working in some 3500 courts as well as some 130,000 lawyers (against 41,000 in 1990).

However, these numbers remain very low: one judge for more than 6,000 inhabitants and one lawyer for about 10,000 inhabitants

are ratios well below those not only of developed countries such as France and the US of course but also of developing countries such as India (which has more than 500,000 lawyers, the second largest lawyer population after the US). The current number of lawyers remains low and a far cry from the original targets (150,000 lawyers in 2000 and 300,000 in 2010).[21] They are also very unevenly distributed, the majority working in the coastal areas and in the city, where most of the business is located. The other worrying marker is the ratio between lawyers and judges, indicating the weakness in defense rights: in most countries there are many more lawyers than judges. In 2001, Chinese lawyers appeared in only 27% of all cases (compared to 18% in 1996); and if they took part in 54% of the criminal cases (compared with 39% in 1996) and 43% of the administrative cases (against 33% in 1997), they remained absent from four civil cases out of five (19% set against 12% in 1996) and two-thirds of economic cases (35% set against 24% in 1996).[22] Moreover, the number of cases remains much lower in China (around 5.7 million in 2003) than in countries such as India (22 million).

And beyond the figures there remains a serious problem of expertise. The large majority of judges and procurators have not yet received any formal legal education: many of them are still retired PLA or police officers hastily trained in law (very often on a 3- or 6-month crash course). A 2002 report indicated that only 10% of judges had a graduate degree.[23] Though this statistic does not mean much and may be a bit exaggerated, it is generally thought that still around 10% of judges have a four year undergraduate degree in law. The same is true for just half of the lawyers. Moreover, the best jurists prefer to become lawyers in a foreign law firm (in such a case

[21] *China Daily*, January 13, 1996, p. 1.

[22] *Zhongguo tongji nianjian 2002* (China Statistical Yearbook 2002) (Beijing: Zhongguo tongji chubanshe, 2002), pp. 791, 802; these percentages are calculated by dividing the number of lawsuits (*susong*) in which lawyers acted as agent (*daili*) by the number of cases.

[23] *Wenhuibao* (Shanghai), quoted in the *South China Morning Post*, January 2, 2002, p. 4.

they have to give up their Chinese lawyer qualification) or in a law firm specializing in business law. Many Chinese lawyers work on criminal cases only when forced and threatened by a system of fines imposed by the justice departments, the local branches of the Ministry of Justice.[24]

Though Beijing and other big metropolises do have a fair number of qualified judges and lawyers, this is far from the case in all 3,500 jurisdictions and 10,225 law offices (in 2002) in the country. This is the avowed reason why most of the judicial awards made by the courts are not published: many of them do not even end up in written form, while the written judgments are often far from comprehensive or up to the legal standards required by the Supreme Court. Thus, despite the WTO commitments, this lack of expertise will contribute for a long time to keeping court decisions at least partly secret when they only concern Chinese nationals.

In the last few years, several decisions have been made to change this situation. In July 2001, the Ministry of Justice established a joint examination for both lawyers and judges or procurators based on its experience in selecting lawyers through examination. Thanks to this reform, the government is hoping that every new judge or procurator will have been forced to receive formal legal training and meet the same professional standards as the lawyers. In imposing a joint recruitment examination, it is also hoping to improve both the image and the carrier of judges and procurators and, in so doing, attract a larger number of law students into the courts and the procuratorates. However, unless their salary is not dramatically readjusted, which is unlikely because of the budgetary constraint, young judges and procurators will remain on average much more badly remunerated than young lawyers.[25] A total of

[24]Li Yuwen, "Lawyers in China . . .," op. cit.; cf. also *Lawyers in China: Obstacles to the Independence and the Defense of Rights* (New York: Lawyers Committee for Human Rights, March 1998).

[25]A judge at a grass-roots court in a less developed province normally receives about RMB600 a month (US$72), a high court judge in Peking can get about RMB2000 (US$242), and a judge in coastal areas may receive RMB7000 (US$845),

360,000 applicants sat for the first examination of this kind in March 2002 and around 20,000 passed, although the respective number of persons who got the qualification to practise these three different professions was not published.

In January 2002, the law on judges was amended to introduce some incentives to make this career more attractive.[26] On the other hand, in early 2002, the People's Supreme Court announced the creation of a new and special court under its direct supervision, to which cases related to the implementation of WTO regulations can be directly submitted. And since March 1, 2002, the Supreme Court has restricted to a small number of intermediary courts — located in big cities or provincial capitals — and a handful of basic courts (such as Shenzhen) the competence to hold foreign (and Hong Kong) related commercial cases, restoring a procedure that had been in place between 1979 and 1991.[27]

Prudent and conservatory, this last decision shows how much China wants to become a good WTO pupil. But at the same time, it underlines the lack of talent and will probably not be sufficient to protect foreign enterprises from nonprofessional judgments or legal advice. And, perhaps more importantly, as long as the planned inflow of specialized jurists into the courts is not completed, it may more than ever deprive Chinese entities and individuals of the qualified judges of which they are in increasing need. In 2001, 200 middle-aged and young judges were selected for training stints abroad or in Hong Kong. The same year, 8,500 judges were qualified to handle WTO-related cases after receiving training at the Peking University Law School. But the numbers involved remain terribly low

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*South China Morning Post*, March 13, 2002, p. 8. In large cities and coastal areas, lawyers usually earn between RMB6000 and 20,000 a month (US$725 to 2,400).

[26]Apart from the rank of senior judge mentioned above, 41 supreme and provincial court judges were given the title of "grand justice" (*dafaguan*); this title is identical to the one used in Taiwan for the members of the Judicial Yuan (*sifayuan*); *Xinbao*, March 23, 2002, p. 15, *China Daily* (March 22–23, 2002), p. 1.

[27]*South China Morning Post*, February 8, 2002, p. 6; *Hong Kong iMail*, February 27, 2002, p. 11; *China Daily*, March 19, 2002, p. 11.

in the light of the country's needs.[28] Xiao Yang, president of the Supreme Court, echoed this problem at the March 2002 annual session of the NPC, very candidly admitting that, since 80% of the cases were handled by grass-roots courts, more than five years will be necessary to upgrade the judiciary.[29]

Finally, the lack of resources will continue to limit the judicial assistance provided by the courts. Although important efforts have been made in the last few years to assist needy defendants, for instance, in 2001 only 300,000 cases were granted such assistance.[30] Moreover, we must keep in mind that in 2001 there were still nearly 5 million (4.86 million) civil disputes (compared with 9 million in 1987) settled not by the courts but by the nearly one million mediation committees, bodies in which local government officials play a crucial role.[31]

For a long time to come, therefore, the Chinese courts and, to a lesser extent, law firms will suffer from a lack of talent. The situation is gradually improving, but blatant inequalities will persist among jurisdictions and among judges in their understanding of the large number of new laws and in particular of the economic legal norms that the NPC and the State Council have enacted in the last few years.

## Corruption

In China as in many nations in transition, the rolling back of the state has more often favored the emergence of new spheres of uncontrolled power and social inequalities without a safety net rather than new areas of self-restrained freedoms and well-accepted responsibilities. The might of the strong or the rich, the growing

[28] *Hong Kong iMail*, March 11, 2002, p. 7.

[29] *South China Morning Post*, March 13, 2002, p. 8; *Wenhuibao* (Hong Kong), March 13, 2002, p. A4.

[30] This represented a total cost of RMB839 million (US$1.1 million) in litigation costs exempted, reduced, or postponed. *China Daily*, March 12, 2002, p. 1.

[31] *Zhongguo tongji nianjian*, op. cit., 2002, pp. 791 and 793; and 1995, pp. 681 and 683.

corruption of Party and government cadres, and the venality of administrative positions are some of the most serious problems that the PRC regime faces today. Corruption is indeed considered by a growing number of Chinese, among them Hu Angang, director of the Centre for China Studies at the Chinese Academy of Sciences, as "the number one political challenge".[32] These flaws can only hold back or slow down the legal system's and in particular the judiciary's current modernization process and the ambition of the Chinese leadership to establish a socialist rule by law. The areas or matters that the CCP no longer interferes in or controls are too often taken over by the power of money or sometimes the underworld. In the last few years, in some places (such as Shenyang, Xiamen, or Yunnan), local CCP bureaucrats have worked hand in hand with or offered protection (*baohusan*) to the mafia, in Shenyang even helping their bosses to join the local people's congresses, hoping that they will there enjoy legal immunity.[33] These cases underline the danger of the criminalization of the state in some areas of

[32]Hu Angang has estimated that in the years from 1995 to 1999 corruption cost the Chinese economy the equivalent of 17 percent of GDP or US$153 billion, *South China Morning Post*, March 17, 2001, p. 9. Cf. also Hu Angang, *Zhongguo: tiaozhan fubai* (China: Fighting Against Corruption) (Hangzhou. Zhejiang renmin chubanshe, 2001), p. 380. The scope of these phenomena is by nature very hard to assess. Some officially published figures have recently indicated that 50 percent of the four million contracts signed in China are fraudulent in some respect, tax evasion accounts for 50 percent of taxes due in the private economy, two-thirds of the biggest state firms produce false accounts, and 15–20 percent of the spending on an average infrastructure or building project is lost to bribery, fraud and poor quality work, *The Far Eastern Economic Review*, June 21, 2001, pp. 59–60. Moreover, in 2001, the number of cases handled by the Central Discipline Inspection Commission of the CCP increased by 30 percent. *Wenhuibao* (Hong Kong), March 9, 2002, p. A6. On corruption, cf. also Lü Xiaobo, *Cadres and Corruption. The Organizational Involution of the Chinese Communist Party* (Stanford, CA: Stanford University Press, 2000).

[33]On Shenyang, cf. *International Herald Tribune*, March 8, 2002, p. 2. On Xiamen, cf. Zhang Xianhua *et al.*, *Fengbao, Chachu Xiamen teda zousi'an jishi* (Windstorm, Record of the Investigation on Xiamen's Big Smuggling Case) (Xiamen: Zuojia chubanshe, 2001), p. 418.

China.[34] In 2001, Chinese courts heard 350 cases of mafia-style organized crime, six times the figure in 2000, while procurators investigated 279 such cases involving 345 Party or government officials.[35] Of course, this not only directly thwarts the uniform application of the law but also seriously damages the functioning and the legitimacy of the state.

Badly paid, judges and procurators are ideal targets for, and sometimes victims of, these new social forces when these forces perceive that their interests may be jeopardized by the courts. According to the Chinese authorities, attempts to bribe or embezzle judges and procurators have been increasing in the last few years. A total of 1,200 judicial employees were "punished" for corruption in 2000, a further 996 in 2001.[36] Of course, one may argue that such a trend underlines the growing importance and influence of the Chinese courts. Nevertheless, this evolution also tends to highlight the reallocation of privileges from traditional Party authorities to the new economic centers of powers — but still often related to the CCP — and the emergence of increasingly complex clientelist and corporatist relationships, multiplying the occasions of interference in the work of the courts.[37]

Another side-effect of the judges' low pay is the need to moonlight. Most often tolerated for obvious reasons (in particular not to see the courts deserted by its judges), such a practice tends however to multiply the risks of conflict of interest and partiality

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[34]Guilhem Fabre, "Etat, corruption et criminalisation en Chine," *Revue internationale des sciences sociales*, no. 169 (September 2001), pp. 501–508.

[35]*Ibid.* Report of the People's Supreme Procuratorate presented to the NPC on March 11, 2002 <www.law-lib/com/>; *South China Morning Post*, March 12, 2002, p. 8.

[36]<www.law-lib/com/>; *South China Morning Post*, March 13, 2002, p. 8.

[37]Jonathan Unger and Anita Chan, "China, Corporatism and the East Asian Model," *Australian Journal of Chinese Affairs*, no. 33 (January 1995), pp. 29–53; Jean Oi, *Rural China Takes Off: The Institutional Foundations of Economic Reform* (Berkeley: University of California Press, 1999), p. 259; David Wank, *Commodifying Communism: Business, Trust and Politics in a Chinese City* (Cambridge: Cambridge University Press, 1999), p. 264.

since, after hours, many judges become legal advisers (and actually lawyers).

The low level of education among judges and the lack of transparency of their promotion and mobility rules are also perceived as major factors in corruption. For instance, in 2001 in Shanxi province, 89 judges in rural areas were "unlawfully appointed". And according to some China media reports, more extreme appointments took place the same year: a dance-hall proprietor, Wang Airu, was made a judge in Fuping county, Shaanxi province, despite having barely finished primary school, by a female county official who was one of his dance patrons.[38]

Moreover, even if they do manage to conduct a fair trial, the courts possess little constraining power to force the litigants to execute the awards that they have imposed: local political or economic pressures and the insolvency of the condemned party are among the most often quoted causes of the nonimplementation of judgments[39]. In other words, while corruption can spoil the work of the court and the handling of a number of legal cases, something that will long remain impossible to assess,[40] other factors can also disrupt the due process of law. Of them, local protectionism is probably the most powerful.

## Local Protectionism

Although local protectionism has a deep-rooted historical background in China, in today's PRC it is the result of two main factors: an institutional pattern deprived of checks and balances and thus of independent control apparatus; and an economic strategy based on

[38]*South China Morning Post*, January 2, 2002 p. 4. The latter story was questioned by the *Beijing Qingnian Bao*, October 30, 2001, but later confirmed; see <http://news.tom.com/Archive/2002/3/5-3361.html>.

[39]Stanley B. Lubman, *The Bird in a Cage: Legal Reform in China After Mao* (Stanford: Stanford University Press, 1999), p. 258.

[40]Hu Angang estimated that only 10 percent of the corruption cases in China were made public and about 1 percent of those investigated were sentenced, *South China Morning Post*, May 16, 2001, p. 8.

the unequal development of the various regions of the country. The size of China has often been put forward as a cause of local protectionism, i.e. the tendency of many provinces and in particular the less competitive regions to implement only the national legal and administrative rules that do not jeopardize their own interests and to decree their own "domestic regulations", and in so doing becoming what the Chinese often call "independent kingdoms" (*duli wangguo*). But, although the geography of a country often determines its institutional arrangements — large states tend to opt for the federal system — it rarely implies the parceling of the domestic market into multiple and rival "bureaucratic and economic fiefdoms". Yet this is still a problem in today's China.

A unitary state, the PRC has, since the beginning of the reforms, been practicing an unstated federalism, the tendency of which to "decentralism" (*fensanzhuyi*) has been stigmatized many times by the Chinese central leaders themselves. Ironically, these centrifugal forces result directly from the overconcentration of politico-bureaucratic power in the hands of the CCP at each level. The respective attributions of central and local governments are ill defined and not guaranteed by any institutional mechanism.[41] Illegal regulations promulgated by the provinces, the municipalities, or the counties — thus in contradiction with national rules — are rarely abolished by the NPC, an institution still tightly controlled by the CCP and not well equipped to screen all these local norms, in spite of the promulgation in 2000 of a new law on legislation (*lifafa*) aimed at establishing a clearer hierarchy of legal norms in the country.[42]

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[41]Cf. Jean-Pierre Cabestan, *L'administration chinoise après Mao. Les réformes de Deng Xiaoping et leurs limites* (Paris: Ed. du CNRS, 1992).

[42]Li Yahong, "The Legislative Autonomy of the Localities in China," *China Perspectives*, no. 32 (November–December 2000), pp. 13–21; Jean-Pierre Cabestan, "The Relationship Between the National People's Congress and the State Council in the People's Republic of China: A Few Checks But No Balances," *American Asian Review*, vol. XIX, no. 3 (Autumn 2001), pp. 35–73. A slightly different version can be consulted on the website of the French Centre for Research on Contemporary China (CEFC) at <www.cefc.com.hk>; Zou Keyuan, "Harmonizing Local Laws with the Central Legislation. One critical step in China's long march towards rule of law," *China Perspectives*, no. 52 (March–April 2004), pp. 44–55.

Moreover, because of the rapid political and economic changes that China has undergone in the last two decades, many intricate and almost unsolvable legal situations and disputes have arisen, where contradictory legal principles or administrative rules compete with each other, a situation which helps the local authorities to protect themselves with specific regulations that the center has not been able to scrap or may not even be aware of.[43]

More importantly perhaps, the one-party system has so far forbidden the establishment of an independent apparatus to control the bureaucracy. The most powerful of these structures, the CCP discipline inspection commissions, have constantly remained under the leadership of the CCP committees of the same level. Though these inspections commissions have been empowered in 2003 by Hu Jintao to control the CCP committee at the same level, it remains hard to tell whether this new type of supervision is and can be effective. Thus the only way of bringing to heel a recalcitrant locality is changing its Party boss.

The same organizational model applies to the judiciary. In spite of a relative professionalization of the judges and procurators, courts remain highly dependent upon the CCP and the government of their jurisdiction. When local interests are at stake, the CCP secretary, the governor (always the second-in-command of the party committee), or the deputy secretary in charge of the political and legal commission influence the court's decision. This trend has become very visible in the economic realm, where local courts have been often accused of protecting companies' interests not only against foreign but also other localities' enterprises. Local authorities also attempt to influence the appeal verdict of the higher court judges. These instances of interference are also eased by the court's lingering financial dependence on local government as well as the CCP's cadre system. On the one hand, only a small percentage (10 percent?) of their funding is contributed by the Supreme People's Court, the rest is financed by the local authorities (equally by the provincial and

[43]For instance, on property rights, Jean Oi and Andrew Walder, *Property Rights and Economic Reform in China* (Stanford, CA: Stanford University Press, 1999), p. 354.

city or county levels). And sometimes central funding is even held by the latter.[44] On the other hand, judges and procurators are just another category of cadre (*ganbu*): their professional, social, and personal connections with the local party committee and government are immensely closer than in any democratic country; belonging to the same social environment, they much more frequently swap positions, meet, and socialize, thus multiplying the occasions of outside interference in the court's affairs and negotiated or biased judgments.

Since China's entry into the WTO, this situation is becoming less and less tolerable. But how much and how fast can it change? The leading role of the CCP in every segment of bureaucratic action is hard to question. Though the Chinese constitution recognizes the independence of the courts in their judicial activities, this latter rule is subordinate to the former principle enshrined in the preamble to the constitution.[45] Having said that, breaking provincial and subprovincial protectionism as well as preventing the local authorities from interfering both in the courts' decisions and in the implementation of these decisions have clearly become priorities.

A number of recipes have been put forward. For instance, in order to contain such interference, some jurists have proposed the establishment of a new tier of three "regional final appeal courts", in northern, central, and southern China, empowered to oversee the appeal cases in their respective jurisdictions.[46] Similar to the reform carried out in the banking sector in 1998, when the People's Bank of China set up nine regional headquarters nationwide to prevent provincial officials from forcing local bankers to approve loans, this

[44]As was in 2002 the case in Gaozhou city in Guangdong province, *South China Morning Post*, March 13, 2002, p. 8.

[45]Article 126 of the PRC Constitution states: "The people's courts exercise judicial power independently (*duli xingshi shenpanquan*), in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual."

[46]This proposal was made by Wang Liming, deputy director of the Law School at the Peking-based People's University and member of the NPC's finance committee, *South China Morning Post*, March 14, 2002, p. 8.

proposal has, however, little chance of being adopted since it would add a fifth level of courts. Nevertheless, it may feed the discussion on the redesigning of the respective geographical jurisdictions of the various levels of courts, a reform which would probably facilitate the separation of the judicial organs from the governments. But this will not be easy in view of the large number of weapons that the local CCP and state authorities still have at their disposal to influence the courts' decisions, including the formal election of the judges and procurators by the local people's congresses, assemblies in principle elected but actually manned and controlled by retired or active CCP cadres.

What the Chinese judicial system would need is a complete overhaul of its organizational pattern and a dramatic vertical integration of the court system, a reform which does not necessarily jeopardize one-party rule but which remains today perceived by the majority of CCP leaders, especially at the local level, as too profound and destabilizing to be contemplated.

There are of course other hurdles, more of a cultural or historical nature, to the establishment of a socialist rule by law in China. However, in the eyes of most Chinese jurists, the three problems briefly discussed above constitute the main obstacles to the establishment of a *Rechsstaat* in a politically authoritarian environment.

## CONCLUSION

We therefore come back to our starting point: Is China's socialist rule of law qualified to be called "rule of law" or the "thin rule of law" proposed by Randall Peeremboon, without abolishing the political supremacy of the Chinese Communist Party and the establishment of an independent judiciary? To be sure, the three problems indicated above are not going to disappear overnight when and if the Chinese polity democratizes. Bearing in mind the economic (and cultural) constraints under which the Chinese legal system is developing, training competent jurists, ferreting out corruption, and fighting localism will remain high on the agenda of any democratically elected and hence politically legitimate Chinese government.

However, the current institutional arrangements and lack of public liberties, such as freedom of the press or freedom of association, clearly intensify these problems. And though there are some similarities between China, Singapore and Hong Kong, the two former British territories have inherited legal and judicial institutions which are still today, in spite of their large differences, heavily influenced by the practice and the legal culture of common law systems.[47] In contrast, the rule by law in China is still more often interpreted and guaranteed in the light of the respective political, bureaucratic, and economic powers of the parties involved than according to principles of law or equity. While Chinese courts are now more often — and sometimes very symbolically — able to protect the interests of giant transnational companies such as Microsoft or Walt Disney, to mention just a couple of well-known judicial cases, they have not yet shown their capacity to guarantee evenly and independently the legal rights of the average foreign or local company. And in spite of the guarantees recently given to the USA and other countries and a genuine mobilization, the Chinese government will face formidable difficulties in eliminating, with the assistance of the police and the judiciary, the widespread production of counterfeited products on its territory.

That said, the Chinese legal system is evolving in a social and economic environment very different from, say, Brezhnev's Soviet Union or even Gierek's Poland and Kadar's Hungary. Two sets of pressures, which we have alluded to above, are at play in China, and these pressures are likely, sooner or later, to compel the country's leadership to speed up institutional and judicial reforms, even if they do not directly question the leading *political* role of the Communist Party.

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[47]Executive interference in the judiciary is much more prevalent in Singapore than in Hong Kong, despite the NPC's 1999 interpretation of the Hong Kong Basic Law restricting the right of abode of mainland Chinese; cf. Peerenboom, "Let One Hundred Flowers Bloom…," op. cit., pp. 56–57. Pei Minxin, "Legal Reform and Secure Commercial Transaction: Evidence From China," in Peter Murrell, ed., *Assessing the Value of Law in Transition Economies* (Ann Arbor: University of Michigan Press, 2001).

The first set of pressures comes from the outside: China's entry into the WTO will force the Chinese legal system gradually to become more transparent, more reliable, and fairer not only to powerful transnational companies but also to the average foreign and local enterprises involved in judicial disputes. These pressures will not have any rapid impact. Even today, many foreign businesses are wary about the commitment of the Chinese authorities to implement the WTO regulations and are asking for greater transparency in both the legislative process and regulatory control of business.[48] Rather than a full implementation of WTO rules, most Western governments and companies, as Pitman Potter has suggested, are hoping for "appropriate compliance" or more exactly "acceptable noncompliance" with the country's WTO commitments.[49]

But the important point regarding these outside pressures is that they may incrementally spill over into Chinese society and convince more local companies to jump on the bandwagon of legal actions, even if this is to protect conflicting interests.[50]

The second set of pressures, therefore, is a domestic one. And these pressures are often underestimated. It is not only Chinese business people who have increased their demands on the legal and judicial systems but also wider segments of the whole society. And these demands are reflected in the ideas or the proposals put forward by the most reformist or liberal Chinese

[48]For instance, in a White Paper published in April 2002, the American Chamber of Commerce (Amcham) in China indicated that greater transparency should include "allowing interested parties to comment on draft laws and publicizing all laws and regulations in detail and making public the reasoning behind the interpretation and manner of their enforcement." According to a survey organized by Amcham, 35% of its members were "very concerned" that the WTO agreement would be ignored, that new regulations would be enacted to counter WTO rules and commitments or that protectionism might increase as a result of WTO accession," *South China Morning Post*, April 25, p. B4.

[49]Potter, *The Chinese Legal System*, op. cit., p. 141.

[50]Cf. Pitman B. Potter, "Are Human Rights on China's WTO Agenda?" *China Rights Forum*, no. 1 (2002), pp. 8–10.

jurists.[51] The Sun Zhigang affair, which took place in Spring 2003, is a good example of the usefulness of such pressures: the death in detention in Canton of Sun, a young migrant beaten to death by other prisoners, triggered a strong reaction from the public and in particular some local law professors, who sent a petition to the NPC and eventually convinced Premier Wen Jiabao to relax the regulations restricting the rural migrants' residence rights in cities.[52] The attempt in 2004 to impose restrictions on the CCP politico-legal commissions, the development of more protective labor laws, and the growing autonomy of the lawyers' associations are other examples of the Party's necessary adaptation, an adaptation which, once again, does not directly challenge the *political* leading role of the CCP but on the contrary may contribute to stabilizing the state–society relationship while at the same time favoring a gradual autonomization of the law and hence the courts. In other words, these international and domestic pressures can favor the emergence of, if not a rule of law, at least a new type of *Rechsstaat* in China, a *Rechsstaat à la chinoise*.

At the same time that it is coming under these pressures, however, the Chinese legal system is facing two different risks. The first is a growing gap between the coastal areas, where legal and judicial practice is rapidly becoming more professional, and the hinterland, where poor localities controlled by corrupt bureaucracies will continue successfully to protect themselves through clientelism and corporatism against both WTO commitments, what they perceive as unfair outside — and not only foreign — competition, and legal modernization.

The second risk is political instability and even upheaval if the legal system and in particular the judicial system do not show that

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[51]Li Buyun, *Zouxiang fazhi* (Toward a Rule of Law) (Changsha: Hunan renmin chubanshe, 1998), 2nd edn, 2001, 770 pp. Liu Junning, *Gonghe, minzhu, xianzhen, ziyouzhuyi sixiang yanjiu* (Republic, Democracy and Constitutional Government, Study of Liberalist Ideology) (Shanghai: Shanghai sanlian shudian, 1998), 422 pp.

[52]Kristen Looney, "Death of Sun Zhigang challenges rule of law in China," May 20, 2003, <http://www.chinaelections.org/eng>.

they can alleviate more efficiently the social and legal problems that society is facing. The emphasis given since 2002 to improving the judicial and administrative mechanisms for settling labor disputes is no coincidence and offers some interesting similarities with the social compromise elaborated by Bismarck in late 19th Century Germany.[53] If no acceptable answers are proposed in this area, the risk of social unrest and pressures for the creation of free trade unions will probably increase. And a more credible fight against corruption is more and more often associated with the need to revive "political structure reform" (*zhengzhi tizhi gaige*).[54] Before he became general secretary and president, Hu Jintao asked the Central Party School, a think tank that he then directly supervised through his close aide Zheng Bijian, to conceive fresh plans for political reform, as he saw how much institutional obstacles prevented the legal modernization of the country from moving forward. But after he succeeded Jiang Zemin, under the pressure of his peers and the local leaders, Hu has remained very cautious and, in spite of some true initiatives, refrained from pushing for large-scale political reforms, hoping that the gradual establishment of a "socialist country ruled by law" and a better "governance" will not require, at least in the foreseeable future, any weakening of the CCP rule.[55] He may be right.

The modernization of the legal system will continue under the twin pressures indicated above, allowing China to narrow the distance that it must still cover to reach what, for the purpose of this

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[53]Cf. "Labor and Social Security in China," White Paper of the Information Office of the State Council, *China Daily*, April 30, 2002, p. 10. Cf. also Isabelle Thireau and Hua Linshan, "The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices," *The China Journal*, no. 50 (July 2003), pp. 83–103. Aiqing Zheng, *Les libertés et droits fondamentaux des travailleurs en Chine: critique et perspectives au regard du droit français et des normes internationales* (Fundamental liberties and rights of the workers in China: a critical comparison with French law and international norms), doctoral dissertation, Paris, University of Paris 1, 2004.

[54]*Xinbao*, March 5, 2002, p. 10.

[55]*Dongxiang*, March 2004, pp. 33–34; *South China Morning Post*, April 30, 2004.

analysis, I have called a rule by law or a *Rechsstaat*. Nevertheless, the political translation of the legal demands of society and the international community will take more time to materialize. And in the meantime, risks, setbacks, and difficulties will continue to be present and prevent China from establishing a truly independent judiciary and what is universally called a rule of law or an *Etat de droit*.

Chapter

8

# Public Participation and the Democratization of Chinese Governance[1]

*Jamie P. Horsley*

The concept of developing socialist "political civilization" [政治文明] was first raised in General Secretary Jiang Zemin's report to the 16th National Congress of the Communist Party of China in November 2002 (the "2002 Political Report")[2] as a major objective of the Party's goal to

[1]This paper is taken from a longer one prepared for the International Conference on Advancing Political Civilization in China, June 11–12, 2004. The author wishes to thank Professor Paul Gewirtz, Director, and Jeffrey Prescott, Senior Fellow, of The China Law Center at Yale Law School and students Peng Yannan, Liu Hui and Xu Kaichen, as well as research assistant Helen Tang Hanjie, for their advice, comments and research relating to the themes of this paper.

[2]*Quanmian jianshe xiaokang shehui, kaichuang zhongguo tese shehui zhuyi shiye xin jumian* [Build a Well-off Society in an All-Around Way and Create a New Situation in Building Socialism with Chinese Characteristics], Part V on Political Development and Restructuring, delivered November 8, 2002, at <http://www.people.com.cn/GB/shizheng/16/20021117/868414.html>; English translation at <http://english.peopledaily.com.cn/200211/18/eng20021118_106983.shtml>.

build a well-off society. It has become clear over time that "political civilization" is shorthand for good governance. China's leaders seem seriously to want a government that is efficient, effective, law-abiding, and relatively open, one that increasingly seeks to serve, rather than control, social and economic development. While electoral democracy does not seem to be part of "political civilization," the term political civilization is often referred to together with "socialist democracy" by the Chinese Communist Party (the Party) and the government of President Hu Jintao and State Council Premier Wen Jiabao.

The 2002 Political Report, which introduced the concept of political civilization, also set the goal of improving China's decision-making mechanism by having decision-makers reach out to the people, "pool their wisdom," and introduce mechanisms such as public hearings to better reflect the people's will, thereby putting decision-making on a more "scientific and democratic basis." These instructions lay the political groundwork for development of what Chinese policymakers refer to as a system of public participation in legislation, administrative rule-making, and policy formulation (which are hereafter sometimes collectively referred to as "decision-making").

Communist Party ideology has long emphasized the need for government action to reflect the will of the people, referred to in Maoist ideology as the "mass line" of "from the people, to the people."[3] Chinese leaders typically have tried to implement this by conducting selective consultations and research with trusted groups of other government officials and "experts," supplemented by "site visits," before setting policy. The idea of establishing regular channels through which the general public could make its "will" known is a fairly recent phenomenon. This paper will outline and discuss recent Chinese experience in public participation and its importance to the development of political civilization and socialist democracy in China.

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[3]In Chinese: "cong qunzhong zhong lai, dao qunzhong zhong qu," referred to in Ma Qinghong and Zhang Huiping, "*Gongmin canyuquan de lilun jianshi*" [Theoretical Study on Citizens' Right of Participation], *Lilun Tansuo* [*Theoretical Exploration*], no. 6 (2001) p. 63; and Zhu Jingwen, "*Guangyu lifa de gongzhong canyu de jige wenti*" [Several Issues about Public Participation in Lawmaking], *Zhejiang Shehui Kexue* [*Zhejiang Social Sciences*], issue 1 (January 2000), p. 73.

## THE ROOTS OF PUBLIC PARTICIPATION IN CHINA

The term "public participation" [公众参与] was first used by the Chinese leadership in the report of the Third Plenum of the 16th Party Congress in October 2003,[4] but the concept traces its origins to the collectivization and communization programs of the 1950s, which left a legacy of expectations of farmer participation and transparency, especially in local finances,[5] and which helped shape the more recent development of participatory villager self-governance. The expansion of public participation beyond China's villages was spurred by the need for practical suggestions as well as technical expertise to make increasingly complex policy decisions and laws to support China's modernization and drive for economic development, the desire to ensure social stability and build trust in government, and the need to curb rampant corruption.

## THE LESSONS OF VILLAGE SELF-GOVERNANCE

Chinese farmers first started organizing largely self-governing villager committees in 1980 to impose some order in the political, social, and economic vacuum created in China's vast and impoverished countryside by the dismantling of rural communes following the Great Proletarian Cultural Revolution (1966–76). Party leaders endorsed the development of villager committees, civic organizations below the lowest level of formal government, the township. The Party hoped the system would promote stability and economic prosperity by allowing villagers to choose local leaders they trusted and by making those leaders directly accountable to their constituents.

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[4]"*Zhonggong shiliujie sanzhong quanhui zai jing juxing,*" October 15, 2003, <http://www.peopledaily.com.cn/GB/14576/14957/2135585.html>, containing the plenary report, dated October 14, 2003.

[5]Zhou Hanhua, ed., *Wo Guo Zhengwu Gongkai De Shijian Yu Tansuo* [*My Country's Experience With and Consideration of Open Government Affairs*], Zhongguo falu chubanshe [China Law Publishers] 2003, p. 89 [hereafter Zhou Hanhua], pp. 95–97.

China's post-Cultural Revolution Constitution adopted in 1982 conferred legal status on these self-governing committees, providing in Article 111 that they are "mass" (civic rather than political) organizations at the grass-roots level elected by village residents to manage village affairs, mediate civil disputes, help maintain public order, and convey residents' requests and opinions to the official people's government.[6]

To implement this system, the National People's Congress (NPC) adopted in 1987 a provisional law on villager committees. This law (the Trial VC Law)[7] was the first Chinese law to institutionalize and legalize a system of village self-government characterized by direct elections of executive bodies called villager committees (VCs); the establishment of participatory villagers assemblies comprised all adult voters, with the authority to discuss and decide matters affecting the interests of all villagers, as well as the formulation of self-government charters; and mandatory transparency of village affairs. The Trial VC Law also gave VCs certain key economic responsibilities, including the power to manage and allocate village lands and collective property among the residents and to support cooperative economic undertakings and village production, all matters of direct concern to the villagers and over which the villagers would eagerly want to exercise supervision.

Villager participation through direct elections and villager assemblies gradually changed conceptions of villagers' relationships with their local leaders. Some villages have even started entering into contracts with successful VC candidates to ensure they fulfill their campaign promises, posting the agreements on the

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[6]Article 111, Constitution of the People's Republic of China, adopted and promulgated on December 4, 1982, by the Fifth Session of the Fifth National People's Congress, as revised as of March 22, 2004, is available in Chinese at: <http://news.xinhuanet.com/newscenter/2004-03/15/content_1367387.htm>, and in English translation (with amendments through 2004 at the end) at <http://english.peopledaily.com.cn/constitution/constitution.html>.

[7]An English translation of the Trial VC Law is at <http://law.chinalawinfo.com/dispecontent.asp?ID=287&DB=1>. The Chinese text is at <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=3583>.

village bulletin board.[8] Such contracts represent in concrete form the emerging horizontal relationship between elected village leaders and their constituents, and a new vision of accountable governance.

## REFINEMENT AND SPREAD OF PARTICIPATORY CONCEPTS

Although implementation varied greatly throughout China's countryside, the people and supervising officials from the township and higher levels embraced the villager self-governance and open villager affairs program, where it was implemented well. Top-level Party and government leaders began more frequently to espouse broadly applicable concepts of greater citizen participation and open government.

The same year that the Trial VC Law was adopted, the report to the 13th National Party Congress in 1987 called for more transparency in the activities of leading agencies and endorsed the principle that major national issues should undergo discussion by the people.[9] The concept of "people's discussion" had been utilized sporadically in legislative activities in the 1950s and 1980s but was not incorporated formally into the legislative process until the NPC enacted procedural rules in 1989 that call for broadly seeking opinions on drafts of major, basic laws.[10]

In September 1997 at the 15th Party Congress, Jiang Zemin heralded not only village grassroots democracy but also called on township-level governments as well to make public their political and financial affairs so the people could directly take part in discussion and decision-making as well as exercise supervision over

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[8]Amy Gadsen and Anne F. Thurston, *Elections at the Grassroots: An Assessment of Local Elections in Guangxi, Hebei, Henan, Shanxi and Yunnan Provinces*, PRC (July 2000), p. 14.

[9]Zhou Hanhua, supra note 5, p. 53, and "Government Opens Policy-making to Public," *People's Daily* (English edition) (January 3, 2004), at <http://english.peopledaily.com.cn/200401/03/print20040103_131768.html>.

[10]Zhou Hanhua, supra note 5, p. 57.

government.[11] Departments handling affairs of immediate concern to the people were to carry out an "open work system" to make sure what they do is "fair, just, and open" and to give scope to the role of "public opinion."

On April 18, 1998, the Party and the State Council issued a joint notice on increasing openness and democracy in the management of village affairs,[12] in which they called specifically for exploration of ways to move the open affairs system from the villages up to the *township* level.

This notice was followed quickly in November 1998 with adoption of the permanent Organic Law on Villagers Committees (the VC Law).[13] The VC Law strengthened the villager supervision provisions, in a detailed new article requiring the VCs to institute systems for "openness in village affairs."[14] In particular, villagers assemblies are to evaluate an annual report by the VCs and VC performance, as well as decide specified matters relating to income and land distribution and finances. VCs must disclose finances at least once every six months for the villagers to inspect and

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[11]Report to the 15th Party Congress, called, "Hold High the Great Banner of Deng Xiaoping Theory for an All-round Advancement for the Cause of Building Socialism with Chinese Characteristics to the 21st Century," September 12, 1997, Section VI on Reforming the Political Structure and Strengthening Democracy and the Legal System, at <http://www.fas.org/news/china/1997/970912-prc.htm>; Chinese text at <http://xcb.ysu.edu.cn/jdzz/jzm/gjqz.htm>.

[12]"*Guanyu zai nongcun pu bian shixing cunwu gongkai he minzhu guanli zhidu de tongzhi*" [Notice on Universally Implementing Openness in Village Affairs and Democratic Management in the Countryside], jointly by the Party Central Committee and the State Council General Office, published June 11, 1998, in the *People's Daily*, online at <http://202.99.23.245/9806/11/current/newfiles/a1010.html>; <http://www.mca.gov.cn/artical/content/WCM_ZCWJ/2004225115400.html>. An English translation is available through FBIS, Article ID: drchi06111998000658, June 18, 1998.

[13]"*Zhonghua renmin gongheguo cunmin weiyuanhui zuzhi fa*" [Organic Law on Villager Committees of the People's Republic of China], adopted and effective November 4, 1998; Chinese text available online at <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=21056>, and an informal English translation at <http://www.cartercenter.org/peaceprograms/470_cdoc.htm>.

[14]Id., Article 22.

supervise, and they are to respond to inquiries from the villagers. Villagers refer to this system as the "Sunshine Project" [阳光工程].[15]

In a March 1999 speech on villager self-rule, Vice Premier Jiang Chunyun reported on the transparency and self-governance changes taking place in the countryside:

> "Following the deepening of rural reform and development of the market economy, farmers' thinking, concepts, and value orientation have undergone profound changes. Their sense of democracy and their sense of participating in the management of economic and social affairs have constantly increased. And more and more they want to have the right to information, dialogue, and decision-making. They long for direct participation in making decisions on major affairs in the village and the management of village affairs."[16]

The Communiqué of the Fifth Plenum of the 15th Party Congress in October 2000 broke new conceptual ground in identifying the desirability of "expanding citizens' participation in political affairs in an orderly way" [公民有序的政治参与].[17] This may be the first time the Chinese leadership referred to the "masses" more respectfully as "citizens" in an official document. The encouragement of citizen participation in *political* affairs, albeit in "an orderly manner," offers at least the possibility of a larger role in governance for the people. That communiqué also encouraged openness in "government affairs" and "factory affairs," as well as village affairs, thus officially expanding the scope of the "openness" program beyond the village.

The Party and State Council issued a second joint notice, this one on "openness in *government* affairs" [政务公开] at the township level, on December 25, 2000. In addition to providing detailed

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[15]Zhou Hanhua, supra note 5, p. 83.

[16]Jiang Chunyung, "*Ba cunmin zizhi zhejian rang jiuyi nongmin dangjia zuozhu de dashi banhao*," <http://www.univillage.org/czht10.htm>; in English, "Do Well Matter of Primary Importance Which Allows 900 Million Peasants to Become Masters of Their Own Affairs," Beijing Renmin ribao [*People's Daily*], March 3, 1999, translated in FBIS Article ID: FTS19990318000285, Document Number: FBIS-CHI-1999-0318.

[17]Communiqué of the Fifth Plenum of the Fifteenth Central Committee of the CCP, October 11, 2000, in Chinese at <http://www.people.com.cn/GB/channel1/10/20001012/268296.html>; in English at <http://english.peopledaily.com.cn/200010/11/eng20001011_52364.html>.

instructions to localities on how to implement greater government transparency, the notice also mandated preparations to expand the "open government affairs" system up to the *county* level.[18] This document included the recommendation that matters should be published in advance before final decisions are made, thus bolstering the movement for decision-making transparency and suggesting opportunities for public participation.[19] A year later, on December 11, 2001, China joined the World Trade Organization, committing in the process to improve regulatory transparency and provide opportunities to comment on trade-related regulations before they go into effect.

At the November 2002 16th Party Congress, Party leaders again referred to "citizens' participation in political affairs in an orderly manner," adding language about establishing "scientific and democratic decision-making" mechanisms and endorsing "openness in government, factory, and village affairs" as national standards.[20] Wu Guanzheng's Work Report to the Party Central Discipline Inspection Commission four months later on February 17, 2003

[18]December 6, 2000, Circular Zhongfaban [2000] No. 25, Issued by the General Office under the CCP Central Committee and State Council General Office on "Implementing in an All-Around Manner the System of Opening Government Affairs to the Public by Organs of State Power in Towns and Townships throughout the Nation," BEIJING XINHUA DOMESTIC SERVICE in Chinese, translated in FBIS Article ID: CPP2001010500097, December 25, 2000; Chinese text of "*Zhonggong zhongyang bangongting, Guowuyuan bangongting guanyu zai quanguo xiangzhen zhengfu jiguan quanmian tuixing zhengwu gongkai zhidu de tongzhi*" at <http://www.cass.net.cn/chinese/s04_nfs/rdi2/regulation/regulation1.htm>.

[19]This circular instructs townships to make all financial affairs public and to make it "convenient" for the masses to supervise the work of township governments, citing the spirit of the 15th Party Congress on broadening democracy at the grass-roots level, guaranteeing direct exercise of democratic rights by the masses, and the goal of promoting governing the country by law and strengthening supervision over the exercise of administrative power. Townships are to set up a "small group for supervising the work of making government affairs open to the public," which is to schedule regular and periodic discussions with the public on matters of concern.

[20]Supra note 2.

moved the openness-in-government-affairs campaign further up the administrative ladder from the township and county to the *city (prefectural)* level.[21] The report of the Third Plenum of the 16th Party Congress in October 2003 emphasized again the need to increase transparency and public participation and to perfect scientific, democratic, and standardized decision-making procedures for major social and economic problems, thus importantly calling for institutionalization of more open decision-making procedures.[22]

These themes were echoed and expanded to internal Party operations in the Fourth Plenum report of the 16th Party Congress in September 2004.[23] That document calls not only for increased transparency so the people can better supervise government work but also endorsed the new concept of "open Party affairs" and greater transparency in Party work so that Party members can better understand and participate in internal Party work. The Fourth Plenum report further calls for instituting participatory mechanisms to solicit opinions of Party members on major decisions, as well as a system of handling and responding to suggestions made by delegates to Party Congresses.

On the government side, Premier Wen Jiabao built on these themes in his Work Reports to the annual NPC sessions in

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[21]"Wu Guanzheng Stresses at the National Teleconference on Openness in Government Affairs the Need to Advance Openness of Government Affairs in Depth and Earnestly Safeguard the Fundamental Interests of the Broadest Masses of the people," Xinhua Domestic Service, September 25, 2003, translated into English by World News Connection, FBIS Document Number FBIS-CHI-2003-0925, AFS Document Number CPP20030925000144; short article on the speech, in Chinese "*Shenru tuijin zhengwu gongkai qieshi weihu hao zui guangda renmin de genben liyi*" at <http://search.people.com.cn/was40/people/GB/rmrbxl.jsp?no=0>.

[22]"*Zhonggong shiliujie sanzhong quanhui zai jing juxing*," October 15, 2003 <http://www.peopledaily.com.cn/GB/14576/14957/2135585.html>, containing the plenary report, dated October 14, 2003.

[23]"Chinese Communist Party Publishes Key Policy Document on Governance Capability," in *People's Daily* (English) online, September 26, 2004, at <http://english.peopledaily.com.cn/200409/26/print20040926_158378.html>; and links to other sections of the policy document.

March 2004 and 2005. In the 2004 report,[24] Wen instructed deputies to "solicit opinions from all sectors of society when drafting important laws and formulating administrative regulations that affect the vital interests of the people." He stressed the need to improve the decision-making mechanism by integrating public participation, including keeping the public informed, holding public hearings, and consulting experts to ensure that government decisions are scientific and correct. The State Council Office of Legislative Affairs is seeking to implement this policy directive through a 10 year work program for "administration in accordance with the law," announced in April 2004, which calls, *inter alia*, for perfecting a scientific and democratic decision-making system that is open and more participatory.[25]

Premier Wen's shorter 2005 report repeated these themes, calling for a more service-oriented government with improved systems of public notice and public hearings to expand participation of the general public in the management of public affairs and with more open government affairs, E-government, and increased transparency of government work, all bolstered by public and media oversight of the government.[26]

Thus, by the Spring of 2005, China's Party and state leaders were talking explicitly about the importance of increasing public

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[24]Sections II(9), "Strengthening Democracy and the Legal System and Safeguarding National Security and Social Stability," and III, "Government Self-Improvement;" the Chinese text of the Premier's Report on the Work of Government, delivered March 5, 2004, is available at <http://www.peopledaily.com.cn/GB/shizheng/1024/2394441.html>. The official English translation available at <http://english.peopledaily.com.cn/200403/16/eng20040316_137651.shtml>.

[25]"*Quanmian tuijin yifa xingzheng shishi gangyao*" [Outline on Implementing the Comprehensive Promotion of Administration in Accordance with the Law], adopted and effective March 22, 2004, available online at <http://news.xinhuanet.com/zhengfu/2004-04/21/content_1431232.htm>.

[26]Section VI, Improving the Government's Administrative Capacity and Style of Work; the Chinese text of the Premier's Report on the Work of Government, delivered March 5, 2005, is available at <http://news.tom.com/1002/20050314-1947812.html>. The official English translation available at <http://english.peopledaily.com.cn/200503/14/print20050314_176792.html>.

participation as an important tool for improving the quality of decision-making and for permiting the public better to supervise the government.

## THE POLICY JUSTIFICATIONS

Public participation in China is still in experimental stages locally and within the central government. Although the idea of the people participating in legislation, administrative rulemaking, and policy formulation can trace its policy origins to Mao Zedong's theories of people's democracy and the mass line, only in the past decade or so have Chinese leaders at the local and central levels begun to introduce concrete practices to expand the opportunities for such involvement in political affairs. Why has public participation become such a core focus of government reform? In addition to its ideological attractiveness of making the people feel more like they are truly "masters" of their country, Chinese academics and officials have begun to appreciate its practical attractions.

First, public participation can help improve the quality and content of the rules. Decision-makers are not omniscient, and issues that must be dealt with are increasingly complex, while the public is a vast repository for all kinds of information and experience. Public participation can help fill the "information gap" on behalf of the decision-making authorities, minimize the discrepancy between the information they possess and the real situation that must be addressed, and thus raise the quality of the rulemaking.

Second, public participation can enhance the authority of laws, regulations, and policies. People's identification with the rules by which they are asked to live depends, to a large extent, on the roles they played in the process of making those rules. Public participation and appropriate utilization of the public's input in the process of decision-making are conducive to strengthening the public's sense of identification with — or "ownership of" — the rules.

Third, public participation can help bolster effective enforcement of laws, regulations, and policies. Not only can it contribute to development of better rules and enhance the authority of those

rules, citizens are more likely to know about and willingly comply with rules the making of which afforded them the opportunity to be heard. The authorities are also more likely to better understand the enforcement situation and adapt regulatory mechanisms accordingly. The widespread failure to implement and obey the laws in the books has been a real headache for the Chinese government at all levels. If voluntary compliance rises, policy objectives will be better achieved and the costs of enforcement in terms of time, personnel, and other resources will go down.

Fourth, public participation can improve the relationship between the people and their government. The process of public participation in decision-making enables citizens and their government to better understand each other's situations and motives, as well as the challenges to be addressed. As the people play a more extensive role in social, economic, and public affairs, provided that government actually takes account of their input and demonstrates that they are doing so, public participation can enhance the people's trust in, understanding of, and support for the government and its policies and programs.

Fifth, despite fears to the contrary on the part of some Chinese leaders, public participation, when implemented well, promotes social stability. Regularized opportunities to make input into legislation and administrative in accordance with practices that have been institutionalized by the government can provide the people with precisely the "orderly" channel for participating in political affairs called for by the Party leadership. Such participation provides a "safety valve" for airing grievances and attempting to resolve problems encountered in society. Societies in transition, such as China, need effective institutions for addressing public concerns and managing change. The institutions of public participation can help accomplish that.

Sixth, public participation in decision-making helps combat and restrain corruption, by opening up the decision-making process to public scrutiny and input, as well as by requiring decision-makers to explain and justify their decisions. It serves to subject the administrative rulemaking process to public supervision, as envisioned by China's Constitution, to help prevent and constrain official wrongdoing.

## THE LEGAL CONTEXT FOR PUBLIC PARTICIPATION

In addition to achieving the policy goals set forth above, public participation in China carries out the foundational principle embodied in Article 2 of the Constitution of the People's Republic of China that "[a]ll power in the People's Republic of China belongs to the people" and that "[t]he people manage state affairs and economic, cultural, and social affairs through various channels and in various ways in accordance with the law."[27] Article 3 makes the nominally elected people's congresses at all levels responsible to the people and subjects the congresses to supervision by the people. Article 27 requires state organs and functionaries to rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision, and work hard to serve their interests, while Article 41 grants citizens the right to criticize and make suggestions regarding state agencies and their functionaries. All these constitutional principles provide a legal basis for public participation in decision-making.

The groundbreaking Legislation Law of 2000,[28] which for the first time attempts to bring order to the complex legislative and rulemaking system in China, prescribes general principles for public participation in legislation and rulemaking. It stipulates the basic precept that laws are to "embody the will of the people, enhance socialist democracy, and guarantee that *the people participate in legislative activities through various channels*." This Law also requires opinions to be sought from all quarters about bills being considered by the NPC Standing Committee through such means as seminars and hearings, as well as by distributing drafts to various agencies, organizations, and experts for their opinions. The Law broadens the scope of these selective forms of opinion solicitation

[27]Constitution of the People's Republic of China, as amended through 2004, supra note 6.

[28]"*Lifa Fa*" [The Legislation Law], adopted by the National People's Congress on March 15, 2000, effective July 1, 2000, available in Chinese at <http://www.china.org.cn/chinese/SFKSZN-c/82314.htm>, and in English at <http://www.novexcn.com/legislat_law_00.html>.

only in the case of "important draft laws." Those are to be published for comment by the public at large.

Somewhat more inclusive rules apply to the drafting of lower-level legislation. In drafting administrative regulations, the State Council is to listen widely to opinions from relevant agencies, organizations, and citizens. Diverse forms of soliciting input such as forums, seminars, and hearings may, but need not, be used for that purpose. However, the actual drafting entity (which may be one or more ministries, another office within the State Council, or a group of outside scholars entrusted with the preliminary drafting) is to discuss differing opinions from "various quarters," including input from organizations, and citizens, in a report that accompanies the draft when it is sent to the Office of Legislative Affairs of the State Council (OLA) for review.[29] In its review, the OLA is to consider whether these opinions of other agencies, organizations, and citizens on the major issues in the draft submitted for approval have been "properly handled."[30] Thus, the Legislation Law requires at least some review of how drafting agencies consider and deal with public input on proposed regulations. As is the case with drafting State Council administrative regulations, the lower-level central ministries and provincial and local governments are to listen to the opinions of relevant agencies, organizations, and citizens during their rule-drafting process.[31] In addition to the forums, seminars, and hearings authorized in the case of State Council administrative regulations, soliciting written comments is specifically mentioned as an additional channel for obtaining input in drafting lower-level rules.

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[29]Id., Article 59, and "X*ingzheng fagui zhiding chengxu tiaoli*" [Regulations on the Procedures for Formulating Administrative Regulations], effective January 1, 2002, available online in Chinese at <http://news.xinhuanet.com/zhengfu/2001-11/27/content_135322.htm> (hereafter "Regulations Procedures"), Articles 12 and 13.

[30]Id., Article 17.

[31]"*Guizhang zhiding chengxu tiaoli*" [Regulations on the Procedures for Formulating Rules], effective January 1, 2002, available online in Chinese at <http://news.xinhuanet.com/zhengfu/2001-11/27/content_135502.htm> (hereafter "Rules Procedures"), Article 14.

"Important" draft State Council administrative regulations and lower-level rules are all to be published broadly for comment, and field investigations soliciting input on drafts that involve "important" issues should be conducted. Again, hearings may, but need not, be held in the case of draft regulations and rules that are deemed directly to affect the "vital interests" of the people.

As discussed below, local legislatures and governments have embellished these basic principles. By 2002, more than half the provincial people's congresses had held at least one public hearing, and 17 local congresses or governments had adopted procedural rules on hearings.[32] This trend has continued.

## ADMINISTRATIVE AND LEGISLATIVE HEARINGS

The word for "hearing" [听证会] seems to have been adapted from Western usage,[33] but the practice, once introduced into China, spread rapidly. As is often the case in China, it was local governments that first experimented with the earliest organized hearings, before they were tried at the central level. Shenzhen, where an experimental special economic zone was established in the 1980s to introduce Western-style business practices and legislation, held the first reported hearing in the early 1990s, on price-setting, apparently having adapted the practice from nearby Hong Kong.[34]

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[32]Xue Hua and Wang Ye, "*Lifa tingzheng zhidu chutan*" [Primary Study on Legislative Hearings], 124 *Renda Yanjiu* [*People's Congress Study*], no. 4 (2002), p. 19.

[33]Zhou Hanhua, supra note 5, at 58; and "*Cong* '*lifa tingzheng*' *kan* '*lifa weimin*'" [From "Legislative Hearings" to "Legislation for the People"], *Legal Daily* (May 20, 2004), at <www.legaldaily.com.cn/bm/2004-05/20/content_100788.htm>.

[34]"*Guangdongsheng wujiaju guanyu shixing jiage juece tingzheng zhidu de qingkuang baogao*", August 13, 2001 <http://www.gdpi.gov.cn/tingzheng/summary/13.htm>; Han Zhenjun and Zhao Cheng, "Public Hearings Empower the People," Beijing Xinhua Domestic Service, January 12, 2002, translated by FBIS as Xinhua Views China's First Public Price Hearing in Article ID: CPP20020112000077, Insert Date: January 17, 2002 [hereafter "Price Hearings"]; "*Boxia longzhong yexu shouhuole tiaozao — tingzhenghui hai que shenma?*" <http://life.wuhan.net.cn/info/aqh.asp?tbl=jjy&id=1797>.

The practice of holding hearings achieved national legitimation in the 1996 Administrative Penalty Law (APL), which introduced the concept that citizens, legal persons, and other organizations have the "right to be heard" and the right to defend their case and that an administrative agency must inform a party of their right to a hearing in the event the agency plans to impose a penalty such as ordering production stoppage or shutdown, revoking a license, or imposing a large fine.[35] That law sets forth some basic procedural requirements for hearings and provides that they are to be open to the public, unless they involve state secrets, commercial secrets, or individual privacy.[36] This law was heralded as the first step toward "open-door legislation" and credited with introducing the concept of a public hearing into the social consciousness.[37] Many government agencies, including the Ministry of Public Security,[38] and local governments adopted regulations implementing the APL and its hearing requirement.

Hearings under the APL are to adjudicate individual cases. The 1998 Price Law[39] subsequently introduced the hearing into the broader administrative decision-making process, requiring that public hearings be held when government-set or guided prices are being determined or changed. Article 23 of that law provides that, when proposing to set or change government-guided or controlled

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[35]Law of the People's Republic of China on Administrative Penalties [*Zhonghua renmin gongheguo xingzheng chufa fa*], effective October 1, 1996, available online in English at <http://www.qis.net/chinalaw/prclaw46.htm> and in Chinese at <http://www.shfpc.online.sh.cn/fgwj/refe/b7.htm>, Articles 6, 32, and 42.

[36]Id.

[37]See, e.g., "*Tanjiu falu shixing dui jiejue fang'an: gedi lifa jigou kaimen lifa*," April 15, 2004, available online at <http://news.sina.com.cn/c/2004-04-15/1706313129a4.shtml>.

[38]See, e.g., "*Gongan jiguan banli xingzheng anjian chengxu guiding*" [Provisions on Procedures for Public Security Agencies Handling Administrative Cases], adopted August 26, 2003, effective January 1, 2004, available at <http://www.mps.gov.cn/webpage/shownews.asp?id=1042&biaoshi=bitGreatNews>.

[39]Price Law of the Peoples' Republic of China ["*Zhonghua renmin gongheguo jiage fa*"], effective May 1, 1998, in English at <http://us.tom.com/english/430.htm>, and in Chinese at <http://www.ccn.com.cn/appeal/readlaw.php?lawid=5>.

prices on utilities and public services, public hearings presided over by the government price department should be convened to solicit views from consumers, business operators, and other quarters "to explore the necessity and feasibility of pricing."[40] Over ten provincial governments were quick to follow suit, establishing price-setting hearing systems and holding around 200 evidentiary hearings within some 18 months on such matters as water, power, gas, transportation, sightseeing tickets, education, and telecommunications.[41]

Despite high initial expectations of hearings, the public quickly complained about the lack of fair procedures that would ensure an impartial and truly open process. A telecommunications hearing with carefully selected participants convened behind closed doors jointly by the Ministry of Information Industries and the State Planning Commission (SPC) in September 2000 created a public outcry.[42] Subsequently, a Beijing lawyer named Qiao Zhanxiang even sued the Railway Ministry for not holding hearings at all on fare price increases that were imposed for rail travel during the Spring Festival holiday in 2001.[43] Although Qiao lost his bid to be able to participate in the hearing, the court did rule that the Price Law requires hearings before government-guided prices can be set on key public utilities.[44] Moreover, the central government came to recognize that public hearings would not only have to be held when required by law but also managed openly and fairly in order to win

[40]Article 23 of the Price Law, id. Some 13 categories of commodities and services remain subject to state price regulation. See, "Public Hearings to Help Increase Pricing Transparency, *China Daily* (July 16, 2003), available online at <http://service.china.org.cn/linl/wcm/Show_Text?info_id=69999&p_qry=hearings>.

[41]Price Hearings, supra note 34.

[42]Id.; see, also, Chen Tan, "*Dangqian Zhongguo jiage tingzheng: Jiyu jiegou he zhidu cengmian de gonggong zhengce fenxi*," at <http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2859>, text accompanying note 3.

[43]Price Hearings, supra note 34, and "China's public hearing system needs improvement," *China Daily* (October 4, 2003), online at <http://english.peopledaily.com.cn/200310/04/eng20031004_125379.shtml>.

[44]"Public Hearings to Help Increase Pricing Transparency, *China Daily* (July 16, 2003), available online at <http://service.china.org.cn/linl/wcm/Show_Text?info_id=69999&p_qry=hearings>.

public acceptance and not create social instability. In August 2001, the SPC enacted Interim Regulations on Government Price-Setting Hearings, in an attempt to improve and standardize the procedure.[45]

A subsequent national hearing on proposed railway fare increases held by the SPC amid great media fanfare in January 2002 went more smoothly. Televised live over China Central TV (CCTV), various consumer and business representatives, National People's Congress and Chinese People's Political Consultative Conference deputies, and academics participated and were given audited financial and cost data relating to the proposed increase that had in the past been kept secret from the public.[46] The National Development and Reform Commission, successor to the SPC, organized another successful national hearing on airfares in July 2003, which involved representatives from a wide range of interest groups, including government authorities, the aviation industry, and the general public.[47]

The Administrative Licensing Law (ALL), passed in August 2003 and effective from July 1, 2004, further requires that public hearings must be held prior to the granting of administrative licenses when there are conflicts of interest involved or the license involves major matters relating to the pubic interest, to ensure transparency and fairness.[48] The ALL prescribes hearing procedures that require a record of

[45]These procedures were amended in November 2002 to permit citizens directly to sign up to participate and to require government agencies to then announce the final price so determined. Although these citizens must still be found to be "qualified," the new Measures are intended to enable broader representation that the previous selective system. The revised Measures are available at <http://www.people.com.cn/GB/shehui/212/3572/3574/20021128/877068.html>.

[46]See, e.g., report "China Marks Historical Step with Hearing System," January 13, 2002, at <http://service.china.org.cn/link/wcm/Show_Text?info_id=25147&p_qry=hearings>; some background at "Public Hearing on Ticket Prices on Track," January 7, 2002, at <http://service.china.org.cn/link/wcm/Show_Text?info_id=24802&p_qry=hearings>.

[47]"Public Hearing System Needs Improvement, October 4, 2003, at <http://service.china.org.cn/link/wcm/Show_Text?info_id=76614&p_qry=hearings>.

[48]"*Zhonghua renmin gongheguo xuke fa,*" adopted September 27, 2003, and effective July 1, 2004, Chinese text at <http://www.law-lib.com/law/law_view.asp?id=79264>.

the hearing to be made and used as the basis for the ultimate licensing decision; local governments were to have in place new procedures for conducting such hearings before the ALL went into effect.[49]

Hearings have also been identified as a useful tool for soliciting public input and helping ease the tension in such sensitive areas as the requisition of rural land and demolition of urban housing in furtherance of China's urbanization and redevelopment drive. The Ministry of Land and Resources (MLR) first experimented with the idea of hearings when it adopted its Measures on Public Announcement of Land Requisition in late 2001.[50] The Measures, effective January 1, 2002, gave rural residents for the first time the right to request a hearing if they were unhappy about the terms of compensation or resettlement in connection with rural land requisition. The Measures further provide that a written record of any hearing should be made and attached to the revised scheme.

In 2004, the MLR promulgated broader-based and more detailed Provisions on Land and Resource Hearings,[51] which apply to urban as well as rural land issues. These Provisions require, *inter alia*, in the formulation of rules, hearings and normative documents that directly involve the major interests of affected parties, especially on issues specifically relating to land use, compensation for land takings, and development projects, all extremely sensitive issues in recent years. The Provisions also require, for example, the relevant agency to notify affected parties of their right to request a hearing on a proposed conversion of basic agricultural land to nonagricultural development uses, in advance of finalizing plans for compensation

[49]Beijing published for comment its draft procedures on hearings pursuant to the ALL, with a comment period running from May 8 to June 8, 2004, and an effective date of July 1, 2004; draft available at <http://www.bjfzb.gov.cn/advice/user/content.asp?UNID=67&law_style=1>.

[50]"*Zhengyong tudi gonggao banfa*," issued by the MLR on October 22, 2001, and effective January 1, 2002, available online in at <http://www.agri.gov.cn/zcfg/t20030624_94279.htm>.

[51]"*Guotu ziyuan tingzheng guiding*," issued February 10 and effective May 1, 2004, available online at <http://www.chinalaw114.com/chinafa/shownews.asp?id=8254>.

and resettlement.[52] This represents a huge breakthrough in a system where, at best, affected parties have been notified of actions already decided only after the fact and then been limited to contesting the amount of compensation and the terms of resettlement.[53]

The movement to make government decision-making more transparent and participatory spilled over into the people's congress system, where local people's congresses first began with introducing the practice of inviting some members of the public to sign up for the opportunity to sit in on legislative sessions and listen to the proceedings, the *pangting* or people's audit system. Shenzhen apparently pioneered the *pangting* system in 1998, which was authorized for the National People's Congress system under 1989 regulations on meeting procedures.[54] The auditors are not permitted to take part in the discussion or ask questions but are encouraged to submit written views about their observations, and suggestions for legislation.[55]

The Guangdong Province People's Congress took public participation a step further when it held the first legislative or congressional hearing ever conducted in the "New China" in September 1999.[56] That hearing involved draft local legislation governing bidding for contracted construction projects, followed a year later in November 2000 by a second legislative hearing regarding construction project supervision.

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[52]Id., Article 19.

[53]The MLR hearing provisions also appear to apply to the demolition of urban buildings referred to as "*chaiqian*" [拆迁] and are already influencing local regulations. See, e.g., "*Beijing chutai chaiqian tingzheng xin gui, 4 chang zhuhu bu chaiqian jiu kai tingzhenghui*" [Beijing Announced New Provisions on Chaiqian hearings; if 40 percent of Residents Disagree with Chaiqian a Hearing Must be Held], April 6, 2004, at <http://www.china.org.cn/chinese/2004/Apr/530798.htm>.

[54]Zhou Hanhua, supra note 5, at 53, 61 et. seq.; "*Guanyu gongmin pangting zhidu de sikao*" [Thoughts on the Citizen's Audit System], from Renmin daibiao bao [People's Deputy Paper], August 3, 2000, at <http://www.people.com.cn/zgrdxw/news/200008/14/81206.html>.

[55]Huang Yan, "Democratic Politics in China," Beijing Xinhua Hong Kong Service, November 10, 2002, translated by FBIS, Article ID: CPP20021110000067.

[56]"*Guangdong* '*Lifa tingzheng*' *jixu chengxu guize*" [Guangdong Legislative Hearings Urgently Need Procedural Rules], March 16, 2001, at <http://www.grrb.com.cn/news/news_detail_zt.asp?news_id=2881>.

The 2000 Legislation Law discussed earlier[57] codified the requirement that legislators should listen to the opinions of experts, government agencies, and the public on draft legislation at various levels. That law did not mandate hearings but made them discretionary, unless hearings are specifically required by statute, as is the case with price-setting hearings under the Price Law and administrative penalty cases under the Administrative Penalty Law. Soon after enactment of the Legislation Law, the Shenzhen Municipal People's Congress became the first actually to adopt legislation on holding public legislative hearings.[58] Other localities were not far behind.

The Shanghai Municipal People's Congress Standing Committee held Shanghai's first legislative hearing in May 2001 on draft regulations dealing with student injuries in school. Over 50 legislators, government officials, and selected school and parent representatives held a day-long discussion. Although the media was excluded from that first experiment, the event was reported extensively as an important innovation, and subsequent hearings incorporated improved procedures.[59] Some 20 provinces, regions,

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[57]Supra note 28.

[58]"*Quanguo shouge tingzheng fagui zai Shenzhen chutai*" [The First Legislation in the Country on Hearings Appears in Shenzhen], at <http://www.npcnews.com.cn/gb/paper412/1/class041200001/hwz233658.htm>; "*Shenzhenshi renmin daibiao dahui changuhui tingzheng tiaoil*" [Shenzhen Municipal People's Congress Standing Committee Regulations on Hearings], promulgated December 26, 2001, effective January 1, 2002, available in Chinese online at <http://fzj.sz.gov.cn/laws/3LAWa22.htm>. Shenzhen has also provided for the possibility of holding hearings when drafting its economic plans and budget. Article 8, "*Shenzhenshi renmin daibiao dahui shencha pijun guomin jingji he shehui fazhan jihua ji yusuan guiding*" [Provisions of the Shenzhen Municipal Peoples' Congress on Investigating and Approving National Economic and Social Development Plans and Budgets], revised March 31, 2001, available at <http://www.sz.gov.cn/zhengfu/fagui/Showzn.asp?rid=200205220000000007>.

[59]Price Hearings, supra note 34. Although there were many defects with the first hearing, successive hearings have increased their openness in terms of information about the issues and the statements made at the hearings and in terms of the process for selecting participants. Memorandum on Legislative Hearings in Shanghai, Kaichen Xu, Yale Law School, August 2002 (on file with the author; hereafter "Kaichen Xu").

and municipalities such as Shanghai, Guangdong, Sichuan, and Chongqing have held dozens of legislative hearings, and many have issued local regulations governing such hearings.[60] Some local governments have similarly adopted rules on hearings related to administrative decision-making on important matters closely related to the public's interests.[61]

Chinese academics and legislators recognize that holding well-organized hearings has the potential to elicit a broad cross-section of views from all segments of society to inform the government decision-making process. This input helps make legislation more responsive to real concerns, which reduces legislative controversy, raises legislative efficacy, and stimulates civic initiative through orderly public participation. Not only does this process serve to fulfill the constitutional objective of enabling the people to be the masters of their own affairs, it also helps legislative and regulatory enforcement, since a citizenry tends to be more understanding of and accepting of rules that have been developed through a transparent and participatory process. Hearings also can help ease social tensions over sensitive issues such as rural land expropriations and urban housing demolition, by giving affected citizens a channel to voice their grievances and seek to both prevent and correct abuses of administrative power in the process.

However, as with any process that involves the public, the system must be deemed to be fair and implemented fairly. There are signs of progress as experience is gained. The procedures for

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[60]*Lifa tingzheng keti yanjiuzu* [Legislative Hearing Research Group], "*Difang lifa tingzheng diaocha baogao"* [Report on Investigation into Local Legislative Hearings], in Zhongguo Renda, no. 1, (2002), p. 21; available online, with a chart of local legislative hearings held as of October 26, 2001, at <http://www.thaids.org/chinac/liudb/aids/lanmu/qinghua/tzzd/baogao.htm>.

[61]See, e.g., "*Yunchengshi zhengfu zhongda shixiang juece tingzheng banfa*," effective June 1, 2004, at <http://www.yuncheng.gov.cn/zwgb/zwgb040517B.htm>; and "*Shanghai shi renmin zhengfu gongzuo guize*," September 22, 2003, at <http://www.yfzs.gov.cn/gb/info/yfxz/2003-11/01/1745287239.html>. The Beijing Municipal People's Congress held its first legislative hearing in 2004, "Beijing shixing lifa tingzheng," February 20, 2004, at <http://fzj.sz.gov.cn/ho154.asp>.

Shanghai's third legislative hearing, on draft regulations to protect historical districts and buildings in April 2002, for example, were significantly improved over those for the first two, in terms of providing advance notice of the hearing together with an invitation for the public to apply to participate, access to the hearing for media and nonparticipating residents, detailed reporting on the substance of the hearing by the media, and clear evidence of the hearing's impact in the legislative report submitted by the Law Committee of the Shanghai Municipal People's Congress, which referred extensively to the hearing and discussed important changes in the final draft that were based on the opinions presented there at.[62]

Nonetheless, hearings in China are still plagued by many problems, including inadequate openness, hand-picked participants not necessarily representative of the diversity of views on a matter, inadequate feedback to the public of the impact on the final decision, and the lack of a public record of the hearing, proceedings.[63] Chinese commentators complain that hearings are often just "for show" and call for more standardized hearings procedures that would truly serve to curb arbitrary exercise of power and safeguard citizens' rights and interests, including the "right to be heard."[64] Indeed, Chinese scholars are working with experts from the NPC Legal Affairs Committee on a draft Chinese Administrative Procedure Act that would include basic procedures for holding public hearings.

Experience suggests there is no one set of rules that can adequately meet expectations for public hearings in all situations. In the United States, hearings may be informal, as in the case of

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[62]Kaichen Xu, supra note 59.

[63]See, e.g., "Experts on PRC National Hearings Regulations, Order in Legislative Hearings," Zhongguo Xinwenshe, September 19, 2003, carried by FBIS Dialog, FBIS Document Number: FBIS-CHI-2003-0919.

[64]Wang Xixin, "Public Participation and Its Limits," Paper Prepared for the Workshop on Chinese Legal Reform at the Yale Law School, September 24, 2002, copy on file with the author; see, also, transcripts of remarks on public participation by Professor Wang Xixin at the Carnegie Endowment, "Public Participation in China's Regulatory Process and Reform of Governance in China," December 15, 2003, at <http://www.ceip.org/files/events/2003-12-15-WangXixin.asp?pr=16&EventID=689>.

legislative sessions held to collect information in which witnesses are summoned and questioned by the legislators holding the hearing, and there is often little give-and take. Or they may be the more formal, trial-type adversarial hearings when required by statute.[65] The specific procedures for holding hearings depend on the nature or purpose of the hearing and are often left to the relevant convening agency or body. Nonetheless, certain basic principles, already enunciated in certain Chinese legislation,[66] may be applied usefully to help ensure a fair, effective, and credible decision-making hearing (as opposed to a more adjudicatory hearing, as in the case of proposed imposition of an administrative penalty).[67] These include:

- Adequate notice of the proposed decision or action and the grounds asserted for it;
- Notice of the time and place of the relevant hearing;

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[65]Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law And Make Policy* (CQ Press, 2003), p. 163.

[66]See, e.g., the general rules set forth in Article 15 the Rules Procedures: (1) In cases where a hearing is to be held in public, the drafting unit shall announce the time, place, and contents of such hearing 30 days in advance. (2) The relevant agencies, organizations, and citizens attending the hearing shall be entitled to raise questions and voice their opinions with regard to the draft of rules. (3) A written record of the hearing shall be made to record main opinions and reasons presented by the speakers according to facts. (4) The drafting unit shall conduct a careful study of various opinions brought forward at the hearing. While submitting the draft rules for examination, the said unit shall explain the handling of opinions from the hearing as well as the reasons therefor.

[67]Compare to Judge Friendly's ten elements of a fair hearing, set forth in his article "Some Kind of hearing," 123 *U. Pa. L. Rev.* 1267, 1279 et. seq. (1975), cited in Peter L. Strauss, *Administrative Justice In The United States* (Carolina Academic Press, 2d Edition 2002). 2nd edn, p. 64 [hereafter Strauss]. For administrative rulemaking, the US Administrative Procedure Act gives agencies the discretion to determine whether and when to hold hearings with respect to informal rulemaking and Sections 556 and 557 set forth requirements for trial-type or evidentiary hearings for formal rulemaking under statutes that call for opportunity for an agency hearing. Jeffrey S. Lubbers, *A Guide To Federal Agency Rulemaking,* 3rd edn. (American Bar Association, 1998) [hereafter Lubbers], pp. 43–45, 201–202, and 377–380 for the text of Sections 556 and 557.

- The right of interested parties to make a statement or present information;
- The right to an impartial hearing presided over by a neutral party;
- Open proceedings except to the extent they involve state secrets, commercial secrets, or individual privacy; and
- Maintenance of and public access to a record of the proceedings.

One of the main procedural deficiencies in Chinese hearing rules to date is the failure to require that the hearing record be made public or accessible to the public, which is generally standard practice in the United States. However, even in the United States, there are no uniform rules determining such matters as how to decide which persons get to present oral testimony at the hearings, how many should speak and for how long, what the minimum rules of procedure should be, and the like. Indeed, the US Supreme Court has found that, in some circumstances, a written "notice and comment" procedure may satisfy a statutory hearing requirement.[68]

## DEVELOPMENT OF NOTICE AND COMMENT PROCEDURES

Hearings have obvious benefits, including providing the opportunity for give-and-take among participants. However, they can be cumbersome, time-consuming, and expensive to conduct. In the United States, the US Congress continues to rely heavily on face-to-face hearings to solicit public input on proposed legislation, but in the administrative rulemaking area, government officials rely most often on a procedure referred to as informal rulemaking or notice and comment.[69] This process serves to achieve most of the objectives of public hearings but in a generally more efficient manner since it does not require getting all relevant participants together for a physical meeting.

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[68] *United States v. Florida East Coast Railway*, 410 U.S. 224 (1973), discussed in Lubbers, supra note 67, pp. 202–203.

[69] See Lubbers, supra note 67, for an authoritative discussion of this topic.

The people's congresses have been experimenting for a number of years with making draft regulations public for comment. A handful of national laws felt to be of particular interest to the people were published in the national media to solicit public input, including the draft 1954 Constitution, the revised Land Management Law and Organic Law on Villager Committees in 1988, the 1989 Organic Law on Urban Residents Committees, the revised Marriage Law in 2001, and the revised Securities Law in 2003.[70] The 1989 Rules of Procedure of the NPC for the first time stipulated in a formal, national-level rule that the Standing Committee may publish drafts of important basic laws to broadly seek opinions before considering the final draft.[71] The 2000 Legislation Law and its implementing regulations also endorse, but do not require, publishing "important" draft national and local level legislation to seek opinions as one of the channels for public participation.[72]

Local people's congresses have followed selectively the trend toward publication of draft local legislation.[73] In mid-2003, the

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[70]Ten laws were published for comment by the NPC Standing Committee from the 1980s to the end of the 1990s. Zhou Hanhua, supra note 5, p. 53. Reportedly, the revised draft of the Marriage Law stimulated the broadest and greatest response to date, eliciting some 3829 letters and other communications. See, "*Zhongguo: Kaimen lifa shidai*," at <http://zgrdxw.peopledaily.com.cn/gb/paper367/1/class036700002/hwz228739.htm>.

[71]Zhou Hanhua, supra note 5, at 57. Article 25 also notes that the comments are to be summarized and distributed to the deliberative meeting. The Chinese text is available at <http://www.isinolaw.com/jsp/law/LAW_Articles.jsp?CatID=11278&LangID=2&StatutesID=2002760&ChapterID=_1>; English translation available at <http://www.isinolaw.com/jsp/law/LAW_Articles.jsp?CatID=235&LangID=0&StatutesID=2002760&ChapterID=_1>.

[72]See, discussion accompanying notes 28–31.

[73]See, e.g., Article 25 of the "*Fujiansheng renmin daibiao dahui ji qi changwu weiyuanhui lifa tiaoli*" [Regulations of Guangdong Provincial People's Congress and its Standing Committee on Making Legislation], adopted and effective February 14, 2001, which provides that drafts of laws and regulations that have been placed on the Standing Committee agenda for action may, with the approval of the chairman, be published in newspapers of the province to seek public comment. Chinese text available at <http://www.locallaw.gov.cn/main/lfjj/lfjj_01.asp?news_id=74>.

Guangdong Provincial People's Congress began to post draft laws on its own and local media websites,[74] a practice now followed by many other provincial-level people's congresses. Similarly, the Shanghai Municipal People's Congress (SMPC) determined that 2004 would be the year to strengthen legislative openness, promising to publish all draft laws closely related to the interests of the masses in the local media and widely solicit input from all segments of society, while holding legislative hearings on particularly important or difficult issues involved.[75] The SMPC further published its 2004 legislative plan on its website,[76] and the Beijing Municipal People's Congress went one step further by publishing for comment, for the first time in June 2003, the city's draft five-year legislative plan, together with an explanation of how the draft plan was formulated.[77] Chinese citizens increasingly have opportunities to make suggestions for new legislation, although they do not have the *right* to participate in lawmaking through such procedures as the initiative and referendum.

In an important development, the movement toward greater legislative openness has extended also to rulemaking by Chinese administrative agencies. The advent of the Internet and E-government has spurred publication for comment of draft administrative regulations and policy documents on government websites. At the central government level, ministries bearing a close connection to the

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[74]"*Guangdong: Zhengqiu fagui cao'an yijian, gongzhong ke shangwang jianyan*" [Guangdong: Soliciting Views on Draft Regulations, the Public Can Go Online to Post Views], May 15, 2003, at <http://zgrdxw.peopledaily.com.cn/gb/paper367/1/class036700001/hwz235961.htm>.

[75]"*Shanghaishi renda changweihui zengqiang lifa gongkaixing*" [Shanghai Municipal People's Congress Standing Committee Strengthens Legislative Openness], February 18, 2004 <http://www.spcsc.sh.cn/renda/lfdt/node37/userobject1ai1844.html>.

[76]See, <http://www.spcsc.sh.cn/renda/lfdt/node40/userobject1ai2615.html>.

[77]"*Beijingshi renda zhouci jiang wunian lifa guihua cao'an gongbu zhengqiu yijian* [Beijing Municipal Peoples' Congress For the First Time Publishes Draft Five-Year Legislative Plan to Seek Opinions], June 11, 2003, at <http://zgrdxw.peopledaily.com.cn/gb/paper367/1/class036700001/hwz237559.htm>.

people such as the public health, commerce, information industry and civil affairs ministries, and the China Securities Regulatory Commission were among the first to adopt this procedure.[78]

The State Council itself has published three national regulations for comment in national media and on selected websites. The first such experiment was conducted in October 2002, when the State Council issued a draft of much-debated national regulations on property management in the national *People's Daily* and *Legal Daily* and allowed a 26-day period for public comment. This was the first time the State Council had openly sought public comment on a draft regulation.[79] The director of the State Council Office of Legislative Affairs (OLA), Cao Kangtai, reported in an interview that approximately 50 percent of the comments received were adopted in some form in the final rule.[80] He revealed that OLA had received some 386 letters, while 19 provincial governments had collected some 4,000 comments, from diverse sectors of society including property managers, owners, lawyers, staff of property development companies, academics, associations, chambers of commerce, and government officials. While not everyone was happy with the final substantive rule,[81] Director Cao promised to continue to explore the best way to collect public input.

In May, after rushing to publish regulations on the handling of public health emergencies during the SARS crisis, the State Council established an on-line mailbox for the public to offer suggestions and comments on the implementation of the regulations.[82] The State

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[78]See, e.g., Zhou Hanhua, supra note 5, pp. 69–70.

[79]See "*Quanguo wuye guanli tiaoli jintian chutai*" [National Regulations on Property Management Published Today], available at <http://www.cyol.com/news/gb/news/2003-06/19/content_683511.htm>, last visited on June 23, 2003.

[80]"*Wuye guanli tiaoli caina minyi jin 50%*" [Nearly 50% Comments Adopted in Regulations on Property Management], available at <http://www.cyol.com/news/gb/news/2003-06/20/content_683975.htm>, last visited on June 23, 2003.

[81]"'*Wuye tiaoli*' *weineng yinzhi yiqi hecai*" [Regulations on Property Management Do Not Receive Full Applause], in *Zhongguo qingnian bao* [*China Youth Daily*], June 23, 2003, available at <http://zqb.cyol.com/gb/zqb/2003-06/23/content_684412.htm>, last visited on June 23, 2003.

Council Standing Committee published a second regulation, on toll road management, for public comment, on November 29, 2003,[83] and a third regulation on no-fault drivers' insurance, on January 10, 2005 (with a deadline for comments of March 7, 2005).[84]

Following the State Council's example, many central government agencies have started periodically publishing draft legislation for public comment. The Ministry of Public Health seems to have been particularly active. [85] One solicitation indeed related to a draft of a plan to establish a national public health information system.[86] The Ministry of Land and Resources (MLR) embraced the concept of notice and comment with respect to recent regulations dealing with particularly sensitive issues. The MLR put their draft Measures on the Public Announcement of Land Requisition out for public comment in June 2001 in national media and on central and local government websites and sent officials out to talk with the

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[82]"*Guanyu dui "Tufa gonggong weisheng shijian yingji tiaoli" zhengqiu iyian de youxiang kaitong*" [Mailbox opened to seek opinions on the Regulations on Responding to Public Health Emergencies], issued May 9, 2003, link online at <http://www.chinalaw.gov.cn/jsp/contentpub/searchmsg/msglist.jsp>.

[83]"*Shoufei gonglu guanli tiaoli (cao'an) zhengqiu yijian*," at <http://www.legaldaily.com.cn/zl/2003-11/29/content_62133.htm>, November 29, 2003, published jointly by the State Council Office of Legislative Affairs and the Ministry of Communications. The decision of the Standing Committee is reported in "*Wen Jiabao zhuchi guowuyuan changwei huiyi, yisheng bing yuanze tongguo liang cao'an*" [Wen Jiabao Presides over a Meeting of the State Council Standing Committee that Approves and Adopts in Principle Two Drafts], at <http://www.people.com.cn/GB/shizheng/1024/2213395.html>.

[84]"*Guowuyuan faxzhibangongshi guanyu gongbu 'Jidongche disanzhe ziren qiangzhi baoxian tiaoli (cao'an)' zhengqiu yijian de tonzhi*," at <http://www.legaldaily.com.cn/xwzx/2005-01/12/content_177276.htm>.

[85]The MOPH issued 42 draft regulations on the Internet over two years to solicit comments from the first such event on June 13, 2002, list on the MOPH website <http://www.moph.gov.cn/fzyjd/zqgzyj/index.htm>, and another two since May 2004, according to a new website as of last April 2005 <http://www.moh.gov.cn/news/more_index.aspx?tp_class=A405>.

[86]"*Guanyu zhengqiu 'Guojia gonggong weisheng xinxi xitong jianshe fang'an' yijian de han*," September 12, 2003, available online at <http://www.moh.gov.cn/tjxxzx/wstjxxgzjz/1200309270045.htm>.

people to solicit their views, receiving hundreds of letters, telexes, and other communications as well as suggestions from local governments and government agencies.[87] Reportedly, over 100 letters came from the directly affected farmers. An MLR official stated that their inspiration came from the publication for comment of the revisions to the Land Management Law in 1998, and described this first MLR experiment with seeking public input as a "great revolution."[88] Even the Supreme People's Court has turned to the public for advice in formulating interpretations relating to complex legal issues, publishing several draft interpretations for public comment on its website.[89]

Beijing may well be the first local government to formulate internal guidelines regulating this process. Pursuant to these guidlelines developed through experimentation, the Beijing Municipal Government's Office of Legislative Affairs (Beijing OLA) has undertaken to respond publicly to opinions received on draft regulations that were published for comment in semi-annual reports summarized at press conferences and carried on the government website, "Window to the Capital," as well as in local media.[90] For example, the report on the second half of 2003 described comments received and how they were handled in respect of six draft regulations that were made public for comment. One of those drafts was even withdrawn after residents criticized it for being unnecessary as well as discriminatory toward out-of-town enterprises.[91] Beijing OLA issued

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[87]"*Guotu ziyuanbu jiu 'Zhengdi gonggao banfa' zhengju yijian yinqi fanying*" [Seeking Opinions on the MLR's Land Requisition Announcement Provisions Gets a Response], Xinhuawang, September 24, 2001, available online at <http://news.xinhuanet.com/zhengfu/2001-09/24/content_70252.htm>.

[88]Short news item, June 29, 2001, at <http://www.grrb.com.cn/nes/news_detail_zt.asp?news_id=26127>.

[89]Since September 2003, the Supreme People's Court has published several draft interpretations, links online at <http://www.chinalaw.gov.cn/jsp/contentpub/searchmsg/msglist.jsp> [website of the State Council Office of Legislative Affairs].

[90]See, e.g., the second semi-annual report for 2003 published by the Beijing Municipal Government Office of Legislative Affairs on April 14, 2004, at <http://www.beijing.gov.cn/zw/zwxx/t20040414_123948.htm>.

an annual report for notice-and-comment work conducted in 2004[92] and continues to innovate with its public participation program.

While Chinese government agencies are getting accustomed to the practice of publishing draft rules for public comment, the procedures are not standardized. In the United States, the Administrative Procedure Act (US APA)[93] establishes basic mandatory procedures for what is referred to as "informal" or notice-and-comment rulemaking. Contrary to what seems to be the widespread impression in China, most administrative rulemaking in the United States is done without a hearing, through notice and comment, except where a statute requires the convening of a pubic hearing.

To sum up the US practice for purposes of comparison, the US APA stipulates that notices of most proposed federal agency rulemakings, with either the text of the proposed regulation itself or a description of the subjects and issues involved, are to be published in the *Federal Register*. The *Federal Register* is widely available in print and on-line and is well known as the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.[94] China lacks a comparable comprehensive publication at present, but the Chinese public can be educated over time to watch for such notices in relevant publications such as the *People's Daily* or local newspapers of general circulation, as well as government websites. Another option would be to convert the

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[91]Id., and the article by Zhao Zhenyu and Chen Yiru, *Bage gongmin de lifa jianyi shi zhenyang bei cainade* [The Legislative Suggestions of Eight Citizens Were Truly Accepted], *Fazhi ribao* [*Legal Daily*], April 21, 2004, available online at <http://legaldaily.com.cn/xwzx/2004-04/21/content_94109.htm>.

[92]Available on-line at <http://www.bjfzb.gov.cn/newsite/zffzgzdt/t20050407_114975.htm>.

[93]Section 553, in LUBBERS, supra note 67, pp. 374–375.

[94]The Federal Register homepage is at <http://www.gpoaccess.gov/fr>. It is published by the Office of the Federal Register, National Archives and Records Administration (NARA). Users can sign up to receive the free daily Federal Register Table of Contents via e-mail. Notices of public hearings are also published in the Federal Register.

central and local government gazettes, which are issued periodically to publish rules and documents that have already gone into effect, into a daily publication that includes draft rules. A central on-line website, such as that of the State Council Office of Legislative Affairs, might also become the unified source for draft rulemakings at the central government level, just as the US Government has established the centralized website — or "one-stop site to comment on federal regulations" — at www.regulation.gov.

The US APA further requires that, after notice, the agency must give interested persons an opportunity to participate in the rulemaking through submission of written comments containing data, views, or arguments, with or without the opportunity for oral presentation. The relevant agency formulating the rule has the discretion to decide whether or not to hold a hearing. Chinese government agencies, as described earlier, have already adopted this practice of "seeking opinions" for selected rules and regulations.

In the US, federal agencies now generally develop and maintain a file or rulemaking record. Although this is not required by the US APA, experience with judicial review of challenges to certain federal rulemakings has given rise to recognition of the importance of developing such a file, not only to facilitate judicial review of whether the ultimate decision accords with the evidence heard, but also as an aid to informed public participation, and a basis for the agency's decision whether or not to adopt the rule.[95] Typically, the rulemaking file, which is accessible to the general public for review, will include all notices relating to the rulemaking, copies, or an index of all written factual materials, studies, and reports substantially relied on or seriously considered by agency personnel in formulating the proposed or final rule, all written comments to the agency, and any other materials required by statute.[96] Chinese agencies do not generally seem to have yet adopted the practice of

[95]LUBBERS, supra note 67, p. 214.

[96]Id., pp. 215–216. For an example of a rulemaking file or "docket," visit the website of the U.S. Department of Transportation's (DOT) Dockets and Regulations website <http://www.dot.gov/regulations.html>. That website indicates that some 1.2 million

making such a rulemaking file public, although the Beijing Municipal Office of Legislative Affairs experimented with an on-line docket in which all comments received were posted for public viewing, in connection with a proposed rule relating to the demolition of buildings on collectively owned land in March 2005.[97]

After consideration of all input, the agency is to incorporate into the final rules a concise statement of their "basis and purpose." This statement, commonly referred to as the "preamble" to the rule itself, sets forth the legal basis for the rule and generally includes a description of significant substantive issues raised by the public. Most importantly, it explains the agency's response to the major comments. This preamble serves the same purpose as the legislative history that accompanies laws passed by the US Congress, which some local people's congresses in China have adopted as well.[98] Experience has shown the importance of the preamble's explanation in demonstrating to the public that the agency considered various arguments and why it made the ultimate choices it did. In other words, even if the result is not to someone's liking, at least that person knows that his comments were considered and why they were not accepted, and that the public participation process was not merely a sham. The concept is not unlike that developed in some Chinese villages, where villagers post views on the local bulletin board, and the villager committee must post a response in a timely manner, a practice referred to as the "echo wall."[99]

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pages of regulatory and adjudicatory information are contained in the online database accessible to the interested public. For instance, the DOT's Docket management System electronically stores all DOT issued documents and public comments regarding a particular rulemaking. Users can locate the docket for a particular rulemaking.

[97]The proposed rule was posted at <http://www.beijing.gov.cn/myzj/myzj/t20050315_218305.htm>.

[98]The Shanghai People's Congress, for example, in recent years has issued public reports on its website not only on the issues involved in the final legislation but on some of the interim drafts as well.

[99]Jiang Zhiyuan, "*Zhongguo xingzheng gongong xinxi gongkai fazhihua yanjiu*" [Research on the Legalization of Chinese Open Administrative Public Information], carried at <http://www.xingzhengfa.net>.

The Legislation Law does require that reports on the deliberative process, setting forth the differing views on proposed administrative regulations received from all quarters during the drafting process, be submitted as part of an "explanation" to the State Council for examination prior to final approval of the regulations,[100] with similar provisions stipulated in the Law's implementing regulations pertaining to formulating rules. However, there is no requirement to make that explanation public. In fact, State Council OLA Director Cao did make a public explanation of the first-time public comment process the OLA used in formulating the Property Management Regulations, in the form of a press conference held at the time the final rule was announced.[101] During its first public comment process, the Shanghai municipal government published an explanation of opinions received from the public concurrently with publication of the final version of the Provisions of Shanghai Municipality on Open Government Information, passed in January 2004,[102] and the Beijing municipal government has adopted the practice of providing, on a semi-annual basis, a public explanation of comments received on all draft regulations that were made public for comment and how they were handled.[103] Nonetheless, these praiseworthy and important practices of providing feedback to the public on decision-making have yet to be institutionalized and standardized.

## RELATED DEVELOPMENTS

The practice of encouraging the public to take part in decision-making is also extending to other areas. For example, in line with recent reforms intended to make the selection of leading party and government cadres more transparent and "democratic," the Party Organization Department of Fujian province placed the names of 44

[100]Legislation Law, supra note 28, Article 59.

[101]See article on Property Management Regulations cited in note 80, supra.

[102]"*Shanghaishi zhengfu xinxi gongkai guiding*" *zhiding guochengzhong tingqu he xishou gongzhong yijian zhuyao qingkuang*", February 10, 2003, <http://www.shqp.gov.cn/gb/content/2004-04/15/content_24159.htm>.

[103]See discussion accompanying notes 90, et. seq.

candidates for a variety of government positions on the government website, asking for public comments from April 30 to May 9, 2004.[104] The National Development and Reform Commission (NDRC), formerly know as the State Planning Commission, sought public input on its draft five-year plan for the 2001–05 period and has increased public participation in drafting policy goals for the 2006–10 period by contracting out research on major economic and social issues to nongovernmental institutes and seeking ways to encourage public input on development strategy and to make the process more transparent.[105] Prisoners in a Shanghai prison participated in a first-ever hearing to discuss proposed prison reforms.[106] The Ministry of Construction has announced plans to revise the Urban Planning Law to incorporate more public participation in the formulation and revision of urban plans, through such methods as public hearings and an open government information system,[107] and the Ministry of Education for the first time, in the Fall of 2004, conducted hearings on the level of tuition fees to be collected for compulsory education.[108]

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[104]"*Zhonggong Fujiansbengwei zuzbibu guanyu Chen Weisban deng 44 wei tongzbi renzbi qian gongsbi de gonggao*" [Notice on Appointment of Chen Weishan and 44 other Comrades Publicly Announced by the Party Organization Department of Fujian Province], April 30, 2004, at <http://www.fujian.gov.cn/html/540/20436.html>.

[105]"Chinese Government Enhances Transparency in Drafting Development Guidelines," Beijing Xinhua in English, March 24, 2004, in FBIS Daily Report, WNC Document Number 0hv4yc903hkx7e; "*Fazban gaigewei dui 'sbiyi wu' guibua qianqi yanjiu keti jinxing gongkai zbaobiao*" [NDRC Puts Out Public Bids on Research Topics for the 11th Development Program], September 27, 2003 <http://dp.cei.gov.cn/yjdt/115ZB01.htm>.

[106]"Prison 'Hearing' Enters Jail in China," *Peoples' Daily* (English), March 31, 2004, available online at <http://english.peopledaily.com.cn/200403/31/eng20040331_139067.shtml>.

[107]"*Chengsbi guibua jiang gengduo tixian gongmin canyu*" [Urban Planning To Reflect Greater Citizen Participation], *Legal Daily*, May 20, 2004, at <http://www.legaldaily.com.cn/bm/2004-05/20/content_100699.htm>.

[108]"*Zbou Ji: Yiwu jiaoyu sboufei jiang tuixing tingzbeng gongsbi zbidu"* [[Minister] Zhou Ji: Hearings and Public Notice Systems Will Be Carried out for Compulsory Education Fees], March 10, 2004, at <http://www.edu.cn/20040310/3100798.shtml>.

The environmental field has also provided fertile ground for public participation experiments in China, where public participation is listed as one of the guiding principles in the National Tenth Five-Year Plan for Environmental Protection.[109] The American Bar Association pioneered a cooperative program in the polluted industrial city of Shenyang, which drafted and is implementing China's first legislation on "public participation in environmental protection."[110] The draft measures define what the participation rights are (which include the public's right to participate in legislation, policy and planning formulation, and environmental impact assessments and raise complaints and suggestions and seek compensation for damages caused by environmental pollution, etc.).

At the national level, the September 2003 Law on Environmental Impact Assessments promotes public participation, encouraging the public to participate in environmental impact assessments as appropriate and calling for public hearings or other mechanisms to be adopted when a plan or project might have an unfavorable impact on the public and affect their environmental rights and interests.[111] This law further requires the drafting agency to take account of public views and attach an appendix explaining why it adopted or did not adopt various views that were put forward concerning the potential environmental impact,[112] which sounds rather like the preamble required in federal rulemaking in the United States, except

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[109]January 2002, English abstract at <http://www.zhb.gov.cn/english/plan/Tenth.htm>.

[110]See testimony of Brian Rohan of the ABA and translation of the Draft Shenyang Municipal Measures on Public Participation in Environmental Protection at the website of the Congressional-Executive Commission on China <http://www.cecc.gov/pages/roundtables/012703/index.php>. The Chinese text is available on the website of Shenyang's Central Business District at <http://www.cbd.gov.cn/channel/kejiao/0007/a002/news_paper/200282821647.stm>.

[111]"*Zhonghua renmin gongheguo huanjing yingxiang pingjia fa,"* adopted by the National People's Congress Standing Committee on October 28, 2002, and effective September 1, 2003, at <http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html>.

[112]Id., Articles 11 and 21.

there does not appear to be a requirement to make the appendix public with the final decision. A widely reported example of this law in practice was the hearing held in April 2005, the first public hearing ever convened by the State Environmental Protection Administration (SEPA), in response to public outcry over a water conservation project to line lakes in historical Yuanmingyuan Park in Beijing with plastic, which academics and conservationists said would impact underground water systems in Beijing. The project had not applied for approval of the required environmental impact assessment. SEPA Deputy Administrator Pan Yue promised to take into account all opinions before making a determination on the controversial project.[113]

In the more political realm, a township in Zhejiang has been developing a form of dialogue with residents to exchange ideas between leaders and residents. In April 2005 it experimented with a form of "deliberative democracy" among randomly selected citizens who gathered to discuss and select among 30 proposed development projects for their locality.[114]

## DEVELOPMENT OF SOCIAL ORGANIZATIONS TO CHANNEL PUBLIC INPUT

Public participation can be viewed, like grassroots elections, as another training ground for developing an aware and involved citizenry, as well as a responsive government, which are so necessary for realizing an effective democracy and establishing rule of law. In the United States, the 1946 Administrative Procedure Act spurred development of associations that finally had an institutionalized channel through which to make input on government policy affecting their interests. Similarly, in China, participatory mechanisms may create greater opportunities for the rise of

[113]"Public Hearing over Lake Project," *China Daily*, April 14, 2005, online at <http://service.china.org.cn/link/wcm/Show_Text?info_id=125854&p_qry=Yuanmingyuan>.

[114]Susan Jakes, "Dabbling in Democracy," *Time Asia*, April 25, 2005, online at <http://www.time.com/time/asia/magazine/article/0,13673,501050425-1050191,00.html>.

independent social organizations that can compile and channel meaningful input into the policymaking and legislative process, as happened in the United States.

Chinese decision-makers are concerned about how best to get the Chinese public involved in the decision-making process. On the one hand, they are worried about being inundated with thousands or hundreds of thousands of divergent comments and opinions that all must be read, considered, and responded to. On the other hand, they are concerned that comments received will not adequately reflect the diversity of public opinion, especially that of the so-called "weak and disadvantaged persons.[115] A strengthened civil society that could organize itself around different issues and become an "orderly channel" for input into the decision-making process would help address some of these concerns, both by compiling potentially numerous and scattered opinions into more professional input through an association and by facilitating the organization of associations to represent the interests of the weaker groups.

Such civic organizations in turn would likely inculcate their members with participatory values. Just one example is the response of the state-sponsored All-China Women's Federation (ACWF) to a solicitation for public input by the Supreme People's Court on a proposed interpretation of the Marriage Law in September 2003. Upon reading the announcement of the draft interpretation and solicitation of comments, the ACWF promptly issued an urgent notice to its local branches encouraging them to participate and provide comments to the court.[116]

In the relatively politically safe environmental area, the central government has actively promoted the role of social organizations in

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[115]See, e.g., Zhang Jianhua, "*Gonggao he pinglun fanshi: gongzhong canyu yu xingzheng lifa de lixiang tujin*" [Notice and Comment Procedure: The Ideal Channel of Public Participation and Administrative Legislation], *Fazhi Jianshe* [*Legal System Construction*], no. 6 (2003), pp. 22–24.

[116]"*Zuigao fayuan jiu Hunyin Fa zhengqiu yijian, 20 tiao yangshuo lkihun fen caichan*" [Supreme People's Court seeks comment on Marriage Law, 20 Detailed Views on Division of Property Upon Divorce], posted September 8, 2003, link online at <http://www.chinalaw.gov.cn/jsp/contentpub/searchmsg/msglist.jsp>.

educating the public and promoting popular and noncontroversial causes such as tree-planting, recycling, and antilitter campaigns.[117] More recently, the government is beginning to recognize their potential positive contribution in gathering opinions and technical input from society in the environmental policy and decision-making process. The State Environmental Protection Administration (SEPA) has committed to supporting the establishment of an environmental network for the roughly 2000 environmental NGOs in China so that they can communicate and coordinate better. The government endorsed formation of the All China Environment Federation in April 2005 to bring government officials, environmental social organizations, enterprises, and ecologists together to research major ecological problems and offer advice to the government.[118] "There is a long way to go to establish full public participation, a disclosure system for environmental information, and a democratic decision-making process for environmental issues, but it's SEPA's ultimate goal," said Pan Yue, SEPA Deputy Administrator and an advocate of public participation in environmental matters.[119]

## OBERVATIONS

Public participation is not, of course, the same thing as democracy. Taking part in a hearing and providing comments on a draft

[117]"Chinese NGOs — Carving a Niche Without Constraints," January 2003 Report from Embassy Beijing, <http://www.usembassy-china.org.cn/sandt/ptr/ngos-prt.htm>. The State Environmental Protection Administration (SEPA) even carried reports on its website in 2000 on the history of social organizations in China and how such organizations can provide service in the environmental area. "Birth of an NGO? Development of Grassroots Organizations in The land of Big Brother," March 2003 Report from U.S. Embassy Beijing.

[118]"New NGO Founded to Rally All Chinese People Against Worsening Pollution," April 23, 2005, online at <http://news.xinhuanet.com/english/2005-04/23/content_2869707.htm>.

[119]"College Students Work for Environmental Protection," Xinhua News Agency, March 27, 2004, available at <http://service.china.org.cn/link/wcm/Show_Text?info_id=91502&p_qry=NGO>.

proposal are not the same as voting in an election. The majority opinion need not prevail, if regulators feel that it is misguided or ill-informed. In China at present, the government retains control over the process in determining which draft documents meet the open-ended "major" or "vital" interests requirement for both hearings and notice and comment procedures. Moreover, the unelected Chinese government and Party leaders may ignore with impunity all the proffered public opinion as there are no effective legal or political means to hold them accountable to the people for the decisions they make.

In the United States, in addition to the electoral process, which can be utilized to bring pressure to bear even on unelected bureaucrats, citizens can also turn to an active and independent judicial system that has the authority to enforce government compliance with public participation and information access requirements. Although Chinese citizens can now sue government agencies under the Administrative Litigation Law of 1989, that law does not yet permit them to challenge the substance of an administrative regulation *per se* or the procedure by which it was adopted,[120] and Chinese courts institutionally are not as independent as their United States counterparts. Chinese citizens basically lack the means to compel government compliance with newly articulated rights of participation.

Nonetheless, in the absence of direct and competitive elections except at the most local level, mechanisms of public participation in decision-making through hearings and notice and comment procedures, buttressed by an emerging system of open government information,[121] might prove to be a real step toward greater

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[120]Cf., U.S. Supreme Court comment in 1915 that citizens' "rights are protected in the only way that they can be in a complex society, by their [political] power, immediate or remote, over those who make the rule," in *Bi-Metallic Investment Co. v. Colorado*, 239 U.S. 441, 445, quoted in Strauss, supra note 67, p. 189. Chinese scholars and legal experts are in fact working with the State Council and National People's Congress law experts to revise the Administrative Litigation Law to, *inter alia*, provide greater rights precisely for such citizen challenges to rulemaking itself.

[121]See, Jamie P. Horsley, "Shanghai Advances the Cause of Open Government Information in China," at <http://www.freedominfo.org/news/shanghai/index.htm>, posted April 20, 2004.

democracy. Public participation increases the openness, accessibility, responsiveness, and fairness of China's legislatures and bureaucracies and provides training in participatory government for both citizens on the one hand and legislators and regulators on the other. In Chongqing, for example, after several years of experimentation in public participation, the provincial-level people's congress has decided on its own to make *all* draft laws public for comment over the Internet and in the media; hearings, the involvement of experts, and on-the-spot discussions will be used for those legislative issues that affect important matters closely related to the public or that present particular difficulties, and "open-door legislation" was a major focus of the congress in 2004.[122] The Chongqing municipal government also adopted in mid-May 2004 provisional measures on open government affairs information and on administrative decision-making hearings. [123]

Public participation is still largely at the policy stage, with only general principles articulated in law. Apart from price-setting and adjudicatory proceedings over such matters as the imposition of fines and issuance of permits, current legislation does not yet give citizens clear rights of participation in decision-making. However, the exploratory mechanisms that have developed thus far have begun to create a perception that citizens do have the "right of participation," which is recognized by the government and the Party and increasingly viewed as being necessary for the people to exercise their constitutional duty and implied right of supervision.

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[122]See, "*Chongfen fanying minyi, Chongqing jinnian zhuoli shishi 'kaimen lifa*,'" April 23, 2004, at <http://www/cq.xinhuanet.com/2004-04/23/content_2023947.htm>, and Chongqing's website, which posts 15 draft provisions for comment as of May 1, 2005, at <http://www.cq.gov.cn/OtherShow/Fgzqyj/Fgzqyj.aspx>.

[123]"*Chongqingshi zhengwu xinxi gongkai zanxing banfa*" [Chonging Municipal Provisional Measures on Open Government Affairs Information], at <http://www.cq.gov.cn/zwgk/zfgb/gb2004/aaa/200501311549.htm>, and "*Chongqing shi xingzheng juece tingzheng zanxing banfa*" [Chongqing Municipal Provisional Measures on Administrative Decision-making Hearings], at <http://www.cq.gov.cn/zwgk/jctz/200412241822.HTM>, both effective July 1, 2004.

Although Chinese Communist ideology and policy have long referred to "pooling the wisdom and valuing the resources" of the people, leaders have generally preferred to turn to the elite few for their views rather than truly consult with the anonymous "masses." Opening the doors to greater public participation should not only help reach better and more effective decisions but may change the all too prevalent view of the elites that the "quality"of the vast majority of Chinese is too low for them to either be entrusted with a vote or make useful input in decision-making. On the contrary, studies have shown that large groups of people voicing their individual opinions are generally smarter than the few, no matter how well-educated those few may be.[124] Well-managed public participation could engender the emergence of a "collective wisdom" and a significant shift in the way government views its citizens and vice versa.

Moreover, learning truly to "listen to the people" while exercising one's own judgment as a decision-maker is an art. While Chinese officials do not have to account to the people in regularly scheduled and competitive elections, or (as yet) fear being summoned to court to answer for their policies and legislation, they clearly understand that their credibility and the legitimacy of their leadership depend in large part on being responsive to the concerns and needs of their people. Leaders at all levels now talk frequently of "responsible" or "accountable" government. Serious implementation of public participation, complete with open information and feedback from the government, would be an important device to help ensure that government becomes more accountable.

Public participation should also help curb official corruption, by subjecting the decision-making process to public scrutiny through participation and through information–sharing. In this sense, public participation can be characterized as prophylactic or preventative rather than punitive. China traditionally has focused more on bureaucratic

[124]See, James Surowiecki, *The Wisdom of Crowds: Why the Many are Smarter than the Few and how Collective Wisdom Shapes Business, Economies, Societies and Nations* (Doubleday, 2004).

controls and penalties than seeking to provide positive incentives and inducements that may more effectively accomplish the same objective. Building and strengthening institutions such as public participation can reduce the need to rely on coercive and punitive measures, by creating an open environment ("government in the sunshine") in which it is more difficult to commit and conceal corrupt behavior.

The institution of public participation could also help address the growing social unrest in China. Rapid development has given rise to new and greater popular economic, social, and political demands. Chinese citizens are frequently frustrated by the lack of effective political and legal channels through which to voice their demands.[125] The number of petitioners who appealed to Beijing to resolve complaints against local officials through traditional bureaucratic rather than more formal legal channels reportedly more than doubled in 2004.[126] China's leaders seem to recognize that China needs new institutions such as public participation to address complex problems and manage change better. Surely, this is exactly what "political civilization" is all about.

To be sure, the Chinese government is mindful of the public relations value of these institutional innovations. The State Council's "white paper" on China's human rights situation, issued on March 30, 2004, trumpets increased transparency as an important element of China's improving human rights situation that better permits the Chinese people to exercise their right to supervise the government and "right of participation in public affairs."[127]

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[125]Murray Scott Tanner, "China Rethinks Unrest," *The Washington Quarterly* (Summer 2004), pp. 137, 146–147, available online at <http://www.twq.com/04summer/docs/04summer_tanner.pdf>.

[126]Philip P. Pan, "Hu Tightens Party's Grip on Power," *Washington Post*, April 24, 2005, online at <http://www.washingtonpost.com/wp-dyn/articles/A12427-2005Apr23.html>.

[127]Translating from Section II, Civil and Political Rights, of the Chinese text of the Civil and Political Rights section, *2003 nian zhongguo renquan shiye de jinzhan (quanwen)* [Progress in China's Human Rights in 2003] <http://www.people.com.cn/GB/shizheng/1026/2418866.html> (March 30, 2004); an English translation of which appears at <http://english.peopledaily.co.cn/whitepaper/hr2004/hr2004(2).html>.

Nonetheless, the new institution of public participation, while still under development, is an increasingly popular mechanism by which Chinese citizens can participate to a greater extent in the making of rules and policies that affect their daily lives and in the governance of their country more generally. Participation in government decision-making is a democratizing experience that trains citizens and government alike in what it means to have an accountable government. Civilizations do not spring well-formed overnight. China's concept of "political civilization," whose contours are broad and fluid, will likewise take time to develop. As the villager self-governance experience has shown, self-governance and democracy require social as well as political change, change from a habit of passive acceptance of orders and rules handed down from anonymous superiors to a practice of active participation and taking responsibility for what is happening in one's life. Public participation can help provide Chinese citizens with new channels and tools with which to practice and, eventually, achieve a "political civilization" in which they are more truly the masters of their own country.

Chapter

9

# Rights Consciousness, Economic Interests, and the 2003 District-level People's Congress Elections in China: Middle-Class Motivations and Democratic Implications

*Xinsong Wang*[1]

Students of Chinese politics have long been concerned about how China's economic liberalization will affect the potential democratization of this socialist country, which has been dominated by the Chinese Communist Party (CCP) for over five decades. As China's economic reforms took off two decades ago and its interaction with the outside world increased, the Chinese authorities have faced mounting pressure for political liberalization due to constant social and rapid economic changes. The emergence of a new middle class

[1]I am indebted to Kim Reimann, Albert S. Yee, Michael Herb, William Downs, and Yi Zhao for their helpful comments on the previous versions of this paper.

and its members' numerous social and political demands are among the most pressing challenges facing the Chinese state.

However, scholars of China have found mixed evidence of the new middle class's political leanings. While the wealthy and more educated demand political liberalization, others withdraw such demands if they are afraid that their wealth and social status could be taken from them by the Communist authorities or destroyed by political changes.

The emergence of some middle-class campaigners running for district-level people's congress (DPC) elections in 2003 has given us an opportunity to study the Chinese middle class's attitudes toward political participation and determine whether their participation will contribute to democratization in China. During elections in Shenzhen and Beijing, dozens of middle-class Chinese conducted election campaigns to be nominated as candidates and elected as people's deputies (*renda daibiao*) to the DPCs, relatively powerless organizations in the Chinese political structure.

This chapter examines the motivations of middle-class members to run for people's deputies in the DPCs and the ways their behavior might influence political change in China. The first part introduces the People's Congress in China and DPC elections in 2003. The second part argues that the major motivating factors behind the middle-class DPC candidates' decision to run for the elections were to protect property interests and to defend their political rights. The third part further discusses the motivating factors by examining the evidence from the campaigners' speeches and activities. The final section discusses how the campaigners' actions in Shenzhen and Beijing will affect the democratization process in China.

## 2003 DPC ELECTIONS IN SHENZHEN AND BEIJING

The Chinese Constitution and China's laws grant superior power to the people's congresses and people's deputies, who are elected by the people to represent their interests and will.[2] However, in reality,

[2]According to the "Law of the People's Republic of China on Deputies to the National People's Congress and to the Local People's Congresses at Various Levels,"

people's deputies represent the "state authority" and are responsible for providing "a rationale for policy," made by the state, and diffusing "societal pressures."[3] In other words, rather than representing the interests of voters, people's deputies appear to be unpaid government staff whose job is to mobilize "the masses to implement decisions made by the central government rather than actually make decisions."[4]

The direct elections for the Local People's Congress (LPC) and indirect elections for people's congresses of higher levels have also been strictly controlled by the CCP.[5] Although the CCP amended the election law[6] in the late 1970s to let voters directly elect the deputies to local people's congresses, nominate candidates, choose among multiple candidates, and vote secretly, it has continued to control the entire process of LPC elections, such as voter registration, nomination, mobilizing voters, duration of election campaigns, and so

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the people's congresses and people's deputies function to monitor the government, legislation, appointment of bureaucrats, decision-making on substantial policies, etc.

[3]Kevin O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies," *The China Quarterly* vol. 138 (June 1994), p. 359. O'Brien explained that the Chinese people's deputies implement the tasks assigned by the state and "deny conflicts of interest both within society and between state and society," rather than making real policy changes that are requested by voters.

[4]Tianjian Shi, "Voting and Nonvoting in China: Voting Behavior in Plebiscitary and Limited-Choice Elections," *Journal of Politics*, vol. 61, no. 4 (1999), p. 1119.

[5]There are four levels of people's congresses in China, each corresponding to a level of government bureaucracy. The lowest level is the town/township people's congress in rural areas whose deputies are directly elected by voters. Voters are also allowed to directly elect deputies of county-level congresses in rural areas and those of district-level congresses and county-level city congresses in urban areas. These deputies, on behalf of the voters of the same level and below, elect the deputies to provincial-level and municipal-level people's congresses. Finally, the National People's Congress deputies are elected by deputies to the provincial-level and municipal-level people's congresses. County (District)-level people's congresses and below are considered as local people's congresses.

[6]The election law here refers to "The Electoral Law of National People's Congress and Local People's Congresses of the People's Republic of China (3rd amendment in 1995)," translated by Foreign Broadcast Information Service (FBIS), *China Elections and Governance* <http://www.chinaelections.org>.

on. The amended election law also prohibits formation of political parties and precludes electoral competition.[7]

Given the constraints of LPC elections by the CCP and considering the weakness of people's congresses, Chinese voters usually vote without enthusiasm. Moreover, election campaigning is almost unimaginable to the Chinese people, especially after the election law was amended in 1982.[8] For a long time, the word *jingxuan* (election campaign), which is believed to be a feature of "Western capitalism," has been taboo among electoral officials and staff.[9]

In 2003, however, election campaigns were revived during the urban DPC elections in Shenzhen and Beijing. In April and May,

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[7]See John Burns, "The People's Republic of China at 50: National People Reform", *The China Quarterly*, vol. 159, no. 3 (1999), pp. 580–594; Jie Chen and Yang Zhong, "Why Do People Vote in Semicompetitive Elections in China?" *The Journal of Politics* vol. 64, no. 1 (2002), pp. 178–197; Barrett L. McCormick, "China's Leninist Parliament and Public Sphere: A Comparative Analysis," in Barrett L. McCormick and Jonathan Unger, eds., *China after Socialism: In the Footsteps of Eastern Europe or East Asia?* (Armonk, NY: M. E. Sharpe, 1996), pp. 29–53; Andrew J. Nathan, *Chinese Democracy* (New York: Alfred A. Knopf, Inc., 1985); Kevin O'Brien, *Reform without Liberalization: China's National People's Congress and the Politics of Institutional Change* (New York: Cambridge University Press, 1990); O'Brien, "Agents and Remonstrators: Role Accumulation by Chinese People's Congress Deputies", pp. 359–380; Tianjian Shi, *Political Participation in Beijing* (Cambridge, MA: Harvard University Press, 1997); Shi, "Voting and Nonvoting in China: Voting Behavior in Plebiscitary and Limited-Choice Elections", pp. 1115–1139.

[8]The amended election law in 1979 allowed political parties, mass organizations, and voters to introduce deputy candidates by all kinds of means. Then in the 1980 LPC elections, some college students and workers in Beijing, Changsha, and Shanghai ran election campaigns by organizing rallies and passing literatures to test the amended law. Worried that the heated campaigning activities were producing potential "social disorder," the NPC amended the law in 1982 and specified that the political parties, mass organizations, voters, or deputies who recommend candidates may brief group meetings of voters or deputies about the candidates they recommend. However, the effects of such "group meetings" are limited. Normally voters are only briefed with very basic information of the candidates such as education level, party affiliation, employment, awards, etc.

[9]Interview with Yuan Dayi, Professor of Politics at Beijing Governance Administration College, August 2003.

eight voters in Shenzhen sought candidacies to be elected as people's deputies in the DPC elections. Seven months later, during the DPC elections in Beijing, 26 voters conducted campaigns to be nominated and elected. Most of the campaigners publicized themselves by putting up posters, handing out flyers and name cards, mailing letters of self-introduction to local residents, distributing brochures of election law to voters, and posting campaign speeches at on-line discussion boards. One of the campaigners even set up a three-member campaign office to help him win the election.

It is interesting to note that many campaigners in Shenzhen and Beijing came from the middle class, which is newly emerging from the decades of economic reforms of China. Table 1 shows that

**Table 1.** Occupations of the Campaigners in the 2003 DPC Elections

| Occupation | Number | Percentage ($N = 34$) |
|---|---|---|
| Private business leader | 4 | 12 |
| Lawyer | 3 | 9 |
| College student | 12 | 35 |
| Professor | 2 | 6 |
| Academic researcher | 1 | 3 |
| Assistant to manager; senior accountant | 1 | 3 |
| Employee of a telecommunications company | 1 | 3 |
| President of Shenzhen Advanced Technical Institute | 1 | 3 |
| Senior Engineer of Shenzhen Urban Infrastructure | 1 | 3 |
| Planning institute insurance salesman | 1 | 3 |
| Deputy Director of Road Bureau, Baoan District of Shenzhen | 1 | 3 |
| Retired | 1 | 3 |
| N/A | 5 | 15 |

33 percent of the 34 campaigners are private business leaders, lawyers, and white-collar employees, many of whom are also owners of private homes. Meanwhile, college students and professors account for 47 percent of the campaigners.

What has motivated the campaigners to run for the DPC elections that have been practically ignored by most voters for two decades? What does the social class of the campaigners say about their motivation to participate in the elections? What effects will the middle class's election-campaigning activities exert on democratization of China in the future? The rest of this chapter will address these issues.

## CAMPAIGNERS' MOTIVATIONS

In order to study the motivations of middle-class members in China to participate in local elections, one needs to understand what most concerns the new Chinese middle class and how these concerns affect decisions to participate in politics. This section will discuss two major concerns of the middle class and suggest possible motivators for middle-class campaigning activities.

## ECONOMIC INTERESTS

Because China is undergoing major economic transitions, it is worthwhile asking whether middle-class members participate in politics because of these changes and, if so, how they choose to participate. For example, purchasing a private home became possible as the housing reform unfolded in the late 1990s and middle-class income started to increase. Ownership of property, one could argue, potentially provides middle-class citizens material incentives to get involved in politics.

From the time the CCP took power in 1949, urban housing was owned by governments or by work units (*danwei*) and was allocated to urban residents for free. Starting in the 1980s, however, China implemented housing reforms to sell existing homes to residents and to build new commercial apartment

complexes for sale. It was estimated that nearly 5 million square meters of new homes were constructed each year from 1995 to 1997.[10]

Once people purchase private homes in newly built apartment complexes or neighborhoods (*xiaoqu*), they are inclined to protect the properties they own and to maintain the quality of the neighborhoods they live in. To do so, they have to deal with two actors that are involved in the apartment complexes. One is the development companies (*kaifa shang*) that construct commercial homes and are either privately owned or owned by branches of governments. Many development companies make promises to prospective customers, such as maintaining a certain size of lawns in the apartment complex, installing natural gas, and building a fitness center. But they often end up using the proposed budget to construct more buildings in the complex, or they simply break their promises after customers purchase homes. There have thus been conflicts between homeowners and development companies.

The other actor is the property-management companies (*wuye guanli gongsi*) that handle all community affairs, such as sanitation, security, parking, and lawn maintenance. Property-management companies are often owned by development companies or by the housing management office of the government. Very few are privately owned.[11] Many management companies try to maximize their profits by exacting unreasonable fees from homeowners. When homeowners have problems with their apartments within the warranty period, the management companies often ignore them or send them to the development companies.

As individual homeowners found their property interests unprotected, they formed homeowner associations in apartment

[10]Benjamin L. Read, "Democratizing the Neighborhood? New Private Housing and Home-Owner Self-Organization in Urban China," *The China Journal*, vol. 49 (January 2003), p. 40.

[11]Hao Xiaoyao, Lü Fuming, and Wang Yuanyuan, "*Wuye ni bei shei paoqi?*" (Property-management Companies: Who Abandoned You?) *Xinhua News Agency*, April 25, 2004.

complexes to defend their economic interests (*weiquan*[12]) and to resist exaction from the management company. However, since management companies and development companies usually have connections with the government, homeowners have often been defeated in their battles with them. For example, there have been many cases where activists of homeowner associations were beaten by gangsters employed by development companies and management companies.

Unable to secure their property interests, the homeowners may consider joining the government to protect their economic interests by using public power. Thus it is a sensible decision for them to choose to work for a local people's congress and represent other homeowners as people's deputies so that they can submit bills for local government to consider and suggest formulating or amending laws and regulations to better protect their economic interests. A number of campaigners in the 2003 DPC elections in Shenzhen and Beijing were leaders of homeowner associations who believed that their economic interests could be better protected if they were represented in the LPCs.[13]

## POLITICAL-RIGHTS CONSCIOUSNESS

Candidates may run for elections for political reasons, apart from economic interests. For example, according to Nathan's research, campaigners in 1980 ran for the DPC elections as an opportunity both to test the potential of the election law amended in 1979 and to

[12] *Weiquan* means to defend one's rights. Activists of homeowners would like to call themselves *weiquanzhe* (rights-defenders). They believe that to protect property interests and to make development companies realize their promises are part of the rights they hold once they purchase the assets, and they believe that by protecting their property interests, they are indeed defending their rights. Therefore, rights-consciousness has already been embedded in the homeowners' mind.

[13] For a detailed discussion of urban community development, housing reforms, and homeowner associations' *weiquan* activities in China, see Read, "Democratizing the Neighborhood?" Benjamin Read, "Revitalizing the State's Urban 'Nerve Tips'," *The China Quarterly*, no. 163 (September 2000), pp. 806–820.

change the state power through the congress.[14] While it is hardly realistic to expect that election to the DPC can seriously challenge state power, it is worth noting that the campaigners in 1980 had a keen perception on how the law could be used to challenge state authority and help them reach the goal of democratization. For them, running election campaigns based on the law was a "first step toward the realization of socialism democracy."[15]

From the 1980 election we see a strong desire among campaigners to defend their political rights after the amendment of the election law. Such a desire has reappeared in the past decade as people have become more aware of their rights. In a recent study, for example, Minxin Pei found that the Chinese people's awareness of their rights granted by state laws and policies has increased in the 1990s.[16]

Pei attributed such rights consciousness to the legal reforms, socioeconomic development, and a changing international context. As the level of education increases, citizens are more aware of the economic policies, legal reforms, and political system under which they are governed. Moreover, the opening of the state to the international community has enabled the citizens to observe and experience the political and legal systems in other countries. These developments have made Chinese citizens more aware of the rights they hold as well as the ones that are not allowed by the Chinese authority. As a result, they become more willing to defend their rights once they are infringed and more eager to practice rights that were ignored in the past. People's desire to defend their rights implies their rights consciousness.

Under the authoritarian government, many rights that are granted to Chinese citizens by the Constitution and laws are kept in tight control by the CCP or are not allowed to be put into

[14]Nathan, *Chinese Democracy*, p. 206.

[15]*Ibid.*

[16]Minxin Pei, "Rights and Resistance: The Changing Contexts of the Dissident Movement," in Elizabeth J. Perry and Mark Selden, eds., *Chinese Society: Change, Conflict and Resistance* (London: Routledge, 2000).

practice.[17] For example, although the election law specifies that ten or more voters may collectively nominate preliminary candidates to the LPC deputies elections, the CCP often replaces the candidates nominated by voters with those it trusts.[18] Similarly, although the law allows candidates to meet voters at "voters' group meetings" organized by the election committee, it does not specify whether to allow election campaigns beyond "group meetings" as a way of candidates interacting with voters. As a result, voters lose their trust in the election procedures and rarely try to nominate candidates conjointly, and candidates barely reach out to publicize themselves. In the 2003 DPC elections, however, some voters regained their enthusiasm and assembled to nominate their candidates. Meanwhile, the candidates, including the independent ones, bravely tested the election law by running campaigns to seek ballots from the voters. This implies that the new middle-class members possess a political-rights consciousness; that is, not only do they have a clearer view of the political rights they hold, but they are also ready to defend such rights.

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[17]Andrew J. Nathan, "Sources of Chinese Rights Thinking," in Randle R. Edwards and Louis Henkin, eds., *Human Rights in Contemporary China* (New York: Columbia University Press, 1986), p. 161.

[18]Article 29 of the election law states, "Political parties and people's organizations may either jointly or separately recommend candidates for deputies. A joint group of at least ten voters or deputies may also recommend candidates." However, Article 31 stipulates the determination of final candidates as follows, "The election committee shall collect and publish, 15 days prior to the date of election, the list of nominees for deputies for repeated deliberation, discussion and consultation by voter groups in the respective electoral districts and shall decide, in accordance with the opinion of the majority of voters, upon a formal list of candidates to be made public five days prior to the date of election." See "The Electoral Law." The "deliberation" and "discussion and consultation" processes are briefly called "*yunniang*" (fermentation) in Chinese, and in reality are manipulated by the CCP so that certain nominees are removed while "qualified" candidates are selected. For a story on how a preliminary candidate was removed in an electoral precinct in Beijing in 2003, see Yuan Dayi, "*Wo shi ruhe bei 'xieshang' xialai de* (How was I Removed by 'Fermentation')," *Zhongguo Xinwen Zhoukan* (*China Newsweek*), December 8, 2003.

Some middle-class members may turn to politics both to protect their economic interests and to defend their political rights. In order to protect their property interests by joining the LPCs, the middle-class members have to understand the advantages and flaws of the political system so that they may assess the possibility of their success in elections. Once they realize that certain political rights are not ensured, they would seek to consolidate them so that they are able to win the elections and have their economic interests ensured. Thus the political-rights consciousness emerged partly for economic reasons.

For some middle-class members, to become a people's deputy may be an honor and may help to advance their personal careers. In urban China, the ratio between the number of people's deputies and that of voters is very small. Normally a people's deputy represents approximately 40,000 voters. Although the position of people's deputy has no real political power, it still symbolizes an honor to represent a large number of people in the government. The honor may even be aggrandized, considering that being a local people's deputy is an unpaid job, and people may appreciate the individual's volunteering spirit. Presumably some middle-class members, particularly businesspeople, will take advantage of the honor of being people's deputies as a way of getting publicity. For example, displaying one's title of people's deputy on name cards and business-publicity materials increases one's credibility and strengthens one's credentials. It may also indicate one's connection with the government and affect others' views on one's capacity to achieve business success.

## CASE ANALYSIS

This section analyzes campaigners' motivations to run for elections by looking at their campaign speeches and activities reported by the media and published on Internet discussion boards. Due to the emergence of campaigners, the 2003 DPC elections attracted extraordinarily more attention from the media than before. According to the Carter Center's China Elections and Governance

website,[19] about 125 Chinese articles, both news reports and scholarly studies, have been written on the 2003 Shenzhen DPC elections and campaigns. About 400 news articles and editorials on the DPC elections in Beijing have been published in newspapers and magazines. In addition, there were dozens of Western news reports on both elections in 2003. Therefore, although the number of campaigners is small in contrast with the number of voters, they are more visible than expected in the public eye; they may thus have greater significance than suggested by their small number.

## Aggregate Data

From all relevant articles, I identify the motivations of each of 34 candidates who ran for the DPC elections (see Table 2). Then I categorize the various motivating factors and identify the candidates who were motivated by each categorized factor (see Table 3). Table 3 indicates that the following factors have motivated the middle-class Chinese to seek candidacies or conduct campaigns in the DPC elections in Shenzhen and Beijing:

1. *Protecting the interests of voters*. Data shows that 35 percent of the 34 campaigners in the DPC elections of Shenzhen and Beijing were motivated by their interests of protecting private property. Meanwhile, 32 percent of the campaigners, all of whom were college students and faculty members, vowed to represent the interests of college students.
2. *Defending election rights*. Among the thirty-four campaigners, 50 percent publicly stated that they hoped to defend the rights of voting and the rights of being elected through their participation. Some nineteen campaigners (56 percent) are known to carry out campaigning activities to help promote the election rights granted by the election law. In addition, 15 percent of campaigners promised to empower the DPCs if they were elected.
3. *Protecting both economic interests and political rights*. Seen from Table 1, 12 percent (or four) of the campaigners, mainly homeowner association leaders, were not only motivated by economic interests to run for elections but also wanted

[19] *China Elections and Governance* <www.chinaelections.org>, a website produced by The Carter Center, focuses on political and social issues in China. It has a fairly complete collection of the media reports on the 2003 DPC elections in Shenzhen and Beijing. I am one of the founders and Editor of the website.

**Table 2.** Candidates and Their Motivations

| No | Name | Location | Occupation | Motivation |
|---|---|---|---|---|
| 1 | Du Maowen | Beijing | Retired | Protect the interests of home owners |
| 2 | Yang Fengchen | Beijing | N/A | N/A |
| 3 | Nie Hailiang | Beijing | Businessman | Protect the interests of home owners |
| 4 | Shao Xiazhen | Beijing | Researcher, Chinese Academy of Social Sciences | Protect the interests of home owners |
| 5 | Chen Junchao | Beijing | N/A | N/A |
| 6 | Zhou Wenbin | Beijing | N/A | N/A |
| 7 | Wang Ruiqi | Beijing | N/A | Protect the interests of home owners |
| 8 | Ming Liang | Beijing | College student | Defend election rights |
| 9 | Yao Yao | Beijing | College student | Defend election rights<br>Protect the interests of students |
| 10 | Li Menglin | Beijing | College student | Defend election rights<br>Protect the interests of students<br>Improve his social abilities |
| 11 | Li Min | Beijing | College student | Protect the interests of migrant workers, college students, and women |
| 12 | Ouyang Wenjie | Beijing | College student | Protect the interests of students<br>Advance Chinese democracy via elections |
| 13 | Yin Jun | Beijing | College student | Advance democratic DPC elections<br>Advance the role of people's deputies<br>Advance Chinese democracy and rule of law<br>Protect the interests of students and other *ruoshi qunti* (socially weak groups) |

**Table 2.** (*continued*)

| No | Name | Location | Occupation | Motivation |
|---|---|---|---|---|
| 14 | Shi Lei | Beijing | College student | Protect the interests of students<br>Defend the election rights<br>Advance democracy in school |
| 15 | Xie Yuelai | Beijing | College student | Advance Chinese democracy via elections<br>Defend election rights |
| 16 | Zhao Jia | Beijing | College student | Protect the interests of students |
| 17 | Chen Junhao | Beijing | College student | Defend election rights<br>Advance democracy in China via elections |
| 18 | Chen Riqiang | Beijing | College student | Defend election rights<br>Protect the interests of students |
| 19 | Chen Meng | Beijing | College student | Defend election rights<br>Protect the interests of students and socially weak groups<br>Develop Haidian district's economy, infrastructure, and environment |
| 20 | Du Zhaoyong | Beijing | Lawyer | Monitor the government |
| 21 | Zhang Xingshui | Beijing | Lawyer | Advance political reform<br>Defend election rights |
| 22 | Tong Lihua | Beijing | Lawyer | Defend interest of voters |
| 23 | Xu Zhiyong | Beijing | Law professor | Defend the political right to election<br>Advance rule of law<br>Advance democratization in China<br>Contribute to public affairs |
| 24 | Ge Jinbiao | Beijing | Law professor | Protect the interests of students<br>Defend election rights |

**Table 2.** (*continued*)

| No | Name | Location | Occupation | Motivation |
|---|---|---|---|---|
| 25 | Shu Kexin | Beijing | Researcher, businessman | Defend political rights by participating in elections<br>Contribute to public affairs<br>Advance democratic self-determination in urban communities<br>Protect the interests of home owners<br>Publicize election rights and the functions of DPCs and people's deputies<br>Advance democracy in China |
| 26 | Wang Hai | Beijing | Businessman | Contribute to law-making<br>Advance democratic self-determination in urban communities<br>Advance the functions of people's deputies<br>Set an example for others to participate in elections<br>Advance both self-interest and others' interests (socially weak groups and home owners)<br>Publicize election rights |
| 27 | Xiao Youmei | Shenzhen | Accountant | Protect the interests of voters<br>Monitor the government |
| 28 | Wu Haining | Shenzhen | Businessman | Protect the interests of voters<br>Protect the interests of home owners<br>Defend election rights |
| 29 | Zou Jiajian | Shenzhen | Employee of a telecommunications company | Protect the interests of home owners and socially weak groups by participating in law-making processes<br>Publicize the DPC elections and increase the voters' rights-consciousness |

**Table 2.** (*continued*)

| No | Name | Location | Occupation | Motivation |
|---|---|---|---|---|
| 30 | Wang Liang | Shenzhen | President of a technical institute | Represent the interests of students<br>Honor of the school<br>Defend election rights |
| 31 | Xu Bo | Shenzhen | Engineer, Shenzhen Urban Infrastructure Planning Institute | Defend election rights |
| 32 | Ye Yuanbai | Shenzhen | Insurance salesman | Protect the interests of home owners |
| 33 | Xie Xiaoying | Shenzhen | N/A | Protect the interests of socially weak groups |
| 34 | Luo Shiping | Shenzhen | Deputy Director of Road Bureau, Baoan district | N/A |

*Notes*:

1. It was mentioned at many occasions that Yang Fengchen (No. 2), Chen Junchao (No. 5), and Zhou Wenbin (No. 6) announced their candidacies as independent candidates. Although their speeches are not available, all reports that mentioned their names indicated that they appeared as homeowners and they were listed together with Nos. 1, 3, 4, and 7. Therefore, it is reasonable for us to assume that the above three candidates were motivated by the demand to protect private properties.
2. Luo Shiping (No. 34) was mentioned only once by the media as himself trying to seek the candidacy and winning the election (Shen Lutao, Wu Huanqing, and Li Nanling, *Piaoxiang li tiaochulai de renda daibiao — Wang Liang dangxuan renda daibiao huifang* (People's deputies jumping out of ballots — review of Wang Liang's winning the election), *Xinhua News Agency*, June 6, 2003). But it is not known to me whether he was nominated by the Party or by voters and whether he was an independent candidate. His motivations also were not available.
3. Due to data constraints, some campaigners' occupations could not be found.

**Table 3.** Candidates' Motivations[a]

| Motivation | Specification | Name | Number | Percentage ($N = 34$) |
|---|---|---|---|---|
| Protect voters interests | Protect the interests of home owners | Du Maowen, Nie Hailiang, Shao Xiazhen, Wang Ruiqi, Wang Hai, Shu Kexin, Wu Haining, Zou Jiajian, Ye Yuanbai, (Yang Fengchen, Chen Junchao, Zhou Wenbin)[b] | 12 | 35 |
| | Protect the interests of students | Yao Yao, Li Menglin, Li Min, Ouyang Wenjie, Yin Jun, Shi Lei, Zhao Jia, Chen Riqiang, Chen Meng, Ge Jinbiao, Wang Liang | 11 | 32 |
| | Protect the interests of socially weak groups | Li Min, Yin Jun, Chen Meng, Wang Hai, Zou Jiajian, Xie Xiaoying | 6 | 18 |
| | Defend the interests of voters (in general) | Tong Lihua, Xiao Youmei, Wu Haining, Wang Hai | 4 | 12 |
| | Contribute to public affairs | Xu Zhiyong, Shu Kexin | 2 | 6 |
| Defend election rights | Defend election rights | Ming Liang, Yao Yao, Li Menglin, Shi Lei, Xie Yuelai, Chen Junhao, Chen Riqiang, Chen Meng, Du Zhaoyong, Zhang Xingshui, Xu Zhiyong, Ge Jinbiao, Shu Kexin, Wu Haining, Wang Liang, Xu Bo, Yin Jun | 17 | 50 |
| | Publicize election rights and the functions of DPCs and people's deputies | Shu Kexin, Wang Hai, Zou Jiajian, Yin Jun | 4 | 12 |

(continued)

**Table 3.** (*continued*)

| Motivation | Specification | Name | Number | Percentage ($N = 34$) |
|---|---|---|---|---|
| Advance Chinese democracy | Advance Chinese democracy via elections | Ouyang Wenjie, Yin Jun, Xie Yuelai, Chen Junhao, Du Zhaoyong, Zhang Xingshui, Xu Zhiyong, Shu Kexin | 8 | 24 |
| | Advance rule of law | Yin Jun, Xu Zhiyong | 2 | 6 |
| | Advance democracy in school | Shi Lei | 1 | 3 |
| | Advance democratic self-determination in urban communities | Shu Kexin, Wang Hai | 2 | 6 |
| Empower the DPCs | Advance the role of people's deputies | Yin Jun, Wang Hai | 2 | 6 |
| | Monitor the government | Du Zhaoyong, Zhang Xingshui, Xiao Youmei | 3 | 9 |
| Advance self-interests | | Wang Liang | 1 | 3 |
| Collective honor | | Chen Meng | 1 | 3 |
| Develop regional economy and welfare | | Li Menglin | 1 | 3 |
| Improve personal social abilities | | Li Menglin | 1 | 3 |

[a]For a list of candidates and their pledges, please see Table 2.
[b]See notes in Table 2.

to defend their election rights and to empower the DPCs. In other words, both economic interests and political-rights consciousness have collectively made the middle-class members in China run for the DPC elections.

4. *Advancing democracy in China*. Twenty-nine percent of the campaigners hoped to advance democracy, rule of law, and grassroots self-determination in China and democracy in their universities if elected. This was especially common among the rights defenders who saw the election campaigns as a step to democratization. The data shows that 42 percent of those who vowed to defend the election law also called for democratization in China. The motivation of democratization is not a surprising result because presumably the defenders of political rights may want to pursue democracy as a broad goal.

## Interview Data and Narratives

While the statistical data suggest the overall answers, analyses of individual cases of the campaigners will help us examine their motivations more closely. Examining campaign speeches and media interviews, the following section shows that the campaigners were motivated by their economic interests or political-rights consciousness or both.

## Economic Interests

In urban cities of China, conflicts between homeowners and the developers and property-management companies have become increasingly severe. The homeowners often find themselves in a disadvantageous situation in striving to protect their property interests against the developers and management companies. At the same time, they see the local people's congresses as a potential political institution through which they can secure their economic interests by means of legislation and government power.

The cases of Mr. Zou Jiajian from Shenzhen and Mr. Nie Hailian from Beijing may best illustrate how economic interests motivated middle-class campaigners to run in the DPC elections. As homeowners, both of them have had problems with the developers and property-management companies of their neighborhood communities. Frustrated by their futile efforts in defending their property interests, both saw people's deputies as helpful in solving their problems and thus decided to participate in the DPC elections and become people's deputies themselves.

Zou had struggled for a long time with the developer and the management company over issues related to his and his neighbors' apartments before he decided to run for the 2003 DPC elections in Shenzhen. When he purchased an apartment in a high-rise building in 1998, Zou was promised by the development company that a brand-name elevator, probably made by Mitsubishi, would be installed in the building. Only after he moved in did he find that the elevator was made by an unknown manufacturer, and, even worse, it sometimes went freefall, which frightened Zou and his neighbors. There were also other infrastructural items in the complex that failed to meet the promises made by the developer before the residents made the purchase. In 2001, Zou led the residents in filing a lawsuit against the developer. They won the case and were compensated by the developer. Later Zou was elected as chairman of the apartment complex's homeowners' association.

Being unsatisfied with the services provided by the property-management company and fed up with the unacceptable fees, Zou and his association members unprecedentedly fired the property-management company that was affiliated with the developer and selected another company through an open bid. In the same year, Zou was lost in another lawsuit and was ordered to pay 80,000 yuan ($9756) to the developer, who accused Zou for being responsible for an on-line post on the homeowner association's website that had been written by an unknown member and contained scandalous messages about the developer.

Then Zou realized that it might be easier to defend the homeowners' interests by joining the DPC and being a people's deputy. However, as an employee of a state-owned enterprise, at first Zou was afraid that running in an election campaign would bring him more trouble. It was not until a week before election day in Futian District that Zou decided to run as a "write-in" candidate (*lingxuan taren*[20]). He grieved to a journalist that "to fight for the residents' rights single-handedly has been too difficult!"[21] He described his life

[20] *Lingxuan taren* literally means "voting for another person."

[21] Fan Qing, "*Zou Jiajian: yezhu wenzheng"* (Zou Jiajian: Homeowner Participating in Politics), *Nanfang Dushi Bao* (*Southern Metropolitan Daily*), January 5, 2004.

in the past years as being intertwined with lawsuits struggling against the developer and the management company at the expense of his physical and financial well-being. Zou believed that to work within the government to change rules would be better than directly confronting the developer and the management company.[22]

Moreover, because homeowner associations appear in China as newly born organizations, they have not been completely incorporated into the Chinese legal system. For example, once when Zou's homeowner association tried to sue the developer for failing to save enough money for maintenance of the apartment complex, it was declined by the court as not being a qualified legal subject for initiating a lawsuit. Zou expressly stated that it was the lawsuits he had been involved with in the past years to protect the homeowners' rights that motivated him to run campaigns in the district people's deputy elections.[23]

Zou said, "If I were elected as a people's deputy, I would be able to submit bills [to the DPC] and to participate in the rule-making process. I would call for modification of those rules and regulations that are unfavored by the homeowners. I could use the power of public service [*gongquan*] to protect the private rights [*siquan*[24]] of the homeowners." Since he missed the deadline for candidacy nominations, he put up posters on public notice boards in his community or beside convenient stores, appealing to voters to vote for him as a write-in candidate. On his campaign poster, Zou wrote, "Please cast your critical vote for a candidate who is courageous to represent the homeowners to protect their rights."[25]

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[22]Li Guiru, "*Shenzhen renda daibiao jingxuan muhou"* (Background of DPC Elections in Shenzhen), *Zhongguo Qingnian Bao* (*China Youth Daily*), May 28, 2003.

[23]"*Shenzhen shouci chuxian renda 'duli jingxuanren'"* (Independent Candidate First Appeared in Shenzhen District Congress Elections), *Wen Wei Po*, May 18, 2003.

[24]*Gongquan* literally means public power while *siquan* means private rights.

[25]Liu Juntong and Li Tianjun, "*Shenzhen yi xuanmin zijian jingxuan renda daibiao, yinzhi wushi fen haibao la xuanpiao"* (A Voter Campaigned in District Congress Elections in Shenzhen; 50 Posters Printed to Attract Voters), *Zhongguo Qingnian Bao* (*China Youth Daily*), May 17, 2003.

In the second case, Mr. Nie Hailiang, 1,200 miles away from where Zou lived, was motivated by similar reasons to carry out election campaigns in Beijing's district-level people's congress elections in December 2003.

Three years previous to the election, the prospective homebuyers of Huilongguan neighborhood were told by the development company that they would have a playground and lawn on a 10,000 square meter land in the neighborhood. Since then, however, nothing had been constructed, and in September 2003 the residents received a notice from the local government that the deserted land would be used to build new apartments for the Department of Public Transportation of the Beijing Municipal Government (BMG). The homeowners in Huilongguan neighborhood were infuriated that their interests were sacrificed by the development company.

On September 14, they went to the BMG and submitted their petition. The government set up an investigation team but did not come up with any solution. On October 18, some homeowners were beaten by the construction workers on the land after some verbal disputes. Believing it was a deliberate action by the development company, some 400 homeowners drove over 100 cars to the BMG to petition officials there in the evening. Nie was one of the five homeowner representatives who were able to meet with the officials of Changping District Government and the developer after the petition. By the time the elections in Beijing were held, the land had been deserted. Since Nie had become well-known among the residents for doing tremendous work in defending the homeowners' rights in the past three months, he was nominated by the residents as a people's deputy candidate.[26]

With respect to his participation in the election, Nie confessed that since 1998, when purchasing private homes became possible, people's interests are more embedded in their assets. Once people are satisfied with their "basic living conditions and clothes

[26]Li Jianmin, "*Nie Hailiang: you hengchan zhe you hengxin"* (Nie Hailiang: Those Who Have Private Assets Have Strong Will), *Zhongguo Xinwen Zhoukan* (*China Newsweek*), issue 47, 2003.

and food," they will have "time and money" to "pursue their rights."[27]

In an interview with a magazine, Nie said, "I represent the interests of those who have private assets and those of the elite of middle- and small-sized businesses. . . . I would like to improve the human and social conditions within the neighborhood, to resolve the conflicts between development companies and homeowners through legislation, and to protect the interests of business leaders."[28]

Two other candidacy seekers, Mr. Du Maowen and Mr. Yang Fengchen, were from the same neighborhood as Nie and were also activists in negotiating with the developer and the local government. Du strongly believed that having a people's deputy representing homeowners' interests would have made it easier for them to deal with the conflicts with the developer. This belief motivated him to run for the elections in Changping District. Reviewing the difficulties in defending their economic interests, Du regretted that the homeowners had no idea who or where their representatives in the government were.[29] A retired person in his 60s, Du sighed, "What if we had a people's deputy to have our voice heard in the government!"[30] He said, "The repeated failure in defending the homeowners' rights [*weiqua*] was the most important motivation for me to work within the [political] system to defend our rights." Du wanted to represent the homeowners and protect their interests if he was elected. "I run for a people's deputy because I am a homeowner

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[27]*Ibid.* Here the "rights" Nie refereed to implied political rights that could be used to protect their property rights.

[28]Wu Peishuang, " *'Beijing Xianxiang' de linglei jiedu — rang renda daibiao chengwei zhengzhi jia"* (Alternative Explanation of 'Beijing Phenomenon' — Let the People's Deputies be Politicians), *Zhongguo Xinwen Zhoukan* (*China Newsweek*), issue 48, 2003.

[29]Wan Xingya, "*Beijing liu yezhu jingxuan renda daibiao de taiqian muhou"* (The Fronts and Backgrounds of the Six Homeowners in Beijing Who Sought Candidacies to People's Deputies), *Zhongguo Qingnian Bao* (*China Youth Daily*), November 20, 2003.

[30]*Ibid.*

and I love this community, which makes me both happy and sorrowful. I deeply understand the difficulties of homeowners, and I want to try my best to protect the rights and interests [*quanyi*] of every homeowner."[31] Du pledged to establish an office to receive voters and their suggestions if elected.

In order to make sure that at least one representative of homeowners was elected, later Du and Yang withdrew from the election and supported Nie's campaign. The strategy worked, and Nie won the election.

## Rights Consciousness

While homeowners desired to protect their economic interests by joining the DPCs, others (i.e., college students, professors, and lawyers — 56 percent in total) intended to claim their right to run for office and to spread the knowledge of election rights among other voters by carrying out campaigning activities.

Wang Hai, for example, explicitly expressed that his election campaigns were meant to tell the Chinese citizens that they should be aware of their (election) rights and know how to defend them. "Many Chinese people are not aware of their right to vote or to be elected. Even though they know, they do not use their rights. By participating in the elections, I will prove that China is a democratic country with rule of law."[32] Wang is well known in China for his persistent efforts to defend consumers' rights by intentionally purchasing fake and problematic products, returning them, and asking for compensations (*Da Jia*).[33] His efforts were believed to have helped

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[31] *Ibid.*

[32] Wang Ru, "*Zijian houxuanren tan xuanju"* (Self-nominated Candidates Discussing Elections), *China Elections and Governance* <www.chinaelections.org>, December 5, 2003.

[33] Article 48 of *Xiaofeizhe Quanyi Baohu Fa* (Law of Consumers Rights Protection) states that, when a purchased product is determined by relevant government offices to have quality problems, upon the request of consumer, the sellers or manufactures are responsible to refund the consumer. *Zhongguo Renda Wang*, Website of the National People's Congress of China; <http://www.npc.gov.cn>.

Chinese consumers acknowledge that they are protected by the "Law of Consumers Rights Protection [*Xiaofeizhe Quanyi Baohu Fa*]."[34] Similarly, Wang believed that it would help spread the knowledge of election law among voters if a celebrity ran for office and generated publicity about the DPC elections. He told the journalists several times, "Through media I would like to tell people that they should know and use their rights!"[35] Wang viewed the result of the election as not so important as the fact of his participation: "If I were elected, I could set an example for other campaigners. If I failed, I could learn a lesson to do better next time."[36]

Another campaigner, Shu Kexin, chairman of the homeowner's association in his neighborhood, claimed that his campaign efforts were meant to tell people that "the rights to vote and to be elected are granted by the election law, and voters have the legitimacy to participate in elections."[37] Shu had a campaign team with two college students as his assistants. The team designed a poster for Shu and purchased 500 brochures of the election law to deliver to the voters.[38] In order to make the voters familiar with Shu and with the functions of a people's deputy, the team set up the Shu Kexin's Election Office (*Shu Kexin xuanju shiwu bangongshi*) and called for people to bring their questions before the nomination process started.[39] Shu also visited the residents'

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[34]"*Shu Kexin xiansheng yu Beida tongxue duihua"* (Mr. Shu Kexin Talking with Students of Peking University), *China Elections and Governance* <www.chinaelections.org>, November 18, 2003.

[35]Wang Ru, "*Zijian houxuanren tan xuanju"* (Self-nominated Candidates Discussing Elections).

[36]"*Sanrenxing, zijian canxuan renda daibiao"* (Three People Running Together: Self-nomination in People's Deputy Elections), *Zhongguo Shehui Bao* (*China Society*), October 25, 2003.

[37]"*Shu Kexin xiansheng yu Beida tongxue duihua"* (Mr Shu Kexin Talking with Students of Peking University).

[38]Miao Wei, "*Shu Kexin de jingxuan biaoyan"* (The Campaigning Performance by Shu Kexin), *Sanlian Shenghuo Zhoukan* (*Sanlian Life Weekly*), vol. 265 (November 24, 2003).

[39]Wan Xingya, "*Wei canxuan renda daibiao, Beijing yi shimin chengli xuanju shiwu bangongshi"* (A Beijing Citizen Set Up an Election Affairs Office to Campaign

houses to introduce himself by saying, "Weigh your decision carefully. Then vote."[40]

Like Wang Hai, Shu candidly confessed, "I do not have high expectations of being elected. Even if I were elected, how much influence would I be able to yield as one of the 400 deputies? I only hope to tell people through my efforts that we have rights to participate in elections."[41] Shu believed that the emergence of election campaigns by other candidates in Beijing's DPC elections was partly attributable to himself.[42]

Shu thought that China has democracy and a good legal system, but people need to defend the rights granted by the law. "China has a rather sound legal system, but the law is somehow covered up." Challenged by a British journalist that elections are predetermined in China, Shu responded, "They are not predetermined. I myself am a self-motivated candidate. It is not that we do not have democracy. It is that nobody strives for democracy."[43] His assistant, Zhu Sihao, a college student of Communication University of China, agreed: "The Election Law and People's Deputy Law are implementable. Through election campaigns we want to tell people that the laws are not abstract legal regulations, and we are exploring a realistic way of exercising the right to be elected."[44]

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for People's Deputy Elections), *Zhongguo Qingnian Bao* (*China Youth Daily*), September 26, 2003.

[40]Mark Magnier, "China Moves Toward an Open Vote," *Los Angeles Times*, December 5, 2003.

[41]Wan Xingya, "*Wei canxuan renda daibiao, Beijing yi shimin chengli xuanju shiwu bangongshi"* (A Beijing Citizen Set Up an Election Affairs Office to Campaign for People's Deputy Elections).

[42]"*Shu Kexin xiansheng yu Beida tongxue duihua"* (Mr Shu Kexin Talking with Students of Peking University).

[43]"*Shu Kexin xiansheng yu Beida tongxue duihua"* (Mr Shu Kexin Talking with Students of Peking University). Ironically, Shu was eliminated during the "fermentation" process and failed to become a final candidate in his precinct.

[44]Wan Xingya, "*Wei canxuan renda daibiao, Beijing yi shimin chengli xuanju shiwu bangongshi"* (A Beijing Citizen Set Up an Election Affairs Office to Campaign for People's Deputy Elections).

In fact, Shu and Wang were not only motivated by their rights consciousness to run for the DPC elections; they also aimed at protecting the economic interests of the homeowners in their neighborhoods. Both Shu Kexin and Wang Hai have been activists in defending the homeowners' interests in their neighborhoods.[45] They met each other at a conference of homeowners' associations in 2000 and decided to form a "Team of Defending Rights" (*weiquan xiaozu*) with a lawyer named Qin Bing, who has been well known among the homeowners in Beijing for filing lawsuits against development companies and property-management companies in defending the interests of homeowners.[46] When the three learned of the DPC elections to be held in Beijing, they decided to seek candidacies and run campaigns.[47] Shu vowed to establish his "Office of People's Deputy" if elected so that he could "strengthen the communication with homeowners and better serve their interests."[48] Wang Hai told a journalist that if he were elected, he would "try to push for democratic management of urban neighborhoods" and "improve legal regulations to better protect the homeowners' interests."[49]

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[45]Shu is a part-time researcher at the Center of Institutional Analysis and Public Policy of Renmin University (People's University), and has been doing research on urban community democratic management. Wang is also on the research team at the Center. Wang has contributed to the making and modification of Regulations on Property Management in Beijing, Tianjin and Shanghai. See Wang Xiaofei, " *'Renda daibiao' Wang Hai?"* (Wang Hai, a People's Deputy?), *Nanfang Zhoumo* (Nanfang Weekend), November 6, 2003; Hu Kui, Wu Peishuang, and Zhang Lan, "*Shu Kexin de geren jingxuan zhi lu"* (The Road of Shu Kexin's Election Campaigns), *Zhongguo Xinwen Zhoukan* (*China Newsweek*), issue 40 (November 3, 2003).

[46]*Ibid.* Hu Kui *et al.*

[47]Qin quit before the nomination started. He was pressured by the law firm he worked for not to seek candidacy, otherwise he would be fired. He quit both the election and the job. Interview with Qin Bing, November 2003.

[48]"*Sanrenxing, zijian canxuan renda daibiao"* (Three People Running Together: Self-nomination in People's Deputy Elections).

[49]Shi Xiaoliang and Wu Wenkai, " *'Diaomin' Wang Hai: woyao dang renda daibiao"* (Censorious Wang Hai: I Want to be a People's Deputy), *Qi Lu Zhoukan* (*Qi Lu Weekly*), November 14, 2003. Wang once authored a bestseller, "I am a Censorious Citizen."

As shown in Wang and Shu's cases, the motivations of economic interests and rights consciousness correlate with each other in election campaigns. Since many of those who can afford private homes are well-educated and have a better understanding of their political rights, they ran for elections to defend both election rights and economic interests.

The student campaigners were also very explicit in defending the political rights by running for the DPC elections. I will discuss the cases of Yin Jun from Beijing University (Beida) and Yao Yao from Beijing University of Governance and Law (BUGL).

Yin, a second-year graduate student, was nominated by student voters of Beida but did not enter the second phase as a final candidate. Yin decided to run for the election as an independent candidate. On the university's BBS,[50] Yin explicitly stated, "The No. 1 purpose of my election campaign was to make the DPC elections more democratic (and more scientific) and to encourage more voters to cast their votes."[51] Yin pointed out that many voters did not even know there were elections, some electoral staff were not familiar with the election procedures, and voters were not enthusiastic toward the elections because they did not know of the candidates and they were not aware of the functions of the DPC. Yin asserted that the reason voters lacked enthusiasm was that there were no election campaigns.

As an independent candidate, he denounced the formal candidates for not doing anything to publicize themselves and to interact with the voters. He said, "An important purpose of my election campaign was to give a hard time to those formal candidates who had not expected themselves to be nominated and who did not expect to conduct campaigns to interact with voters."[52] Once asked

[50]BBS means Bulletin Board System, a type of online forum widely used in Chinese universities. Most campaign activities of student voters, such as posting campaign speeches and answering voters' questions, were carried out on the school BBS.

[51]Yin Jun, "*Zhi gewei chubu houxuanren de gongkaixin"* (A Public Letter to All Preliminary Candidates), *Beida Weiming BBS Zhan* (The BBS of "Unknown" of Beijing University <http://bbs.pku.edu.cn>).

[52]"*Zijian houxuanren yu xuezi 'mian dui mian'"* (Face to face between candidacy-seekers and students), *Beida Weimin BBS Zhan* (The BBS of "Unknown" of Peking

to stop his campaign by a school senior leader, he responded that he would stop under the conditions that either he won the election through campaigns or more than half of the formal candidates ran election campaigns. "I am not afraid of pressure," he said. "I am afraid of indifference [*lengmo*]."[53]

In another case, Yao Yao, a college student of Beijing University of Governance and Law, ranked the defense of election rights as his first motivation to run an election campaign.[54] Yao Yao said in his speech, "As a student majoring in law, it is almost a habit to be conscious of rights. Thus when I heard of the elections to be held in Changping District, I decided to participate in the election. I will not only exercise my rights to elect other people, but also exercise my rights to be elected."[55]

In their speeches, both Yao and Yin also made commitments to protect the interests of college students if they were elected as a people's deputy. However, they did not offer solid solutions to reach their goals. Nor did they give satisfactory answers to the questions

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University <http://bbs.pku.edu.cn>). Other nominees were mostly staff and professors of Peking University who were nominated and determined by the election committee or the CCP branch in the school.

[53]*Ibid.*

[54]It is worth mentioning that Yao Yao's father, Yao Lifa, is a famous rights-defender in China. He ran for county-level people's deputy as an independent candidate for three times in Qianjiang city of Hubei province before finally winning in 1998. He painstakingly fulfilled his responsibility as a people's deputy and made numerous achievements. The most famous one is that he exposed that 187 democratically elected village chairs were "fired" by town/township governments. See Elizabeth Rosenthal, "Far from Beijing, a Semblance of Democracy, *New York Times*, March 8, 2002. In the October 2003 county-level people's congress elections in Qianjiang, 33 voters followed Yao to run for the elections as independent candidates. Liu Zhiming, "*Qianjiang zhi xing*" (Qianjiang Wakening), *Zhongguo Xinwen Zhoukan* (*China Newsweek*), issue 47, 2003. The cases in Qianjiang are not discussed in this article as the data available are very limited.

[55]"*Zhongguo zhengfa daxue xuesheng Yao Yao xuanbu xunqiu Changping qu renda daibiao xuanju houxuanren timing*" (Yao Yao, College Student of Beijing University of Governance and Law, Declared to Seek Nomination in Changping District People's Congress Elections), *China Elections and Governance* <www.chinaelections.org>, November 18, 2003.

raised by voters on how they would fulfill their promises. For example, Yin was asked, "How do you think you could serve as a five-year people's deputy for Beida while you are graduating in a year?" In response, Yin warded off the question by saying, "I do not think that is my problem. Nobody could ensure that he would stay in the same precinct all the time. In addition, I hope to stay at Beida for my PhD study if I am elected."[56] Neither did Yin offer any specific suggestion as to how he would fulfill his commitments on adding civil education to the curricula of middle-school and primary-school students and strengthening civil rights among Chinese citizens.[57]

Indeed, Yin and Yao were similar to other campaigners in seeing their actions more as a means of defending election rights. Although they all made commitments to solve the everyday problems that concern the voters in their precincts, they did not seem to have a clear idea as to how they would achieve their goals as a people's deputy. For example, Professor Xu Zhiyong from the Beijing University of Posts and Telecommunication (BUPT) said in his speech, "I do not campaign for my personal interests. I just wanted to tell people: please trust our law . . . please believe that we have real election rights, and we need to cherish our democratic rights and treat our law sincerely."[58] However, when asked what he would do if he were elected, he seemed to be vague. "I am not very familiar with the detailed working procedures of the people's congresses . . . . Five years is a long time, and I do not have any plan at this point . . . but I will certainly submit bills . . . and I will try to push for the rule of law and democracy by participating in the congress meetings."[59] The candidates' repeated references to election rights and democratization have made the voters doubt their capability to solve real problems.

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[56]Yin Jun, "*Zhi gewei chubu houxuanren de gongkaixin"* (A Public Letter to All Preliminary Candidates).

[57]*Ibid.*

[58]Qin Wen, "*Xu Zhiyong: Qing xiangxin women de xuanjuquan shi zhenshide"* (Xu Zhiyong: Please Believe that We have Real Election Rights), *Nanfang Dushi Bao* (*Southern Metropolitan Daily*), December 16, 2003.

[59]*Ibid.*

Some campaigners promised to empower local people's congresses in monitoring the behavior of local governments and be accountable and obligated if elected as people's deputies. This indicates that people have become aware of the responsibilities supposed to be undertaken by people's deputies according to the People's Deputies Law — responsibilities that have been neglected in the past. As most incumbent deputies do not function as they are supposed to, sometimes because they are suppressed by the CCP, the campaigners vowed to serve as responsible deputies by participating in the law-making process, advancing the functions of people's deputies and monitoring local governments.

Zhang Xingshui and Du Zhaoyong said in their campaign speech, "We have noticed that, when making public policies and market economic rules, the power of the government is not effectively inquired and monitored; thus the decision making to a great extent overlooks the feedback from the public opinion. This motivates us to stand out and conduct campaigns in the Beijing DPCs elections, for the people's deputies are spokesmen of the public, which is stipulated by the Constitution."[60] Du and Zhang pointed out that many deputies were entitled to represent the people but were not doing their job (*zai qi wei, bu mou qi zheng*). Thus they wished to become full-time deputies because otherwise "we could not devote enough efforts to be a qualified deputy."[61]

Similarly, Wang Hai argued, "People's deputies play an important role! The Constitution delegates honorable power to people's deputies, but many deputies do not fulfill their responsibilities.... For some deputies, the title is just a rubber stamp and wields no real power." Wang believes that people's deputies could be more useful.[62]

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[60]Du Zhaoyong and Zhang Xingshui, "*Zhi Haidian qu xuanmin de yi feng gongkai xin*" (A Letter to Voters of Haidian District), *Beijing Kingdom Law Firm*, November 20, 2003. Zhang Xingshui is Director and Partner of the law firm.

[61]*Ibid.*

[62]Jiang Yingshuang, "*Wang Hai: woxiang canyu guize de zhiding"* (Wang Hai: I Want to Participate in Making the Rules), *Nanfang Dushi Bao* (*Southern Metropolitan Daily*), November 17, 2003.

## ADVANCING DEMOCRATIZATION

Among those who advocated the election rights granted by the law, many also sought to advance Chinese democratization by joining the people's congresses. Some campaigners believed that the campaigning action itself symbolized and promoted a democratic way of political participation. Moreover, once elected, they hoped to serve as responsible people's deputies and exercise the rights of people's deputies granted by the Constitution and law so that the LPCs could represent the interests of Chinese people to wield political power. The campaigners believed that these plans, if realized, would pave the way for democratization in China.

Campaigner Xu Zhiyong, a professor of Beijing University of Posts and Telecommunication, believed that democratization is not an "empty word" (*konghua*) or a "penthouse" (*kongzhong louge*). It needs detailed content and needs people to participate. He said, "To exercise our election rights within the limits of law is a means of constructing our democracy."[63] Xu argued that although elections by themselves might not advance democratization, the processes of participation and campaigns would help people see the "hope" for eventual democracy.[64]

Yin Jun believed that his campaign behavior was meant to "pave the way for democratization of his school and his country and to kindle the light for the future of his school and his country."[65] Du Zhaoyong and Zhang Xingshui were even more idealistic in the

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[63]Xu Zhiyong, "*Wo yao jingxuan renda daibiao*" (I Want to Run for a People's Deputy), *Beida Weiming BBS Zhan* (The BBS of "Unknown" of Peking Univeristy <http://bbs.pku.edu.cn>.

[64]*Ibid.* Xu is a law professor at Beijing University of Postal and Telecommunication. In 2003, he and other two lawyers submitted a bill to the National People's Congress of China to ban an unconstitutional national regulation, "*Chengshi liulang qitao renyuan shourong qiansong banfa*" (Regulations on Custody and Repatriation of Urban Beggers), after a college graduate was mistakenly recognized as a migrant worker without necessary IDs and were beaten to death in the local police bureau in Guangzhou.

[65]Yin Jun, "*Beijing Daxue shuoshisheng Yin Jun ni zijian canjia benci haidianqun renda daibiao jingxuan"* (The Master's Student of Beijing University, Yin Jun, Plans

view of the elections. They believed that "nobody could prevent the elite among the contemporary Chinese citizens from becoming glorious people like Hamilton and Madison. Let the Haidian District be our Virginia!"[66]

In comparison, Shu Kexin and Wang Hai predicted that if they were able to win the elections and become people's deputies, they would at least try to advance the grass-roots-level democracy in urban communities. Shu said, "[If I were elected] I would push forward the self-governance of the homeowners in urban communities.... With the institutions for management established, the homeowners need to learn to protect their property rights and learn democracy."[67] After knowing that he was not elected, he said, "I hoped to give a try for our democratic development. And I wish that more people who are more capable than me will participate in the elections next time."[68] Wang Hai said, "If I were elected, I would first forge ahead democratic management in urban communities. I believe that the self-governance of homeowners will bring ahead Chinese democratization."[69]

## CONCLUSION

This chapter set out to explain what factors motivated the urban middle-class members in Shenzhen and Beijing to run for the DPC elections in 2003. By dissecting the campaign activities, speeches, and interviews of the campaigners, I found mixed motivating factors that generally support the hypothesized arguments. The middle-class

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to Campaign as an Independent Candidate in Haidian District People's Congress Elections, *China Elections and Governance* <www.chinaelections.org>, November 9, 2003.

[66]Du and Zhang, "*Zhi Haidian qu xuanmin de yi feng gongkai xin"* (A Letter to Voters of Haidian District).

[67]Miao Wei, "*Shu Kexin de jingxuan biaoyan"* (The Campaigning Performance by Shu Kexin).

[68]*Ibid.*

[69]Jiang Yingshuang, "*Wang Hai: woxiang canyu guize de zhiding"* (Wang Hai: I Want to Participate in Making the Rules).

members in Shenzhen and Beijing ran for the DPC elections to advance their economic interests of protecting private property and to defend the election rights granted by law. Meanwhile, some campaigners hoped to advance the democratization process by organizing election campaigns and spreading the knowledge of elections among the public.

Since the evidence is drawn from media reports and campaign speeches, it might be doubted that the campaigners were motivated by what they said in public. However, on examining the background of the campaigners — for example, the problems of homeowners and the increasing awareness of rights among citizens — I tend to conclude that these factors do concern the new middle class in today's China and are thus likely to motivate members to run for local elections.

There are other factors that could have motivated the middle-class members to participate in the elections but were not mentioned by any of the campaigners. For example, personal honor and personal career advancement could be motivating factors for one to run for political positions, but a campaigner may not want to mention them in interviews or campaign speeches. These motivating factors should not be excluded.

The results and data presented in this study also have implications for the larger question of democratization in China and the middle class's role in the democratization process. The 2003 elections may open the way for the democratic development in China in two ways.

First, the initiation of competitive elections by the campaigners in 2003 may help to legitimize democratic election procedures, such as popular nomination, transparent determination of final candidates, and free and fair campaigns in future DPC elections and other grass-roots-level elections. Since the voters watched the campaign behaviors of the candidates in 2003 and became more familiar with the election law, over time they may deem campaigning behaviors as legitimate and expect similar activities in future elections. If such behaviors are suppressed, voters may demand institutional changes to render more democratic and competitive DPC elections. The

demand will become more imperative if the democratic elections of people's deputies eventually empower local people's congress and chip away the monopoly of power by the CCP.

The development of village committee elections in China may help us understand how democratic election procedures can be legitimized and consolidated through practices and the potential relevance of recent LPC elections. Since their initiation in 1987, village elections were incrementally implemented in China by the Ministry of Civil Affairs (MCA) officials, who are in charge.[70] In the early stages, the MCA reformers did not push hard to implement absolutely democratic election procedures in villages, as the local officials were strongly opposed to village election reforms and often manipulated such elections. Once peasants started to benefit from the competitive elections, they complained about election fraud in the mid-1990s and would not allow any election manipulation. As observed by Wang Zhenyao, the MCA official who was in charge of the village elections at that time, "The peasants cared less about the bad deeds of corrupt officials and more about the way they were elected."[71] By such means, "the MCA could rely on the rural populace to monitor the behavior of local bureaucrats."[72] Eventually it was easier for the MCA officials to consolidate the democratic election procedures in rural villages.

Although the function of the urban DPCs differs from that of the village committees, the democratic and competitive elections of the DPCs may be consolidated in a similar way. Once voters are more aware of the election law and willing to defend political rights, they will not accept the CCP's continuing to deny the electoral rights granted and to manipulate the elections. Gradually, institutional change of DPC elections will be demanded by voters to better serve their goals, either economic or political. However, whether the

[70]Tianjian Shi, "Village Committee Elections in China: Institutionalist Tactics for Democracy," *World Politics*, vol. 51, no. 3 (1999), pp. 385–412.

[71]Yawei Liu, "Guest Editor's Introduction," *Chinese Law and Government*, vol. 34, no. 6 (2001), p. 4.

[72]Shi, "Village Committee Elections in China," p. 404.

democratic changes of local elections will by any chance lead to democracy in China remains to be seen.[73]

Second, the study reveals that the campaigners in the 2003 DPC elections learned how to exercise the rights granted by the state law in confronting the monopoly control of the CCP. Thus a threat may have appeared to the Chinese authoritative government, for it might face more legalistic collective resistance from the people in the future and may have to reform the election system sooner or later to bridge the gap between what is promised by the law and what takes place in reality.

As discussed before, the power of people's congresses and the rights of voters are granted and ensured by the Constitution and the election law. However, such power and rights have long been suppressed by the CCP. It is worth noting that for some middle-class members the election campaigns served as a way of resisting the monopoly control of the DPCs by the CCP. For example, Wang Hai argued that the people's congress needs to be where the citizens exert their power: "Our country does not have an institutional system of 'submitting suggestions' [*najian*]. Only if a system of 'submitting suggestions' is established could the civil society play its role and citizens could be the owner of the country."[74] The CCP may feel threatened when it faces the confrontation from citizens who want to take over the power of people's congresses. The potential threat to CCP control is even more critical, considering that the campaigners

[73]Chinese officials and China scholars have divided views on village election's consequences on Chinese democratization. Some believed that village elections have helped establish grassroots democratic institutions and rule of law, and have made farmers aware of the democratic rights and electoral procedures. Others, on the contrary, argued that village democracy would not have substantial effects on democratization of China without the existence of other institutional and cultural factors needed for a democracy. Some held that grassroots reforms were never as effective as that initiated from the top. For a complete discussion of the debates on the meanings of village elections, see Yawei Liu, "Consequences of Villager Committee Elections in China," *China Perspectives*, no. 31 (September 2000), pp. 19–35.

[74]Wang Xiaofei, "*'Renda daibiao' Wang Hai?"* (Wang Hai, a People's Deputy?).

are now equipped with the law. If the CCP continues to manipulate elections and deny certain electoral rights that are granted, it may face legal suits by voters. One of the lawyers who planned to participate in the 2003 DPC elections in Beijing said that he would sue the CCP-controlled election committee if it eliminated him as a preliminary nominee without giving a reasonable excuse.[75]

Although at this moment the capacity of the middle-class members to make political changes in China remains to be seen,[76] people's willingness to defend their rights by legalistic means and their heightened sense of rights consciousness may have effective power in challenging and resisting the state. Kevin O'Brien acknowledged that the Chinese villagers have learned to use "laws, policies, and other officially promoted values" to "apply pressure on those in power who have failed to live up to some professed ideal or who have not implemented some beneficial measure."[77] He illustrated that the discontented villagers in rural China have learned to cite laws and policies like the regulations limiting "farmer's burdens" to ward off unapproved fees or demands for grain that exceed the agreed amount.[78] While some research has examined the Chinese farmers' collective and legalistic action against the bullying rules and policies of local cadres, there is still very little research on the changing ways in which urban middle-class members collectively counteract state authority by using laws. This chapter has provided empirical evidence to highlight such trends.

In conclusion, this chapter reveals the important roles played by the Chinese middle class in initiating campaigning activities and making elections more competitive. It supports the argument that the middle class is willing to participate in politics when its members are wealthier and more educated. Such willingness is even stronger when the middle-class members' property interests are not

[75]Interview with the lawyer, August 2003.

[76]Only five out of 34 campaigners in Shenzhen and Beijing (15 percent) won the elections. It suggests that the DPCs are still under control of the state.

[77]Kevin O'Brien, "Rightful Resistance," *World Politics*, vol. 49, no. 1 (1996), p. 41.

[78]*Ibid.*, p. 33.

securely protected and when the political rights granted are not warranted, as seen from the middle-class campaigners in China. As a result, the middle class's political participation and its demand for democracy may have a positive effect in spreading democratic norms among the public and may eventually break down the authoritarian control of the CCP.

Chapter
10

# The Role of Media in Democratization: Origins, Characteristics, and Implications of China's Public Forum TV Programs

*Junhao Hong*

## INTRODUCTION

For many decades the democratic functions of a press system in social transition were either neglected or altogether absent in non-democratic nations. The authorities in those countries often failed or refused to recognize the fundamental role of a free press system in sustaining or building democracy. However, in the past few years, the world has entered a new era marked by many unprecedented changes, such as the role and functions of the press transcending national borders, ideological fashions, and short-term transformations in various political climates.[1]

[1]S. Ungar, "The Role of a Free Press in Strengthening Democracy," in J. Lichtenberg, ed., *Democracy and the Mass Media* (New York: Cambridge University Press, 1990), pp. 368–398.

Since the late 1990s, influenced by the global trend of economic liberalization and political democratization, China, which is perceived as the last stronghold of communism, has also undergone numerous historical changes. The transition from a state economy to a market economy and the off-and-on and up-and-down openness in the country's political and ideological spheres have provided the media system with opportunities to restructure and move toward new directions. One of the significant new directions resulted from the changes in the media is the emergence of public forum type of television news magazine programs. With this new trend, the media in China have, to a certain degree, started playing "an important role in the political process."[2] This new function of the media has become an important catalyst for the democratization of society by helping promote the public's democratic consciousness. At the same time, changes in the media have also been weakening the communist ideology and political system.

This article examines how China's media started to function as a public forum since the 1990s. Specifically, this research studies the historical development and present situation of the public forum programs in China's television, the main characteristics of the public forum television programs, the social context and various internal and external factors that have contributed to the emergence of those programs, and the implications and significance of the new direction. This paper employs first-hand data collected through field research at various Chinese government agencies and media organizations, including the Ministry of Radio, Film, and Television, China Central Television (CCTV), and Shanghai Television (STV), and interviews with China's government officials and media practitioners.

## A BELATED BUT SURGING DEVELOPMENT OF PUBLIC FORUM TELEVISION PROGRAMS

No television program with a public forum format existed for more than three decades since television emerged in China in the late

[2]J. Lichtenberg, "Introduction," in J. Lichtenberg, ed., *Democracy and the Mass Media* (New York: Cambridge University Press, 1990), pp. 1–21.

1950s. Television, like all other media in the country, was always viewed and used by the Communist Party as a state apparatus whose main or even sole function was to channel the communist ideology and party and government policies to the public. Therefore, the media served as a political machine of the party leaders and a political and ideological vehicle of the communist system. The basic structure of television programs was vertical, always from top to bottom — from the party leaders to the ordinary people. Using the media as a public forum for exchanging ideas between the leaders and people or among the people was against the communist media's fundamental purpose. Therefore, it is not surprising that television programs with a public forum style were prohibited.

In the late 1980s, public forum programs began to emerge from China's local television stations. However, the influence of those programs was very limited, not only because they were local programs but more importantly because both the scope and depth of those programs were very limited. Although these pioneer programs were democratic by nature, they were not strong enough to change the overwhelming political and ideological function of the media as a tool of the Party. On April 1, 1994, China Central Television (CCTV), the country's monopoly television network with a potential viewership of 900 million, launched an unprecedented new program entitled *The Focal Point*. Since CCTV was the most controlled television station and always regarded as the mouthpiece of the Party, the emergence of *The Focal Point* symbolized permission from the Party allowing the media to function a bit differently. As *The Focal Point* became a flagship among television stations across the nation, many local stations followed suit to establish public forum programs. In 1996 CCTV launched another program entitled *Speaking the Truth*, whose format was more like a public forum than was that of *The Focal Point*. The emergence of *Speaking the Truth* stirred another wave, both among media organizations and audiences. Many television stations also launched programs similar to *Speaking the Truth*. Given this trend, public forum programs have become one of the major television genres and an indispensable part of the media in the 1990s. Tables 1 and 2 demonstrate the swift development of public forum programs in the 1990s.

**Table 1.** Growth of Public Forum Television Programs in the 1990s

| Year | New public forum programs |
|---|---|
| 1990 | 3 |
| 1991 | 6 |
| 1992 | 8 |
| 1993 | 19 |
| 1994 | 22 |
| 1995 | 25 |
| 1996 | 29 |
| 1997 | 18 |
| 1998 | 34 |
| 1999 | 42 |
| 2000 | 46 |

Sources: Compiled from data collected from the Ministry of Radio, Film, and Television of China, and China Radio & Television Yearbook, 1991–2001.[3]

**Table 2.** Increase of Public Forum Program Broadcast Hours

| Year | Hours of programs broadcast per week | Increase over the previous year (%) |
|---|---|---|
| 1990 | 725 | 13.8 |
| 1991 | 911 | 25.7 |
| 1992 | 1140 | 25.1 |
| 1993 | 1720 | 50.9 |
| 1994 | 2179 | 26.7 |
| 1995 | 3021 | 38.6 |
| 1996 | 3647 | 20.7 |
| 1997 | 4092 | 12.2 |
| 1998 | 4804 | 17.0 |
| 1999 | 5686 | 18.6 |
| 2000 | 6322 | 11.2 |

Sources: Compiled from data collected from the Ministry of Radio, Film, and Television of China, and China Radio & Television Yearbook, 1991–2001.[4]

[3]*China Radio & Television Yearbook* (Beijing, China: China Radio & Television Yearbook Publishing House, 1990–2001).
[4]*Ibid.*

In the meantime, broadcasting hours of public forum television programs also increased considerably year by year. Table 2 shows the increase in the 1990s.

Although public forum television programs are a new nonentertainment genre, they have become one of the most popular among the Chinese television audience. In about 10 years, broadcasting hours of pubic forum programs showed an 872% increase, which surpassed the increase rates of all other television programs.

## SIGNIFICANCE BEYOND NUMBERS

Although the above two tables reflect effectively the development of China's public forum television programs, some important background needs to be provided in order to gain an in-depth understanding of the origins and characteristics of this new genre.

When public forum television programs began to emerge in 1990 they were pioneers, even though there were only three such programs across the country. This new type of television program tended to be critical of some social issues, corrupt party and government officials, and party and government policies. However, all three programs were on provincial television stations, and none of them were on the national network or local stations. The reason was that all three provinces that broadcast such programs were the so-called special experimental zones, which were allowed to adopt more flexible policies.

In 1991, six new public forum television programs were launched. These new programs included not only in-depth investigative reporting but also live broadcasting of audience discussions in the studio. In the meantime, the topics of public forum programs were expanded, ranging from economic issues to societal problems and political concerns. Furthermore, this new kind of program spread to county-level television stations as well. In that year alone, four county-level television stations launched public forum programs, whose topics even better reflected the concerns and needs of grassroots people — peasants and workers in small towns. These people live at the bottom of Chinese society and are often economically the

poorest. They have the lowest social status and receive the least attention from the Party and government.

The year 1992 witnessed a steady development of public forum television programs. A total of eight new such programs were launched, four by provincial stations and another four by county level stations. However, there were still no public forum programs on the national network. Despite this, that year can still be viewed as a turning point because the Guangdong provincial television station opened China's first real public forum program that invited the audience to the studio to discuss sensitive issues on air. Many of those issues were still taboo in other provinces at that time.

The year 1993 witnessed not only a continuous expansion of public forum programs — nine on provincial television stations and ten on county level television stations — but also some important new traits.

First, in the wake of the action by Guangdon Province, China's politically "boldest" province, which often took the lead in economic and political openness, live broadcasting of audience studio discussion began to spread to other areas such as Shanghai and Heilongjiang. Although there were still very few real public forum programs, the genre began to become very popular. Second, public forum television programs on county-level television stations began to function as a societal monitor, a public's surveillance, and the people's watchdog on the authorities. That meant that television at the county level too started to evolve from being only a political and ideological vehicle of the Party and government to a somewhat democratic mechanism. Third, despite the fact that there were still no public forum programs on CCTV, under the control of Beijing municipal government, Beijing Television (BTV) inaugurated a public forum program in 1993. Although the public forum programs on BTV emerged much later than public forum programs on other provincial television stations, it was the first public forum program broadcast from Beijing, the headquarters of the Communist Party and the central government. The launch of BTV's public forum program was not only a big challenge to CCTV but also a

catalyst for the debut of CCTV's public forum programs a few months later.

In 1994, CCTV finally launched its first public forum program, *The Focal Point*. The significance of this move was that it symbolized a new function and a new direction of China's media. The silent permission from the topmost leadership of the Party to allow CCTV to broadcast a public forum program caused a series of strong reactions in both print and broadcast media institutions across the nation. With the political safeguard provided by the emergence of *The Focal Point*, now almost all television stations have launched such programs, be they provincial, regional, or county-level stations. It is true that some audiences may not regard *The Focal Point* as a real public forum program by Western standards and might see it as still too propagandistic since the program still follows the tones and needs of the Communist Party and government. Although many programs on *The Focal Point* were critical of societal problems, they were not critical of the political system and communist ideology; rather, they only exposed problems with an attempt to helping maintain and consolidate the current political system and ideology. In other words, the purpose of exposing and criticizing some societal problems is to improve the image of the government and party leadership but not to reveal the real causes of the problems or to challenge the political system and communist ideology. Nevertheless, the majority regarded the emergence of *The Focal Point* on CCTV as an important breakthrough in China's history even if just because of its bold exposure of societal problems and its limited but unprecedented criticism of corrupt party and government officials.

Due to the momentum brought about by *The Focal Point*, in 1995 public forum television programs were extended further and consolidated as an important television genre. They became more mature and influential. While public forum television programs continued to expand at county-level television stations, they became more sophisticated on provincial television stations. Although *The Focal Point* on CCTV was still the model for public forum programs, many television stations at the lower levels were much bolder and critical than *The Focal Point*.

The year 1996 witnessed another very important development — not only did more county level television stations launch public forum programs but CCTV also inaugurated two new public forum programs, *The Investigative Report* and *Speaking the Truth*. The former is a multifaceted and multiangled news magazine program that provides in-depth exposure of societal problems, and the latter is more like a real public forum program, in which the audience air their views and opinions on various concerns. These two new programs, along with *The Focal Point*, became the "golden triplet" with the highest ratings among all CCTV programs and were the most watched television programs in China. According to a CCTV survey report, every time these programs were on air, they drew 300 million viewers nationwide, being the most popular of the night. Most guests who appeared on *Speaking the Truth* especially were ordinary people, so that the public felt it was a rare forum for them to voice their opinions and views. These three programs not only form an indispensable part of CCTV's programming, more importantly they have become an unprecedented social dynamic in the country. This new genre of programs now functions and plays the role of a kind of democratic force, social surveillance, and a catalyst for political change. Public forum programs serve as a kind of agenda-setter of the society and have begun to have a noticeable impact not only on the public but also on the government and the Party.

CCTV's launch of two new public forum programs in 1996 was followed by a series of similar moves among other television stations in 1997. For instance, Shanghai Television (STV), China's second largest television station, whose programs are widely relayed by half the television stations across the country, followed CCTV's example and launched two new public forum programs in 1997: *News and Observation* and *From the Audiences*. These two programs echoed *The Investigative Report* and *Speaking the Truth* and received the highest rating among all STV programs. Hence, public forum television programs took one more substantial step and started to serve the needs, interests, and concerns of the public more than those of the authorities. Nevertheless, the quantitative development of public forum programs in 1997 was slower than in

previous years. The major reason for this was that in most areas such programs had already been launched. Most of the new public forum programs started in 1997 were in areas that were politically conservative, ethnically sensitive, culturally backward, economically underdeveloped, and often geographically remote.

The years from 1998 to 2000 experienced the most vigorous development of public forum television. In three years, a total of 122 new such programs were launched, about half of them by county-level cable stations. This was largely a result of the remarkable growth of cable television. The other half of these new programs were launched by television stations in remote or poverty-stricken regions, such as Qinghai and Xingjiang. The period from 1998 to 2000 was one of improvement for public forum television programs on national networks and provincial television stations. Quantitatively speaking, these television stations had enough such programs, but qualitatively speaking, many were still at a primitive level. While CCTV made efforts to improve its three public forum programs, other major television stations also tried to improve their public forum programs. Among national networks, only China Education Television (CETV), a specialized national network, launched a new public forum program during these years, focusing on education-related issues. In the late 1990s, specialization and fragmentation began to represent an important new trend in Chinese television.

With both vigorous growth in quantity and gradual improvement of quality, public forum television has become one of the most important, most influential, and most popular programs in China, though many of those programs still mainly consist of investigation and exposure of nonpolitical social issues and few really allow the public to voice their views and opinions.

## CHARACTERISTICS AND CONSTRAINTS

In many respects, China's public forum television programs still lag far behind the standards of public forum programs in democratic countries. Judged by that yardstock, Chinese-style public forum television programs may seem to contain only some basic elements

of democratic exercises. On the other hand, considering that China's media are still a political tool and an ideological state apparatus of the communist regime, public forum television programs reflect some important democratic components.

Three important characteristics of public forum television programs are worth noting. The first is public participation in programs. For decades, the media in China were a pure propaganda machine of the Party, and television programs mainly used a top-down, one-way communication paradigm. The media's most important or even sole function was to transmit the party and government policies, decisions, and intentions to the public, which was only a passive receiver of all those messages. Not only was their participation in policy discussion and decision-making process not needed but also the public's use of the media to voice its views of and reactions to party and government policies and decisions was prohibited. Therefore, the public's participation in those newly emerged programs was unprecedented and has profound significance.

There are four types of public participation that have been seen in public forum television programs. One is on-street interviews of ordinary people. This format of news coverage, though simple or even "primitive," was forbidden before the 1990s. Now, on-street interviews have become a basic format of public forum television programs. Another kind of participation is the audience's calling-in while programs are being aired. In the past, calling-in was mainly used in programs like game shows and was never allowed in news programs. The innovation symbolizes a significant step toward the loosening of the Party's control of the media because compared with on-street interviews the contents of incoming calls cannot be censored. Since the early 1990s, the phone-in format has been widely used by the audience to voice its concerns and viewpoints in the highly watched public forum programs. Still another change is media reporting of public polling results. Public polling is also a new development in the political life of the Chinese people and society. Although media reporting of public polling results is still somewhat rare due to the heavy restrictions of the Party, it does provide another way for the public to participate in political activities.

The fourth type of public participation is the audience's direct involvement in the various kinds of public forum television programs, such as discussion and dialogues between the audience and high-ranking party/government officials. Although this type of participation, which more closely resembles public forum television programs in democratic countries, was allowed in China's television much later than the other three kinds of public participation, once it emerged, it received a warm welcome from the audience and has been widely used ever since. The public's enthusiastic participation in public forum television programs has proven that the Chinese people want to be treated as the real masters of society and not just portrayed as such in party and government documents. They want to have a real role in the social change and policy-making process, not just to be told passively to do whatever the Party and government want them to do.

The second characteristic of the Chinese-style public forum programs is the ambiguous criticism of party/government officials and local-level party and government policies, even though this type of criticism is still very limited, controlled, and constrained. Public criticism of party/government officials was prohibited in communist China until recently. In the view of the Party, criticism of party/government officials — especially in the media — would eventually lead to criticism of the Party, the communist political system, and the leaders of the Party and government. Therefore, such criticism was considered "subversive" and often resulted in serious consequences, such as "legal" punishment, professional discipline, and dismissal from media positions. According to the communist doctrine, the media are supposed to only sing the praises of the Party, the communist political system, the "great achievements" of the party and government leaders, and party and government policies. Naturally, for a long time public criticism of the party and government officials in the media was taboo. Accordingly, criticism of party and government officials in pubic forum programs is indeed a breakthrough, though the criticism is still ambiguousis, is indirect, and has a lot of restrictions. It is true that most party and government officials to be publicly criticized in the

media were low-ranking cadres, and almost all the party and government policies that were questioned, or challenged, were local ones, not those issued by the central party committee and central government. Although public forum television programs are by no means the public's watchdog of the party and government leaders, they have nevertheless provided the public with a venue for criticizing some party and government agencies, officials, and policies.

The third characteristic of public forum television programs is the limited exposure of societal problems. For many years the term "societal problems" in China was only used to describe Western countries. By the communist logic, a socialist country should not have "societal problems." Talking about societal problems in the media was taboo. Consequently, no exposures of societal problems could be found in the media, despite the fact that the "socialist country" has actually encountered numerous societal problems. With the advent of public forum television programs, various kinds of societal problems have been exposed. Now, society is no longer a "secret iron box," and "societal problems" no longer belong to Western societies only. In fact, exposures of various societal problems constitute the main content of most public forum programs, though the media still insist that the "ugly societal phenomena" in China are the "results of the influences of the bourgeois world view and Western value system." The "societal problems" that were exposed in public forum television programs included massive corruption among party and government officials, the bureaucracy of party and government agencies, drug traffic and use, and the rapid spread of prostitution and violent crimes. Actually, the societal problems that were exposed in the media were strictly filtered by the authorities. They were selected for exposure not because of the needs of the society and public but because of the needs of the Party and government. Nevertheless, the exposures of those problems have made the society more transparent and the public better informed.

In spite of undoubted progress and achievements, many weaknesses and limitations are clearly visible, especially when China's public forum television is compared with the same type of programs in democratic nations. As Gurevitch and Blumler point out, in

democratic nations the press is required to perform and provide a number of "democracy-promoting" functions and services, such as:

(1) Surveillance of the sociopolitical environment, reporting developments likely to impinge, positively or negatively, on the welfare of citizens;
(2) Meaningful agenda-setting, identifying the key issues of the day, including the forces that have formed and may resolve them;
(3) Dialogue across a diverse range of views, as well as between power holders and mass publics; and
(4) A principled resistance to the efforts of forces outside the media to subvert their independence, integrity, and ability to serve the audience.[5]

In other words, the proposition of a press that is based on democratic principles in multifold: it should act on behalf of the citizenry; it should guard against abuse of power by office holders; it should have diverse opinion sources; it should provide a robust, uninhibited, and wide-open marketplace of ideas; and it should serve the public's "right to know" and offer opinions for meaningful choices and nourishment for effective participation in civic affairs.[6] By those principles, the media in China still have much room for improvement. The most important element that needs to be greatly expanded in China's public forum television programs is still the democratic function. Generally speaking, the current public forum television programs demonstrate only a limited public participation that is permitted by the authorities. The authorities' ultimate purpose in allowing the public to enjoy limited political participation is the result of two considerations. On the one hand, it is to ease the public's anger at the Party, the government, and the communist political system. On the other-hand, it is to use the public's force to help solve some societal problems and to discipline low-ranking corrupt party and government officials. Therefore, this new type of television program is mainly intended to serve the needs of the Party, the government, and the communist political system, rather than to

[5]M. Gurevitch and J. Blumler, "Political Communication Systems and Democratic Values," in J. Lichtenberg, ed., *Democracy and the Mass Media* (New York: Cambridge University Press, 1990), pp. 269–289.
[6]*Ibid.*, p. 269.

serve the needs of the public. According to Ungar, a truly democratic press system must often act as the conscience of the nation, and that role may require the press to function as a lonely adversary of the government in power.[7] Not surprisingly, this is not the present situation of China's media. The prospect of this happening in the near future is still dismal.

## FACTORS CONTRIBUTING TO BOOM OF PUBLIC FORUM PROGRAMS

The boom of public forum television programs in China in the 1990s was not merely an action of the media but more a result of various social factors that emerged when the country started a historical transition. The major factors that contributed to the emergence and development of public forum television programs included the public's awakening democratic consciousness and demand for political participation, the Party's relaxation on ideological control, and the impact of the change from a state economy to a market economy.

### The Public's Awakening of Democratic Consciousness and Demand for Political Participation

Although the crackdown on the student pro-democracy movement in 1989 meant a serious setback for the democratization process, by no means could it suppress the public's consciousness of and demand for democracy. Instead, democratic consciousness has taken root in more people's mind and become a more urgent concern of the public. Moreover, after the 1989 incident, the party's half-willing and half-unwilling attitude toward the open-door policy, the increasing economic, technological, and cultural exchanges between China and the outside world, and the availability of democratic television programs, movies, tourisim, education, and religious activities have all greatly promoted the public's democratic consciousness. Furthermore, this democratic consciousness has

[7]Ungar, "The Role of a Free Press."

transformed into a strong demand for public participation. However, in the Chinese context the very limitedly permitted political participation of the public does not include the formation of political parties and free elections; what the public can do realistically is to find a "permitted place" for voicing their concerns. As a result, many public forum television programs were established because of the public's need and demand.

## The Party's Relaxation on Ideological Control

For both domestic and international reasons, throughout the 1990s the Chinese Communist Party gradually relaxed its control on ideology and people's political life, though the relaxation was limited and fluctuated. In terms of the domestic reasons, this relaxation was mainly attributed to three factors. First, the revolutionary advancement of new communication and information technology has made the Party's control on ideology and censorship of foreign cultures much more difficult. Consequently, the once monopolistic position of communist ideology was eroding. Second, some reformists within the Party also wanted to adopt a relatively relaxed approach for economic and political reforms. Third, absorbing the lessons from the 1989 Tiananmen movement, the Party realized that allowing the public some means of criticizing the Party and government on some issues and up to a certain degree would help avoid potential social turmoil.

The 1989 protests were caused largely by widespread frustrations among the public due to their anger at the serious corruption among party and government officials, disappointment with the economic reforms, and the lack of loosening political restrictions. As Ungar states, a press system empowered to expose the financial abuses that accompanied economic expansion and to discuss the political ferment that was spreading across China might well have helped the country avoid the cataclysm of the 1989 protests.[8] It is meaningful to note that one of the strongest demands of the protesters was for an open and "honest press system" — meaning

[8] *Ibid.*

the press should tell the public the truth, not lies. Based on the lessons drawn from 1989, it became clear to the Party that permitting limited criticism on public forum television programs of corrupt party and government officials, local party and government policies, and some "everybody-knows" societal problems can help release part of the public's dissatisfaction or anger at the Party and government. In the process, public forum television programs may help maintain and consolidate the ruling position of the communist leaders.

## The Impact of the Transition from a State Economy to a Market Economy

The transition from a state economy to a market economy has forced most industries to adjust their structures, operations, and goals. The media as an industry have also been affected by this change. In theory, during the economic reform the media should remain as an ideological state apparatus and a political tool of the communist regime; but in reality, during the economic reform most media institutions' financial structures, programming and content, performances and approaches, and orientations and targets have all drastically altered. Corresponding to the transition from a state economy to a market economy, the government has substantially reduced or completely terminated the subsidies to media institutions since the early 1990s, forcing most media institutions to depend on their own revenues for survival. Accordingly, television has been given more flexibility in designing market competition strategies and more autonomy in programming. As a matter of fact, the flexibility exercised by television stations in programming and market competition strategy designing has often exceeded what they were supposed to have. Since many public forum television programs enjoyed high ratings and drew a large number of viewers, they were also the big revenue earners. This has become a strong push-and-pull reason for television stations to launch more public forum programs. On the other hand, the fierce competition for audiences has also made television stations mimic the successful program formats of others in an attempt to increase their marketing share. It

is not surprising that once a new public forum program became popular, the specific format of that program was quickly copied by other television stations. According to the Ministry of Radio, Film, and Television, compared with, all other kinds of television program, public forum programs were the fastest growing genre in the 1990s.[9]

## CONCLUSION

To some degree, it may be said that one of the unprecedented changes in China's media in the 1990s was the emergence and fast development of public forum television programs. This change reflects two important trends. One is that the emergence and development of public forum television programs have symbolized a meaningful evolution of China's media from a tightly controlled party propaganda machine to a multifaceted social institution. The other trend is that the emergence and development of public forum programs have also symbolized a gradual, subtle, and silent transition of China from a closed, heavily controlled totalitarian state to a less controlled, more open, and more democratic country.

At the practical level, the greatest significance of the availability of public forum television programs is that the media now also have a function of providing space to the public for voicing their concerns. At the theoretical level, the greatest significance of the emergence of public forum television programs is that the media have begun to function as a driving force for democracy. The media have somewhat started to serve as agents in the political process and social transition. As Lichtenberg observes, across the whole world never before has the press been as critical to the political process and social transition as it is today, and never before has the importance of the press and its democratic role and functions been so widely and publicly recognized.[10] Freedom of speech and

[9]J. Luo, Deputy Director of Information Office, Ministry of Radio, Film and Television, Beijing, China, interviewed in 2003.

[10]J. Lichtenberg, "Introduction."

freedom of press have been recognized as a must in any country's transition to an open and democratic society. In an optimistic perspective, the changes seen in China's media, the society, the public's political participation, and even the Party's tolerance of those changes may reflect a global trend.

Nevertheless, in spite of the fast development of public forum television programs in the last decade, China's public forum television programs have not yet matured. Technically speaking, the programs need considerable improvement in terms of presentation style, content arrangement, and production quality. But more importantly, there are still considerable "forbidden areas" or dangerous, unmarked "minefields" public forum programs either cannot touch or do not know whether or not they can, which seriously limits television's function as an independent social institution, a driving force for social transition, and a catalyst for democratization. Among all the limitations of public forum television programs the most serious is that all public forum programs are ultimately controlled by the Party and government and the fundamental purpose of launching those programs is to serve the needs of the Party and government, not of society and the people. Essentially, the operation of those programs is based on the will and intention of the Party, not the desire of the media or the public. Freedom of speech, the right to know, and the transparency of party/government work and of political affairs and the decision-making process are subject to the needs, willingness, or mercy of the Party. Unfortunately, for China there is still a long march ahead before a truly free press system can be established.

Whether one takes an optimistic or pessimistic viewpoint, China's public forum television programs displays distinctive "Chinese characteristics." From a pessimistic view, the various limitations represent tough obstacles to democratization, freedom of speech, and the public's social surveillance of the ruling political party and government. It will not be easy to establish a democratic press system in countries that have a long history of nondemocratic values and institutions. As Ungar puts it, a free and democratic press system can be easily undermined in countries that are newly opened politically if a government is more concerned with staying in power than with

addressing the needs and criticism of its people.[11] Moreover, if a government or political system is brutally repressive, then a free and democratic press system certainly stands little chance of survival. On the other hand, although a free and democratic press system can be an extraordinarily powerful catalyst for the other democratic reforms, the press system can pursue democratic values only in ways that are compatible with the sociopolitical and economic environment in which they operate. Given the situation that most of China's sociopolitical environment is not yet democratic and that the media system has only some basic democratic elements and is far from being entitled to be called democratic, the task of establishing a really free and democratic media system in China would be much more difficult than in many other nondemocratic countries.

From an optimistic viewpoint, however, the newly surged public forum television programs also represent hope for and progress toward democracy, freedom of speech, and the public's social surveillance of the ruling political party and government. In spite of many limitations and constraints, these programs have been promoting the democratic process in the communist society. As seen in a number of countries, during social transitions a free and democratic press system may be more effective than an opposition party in promoting changes in an oppressive system. As Berger indicates, in any country where political institutions and opposition groups are not yet — or are no longer — operating freely, a press system that is able to report and reflect the public's discontent with national policies or with the ruling political party or the government of the moment can serve as an important warning by identifying problems that demand solution.[12] Such functions of the media have already proven effective or even powerful in many countries. Hopefully, it will also be the situation for China.

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[11]Ungar, "The Role of a Free Press."

[12]G. Berger, "Grave new world? Democratic journalism enters the global twenty-first century," *Journalism Studies,* vol. 1, no. 1 (2000), pp. 81–99.

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