

## Socialist Rule of Law with Chinese Characteristics

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*This article argues that China's legal reform and its later endorsement of a socialist version of the rule of law is a rational response to the crisis of political legitimacy, with the aim of facilitating the economic reforms, enhancing government efficiency, curbing corruption, and maintaining social stability and one-party rule. However, since socialist China has built its legitimacy upon economic growth, the law remains one of an array of instruments in the hands of the regime. Thus, the officially endorsed rule of law with Chinese characteristics, from both a theoretical and a practical point of view, is actually a socialist rule by law, for the simple reason that the ruling party has never wanted or advocated, throughout its reforms, a rule of law. What it wants is an effective and authoritarian legal system that will meet its goals while at the same time not undermining its control of the state and society.*

**KEYWORDS:** political legitimacy; eudemonic legitimacy; rule of law; socialist rule of law with Chinese characteristics; rule by law.

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### The Problem of Legitimacy and China's Response



Whenever there is radical social change, the model of authority usually has to transform itself in order to regain legitimacy. According to Max Weber, there have been three ideal types (or pure types) of leadership during the transformation from traditional society to modern society—the patrimonial, charismatic, and legal-rational models.<sup>1</sup> This analysis has had a long-term impact on the study of social modernization and political legitimacy. The legal-rational model, based on Western democratic societies, has long been regarded as the model of political legitimacy in modern society.

However, scholars of comparative communism argue that legitimacy in the communist world is based on goal-rationality, which emphasizes the fulfillment of ends or goals through any effective means, rational or irrational.<sup>2</sup> This type of legitimacy mainly relies on officials rather than the people to administer the state and society. This goal-rational legitimacy, as Holmes notes, has encountered serious crises and has begun to change since the 1980s in many communist states.<sup>3</sup> These countries have begun to seek legitimacy both from the people and officials primarily in terms of economic performance and social welfare. According to Holmes, this model is often referred to as "social eudemonic legitimacy," which is usually used by communist countries to improve their legitimacy by satisfying the growing material aspirations of their people.<sup>4</sup>

However, Holmes claims that the eudemonic model could also become problematic to the leadership and the legitimization process.<sup>5</sup> This

<sup>1</sup>For his account of the three ideal types of leadership, see Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (New York: Bedminster, 1968).

<sup>2</sup>T. H. Rigby, "Introduction: Political Legitimacy, Weber and Communist Mono-organizational Systems," in *Political Legitimation in Communist States*, ed. T. H. Rigby and Ferenc Feher (London: Macmillan, 1982), 1-26.

<sup>3</sup>Leslie Holmes, *The End of Communist Power: Anti-Corruption Campaign and Legitimation Crisis* (Cambridge: Polity, 1993), 10.

<sup>4</sup>*Ibid.*, 15.

<sup>5</sup>*Ibid.*, 16.

is because good economic performance requires reforming both the economic and political systems, leading inevitably to a diminution of officials' power and interests. During times of reform, in order to maintain its legitimacy the state has to appeal more to the masses than to its officials by emphasizing the curbing of official power and the protection of people's rights. As economic reform intensifies, officials will increasingly become obstructive since their decision-making power will be further limited. China's widespread corruption, and the anti-corruption campaigns that have been launched to combat it, as Holmes observes, are symbols of a crisis of legitimacy.<sup>6</sup> If economic reforms fail to achieve their goals, the process could engender growing hostility among cadres toward the leadership, "leaving both an alienated staff [bureaucrats] and a frustrated citizenry."<sup>7</sup>

It follows from this that eudemonism will sooner or later prove inadequate because demands in society for a move toward deeper legality will increase as the reform continues. In the end, the rule of law is ultimately incompatible with communist power. The ideology will become blurred in the course of being adapted to changing circumstances, thus giving rise to an identity crisis with the leadership still in power. Holmes believes that such a conflict will eventually result in the collapse of a communist system, as occurred in the East European communist bloc. This crisis will finally lead to the collapse of the existing form of legitimization whenever the leadership advocates reform through its goals and ideology.<sup>8</sup>

In China, the communist regime is attempting to reestablish its political legitimacy. When Deng Xiaoping (鄧小平) came to power in the late 1970s, he faced a profound crisis of legitimacy for the leadership and its ideology. In order to rebuild the legitimacy of the party-state, Deng launched a policy of economic reform and an opening-up project with

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<sup>6</sup>Ibid., xiv.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid., 40.

the goal of improving people's living standards and realizing the "four modernizations" (of agriculture, industry, science and technology, and national defense). At the same time, Deng called for the strengthening of socialist democracy and the legal system in order to regularize the government and prevent the recurrence of upheavals like the Cultural Revolution, during which Deng and many other senior politicians suffered persecution or torture.

The process of legitimization in China is primarily an ideological adjustment, since ideas and ideology have played an important role in sustaining the Party's legitimacy throughout China's economic reform.<sup>9</sup> In order to justify all-round reforms, Deng Xiaoping came up with the theory of a socialist country with Chinese characteristics. Over the last twenty-five-plus years the Chinese Communist Party (CCP) has gone through several stages in its experiment of combining a market economy and socialism. In order to seek ideological justification for a socialist market economy, the Party devised the theory of a socialist preliminary stage in which the primary task is to develop a commodity economy; during this stage a market economy and legal rules are necessary. In 1992, the CCP achieved an ideological breakthrough by introducing the goal of building up a market economy. In order to construct the legal framework for a socialist market, in 1997 the CCP further endorsed the goal of building a socialist country based on the rule of law, and in 1999 it revised the constitution accordingly. Landmark constitutional amendments introduced in 2004 included, for the first time, provisions protecting human rights and private property rights. This adjustment has been followed by the idea of developing China into a "harmonious society" (和諧社會) with both efficiency and justice based on the rule of law, a concept sponsored by the current leader, Hu Jintao (胡錦濤).<sup>10</sup>

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<sup>9</sup>Chen Feng, *Economic Transition and Political Legitimacy in Post-Mao China: Ideology and Reform* (Albany: State University of New York Press, 1995), 2.

<sup>10</sup>Hu first mentioned this idea on February 19, 2006, at a training session for CCP members. It was then released by the Xinhua News Agency on June 26. The Sixth Session of the CCP's Sixteenth Central Committee formally adopted this doctrine on October 11, 2006.

Since 1978, China's official discourse on legal development has also evolved in several stages—from a requirement "to strengthen socialist democracy and the legal system" (加強社會主義民主和法制, *jiaqiang shehuizhuyi minzhu he fazhi*) to the need to "administer the state according to law to build a socialist country based on the rule of law" (依法治國，建立社會主義法治國, *yifa zhiguo, jianli shehuizhuyi fazhi guo*). Later, Jiang Zemin's (江澤民) call for "combining the rule of law with rule of virtue" (依法治國與依德治國相結合, *yifa zhiguo yu yide zhiguo xiang-jiehe*)<sup>11</sup> was complemented by Hu Jintao's idea of "building a harmonious society" (建立和諧社會, *jianli hexie shehui*), emphasizing fairness and justice through enforcing the rule of law. Thus, from goal-rationality to economic performance, and from the rule of law to the combination of the rule of law with rule of virtue and social harmony, the CCP leadership has at last realized that economic performance alone is not sufficient to maintain its legitimacy, and that it is important to consciously re-engage with the country's history through a legal-rational type associated with other means, such as Confucian virtues, which are pragmatic goal-rational options.

The communist leadership faces a major challenge in trying to elevate the rule of law to a superior position among its many other goals while not threatening the Party's paramount position in state affairs. Will establishing the rule of law eventually fortify the CCP's legitimacy? How will China resolve the conflict between the rule of law and the Party's supremacy over the state and society? What model will China's rule of law adopt? How will the model of economic reform, by stressing both development and stability, affect legal reform, and will the current legal practice, which combines both Party intentions and basic functions of law, eventually lead China to the rule of law? Is there a way to strike a balance between the

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<sup>11</sup>Jiang Zemin initiated this discourse during his tour of Guangdong (廣東) in early 2000. The following year, he delivered a speech in which he said that building up the Party and the state required the implementation of the rule of virtue and the rule of law. See "Ba yifa zhiguo he yide zhiguo jiehe qilai" (To combine administering the state according to law with administering the state according to virtue), *Renmin ribao* (People's Daily), February 1, 2001, 1.

current political system and the rule of law so that the development of a legal system will not undermine Party power, thus resolving the conflict between rule of law and communism? In other words, does the rule of law suit the Party's needs better than any other version of state governance by fulfilling its comprehensive goals, and will it strengthen the Party's position rather than undermining it? In order to answer these questions, it is necessary to examine the concept of the rule of law, especially its official definition, and find out what a socialist rule of law with Chinese characteristics really means. In doing this, we will identify the focus of the rule of law project proposed by mainstream state-sponsored scholars in China, and seek to understand how the law in China serves both its normal functions and the needs of the party-state.

### Rule of Law and Literature Review

#### *Two Versions of the Rule of Law in the West*

Being parallel to the German idea of *Rechtsstaat*, the rule of law

most simply expresses the idea that everyone is subject to the law, and should therefore obey it. Governments in particular are to obey the law—to govern under, or in accordance with the law. The rule of law thus requires constitutional government, and constitutes a shield against tyranny or arbitrary rule: political rulers and their agents (police and so on) must exercise power under legal constraints, respecting accepted constitutional limits.<sup>12</sup>

In the modern liberal view, the rule of law serves two important principles of political morality: fair notice of state intervention in private life, assuring a well-defined zone of freedom and legal accountability, and the requirement that any deployment of power in state agencies should be authorized by a preexisting system of authoritative legal norms.<sup>13</sup>

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<sup>12</sup>Edward Craig, ed., *Routledge Encyclopedia of Philosophy*, vol. 8: *Rule of Law* (New York: Routledge, 1998), 388.

<sup>13</sup>Andrew Altman, *Critical Legal Studies: A Liberal Critique* (Princeton, N.J.: Princeton University Press, 1990), 22-23.

Despite these definitions, the meaning and features of the rule of law are contested and controversial. The primary purposes of law are variously defined thus: to constrain the arbitrary acts of the government; to facilitate and ensure economic development; to protect the individual against the state; and to provide a fair mechanism for resolving disputes. As observed by Peerenboom, there are two theories of the rule of law: a "thin" theory and a "thick" theory, depending on whether one emphasizes its formal or substantial aspects.<sup>14</sup> The thin theory refers to formal or procedural justice free from the influence of ideology and philosophy, focusing on the features that any legal system must possess in order to function effectively. These are a complete set of legal rules and institutions with certain restraints on official arbitrariness. Thin rule of law may be utilized by an authoritarian regime as an effective instrument to fulfill its own ends and suppress its people. As Raz notes, a non-democratic legal system (such as that of Nazi Germany), based on the denial of fundamental human rights, extensive poverty, racial segregation, sexual inequalities, and religious persecution, may contain better formal features required by the rule of law than the legal systems of more enlightened Western democracies.<sup>15</sup>

In contrast, the thick theory of rule of law refers to the substantive justice underlying a formal rule of law, incorporating a wide range of elements such as political democracy, a free capitalist economy, and the protection of human rights. It is part of a larger social and political philosophy, with a broader scope than even a fully developed thin rule of law.<sup>16</sup> The International Congress of Jurists held in New Delhi in 1959 gave a thick meaning to the rule of law thus:

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<sup>14</sup>For a succinct yet inspiring discussion by Randall Peerenboom about the two versions of the rule of law, see Randall Peerenboom, "Ruling the Country in Accordance with Law: Reflections on the Rule of Law in Contemporary China," *Cultural Dynamics* 11, no. 3 (November 1999): 315-51. For more accounts of this issue, see Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002), particularly the introductory part of the book.

<sup>15</sup>Joseph Raz, "The Rule of Law and Its Virtues," in his book *The Authority of Law* (Oxford: Clarendon, 1979), 211.

<sup>16</sup>Peerenboom, *China's Long March toward Rule of Law*, 5-6.

The function of the legislature in a free society under the rule of law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational, and cultural conditions which are essential to the full development of his personality.<sup>17</sup>

This typifies a universal trend toward a definition of the rule of law that combines both procedural and substantial justice, in order to better safeguard individual rights and curb state power.

As discussed above, there are two versions of the rule of law in the West, employed by democratic and authoritarian regimes, respectively—one reflects a type of political philosophy and a model of state governance which is based on liberal and democratic ideas; the other regards the law mainly as an instrument. The instrumental use of law or *rule by law* obviously shares a few common features with the liberal rule of law, but it turns out to be a powerful tool that an authoritarian state can adapt to suit its ends and goals. Although the two versions appear to have many similar features, the biggest difference between them, or between *rule by law* and *rule of law*, is that the rule of law can hold even the most senior state officials to account, and that both the ruled and the ruler are subject to the law.

#### *Current Understandings of Chinese Law in the West—Literature Review*

Since China began its reforms in the late 1970s, there have been great achievements in legal development. The regime has made great efforts in lawmaking and institution-building as well as in popularizing legal consciousness. The framework of a legal system that serves the market economy has emerged.<sup>18</sup> The regime has set itself a target of building a legal system with Chinese characteristics by the year 2010.<sup>19</sup> Although contem-

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<sup>17</sup>The International Commission of Jurists (ICJ), "The Rule of Law in a Free Society," *Declaration of New Delhi* (Passed on January 10, 1959, by International Congress of Jurists in New Delhi, India). See [http://www.icj.org/article.php3?id\\_article=3088&id\\_rubrique=11](http://www.icj.org/article.php3?id_article=3088&id_rubrique=11).

<sup>18</sup>A working report delivered by Tian Jiyun (田紀雲), vice chairman of the National People's Congress (NPC) Standing Committee, at the Fourth Session of the Eighth NPC. See *Renmin ribao*, March 11, 1997, 2.

<sup>19</sup>On March 17, 1998, the Fourth Session of the Eighth NPC passed "Guomin jingji he shehui fazhan 'jiu wu' jihua he erlingyiling nian yuanjing mubiao gangyao" (The "ninth five-year"



porary China is no longer a lawless country in terms of the codification of laws and regulations, and its people enjoy a better life and more freedom than they have in any period in China's history, China is still far from being a rule-of-law society, as both overseas Chinese and Western scholars have observed.<sup>20</sup>

These scholars differ in their opinions as to whether China can become a country based on the rule of law. Some take the optimistic view that despite formidable cultural, organizational, and structural obstacles and state constraints, China will eventually, albeit after a long process, become a rule-of-law state.<sup>21</sup> As Ronald Brown puts it, "Perhaps just as a rose by any other name is still a rose, the question can be asked whether 'rule by law' is just another name for 'rule of law' or is it 'rule of man'?"<sup>22</sup> He concludes that law with Chinese characteristics is diversity between different systems rather than an adversity, and that there is no reason to deny that law and the courts will stop developing toward perfection.<sup>23</sup> Peerenboom suggests that it would be better to assess China's legal development based on a thin theory of the rule of law, which focuses on formal and procedural

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plan for national economic and social development, and the outline for future goals to the year 2010), *Renmin ribao*, February 9, 1996, 1.

<sup>20</sup>See, for example: Wang Yan, *Chinese Legal Reform: The Case of Foreign Investment Law* (London: Routledge, 2002), 14-24; William P. Alford, "The More Law, the More...? Measuring Legal Reform in the People's Republic of China," in *How Far Across the River? Chinese Policy Reform at the Millennium*, ed. Nicholas C. Hope, Dennis Tao Yang, and Mu Yang Li (Stanford, Calif.: Stanford University Press, 2003), 122-49; Stanley B. Lubman, "Prospects for the Rule of Law in China after Accession to the WTO" (2003), at <http://www.law.berkeley.edu/institutes/cslls/lubmanpaper.doc>; Pitman Potter, "Legal Reform in China: Institutions, Culture, and Selective Adaptation," *Law & Social Inquiry* 29, no. 2 (April 2004): 465-95; Pei Minxin, "The Dark Side of China's Rise," *Foreign Policy*, April 2006; Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien, eds., *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford, Calif.: Stanford University Press, 2005), 3-27; and Jamie Horsley, "The Rule of Law in China: Incremental Progress," in *China: The Balance Sheet* (New York: Public Affairs Press, 2006), [http://www.chinabalancesheet.org/Documents/Paper\\_Rule\\_of\\_Law.PDF](http://www.chinabalancesheet.org/Documents/Paper_Rule_of_Law.PDF).

<sup>21</sup>Zheng Yongnian, "The Rule by Law versus the Rule of Law," in *Reform, Legitimacy, and Dilemmas: China's Politics and Society*, ed. Wang Gungwu and Zheng Yongnian (Singapore: Singapore University Press, 2000), 135-36.

<sup>22</sup>Ronald C. Brown, *Understanding Chinese Courts and Legal Process: Law with Chinese Characteristics* (The Hague: Kluwer Law International, 1997), 133.

<sup>23</sup>*Ibid.*, 147.

progress based on China's conditions, rather than targeting human rights and political democracy based on a Western liberal democratic version of the rule of law.<sup>24</sup> In this sense, China's legal system leans toward a thin theory of the rule of law, because the Party seems able to accept certain constraints in order to enforce its policy and state unity more effectively as long as the law does not become a threat to Party interests.<sup>25</sup>

It is true that the law has become more and more important for socioeconomic development and that one needs to look at Chinese law in a Chinese context. However, when scholars express the belief that China will achieve the rule of law, they are either ignoring or underestimating the difficulties, obstacles, and constraints involved. They have also failed to take note of the role played by the law in facilitating Party political and ideological goals by suppressing expressions of dissent. Even if Peerenboom is reasonable in suggesting that China's legal reform should be assessed according to the thin rule-of-law theory, his idea of the function of law remains based on Western legal philosophy rather than on China's own legal traditions in both the imperial and socialist periods. In addition, when he recommends a thin rule of law for China, he underestimates the importance of values and ideologies in that country—both its leadership and its intellectual elite have in fact always advocated a thick rule of law.

Most Western scholars are generally cautious and even suspicious about the rule of law in China, regarding it as fundamentally incompatible with socialism there, as communist ideology and Leninist state rule preclude any genuine development toward the rule of law.<sup>26</sup> They even wrongly disclaim any connection between the rule of law and economic achievements in China.<sup>27</sup> As Tony Saich notes, when the CCP uses the

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<sup>24</sup>Peerenboom, *China's Long March toward Rule of Law*, 5.

<sup>25</sup>Peerenboom, "Ruling the Country in Accordance with Law," 324.

<sup>26</sup>William P. Alford, "A Second Great Wall? China's Post-Cultural Revolution Project of Legal Construction," *Cultural Dynamics* 11, no. 2 (July 1999): 198-99; and Michael W. Dowdle, "Heretical Laments: China and the Fallacies of 'Rule of Law,'" *ibid.*, no. 3 (November 1999): 287-314.

<sup>27</sup>For more details, see note 20 above; William P. Alford, "Law, Law, What Law? Why Western Scholars of China Have Not Had More to Say about Its Law," in *The Limits of the Rule*

phrase "rule of law," it does not mean a system that gives primacy to law above political considerations and Party policy. Instead, it is a way of managing power, regulating the economy, and disciplining society in the light of rapidly changing circumstances. In this sense, while it might provide greater predictability, rule of law is just "another weapon in the arsenal of Party control."<sup>28</sup>

Stanley Lubman prefers the term "legal institutions" to "legal system," and "legal construction" to "legal reform" in the Chinese context, because he does not think that there is a legal system in place in China.<sup>29</sup> He claims that China's political system will become a major obstacle to the realization of the rule of law, and thus the rule of law is beyond imagination.<sup>30</sup> As the Party does not allow any challenges to its vanguard role or to the "four cardinal principles," although these are incompatible with the rule of law, he concludes that the law will be trapped in a cage until the current political system is completely abandoned.<sup>31</sup>

In particular, both Western and overseas Chinese scholars criticize the instrumental use of the law by the CCP to promote its own policies and to maintain stability and unity.<sup>32</sup> Shen Yuanyuan argues that in the current political structure, the popularity of substantial justice over formal justice will last for a long time, which may strengthen the practice of using the

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*of Law in China*, ed. Karen G. Turner, James V. Feinerman, and R. Kent Guy (Seattle: University of Washington Press, 2000), 45-64; and Kenneth Dam, "China as a Test Case: Is the Rule of Law Essential for Economic Growth?" *Chicago Working Papers in Law and Economics* (Second Series, January 2006), <http://www.law.uchicago.edu/Lawecon/index.html>.

<sup>28</sup>Tony Saich, *Governance and Politics of China* (Hampshire, N.Y.: Palgrave, 2001), 125-26.

<sup>29</sup>Stanley B. Lubman, *Bird in a Cage: Legal Reform in China After Mao* (Stanford, Calif.: Stanford University Press, 1999), introduction.

<sup>30</sup>Stanley B. Lubman, ed., *China's Legal Reforms* (New York: Oxford University Press, 1996), introduction.

<sup>31</sup>Lubman, *Bird in a Cage*, introduction.

<sup>32</sup>Yu Xingzhong, "Legal Pragmatism in the PRC," *Journal of Chinese Law*, no. 3 (1989): 29-51; Pitman B. Potter, *The Chinese Legal System: Globalisation and Local Legal Culture* (London: Routledge, 2001), introduction; and Jianfu Chen, "Market Economy and the Internationalisation of Civil and Commercial Law in the PRC," in *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions*, ed. Kanishka Jayasuriya (London: Routledge, 1999), 69-86.

law as an instrument for Party control.<sup>33</sup> Neither China's history nor recent practice has provided strong evidence that a system following principles of the rule of law will emerge in China in the near future.<sup>34</sup> Chen Jianfu states that clearly it is socialist characteristics not Chineseness that China needs to abandon.<sup>35</sup> He points out that law in China is fundamentally used as a tool for social engineering as desired and perceived by the Party.<sup>36</sup> Ronald Keith proposes a deep depoliticization of society.<sup>37</sup> He and Lin examine China's struggle to strike a balance between efficiency and justice in a new marketplace, while developing a new legal theory. He finds that the emphasis on efficiency in a market economy has led to the sacrifice of individual rights and interests, and has also caused an imbalance between efficiency and justice.<sup>38</sup>

It is true that the CCP still uses the law as an instrument for achieving its own ends; at the same time, however, this instrument is becoming stronger and increasingly broad in scope. Certainly it is wrong to deny that there is a connection between the law and economic growth, and those that do are ignorant of the way in which newly-enacted laws and regulations have essentially guided China's socioeconomic development and administrative restructuring. Although still an instrument of the party-state, the law in China today has played an important role in social engineering and even in legalizing the actions of the state and government. One also needs to take into account the whole array of factors that impact on legal development, such as the Legalist tradition of rule by law and the Confucian values handed down from imperial times, the current process of

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<sup>33</sup>Shen Yuanyuan, "Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform," in Turner, Feinerman, and Guy, *The Limits of the Rule of Law in China*, 35-36.

<sup>34</sup>Karen G. Turner, "Introduction: The Problem of Paradigms," in Turner, Feinerman, and Guy, *The Limits of the Rule of Law in China*, 17.

<sup>35</sup>Chen Jianfu, *Chinese Law: Towards an Understanding of Chinese Law, Its Nature and Development* (The Hague: Kluwer Law International, 1999), 361.

<sup>36</sup>*Ibid.*, 361-63.

<sup>37</sup>Ronald Keith, *China's Struggle for the Rule of Law* (New York: St. Martin's, 1994), 36-38.

<sup>38</sup>Ronald Keith and Zhiqin Lin, *Law and Justice in China's New Marketplace* (Hampshire, N.Y.: Palgrave, 2001), 1.

seeking legitimacy, the model of China's economic reform, and other complicated problems arising from rapid development and modernization in China.

It is the traditional legal culture and the current political structure that require a balance between development and stability, or harmony among the market economy, legal tradition, and socialist values on which the legal reform is based. It is always problematic for the ruling party to strike a balance between the rule of law and rule of party in order both to meet the practical needs of the market and to maintain political stability. In other words, the Party must find a way, arguably one that is acceptable to the public, to strengthen its legitimacy rather than jeopardize it.

#### *Academic Debate within China*

How do legal scholars inside China view the rule of law, or more specifically, the socialist rule of law with Chinese characteristics? Unlike their overseas colleagues, mainstream or institute scholars are subject to political and ideological constraints in their debates, although they sometimes go beyond the official line. By the late 1980s, some scholars had already proposed "rule of law" as the goal of the legal reform<sup>39</sup> and also stressed the difference between rule by law, rule of law, and rule of man.<sup>40</sup> Although some scholars adopted a definition of rule of law that was largely based on the Western concept of that term, the debate favored a combination of rule of law and rule of man, in that it emphasized good leadership, the "four cardinal principles," and the instrumental function of law.<sup>41</sup> After 1992, the topics of legal research became much broader with the expansion of the legal aspects of contemporary development. Pure instrumentalism and the rule of man have been criticized on the grounds that a market econ-

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<sup>39</sup>Shen Zongling, "Fazhi, fazhi, renzhi de ciyi fenxi" (An analysis of the meaning of fazhi [rule of law], fazhi [rule by law], and renzhi [rule of man]), *Faxue yanjiu* (CASS Law Journal), 1989, no. 4:8.

<sup>40</sup>Wang Jiafu, Liu Hainian, and Li Buyun, "Lun fazhi gaige" (A discussion of reform of the legal system), *Faxue yanjiu*, 1989, no. 2:9.

<sup>41</sup>Carlos. W. H. Lo, "Rejecting the Traditional Socialist Theory of Law: Reforming Chinese Legal Studies in the 1980s," *China Information* 7, no. 1 (1992): 4-5.

omy is a rule-of-law economy based on Max Weber's legal-rational ideal type; since then, the importance of protecting individual rights and curbing official powers has been stressed. The flourishing state of legal research is manifested in the "ten major hot topics in jurisprudence in 2001," which were listed in the newspaper *Legal Daily* and released by eleven press agencies.<sup>42</sup> However, the discussion in the late 1990s was more restrained than it had been prior to 1989 in that, as Lubman notes, the discussion placed "less emphasis on the need to clarify the relationship between the Party and law, and more focus on the need to create a legal framework for the developing socialist market economy."<sup>43</sup>

Following the official line of legal reform, Chinese legal scholars have focused their debates around the socialist rule of law on four major issues: the meaning of the official formulation "administering the state according to law to build a socialist country based on the rule of law," the model China should adopt for building a rule of law, the underlying values of China's rule of law, and the focus of establishing the rule of law.

The first issue is basically about whether China should adopt rule of law or rule by law (法治或法制, *fazhi huo fazhi*). These scholars regard the official formulation as the same as the rule of law, but with socialist values,<sup>44</sup> and they consider that a socialist rule of law is superior to any other legal system because it empowers a broad group of people rather than a wealthy minority.<sup>45</sup> Liu Hainian (劉海年) proposed ten principles for a

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<sup>42</sup>These include the enforcement of the constitution, the enactment of a comprehensive civil code, the safeguarding of human rights based on the two U.N. human rights conventions adopted by China, the reform of the administrative litigation and state compensation systems, court reform, introducing a systematic law of evidence, Internet rules, the relationship between the WTO and China's rule of law, protection for consumer rights, and regulating the market. See *Fazhi ribao* (法制日報, *Legal Daily*), December 20, 2000; and *Xinhua wenzhai* (新華文摘, *Xinhua Digest*), 2002, no. 4:5-8.

<sup>43</sup>Lubman, *Bird in a Cage*, 129.

<sup>44</sup>Guo Runsheng and Yang Jianhua, "Lun shehuizhuyi fazhi guojia de biao zhun" (On the standards of a socialist rule-of-law state), *Shanxi daxue xuebao* (Journal of Shanxi University), 1996, no. 2:6.

<sup>45</sup>Liu Hainian, "Yifa zhiguo: Zhongguo shehuizhuyi fazhi jianshe xinde lichengbei" (Administering the state according to law: a new milestone in the construction of China's socialist legal system), *Faxue yanjiu*, 1996, no. 3:31. For a summary of the debate on this issue by

socialist rule of law, including socialist democracy, human rights, freedom, equality, supremacy of the law, administrative rule of law, judicial independence and fairness, restriction and supervision of power, social order, and maintaining the Party leadership.<sup>46</sup>

The second issue is which model should be adopted for China's rule of law. Legal reform in China is a part of the project to build "socialism with Chinese characteristics." The term "Chinese characteristics" (中國特色, *Zhongguo tese*) became a living concept for justifying all-round changes in China throughout the twentieth century, based on the principle of "Chinese learning for essence and Western learning for utility" (中學為體、西學為用, *Zhong xue wei ti, Xi xue wei yong*). "Chinese characteristics" is actually a hodgepodge of various cultural, historical, and political elements such as the feudal and tyrannical rule of the past; deep-rooted Confucian values; socialist ideology and general CCP policies with the "four cardinal principles" at their core; the ever-increasing gap in social and economic development between the cities and the countryside, and between the eastern coastal areas and the interior; the general low level of development; and the huge population, nearly 70 percent of which still lives in the countryside. All of these constitute the rationale behind a series of pragmatic adjustments in the reform era. Thus mainstream scholars consider that legal reform should be a top-down process conducted by the Party and the state. They believe it should be a gradual process that follows the pace of economic development, and that it should combine Chinese legal traditions and Western rules, and uphold the leadership of the CCP throughout. Chinese scholars and the Party leadership all emphasize the importance of good traditional values, socialist ideology, and

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influential scholars such as Guo Daohui (郭道暉) and Li Buyun (李步雲), see Yu Xuede, "Fazhi haishi fazhi, zhimin haishi zhiquan: guanyu yifa zhiguo wenti taolun guandian zongshu" (Rule of law or rule by law, governing the people or governing the power: a summary of debates on the issue of governing the state according to law), *Qianxian* (Frontier), 1997, no. 12:26-28.

<sup>46</sup>Liu Hainian, "Lüelun shehuizhuyi fazhi yuanze" (A brief discussion of the principles of socialist rule of law), *Zhongguo faxue* (China Legal Science), 1998, no. 1:5-15. Also see Li Lin, "Fazhi de linian, zhidu he yunzuo" (The concept of rule of law and its institutional operations), *Falü kexue* (Law Science), 1996, no. 4:3-12.

social stability during legal development.<sup>47</sup> In practice, this process involves absorbing positive elements from China's past and borrowing market-oriented rules from the West without undermining socialism and Party power.

However, one Chinese scholar, Jiang Lishan (蔣立山), is worried that this kind of state-dominated legal reform may be effective in mobilizing social resources to propel reform and correct mistakes, but it is also problematic in that it tends to be influenced by the state's own goals and values.<sup>48</sup> There is always a possibility that the state's promotion of the rule of law will be suspended or distorted in certain circumstances.<sup>49</sup> Scholars are concerned that Party leadership will undermine the supremacy of the law, and that it will subject the law to political expediency while ignoring the fundamental requirements of the rule of law.<sup>50</sup>

Despite their doubts, these scholars have always claimed that Party leadership is not in conflict with the rule of law. Cao Jianming (曹建明), a leading figure who has delivered a series of lectures on law for senior Party leaders including Jiang Zemin, makes this claim, and he also believes that the rule of law, through which Party policies are turned into laws and regulations, will improve Party legitimacy rather than weaken it. He further claims that the rule of law and long-term stability cannot be achieved without the leadership of the Party,<sup>51</sup> and therefore Party leadership should be strengthened rather than weakened during the reform process.

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<sup>47</sup>Cheng Weili, "Jianshe shehuizhuyi fazhi guojia de jiazhi jichu" (The value basis of establishing a socialist rule-of-law country), *Shehui kexue* (Social Sciences) (Shanghai), 1996, no. 6:17-21.

<sup>48</sup>Jiang Lishan, "Zhongguo fazhi wenti taolun (xia)" (A discussion of the issue of China's rule of law: part 2), *Zhongwai faxue* (Peking University Law Journal), 1998, no. 4:21-33.

<sup>49</sup>For example, during the annual "strike-hard" campaigns against crime, the regime ignores legal rules by depriving suspects of due process and imposing harsher punishments than would be imposed outside the campaigns.

<sup>50</sup>"Ershi shiji Zhongguo fazhi huigu yu qianzhan yantaohui zongshu" (A summary of the symposium on the past and future of the rule of law in twentieth century China), *Zhengfa luntan* (政法論壇, Politico-legal Forum), 2000, no. 3:157-59.

<sup>51</sup>Cao Jianming, "Cong fazhi dao fazhi" (From rule by law to rule of law), *Tansuo yu zhengming* (Exploration and Debate), 1997, no. 12:4-6.



Liberal-minded scholars in China, as represented by Li Shenzhi (李慎之),<sup>52</sup> call for the establishment of a democratic rule of law, and the development of "legal awareness" (法律意識, *falü yishi*) among the whole population. These scholars argue that rule of law without political democracy and judicial independence is nothing but empty talk.<sup>53</sup> However, many other scholars consider that political democracy is not necessarily decisive in establishing the rule of law. For example, Wei Pan (潘維) advocates a consultative rule-of-law regime in China, in which the rule of law is supplemented by democracy rather than democracy being supplemented by the rule of law, and this is deduced from China's history, culture, and existing social system.<sup>54</sup> He holds that it is the rule of law rather than political democracy that is the most important means of curing rampant corruption.

In Pan's view, Western democracy cannot solve the most pressing problem facing China: rampant corruption in all sectors, especially official corruption, which exploded in the mid-1990s and quickly took over at all levels and in all sectors of government. This corruption stems from the contradiction between China's newly installed market system and the party-state's unfettered power, and from economic decentralization and local protectionism. Political corruption, if not controlled, could lead directly to the collapse of the CCP.<sup>55</sup> Pan claims that people are more concerned with curing corruption and guaranteeing fair market competition than with instituting political democracy. This view suits the Party very well, as can be seen by its backtracking on "socialist democracy" in 1997, the year after the Party's Fifteenth Congress instituted direct elections at village level. The new goal was administration according to law rather than political reform.<sup>56</sup>

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<sup>52</sup>For a detailed account of the emergence and development of liberalism in contemporary China, see Feng Chongyi, "The Return of Liberalism and Social Democracy in Contemporary China," *Issues & Studies* 39, no. 3 (September 2003): 1-31.

<sup>53</sup>Guo Luoji, "Fazhi: xianfa zhishang" (Rule of law is the supremacy of the constitution), *Zhengming* (Contending) Hong Kong, no. 292 (February 2002): 71-74.

<sup>54</sup>Wei Pan, "Toward a Consultative Rule of Law Regime in China," *Journal of Contemporary China* 12, no. 34 (January 2003): 3-43.

<sup>55</sup>*Ibid.*, 3-4.

<sup>56</sup>*Ibid.*, 4.

Pan notes that the CCP preaches that the rule of law is an important means for curbing widespread moral decadence and corruption, and he expects the rule of law alone, without political democracy, to cure serious social problems. One can agree with Pan that democracy is indeed not a panacea, but it is necessary for establishing the rule of law. In a modern society, law without political support is not powerful enough to deal with the ever-increasing pluralization of social interests and problems. Moreover, if there is no democracy or only limited political freedom, the law will always be restrained by the political power, or even worse, a more developed legal system will simply provide a more powerful instrument for strengthening an authoritarian regime; this is, in practice, rule by law rather than rule of law.

The third issue is the values underlying a socialist rule of law. Scholars suggest that legal values in a socialist market economy should stress the efficiency of the rule of law while at the same time maintaining social justice. Although stress was placed on protecting individual rights in the late 1990s, it is hard to guarantee social and judicial justice in a new marketplace when the law is associated with political and economic priorities, as Keith and Lin observe.<sup>57</sup> When scholars appeal for the elevation of the authority of the law and the separation of the state from the law, they also advocate an active state that reinforces the rule of law and protects rights and freedoms. They call for the establishment of a strong and stable political system and central government to carry out legal modernization, in order to maintain social stability and order. Some of them hold that the role of the state must be strengthened rather than weakened.<sup>58</sup>

Chinese scholars emphasize the value of both legal procedures and substantive laws for establishing a market economy and the rule of law.<sup>59</sup>

<sup>57</sup>Keith and Lin, *Law and Justice in China's New Marketplace*, 2.

<sup>58</sup>See Jiang Lishan, "Zhongguo fazhi gaige he fazhigua guocheng yanjiu" (A study of China's legal reform and the process of legalization), *Zhongwai faxue*, 1997, no. 6:41.

<sup>59</sup>For example, Chen Weidong, "Zhichi chengxu gongzheng zuowei sifa gaige mubiao" (My view in support of procedural justice as the goal of judicial reform), in *Zhengyi wang (Jiancha ribao)*, <http://211.100.18.62/fzdt/xwar.asp?id=8484> (December 5, 2002); Han

They also generally agree that, as a requirement for modernization, legal reformers should take account of China's history, culture, tradition, and environment when designing their model and choosing their values.<sup>60</sup> Some scholars suggest that the traditional legal system should be used as an important reference point in building a socialist rule of law, since it embodied some positive values and principles, such as equal treatment in like cases and different treatment in different cases; making the punishment match the crime; the principle that the Party cannot be the judge in its own case; impartiality and fairness among the judiciary; and the principle that the law must be publicly published, be clear, specific, predictable, and stable, and not be retrospective.<sup>61</sup>

However, most scholars have serious doubts whether the traditional legal system can have a positive impact on contemporary legal reform, since this reform aims to transform the rule of man into the rule of law.<sup>62</sup> They acknowledge the lack of certain modern features in China's legal tradition,<sup>63</sup> including constitutionalism with its strict limits on state power and well-developed civil and administrative laws. The role of the law is not only to maintain security and facilitate economic development, but also,

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Yuanheng and Feng Wensheng, "Fazhi de shendu youlu: quanli ruhe deyi zhiyue" (A deep concern of the rule of law: how power can be restrained), in *Zhengyi wang*, id=8297 (October 28, 2002); and Liu Jingyou, "Jianlun chengxu bi shiti geng zhongyao" (A brief discussion on procedure being more important than substance), *Fazhi ribao*, February 17, 2002, <http://www.legaldaily.com.cn>.

<sup>60</sup>Gong Pixiang, *Dangdai Zhongguo de falü geming* (Legal revolution in contemporary China) (Beijing: Falü chubanshe, 1999), 466.

<sup>61</sup>Liang Zhiping, "Fazhi: shehui zhuanxing shiqi de zhidu jiangou—dui Zhongguo falü xiandaihua yundong de yige neizai guancha" (Rule of law: institutional construction during social transition—an intrinsic observation of China's legal modernization movement), *Dangdai Zhongguo yanjiu* (Modern China Studies), 2000, no. 2, <http://www.chinayj.net/stubarticle.asp?issue=000202&total=69#>; Li Jiaofa et al., "Fazhi jianshe lungang: xia" (A discussion outline on the rule of law: part 2), *Xiangtan daxue xuebao* (Journal of Xiangtan University), 1997, no. 6:107-11.

<sup>62</sup>Su Li, "Renzhen duidai renzhi: WeiBo (*Jingji yu shehui*) de yige dushu biji" (Taking the rule of men seriously: a reading note on Weber's *Economy and Society*), *Falü sixiang wang: Su Li wenji* (Legal thought network: a collection of articles by Su Li), <http://mylaw.myrice.com/fali/fali-suli.htm> (1998); and Su Li, *Fazhi jiqi bentu ziyuan* (The rule of law and local resources) (Beijing: Zhongguo zhengfa daxue chubanshe, 1996).

<sup>63</sup>Wu Shuchen, *Zhongguo chuantong falü wenhua* (China's traditional legal culture) (Beijing: Beijing daxue chubanshe, 2000), 697.

in particular, to ensure effective and legitimate administration, and to restrict political and government actions.<sup>64</sup>

The fourth issue is what should be the focus of the establishment of the rule of law in China. Chinese legal scholars have proposed the basic elements needed for establishing the rule of law from a wide range of perspectives. Some state that the creation of a constitution is the ultimate prerequisite for building the rule of law. They call for China's constitution to be elevated to a supreme position, viewing the essence of *yifa zhiguo* as administering the state according to the constitution. They further advocate the setting up of a constitutional court to check whether governmental regulations and actions accord with the constitution, and to enforce the civil and political rights stipulated in the constitution.<sup>65</sup>

Some scholars consider it particularly important to establish a rights-based (權利本位, *quanli benwei*) concept, including the full safeguarding and implementation of citizens' rights. This would call for an awareness of citizenship and rights, the fostering of the mentality that everyone is equal before the law, and emphasizing independent personality, freedom, dignity, and interests.<sup>66</sup> In doing this, they hold, it is important to draw up civil and commercial laws to promote awareness of rights, freedom of contract, and property rights, with the aim of establishing market rules and the rule of law.<sup>67</sup> Others, such as Wang Qifu (王啓福), stress that judicial fairness is the crucial element in realizing the rule of law because serious judicial corruption has hampered the enforcement of state laws and undermined

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<sup>64</sup>Cai Dingjian, "Fazhi de jinhua yu Zhongguo fazhi de gaige: zouxiang fazhi zhi lu" (Evolution of the legal system and the reform of China's legal system: the road toward rule of law), *Zhongguo faxue*, 1996, no. 5:3-11.

<sup>65</sup>See Qin Qianhong, "Yifa zhiguo he xianfa zhishang lun" (On administering the state according to the law and the supremacy of the constitution), *Xinhua wenzhai*, 1997, no. 1: 10-15; Zhou Yezhong, "Xianfa zhishang: Zhongguo fazhi zhi lu de linghun" (The supremacy of the constitution: the soul of China's road to the rule of law), *Zhongguo faxue wang* (June 17, 2003), quoted in *Zhengyi wang*, id=9436; and Guo, "Fazhi: xianfa zhishang," 71-74.

<sup>66</sup>Li Shuguang, "Lun yifa zhiguo" (On administering the state according to the law), *Gongren ribao* (工人日報, Workers' Daily), December 10, 1997, 1.

<sup>67</sup>Wang Liming, "Ye tan yifa zhiguo" (Yet more remarks on administering the state according to law), *Faxue pinglun* (Wuhan University Law Review), 1999, no. 2:43-50.

the authority of the law and the courts.<sup>68</sup>

Generally speaking, Chinese scholars propose that the establishment of the rule of law should focus on the following elements: a complete and good system of laws, government according to the law, an independent and fair judiciary, the subjection of the ruling party to the law and the enforcement of socialist democracy, and a major increase in public legal awareness.<sup>69</sup> The key element among these is how to get the state to exercise its administrative power in accordance with the law (依法行政, *yifa xingzheng*). This requires good and effectively enforced laws concerning administrative penalties, administrative redress, administrative litigation, and state compensation.<sup>70</sup> According to officials from the State Council, the fundamental principle of *yifa xingzheng* is insistence on Party leadership, with the aim of maintaining social security and market order, and achieving administrative efficiency.<sup>71</sup>

Those holding a liberal idea of the rule of law are actually outnumbered in China by the "New Left" (新左派, *xin zuopai*) who favor the model of all-round reform designed by the party-state. As for the liberals, even if some of them advocate constitutional government and judicial independence, they still avoid calling for political democracy and freedom, which would ensure the enforcement of the constitution and judicial independence. When they call for elevating the position of the law, they also support a strong state and uphold one-party rule. Thus their debates are limited and full of apparent contradictions and paradoxes. They have come

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<sup>68</sup>See Yu, "Fazhi haishi fazhi, zhimin haishi zhiquan," 27.

<sup>69</sup>See note 43 above; Wang Jiafu, "Yifa zhiguo ji dai jie jue de xianshi wenti" (Realistic problems need to be resolved relating to administering the state according to law), *Liaowang* (瞭望, Outlook), 1998, no. 10:9-10. For a summary of recent studies by Chinese scholars on the rule of law, see Liu Baoshan, "Yifa zhiguo jinqi yanjiu shuping" (Review of recent studies on administering the state according to law), *Shehui kexue dongtai* (Developments of Social Sciences) (Wuhan), 1996, no. 12:6-10.

<sup>70</sup>Song Caifa, "Yifa xingzheng shi yifa zhiguo de nandian he guanjian" (To exercise administrative power according to law is the difficult and key point in administering the state according to law), *Shehuizhuyi yanjiu* (Study of Socialism), 2000, no. 1:52-55.

<sup>71</sup>Wang Zhongyu, "Guanyu quanmian tuixing yifa xingzheng de jige wenti" (On several problems concerning a full implementation of administration according to law), *Guojia xingzheng xueyuan xuebao* (State Administrative College Journal), 2001, no. 4:6-12.

round to supporting the regime by providing theoretical justifications for narrowing the scope of legal reform to a rule by law rather than a rule of law. In general, both officialdom and the intellectual elite in China support the model of a socialist rule of law with Chinese characteristics as determined by the CCP. Although their discussion provides a framework for the drawing up of market-oriented rules and the overall development of the legal system, they are helping to shape the rule of law project toward the intentions and goals devised by the party-state.

### China's Official Definition of a Socialist Rule of Law

In order to understand the real meaning and underlying motivations of legal reform in China, it is crucial to look at the official discussions of the law, since the party-state designs and guides legal development. China's legal culture is an "elite legal culture,"<sup>72</sup> which can only be perceived through the official utterances of senior politicians backed up by institute scholars or scholar-officials. Since the legal reform began, China has passed through three stages of legal development based primarily on Deng Xiaoping's theory of socialism with Chinese characteristics and the requirements of economic reform. Deng used the phrase "strengthening the legal system" rather than "rule of law," as well as the terms "institutionalization" and "legalization" (制度化和法制化, *zhiduhua he fazhuhua*) to guide the direction of legal development. Thus, in the first stage of legal development in the Deng era the aim was to maintain social order and regularize the work of the government and the economy.

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<sup>72</sup>Pitman B. Potter, "Foundations of Elite Legal Culture in the PRC: The Influence of Peng Zhen," in Association for Asian Studies (USA): *AAS Abstract: China Session 211* (<http://www.aasianst.org/absts/1996abst/china/c211.htm>). For Potter's other studies of China's legal culture, see Pitman Potter, "Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China," *The China Quarterly*, no. 138 (June 1994): 325-58; and Potter, *The Chinese Legal System*. In his book, Potter focused on Peng Zhen (彭真) to provide an example of elite culture shaping China's socialist legality. See Pitman B. Potter, *From Leninist Discipline to Socialist Legality: Peng Zhen on Law and Political Authority in the PRC* (Stanford, Calif.: Stanford University Press, 2003).

Although fragmentary, Deng Xiaoping's legal thinking contains some fundamental principles required by the rule of law. His ideas on the subject are contained in the following widely-quoted paragraph:

In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity, and full authority of this democratic system and laws; *there must be laws for people to follow, these laws must be observed, their enforcement must be strict, and lawbreakers must be dealt with.*<sup>73</sup>

This paragraph is summed up by those in both official and academic circles as bearing four features of a modern legal system: perfection of the law, observation of the law and action according to the law, equality before the law, and strengthening of the supreme authority of the law.<sup>74</sup>

According to Deng, good institutions are a guarantee against arbitrary behavior by individuals, and the correct handling of the relationship between the Party and the government is crucial to reducing the rule of man.<sup>75</sup> He said, "Very often, what leaders say is taken to be the law and anyone who disagrees is called a lawbreaker. Such laws change whenever a leader's views change."<sup>76</sup> Furthermore, he claimed, "Democracy has to be institutionalized and written into law, so as to make sure that institutions and laws do not change whenever the leadership changes or whenever the leaders change their views."<sup>77</sup>

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<sup>73</sup>The communiqué of the Third Plenum of the CCP's Eleventh Central Committee (held on December 22, 1978), *Beijing Review*, 1978, no. 52:14. The italicized part refers to the sixteen characters that make up Deng's legal thought: 有法可依，有法必依，執法必嚴，違法必究。

<sup>74</sup>Zhang Zhengde, "Womende mubiao shi shehuizhuyi fazhi guo" (Our goal is a socialist country based on the rule of law), *Xiandai faxue* (Modern Law Science) (Chongqing), 1988, no. 5:13.

<sup>75</sup>Deng Xiaoping, "Guanyu zhengzhi tizhi gaige wenti" (On the problem of reform of political systems), in *Deng Xiaoping wenxuan* (Beijing: Renmin chubanshe, 1993), 3:177.

<sup>76</sup>Deng Xiaoping, "Jiefang sixiang, shishi qiushi, tuanjie yizhi xiang qian kan" (Emancipate the mind, seek truth from facts, and unite as one in looking to the future), in *Deng Xiaoping wenxuan* (Selected works of Deng Xiaoping) (Beijing: Renmin chubanshe, 1984), 2:135-36.

<sup>77</sup>*Ibid.*

Deng Xiaoping called for the curbing of power through the establishment of supervision systems,<sup>78</sup> because "excessive power concentration hampers the enforcement of socialist democracy and the Party's democratic centralism, the development of socialist construction, and the development of collective wisdom, and causes individual arbitrariness."<sup>79</sup> However, he also rejected a Western-style mutually constrained system for the reason that "if excessive emphasis is placed on a mutually limited system, it may still cannot solve the problem."<sup>80</sup>

While Deng called for equality before the law and for improving people's legal awareness,<sup>81</sup> he also considered that the criteria for evaluating laws and legal systems should be their ability to improve people's material lives, to foster "spiritual civilization," and to promote socialist democracy, rather than to safeguard rights and curb state power.<sup>82</sup> Deng insisted that political stability and economic growth are the two prime concerns in the process of economic reform and strengthening the legal system.<sup>83</sup> He called for equal priority to be given to economic reform and development on the one hand, and law and socialist values on the other (兩手抓，兩手都要硬, *liangshou zhua, liangshou dou yaoying*) in order to attain economic growth while resisting the influence of Western liberal thought.

The ideological boundary that Deng erected for all-round reform was the "four cardinal principles": adhering to the socialist road, the dictatorship of the proletariat, the Party leadership, and Marxism-Leninism and Maoist thought.<sup>84</sup> These principles set the bottom-line for the reformers and also provided hope for pragmatic thinking. As Carlos Wing-Hung Lo comments, "On the one hand, the FCPs [four cardinal principles] were

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<sup>78</sup>Ibid., 331, 333.

<sup>79</sup>Ibid., 321.

<sup>80</sup>*Deng Xiaoping wenxuan* 3:256.

<sup>81</sup>*Deng Xiaoping wenxuan* 2:360.

<sup>82</sup>Ibid., 315.

<sup>83</sup>Ibid., 330.

<sup>84</sup>Ibid., 150-51.



designed to provide an ideological safeguard against the possibility that emancipating the mind from dogmatism could lead to the negation of Marxism. On the other hand, the fact that they were interpreted as living anti-dogmatic principles offered much hope for emancipation."<sup>85</sup>

It is clear that Deng's brand of institutionalization and legalization was not the same as the rule of law. He primarily saw the law as a means to regularize the state, government, and society in order to prevent the reoccurrence of anything like the Cultural Revolution, while stressing the fact that economic reform requires a comprehensive system of rules for both the government and economic actors to follow. The law, by serving the Party's economic goals, is seen as strengthening the Party's ruling position rather than putting limits on its power. Deng's legal reform did not allow for changes to the socialist system and one-party rule. This is obvious from the CCP's call for a halt to the separation of the Party and the government at the end of the 1980s, especially around 1989.

From 1989, when Jiang Zemin came to power, up to the Fifteenth Party Congress in 1997, official texts did not use the term "rule of law." Since 1992, the aim of legal development has been to serve the needs of a socialist market economy, simply because, in theory, a market economy is a rule-of-law economy.<sup>86</sup> It is against this background that the rule of law began to be discussed in official texts under the guise of the formulation "administering the state according to law to build China into a socialist country based on the rule of law" (hereinafter referred to as the "formulation").

This formulation seems to suggest that Deng's China was ruled *by* law while under Jiang it tended toward the rule *of* law. However, the emphasis was on the first part of the formulation, "administering the state according

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<sup>85</sup>Carlos Wing-Hung Lo, "Socialist Legal Theory in Deng Xiaoping's China," *Columbia Journal of Asian Law* 11, no. 2 (Spring 1998): 477.

<sup>86</sup>There are many discussions on this topic. See, for example, Qiu Chunlan, "Shichang jingji yu fazhi jianshe zongshu" (A summary of the study of market economy and legal construction), *Shoudu shifan daxue xuebao* (Journal of Capital Normal University), 1995, no. 4: 76-79; and Xie Pengcheng, "Lun shichang jingji falü tixi de jiben jiegou" (On the basic structure of the legal system in a market economy), *Faxue yanjiu*, 1994, no. 4:50-57.

to law" (*yifa zhiguo*), rather than the second part, "to build China into a socialist country based on the rule of law" (*jianli shehuizhuyi fazhi guo*). For example, Party and government officials prefer to use the phrase "socialist legal system" without differentiating *yifa zhiguo* from *fazhi* (the rule of law). By emphasizing "Chinese characteristics" they have repeatedly rejected a Western liberal democratic concept of rule of law as a bourgeois ideology, contrary to socialism and a socialist legal system because it requires the separation of major state powers and the supremacy of the law.

Jiang Zemin made it clear that "we uphold and improve this fundamental political system, instead of copying any Western models. This is of decisive importance for upholding leadership by the Party and the socialist system, and realizing the people's democracy."<sup>87</sup> The official view of democracy and freedom is that they are not absolute rights but "must be commensurate with this country's tradition, history, culture, and the development levels of education and the economy."<sup>88</sup> Those in power hold that a socialist democracy must be built on unity and stability because China is economically and culturally backward, and more complicated problems and conflicts will emerge with the move toward a market economy.<sup>89</sup>

According to Jiang Zemin, the people administer state affairs under the leadership of the Party and according to the constitution and the law. This ensures that all state affairs are carried out in compliance with the law and, as a result, socialist democracy will gradually become systematic and legal, and this system and these laws will not change when there is a change of leaders, or when the leaders change their opinions.<sup>90</sup> In the same article, Jiang went on to say that administering the country according

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<sup>87</sup>Jiang Zemin, "Gaoju Deng Xiaoping lilun de weida qizhi, ba jianshe you Zhongguo tese de shehuizhuyi quanmian tui xiang ershiyi shiji" (Upholding the great banner of Deng Xiaoping theory to fully push the establishment of socialism with Chinese characteristics into the twenty-first century), *Qiushi* (求是, Seeking Truth), 1997, no. 18:3; and *Renmin ribao*, September 12, 1997, 3.

<sup>88</sup>*Xinhua yuebao* (新華月報, Xinhua Monthly), 1990, no. 2:10.

<sup>89</sup>*Ibid.*, 1992, no. 8:5.

<sup>90</sup>See note 87 above.

to the law would ensure the enforcement of Party policies and enable the Party to always play a leading role.<sup>91</sup>

Thus, Jiang's understanding of the rule of law was still in accordance with Deng's institutionalization and legalization. As Jiang claimed, "Strengthening socialist legal construction and administering the state in accordance with the law are important parts of Comrade Deng Xiaoping's theory of establishing socialism with Chinese characteristics. It is also an important policy for our Party and government to administer the state and social affairs."<sup>92</sup> In 2001, before he ordered a crackdown on China's first opposition party, China's Democratic Party,<sup>93</sup> Jiang Zemin expressed his disapproval of such Western concepts as separation of powers, judicial independence, supremacy of the law, human rights, and multiparty politics.<sup>94</sup> Thus it has been clear from the beginning of the reform that the CCP will not adopt a liberal version of the rule of law, and that legal reform will be kept within the boundaries of the "four cardinal principles" and the political structure of one-party rule. Deng would not allow any challenges to the CCP's rule and neither would Jiang. Two conflicting legal principles—law to rule China and law to serve the Party—have coexisted throughout the reform process.

Only a few intellectuals understand the distinction between a socialist legal system (社會主義法制, *shehuizhuyi fazhi*) and the rule of law, while

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<sup>91</sup>Ibid.

<sup>92</sup>Jiang Zemin's speech at the 1996 CCP legal lectures, quoted in *Renmin ribao*, February 9, 1996, 1.

<sup>93</sup>China's Democratic Party (CDP) was founded in 1998, and in 2001 over thirty of its members were given prison sentences without public trial or due process. A similar fate met the "New Youth Institute," a group of young scholars set up to discuss political reform. Four of its members were detained illegally in 2001 and were refused family visits from then until their trial by the Supreme Court in November 2003. The four were given sentences of eight to ten years in prison. In recent years, there has been more censorship of the Internet and many of those who posted their political opinions on the Internet have been arrested or sentenced for the crime of trying to overthrow the regime under Article 105 (2) of the Criminal Law. This kind of suppression is a violation of Article 35 of the PRC Constitution concerning freedom of speech and has been consistently criticized by the international community and overseas Chinese scholars. For details, see more articles in *Boxun* (博訊), <http://www.boxun.com>.

<sup>94</sup>*Renmin ribao*, February 1, 2001, 1.

the vast majority of the people are unaware of any difference, because the two terms share the same pronunciation in Chinese and are often used interchangeably in official texts. It is possible that the leadership deliberately chose these terms to blur the distinction between rule by law and rule of law, in order to justify its authoritarian rule while at the same time diverting public attention from the political arena to the administrative and legal fields. It is also likely that the Party is not ready to adopt a genuine rule of law, but is instead using the law as a means to develop the economy and control rampant corruption. In any case, this is still not the same as the rule of law.

Although the Jiang leadership declared that it would administer the state according to the law, this has not substantially resolved the crisis of legitimacy. The proliferation of economic crime and corruption has seriously undermined social stability and Party authority. Instead of addressing the underlying reasons for the weakness of the law, Jiang Zemin warned of such phenomena as the deterioration of moral standards, the practice of worshipping money, the pursuit of pleasure and selfish individualism, the revival of feudal superstitions, pornography, gambling and drug abuse, the production of shoddy and fake goods and fraud in the marketplace, and rampant corruption, all of which are seriously damaging the work of both the Party and the government. He complained of the people's loss of faith in socialism and lack of respect for the state. In his opinion, all these problems must be solved through the promotion of socialist ethics.<sup>95</sup>

Jiang Zemin thus emphasized the importance of adhering to Deng's theory on building a socialist morality, highlighting the rule of virtue and requiring Party members and government officials to govern the country through a combination of the rule of law and the rule of virtue. In Jiang's opinion, the rule of law had to be supplemented by the rule of virtue, and the latter would greatly enhance the former.<sup>96</sup>

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<sup>95</sup>"Resolutions in the CCP Central Committee Regarding Important Questions on Promoting Socialist Ethical and Cultural Program" (Adopted at the Sixth Plenum of the CCP's Fourteenth Central Committee, October 10, 1996), *Beijing Review*, 1996, no. 4:22.

<sup>96</sup>Qiu Shi, "Zhongguo gongchandang zhizheng de jiben jingyan" (The basic experience of the CCP rule), *Xinhua wenzhai*, 2002, no. 7:2.

The rule of virtue, as a means of establishing a socialist thought and moral system in compliance with the socialist market economy and legal system,<sup>97</sup> together with Jiang's "three represents" (三個代表, *sange dai-biao*),<sup>98</sup> represents an effort by the CCP to fill an ideological vacuum and improve its legitimacy. The rule of virtue, which is focused on the cultivation of moral qualities among the rulers, has its roots in the Confucian tradition of "benevolent government" (仁政, *renzheng*) and "sage rulers" (明君或明主, *mingjun huo mingzhu*). A problem here is by what standards and by whom is a virtuous official to be defined or judged? With China under the leadership of the Communist Party, the only available judges are the Party and its officials themselves. This combination of law and virtue is reminiscent of the traditional combination of Confucian theory (the rule of virtuous men) and Legalist thinking (rule by law). The rule of virtue relies on officials voluntarily restricting their own actions by cultivating their moral qualities rather than on legal and political reform. It is doubtful whether this can cure China's serious social problems while not at the same time counteracting the effects of the legal system, or whether it can cure them at all.

The rule of law was thus further marginalized as a major means of state governance. The Party has acknowledged the seriousness of problems such as local protectionism, corruption, and power abuses, but it is reluctant, afraid, or even unable to resolve them. It is mainly unrestricted official power at the local level that has prevented the implementation of the rule of law. As long as there is one-party rule, efforts to promote morality among state officials will be ineffective. It is true that the use of law and morality to improve competition and credibility will help the operation of

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<sup>97</sup>"Jianchi yifa zhiguo he yide zhiguo de jiben fanglüe" (Insisting on the basic strategy of ruling the state according to law and virtue), *Xinhua yuebao*, 2001, no. 3:27-28.

<sup>98</sup>Jiang mentioned the "three represents" for the first time in a speech delivered to a meeting of Party propaganda officials in February 2000. He defined them further at the graduation ceremony of the Central Party School on May 31 that year, and again on July 1 at the CCP's eightieth anniversary celebrations. The "three represents" are that the Party represents: the requirements of the developing trend of China's most advanced productive forces, the orientation of China's most advanced culture, and the fundamental interests of the overwhelming majority of the Chinese people.

the market, and that officials may behave themselves better. However, the most important goal is to elevate the authority of the law rather than to require self-cultivation on the part of officials.

When Hu Jintao came to power in 2002, rampant corruption, a big gap between rich and poor, environmental degradation, and widespread social unrest were all threatening the Party's legitimacy and presenting challenges to its model of economic development. Hu's innovation, announced at the Sixth Plenum of the CCP's Sixteenth Central Committee in November 2006, was the building of a "harmonious society" that balances economic growth and social development through enforcing the rule of law and maintaining social justice.

Slightly deviating from his predecessor's focus on GDP growth and efficiency, Hu considers that economic growth and CCP rule cannot be sustained without fairness and justice. Hu's government seems to be emphasizing the importance of those aspects of the law that safeguard citizen's rights and interests and ensure a fair distribution of social wealth in order to curb the abuse of power and corruption, primarily at local levels. Evidence of this can be seen in the 2004 revision of the constitution to include safeguards for human rights and private property rights. However, even if Hu does expand socialist democracy within the current institutional setting, neither Deng's "four cardinal principles" nor the development model is likely to change substantially. The rule of law still lacks support and authority within the party-state power structure. Hu wants the harmonious balance between economic growth and social welfare in order to maintain social stability and Party rule rather than to achieve political harmony. Hu's new idea is to secure the CCP's legitimacy during the process of modernization, which is apparently goal-rational because it is widely accepted by the elite and the public.<sup>99</sup>

To sum up, throughout the reform, the CCP has been consistent in its intentions and attitude toward the rule of law, despite changes in the official

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<sup>99</sup>For Hu's idea, see Fan Yafeng (范亚峰), "Fazhi jianshe yu hexie shehui" (Legal construction and the harmonious society), *Boxun* (October 19, 2006), <http://www.peacehall.com/news/gb/pubvp/2006/10/200610191255.shtml>.

discourse. Being constrained by the "four cardinal principles" and the requirement to maintain stability and the pace of economic reform, legal reform has had to be carried out within the current political system. It has had to bear "socialist" characteristics by maintaining one-party rule and using administrative, legal, and moral methods of governance. In any case, the law has never been elevated to a primary position.

Changes in the official discourse on legal reform show that the Party wants to strengthen its legitimacy by increasingly relying on *yifa zhiguo* as long as this benefits the smooth development of the market economy and political stability. This shows that China's reform is a paradoxical process in that it uses capitalist economic rules and traditional values to enhance socialism. This is in no way related to a genuine rule of law but is rather another version of rule by law. It is well known that the core of the rule of law is the curbing of state power and the safeguarding of private rights. Whether a socialist rule of law with Chinese characteristics can play those roles in the absence of political democracy is doubtful, however much stress is given to the importance of Chinese characteristics.

### **The Rule of Law in Practice**

Thus the rule of law in China is being carried out without any corresponding political democracy, at least not of the kind familiar in the West, and the definition of the rule of law has been narrowed to "administration according to law" (*yifa xingzheng*). With so many restrictions and the historically weak position of the law and the courts, the performance of the law in practice has generally been ineffective in contemporary China.

It is fair to say that the law has become a more powerful means of social engineering than it ever has been in PRC history, although in performing this function it is not permitted to conflict with the goals and interests of the Party. In the name of maintaining social order and the current political system, the party-state has used the law as a coercive instrument not only to fight crime but also to suppress dissident political, social, and religious activities whenever it needs to do so. While the law is a powerful

weapon for performing functions such as these, it has proved to be ineffective in curbing Party and state power in practice. Although the purpose of this article is to examine the meaning of a socialist rule of law with Chinese characteristics, a brief review of the functions of the law in contemporary China is essential if we are to show that what China has is rule by law with Chinese characteristics rather than rule of law.

Two major functions of the rule of law are to constrain the power of the party-state and safeguard individual and private rights and interests. To examine these functions, we shall look at the implementation of the administrative rule of law. Since the enactment of the Administrative Litigation Law (the ALL) in 1989, China's administrative lawmaking has developed rapidly, covering administrative licenses, penalties, redress, and compensation. However, there have been many studies addressing the failures and limits of ALL litigation and there have been appeals for improvement in government behavior.<sup>100</sup> The law has failed to protect rights and interests, or to control government power, because the courts have been overruled by powerful local administrations. In civil and economic areas, the difficulty of enforcing court rulings has long been a major concern for the central government and foreign investors. What is more, Party members are governed by internal Party rules rather than the law when they commit crimes or are guilty of corruption, especially if they are high-ranking officials. Cases only go through the judicial process if the Party approves.

As for safeguarding individual rights, especially human rights and property rights, there is a great gap between the law on the statute books and the law in practice. There is also an ideological constraint, in that state and public interests are favored above individual and private interests.

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<sup>100</sup>See, for example, Joseph Kahn, "When the Chinese Sue the State, Cases Are Often Smothered," *New York Times*, December 28, 2005; Ying Songnian, "Wanshan xingzheng susongfa zhuanjia tan: xiugai xingzheng susongfa shi zai bi xing" (Experts talk about the perfection of the ALL: the ALL is bound to be revised), *Fazhi ribao*, March 3, 2002, 3; and He Haibo, "Xingzheng susong chesu kao" (Reflection on withdrawal of cases in administrative litigation), in *Zhongguo xingzheng faxue jingcui* (The essence of China's administrative jurisprudence) (Beijing: Jixie gongye chubanshe, 2002), 204.



Some examples are the practice of arbitrary administrative detention without trial and the expulsion of rural migrants and homeless people from the cities during important festivals and events. The annual "strike-hard" campaigns often impose unfair process and harsher punishments on offenders than those allowed under the law. There are harsh crackdowns, for example, on the activities of the Falungong (法輪功), on human rights lawyers, labor activists, farmers who have lost their land without fair compensation, pastors of unofficial churches, and other underprivileged social groups such as AIDS patients and women who have been forced to have abortions.<sup>101</sup> The party-state also imposes strict limits on freedom of speech, especially Internet discussions of political reform and other social issues. Under the guise of protecting state secrets and upholding the public interest and national security, the law has become a tool for the maintenance of the existing political and social order at the expense of the rights and interests of individuals and organizations. It is obvious from these examples that the law is not performing its proper functions of curbing state power and safeguarding individual and private rights.

Judicial independence is an essential element of the rule of law, and this does not exist in China.<sup>102</sup> Being subject to wide internal and external

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<sup>101</sup>Pitman Potter, "Belief in Control: Regulation of Religion in China," *The China Quarterly* no. 174 (June 2003): 317-37. Rights-safeguarding activities are highlighted on various websites. See, e.g., Hu Ping (胡平), "Dui wei quan renshi de you yulun daya" (Another round of strikes against rights-safeguarding activists), *Boxun* (October 12, 2006), <http://www.peacehall.com/news/gb/pubvp/2006/10/200610120845.shtml>; "Zhongguo gongmin wei quan kangzheng huodong youzeng wujian" (The ever-increasing fights to safeguard their own rights among the Chinese citizenry), *Boxun* (December 5, 2004), <http://www.peacehall.com/news/gb/china/2004/12/200412050128.shtml>; and He Weihua, "Cong wei quan shidai de kunjing, kan Zhongguo zhengju de weilai zouxiang" (The future direction of China's regime seen from the dilemma in the era of rights-safeguarding), *Boxun* (October 7, 2006), <http://www.peacehall.com/news/gb/pubvp/2006/10/200610071203.shtml>.

<sup>102</sup>Much has been written about judicial independence in China. See, e.g., "Administering Justice for the People [*sifa weimin*]"—China's Judicial Reform Efforts and Their Limitations" (Panel II of the conference on Legal Reform in China: Problems and Prospects, jointly sponsored by the Carnegie Endowment for International Peace and The Asia Foundation, Washington, D.C., April 18, 2005), <http://www.CarnegieEndowment.org>; Veron Mei-Ying Hung, "Judicial Reform in China: Lessons from Shanghai," *Carnegie Papers* (Carnegie Endowment for International Peace), no. 58 (March 2005); and Veron Mei-Ying Hung, "China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform," *American Journal of Comparative Law* 52 (2004): 77-132.

influences, the PRC courts are simply unable to try a case independently, especially politically sensitive and economically localized cases. Moreover, lack of competence and low ethical standards among judges greatly limit the quality and effectiveness of judicial work, and worse still, there is widespread corruption in the judicial sector. The party-state wants the courts to be efficient and fair in resolving disputes in order to maintain social and economic order, but it is reluctant to give the courts the kind of real power that would guarantee their independence and autonomy for fear that they would undermine the supreme authority and control of the party-state. In contrast to a real rule-of-law society, the Chinese courts have no power to interpret laws, nor do they have the power to scrutinize Party actions and government decision-making to check whether it complies with the constitution and the law.

A culture of the rule of law, either among officials or the general public, is lacking in China, although there are many signs of growing legal awareness on both sides.<sup>103</sup> The public still considers officials to be above the law in many circumstances, due to the weakness of the law and the courts in practice, and officials still see obtaining an official post as the most attractive career path. The rampant corruption that exists in state agencies as well as in all other sectors of society has prevented the law from playing its proper role in dealing with ubiquitous social problems. China's long history of rule of man, combining Legalist rule by law and Confucian principles, leads most people to pin their hopes on individual clean and righteous officials, and their awareness of their rights remains lacking. Generally, the public are suspicious of the law, the courts, and lawyers, and regard authority, money, and *guanxi* (關係, connections) as much more important ways of resolving disputes. To them, the law is unreliable, the courts are weak, and judges, like other state officials, are corrupt. All of this has hampered the growth of a legal culture of the rule of law.

The points listed above illustrate how difficult it is for the law to curb the power of the party-state in China, and that individual rights remain

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<sup>103</sup>Potter, *The Chinese Legal System*; and Potter, "Legal Reform in China," 465-95.

subject to state interests. It is clear that the courts are still subject to the wishes of their administrative superiors and to Party goals, and there is a general lack of a culture of legality, due to poor legal awareness and rampant corruption. Indeed, the party-state is always ready to abandon legal rules and attack any phenomena it considers to be a threat to its rule and legitimacy using orders and instructions enforced by the judiciary. In the end, the rule of law in China is ultimately a tool in the hands of the party-state, used to secure its own rule and power. The CCP resorts to the law as one means of enhancing its legitimacy while at the same time restricting the role of the law in order to maintain its position as the ruling party.

### **Conclusion**

The CCP's attempt to reform its legal system has always been fraught with ambivalence and contradictions. The conflict between the rule of law and rule of the Party shows no sign of fading away. Rather, it is becoming even more intense and irreconcilable as the reforms deepen and broaden in scope. China needs to reform its legal system in order to achieve various other goals of the socioeconomic development and state administration, but at the same time it must preserve its legitimacy. These efforts have been hampered by the requirement to retain "Chinese characteristics" in the reform process, so as to achieve economic growth while preserving the existing political system. The purpose of the reform of China's legal system is thus not to constrain or undermine the power of the party-state but to enhance administrative efficiency. However, as noted by Holmes, it turns out that the state ideology has been blurred and party-state power "weakened" (legalized) in the process of legal reform. The last thing the regime wants is for the CCP to collapse as a result of adopting the rule of law. The only way for the CCP to maintain its rule in a changing China is to strike and keep a balance between the rule of law and political legitimacy, which has proven to be a not very difficult task for a pragmatic and sophisticated ruling party like the CCP.

In its legal reforms, the CCP regime has made great efforts to link itself with China's traditional Legalist and Confucian values, while at the same time introducing market rules and the concept of the rule of law in order to modernize the style of state governance. By doing this, the CCP has made a step forward in building up a legal-rational model of governance, although ultimately it is still goal-rational. However, the Party's quest for legitimacy is likely to remain unaccomplished for some time, and it is uncertain how long the public will tolerate the regime in an environment of rapid socioeconomic change.

The socialist rule of law with Chinese characteristics is nothing more than a mixture of Legalist rule by law and Confucian morality, Leninist state structure, and capitalist market rules. Indeed, this is a very "thick" Chinese version of the rule of law, if we still insist in using the term "rule of law" at all. Within the current political framework it is hard to categorize China, a socialist country based on the rule of law with Chinese characteristics, as a rule-of-law state as it is understood in the West. The interests of the CCP and its ideology will be brought into ever-intensifying conflict with the process of legal development unless incremental and regular adjustments are made. The present legal system is in practice used more as a powerful tool by the party-state to achieve its goals, rather than as a means of controlling state power. Therefore, if the rule of law can be said to exist in contemporary China, it is a "thin" version of the rule of law. What both Jiang Zemin and his successor Hu Jintao have been attempting to do is to develop a "thick" version of rule by law, or a socialist rule of law with Chinese characteristics, combining the Confucian-dominant imperial tradition with the existing political system. However, this combination is only acceptable if it can help them develop China's economy and maintain and strengthen the rule of the CCP.

The CCP leadership never intended to establish a rule of law that would constrain the Party itself. A rule by law combining China's own legal tradition and socialist values suits the regime's goals better than a rule of law, because it can resolve the contradiction, under the eudemonic model of legitimacy, between the rule of law and the authority of the Party. Rule by law, although authoritarian and instrumental, is a legal-

rational option for China during its economic reform, because it can promote economic development and government efficiency. A socialist rule of law with a Chinese prefix not only improves the Party's governing style and its social control but also strengthens its legitimacy and its power to deal with local protectionism and corruption. Therefore, the CCP leadership uses the term "rule of law" to appeal to the public while not distinguishing it from "rule by law," although in fact it has rejected political democracy and suppressed freedom of speech as a prerequisite for establishing the rule of law.

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