The Chinese Legal System: Continuing Commitment to the Primacy of State Power

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The development of the PRC legal system reflects the commitment of the Chinese Communist Party to maintaining its monopoly on political power. In 1949, the Chinese Communists were committed to the notion that political power depended on control of political (and legal) institutions. By 1959, in the wake of the Anti-Rightist Campaign and ongoing campaigns against counter-revolutionaries, the Party's unfettered control over legal institutions and personnel was well entrenched. A decade later, the ideological and political themes of the Cultural Revolution left the role of formal law and legal institutions further marginalized.

By 1979, the Party leadership had embarked on a legal reform programme aimed at building legitimacy and furthering economic reforms. As discussed by Anthony Dicks in *The China Quarterly*'s 1989 review of the PRC at 40, the first decade of legal reform saw significant albeit qualified achievements.[1] The China Spring of 1989 revealed the extent to which the ideals of legal reform had taken root. The pro-democracy demonstrations were replete with legal symbolism, while the regime itself attempted to portray its martial law activities and the violence that followed as being in accordance with law and regulation. But the Tiananmen crisis also saw traditionalists in the Party leadership signal their continuing commitment to maintaining a monopoly on political power.

The achievements and limitations of the first decade of reform set the tone for developments in the years that followed. By 1999, law-making and institution-building have reached impressive levels. At the same time, however, the imperative of maintaining political supremacy for the party-state remains a salient feature in this process. Rejecting suggestions that maintaining its political monopoly is incompatible with pursuit of the rule of law, the party-state has pursued a process of selective reform aimed at preserving political power while promoting economic development.

Influences on the Legal System: Borrowed Norms and Local Context

At the very outset of legal reform, legal specialists were admonished to learn from China's past and from the experience of foreign countries.[2] These two sources of law were conflated, however, as the law-making record of the Republican and early PRC period was based largely on imported foreign models. Thus, the enactment in 1979 of a Criminal Law,

1. Anthony Dicks, "The Chinese legal system: reforms in the balance," *The China Quarterly*, No. 119 (September 1989), p. 540.

2. "Zhongguo faxuehui zai jing zhengshi chengli" ("The China Law Society is formally established in Beijing"), *Faxue yanjiu* (*Studies in Law*), No. 5 (1982), p. 8.

Criminal Procedure Law and organizational laws for the People's Courts and the People's Procuracies drew on enactments from the 1950s, which in turn were based on Soviet experience and on Republican statutes borrowed from German models. The 1981 Economic Contract Law also stemmed from prior regulations and drafts derived from Soviet and European codes, as did the 1986 General Principles of Civil Law (GPCL). During the 1980s, legislation on such matters as environmental protection, regulation of foreign and domestic business, intellectual property, and civil procedure and arbitration drew increasingly on European and North American models. This borrowing process accelerated during the second decade of legal reform to include a range of economic measures. In addition, foreign pressures created an impetus for legislation in the areas of human rights, criminal law and procedure, and administrative law.

The borrowing of foreign forms of law and legal institutions has been limited, however, by the general ambivalence towards liberal norms supporting individual rights and the restraint on state power which inform the legal systems of Europe and North America. Law is not a limit on the party-state, but rather is a mechanism by which political power is exercised and protected. Examples can be seen from the role of law in the 1980s to achieve policy goals of economic development and social stability.[3] The issue in autumn 1998 of internal regulations restricting foreign exchange transactions and the response in early 1999 to the decision by the Hong Kong Court of Final Appeal on the right of abode expressed the Chinese government's prioritizing of policy outcomes over legal processes. The resilience of this instrumentalism was reinforced most recently by the incorporation into the 1999 Constitution of the term *yifa zhiguo* to denote the concept of "rule of law," when in fact the phrase connotes "rule through law" when compared to the alternate *fazhi grojia* formulation proposed by certain intellectuals to convey the rule of law ideal. The *yifa zhiguo* terminology still met resistance, however, because of its implications for the potential autonomy of law.

The local context for legal reform also depends on the identity and outlook of the individuals who influence the content and operation of law. Particularly important is the expanding range of bureaucratic officials associated with various legal institutions. The Party's political-legal committee system (*zhengfa xitong*) continues to dominate the process of legal reform, although its senior leadership contains few if any trained lawyers. Other legal bureaucracies such as the State Council's Legal Affairs Bureau, the National People's Congress (NPC) Legislative Work Committee, the Ministry of Justice, and the law departments in the various State Council ministries and commissions are dominated by senior officials with little formal legal training. While their influence is significant, legal bureaucrats remain essentially

3. See generally, Pitman B. Potter, "Riding the tiger: legitimacy and legal culture in post-Mao China," *The China Quarterly*, No. 138 (June 1994), p. 325.

bureaucratic-political actors who tend to reinforce the subordination of law to state power.

The discourse of law and legal institutions is also influenced by a cadre of intellectuals engaged in legal research and teaching. However, their effectiveness is coloured significantly by several factors. First, the initial cadre of legal specialists involved in the law reform effort largely comprised survivors from the persecutions of the Anti-Rightist Campaign and the Cultural Revolution, whose experiences had a chilling influence on their willingness to challenge the orthodoxy of Party supremacy.[4] Many of those who were newly recruited into the law reform effort were selected on the basis of their knowledge of English, and had little if any formal legal training. As the reforms progressed, such legal training as was made available tended to emphasize rote learning of the content of rules, rather than legal analysis of rules and their application based on varying fact situations.[5] And, as is the case with other elite sectors, selection for legal research and teaching posts, as well as judicial positions, continues to give significant weight to Party membership. Thus, despite their potential to act as a community promoting reliance on legal knowledge, China's legal intellectuals often lack the academic training, career exposure and intellectual commitment to the liberal ideals that are embodied in the foreign legal norms they are charged with selecting and interpreting.

Institutions

Informed by the interaction of legal norms and local context, the Chinese legal system has seen significant changes in its institutional framework. Of particular importance are institutions of law-making, administration and dispute resolution.

Legislative reform: strengthening the National People's Congress. Through the first 30 years of the PRC, the NPC was little more than a "rubber stamp" charged with giving legislative form to CCP policy directives. The 1980s saw it play an increasingly important role in the legislative process.[6] Under the 1982 Constitution, the NPC's legislative duties extended to enacting basic statutes of national application, as well as passing amendments to the Constitution and reviewing decisions by the State Council and the NPC's Standing Committee (NPC-SC). The 1982 Constitution also expanded the powers of the Standing Committee

4. For a representative example, see Zhang Xinxin and Sang Ye, "Lawyer," in W.J.F. Jenner and Delia Davin (eds.), *Chinese Lives: An Oral History of Contemporary China* (New York: Pantheon, 1987), pp. 189–194.

5. See generally, William P. Alford and Fang Liufang, "Legal training and education in the 1990s: an overview and assessment of China's needs," manuscript, 1994.

6. Murray Scot Tanner, "Organizations and politics in China's post-Mao law-making system," in Pitman B. Potter (ed.), *Domestic Law Reforms in Post-Mao China* (Armonk, NY: M.E. Sharpe, 1994); Kevin O'Brien, *Reform Without Liberalization: The National People's Congress and the Politics of Institutional Change* (New York: Cambridge University Press, 1990).

to include not just enactment of law but also supervision of the work of the State Council and other administrative bodies. Efforts to strengthen the role of the NPC-SC were continued in the 1990s by Qiao Shi, who supported the supremacy of law over CCP members, and the authority of the NPC and its Standing Committee to supervise enforcement of the Constitution, legislation and the work of state organs.

However, the NPC remains heavily influenced by the Party. The legislative process itself is generally initiated by decisions from the Party's *zhengfa xitong*, and draft laws undergo review and approval in principle by the Politburo, its Standing Committee and selected Party elders. The membership of the NPC-SC must be approved by the Party Politburo. The NPC's dependency on the Party was evident in the removal of Qiao Shi in the wake of disagreements with Jiang Zemin over Party leadership of law-making and law enforcement.[7] Recent examples of legislative debates in the areas of contract and administrative law and even in the process of debating a law on legislation suggest that law-making continues to be initiated and directed from above.[8] After discussions are completed among selected experts and in various NPC and State Council committees, few opportunities are provided for meaningful input from the citizenry who are the subjects of law.

Administrative reform: restraining the bureaucracy. Administrative bureaucracies in China have long dominated the process of governance. With policies of legal and economic reform came a growing consensus recognizing the need for restraints on bureaucratic power. Courts were granted power to hear complaints against administrative decisions pursuant to the Civil Procedure Law (1991, draft 1982). The Administrative Litigation Law (ALL) formalized the courts' authority to review administrative agency decisions, while the State Compensation Law (SCL) permitted monetary redress to individuals and organizations harmed by unlawful bureaucratic action.

The ALL and the SCL are not without their limitations, however. The SCL excludes the possibility of compensation for harm by officials acting outside the scope of their duties, where the complainant has caused harm through its own acts, or "under other circumstances prescribed by law." The ALL does not permit review of discretionary decisions, which are commonplace in light of the textual ambiguities of Chinese laws and regulations. In addition, ALL review does not extend to the lawfulness of the underlying regulations upon which administrative decisions are based, which in effect permits administrative agencies to legislate their own immunities from ALL review. Furthermore, the ALL's provisions on exhaustion of administrative remedies, which are strengthened by the "Regulations of the PRC on Administrative Reconsideration," further

7. "Qiao Shi's words on democracy in China," in *China News Digest* (electronic media), 2 June 1997; "The 15th CCP National Congress closed, Qiao Shi is out," China News Digest (electronic media), 19 September 1997.

8. See papers presented to the Conference on Lawmaking in the PRC, Leiden University Law Faculty, 26–28 October 1998.

shield administrative decisions from judicial review. Finally, the ALL does not extend to Party decisions, thus prohibiting judicial scrutiny of the most fundamental sources of state power. As a result, despite initial enthusiasm, popular willingness to use the ALL to challenge bureaucratic abuses has waned.[9]

Efforts to restrain bureaucratic power have extended as well to administrative rule-making, although the emphasis remains on compliance with higher-level directives rather than accountability to the subjects of rule. During the first decade of reform, measures were taken to bring agency rule-making powers under greater supervision from higher-level departments.[10] The Administrative Supervision Law (1997) authorized the amending or annulment of regulations deemed inconsistent with laws and regulations issued at higher levels. However, the statute offers little support for the subjects of administrative action to challenge bureaucratic rule-making. The Administrative Procedure Law enacted at the end of 1998 may help to address this question, although here too there are significant limits. The Legislation Law remains in the drafting stage, held up by bureaucratic conflicts over rule-making authority.

Developing institutions for civil dispute resolution. The first decade of legal reform saw a revitalization of judicial institutions. The Civil Procedure Law signalled an effort to give the courts greater authority to resolve an increasingly large and complex array of private disputes. In addition, the People's Courts are responsible for compliance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which China acceded in 1987. Increased attention has also been paid to training judges, first under the Supreme Court's Senior Judges Training Centre and later at the PRC Judicial Institute.

Unfortunately, the effectiveness of the Chinese court system remains weak. Courts are often unable to compel production of evidence and enforce awards.[11] Corruption and poor training remain significant problems. Court processes of internal and informal fact-finding and decision-making often leave disputants vulnerable to abuses of power and political connections by their adversaries. Furthermore, the Party continues to play a dominant role through "adjudication committees," which review and approve judicial decisions.

Arbitration of disputes has emerged as a workable compromise between the overly informal procedures of traditional mediation and the problems of the judicial system. Under the Arbitration Law of the PRC (1994), arbitration committees are being established under the provincial

9. Minxin Pei, "Citizens vs. mandarins: administrative litigation in China," *The China Quarterly*, No. 152 (December 1997), pp. 832–862.

10. "Tentative Regulations on the Procedure for Enacting Administrative Laws and Regulations" (Xingzheng fagui zhiding chengxu zanxing tiaoli) (State Council, 21 April 1987).

11. See generally, Anthony Dicks, "Compartmentalized law and judicial restraint: an inductive view of some jurisdictional barriers to reform," and Donald C. Clarke, "The execution of civil judgments in China," both in *The China Quarterly*, No. 141 (March 1995).

governments to handle a wide array of economic disputes. Maritime disputes are subject to the China Maritime Arbitration Commission, while labour disputes are handled by the local Labour Administration. Arbitration and conciliation of disputes involving foreigners are most often handled by the China International Economic and Trade Arbitration Commission (CIETAC), although the local provincial government arbitration bodies also have jurisdiction to handle these types of cases.

While arbitration proceedings are often perceived as reasonably fair and effective, problems remain. Requests to other administrative units for co-operation in the collection of evidence, protection and sequestration of assets, production of witnesses, and other matters often go unheeded. Arbitrators are known to engage in what are essentially *ex parte* contacts with the disputants, either during the course of the mediation process that was previously intertwined with arbitration or during the course of preparing the matter for hearing.[12] Bureaucratic politics have also played a role, as Chinese courts often insist on subjecting arbitral decisions to extensive review prior to enforcement.

Law and Regulation: The Application of Legal Norms in Local Context

The instrumentalist approach to law in the PRC privileges the party-state and permits significant variation in the content and performance of specific legal and regulatory regimes depending on policy priorities. The contrast between the regime's apparent commitment to strengthening the role of law in economic transactions and its refusal to be bound by legal restraints in the management of political order reveal the extent to which law remains contingent on political priorities.

Law in the service of economic growth. The post-Mao legal reform programme was linked expressly to the economic reforms. Laws on contract, property rights and foreign business relations revealed the willingness of the Chinese state to implement formal law in pursuit of its policy goals.

The post-Mao economic reforms required a legal system for protecting property and contract relations. Private property rights received formal recognition under the post-Mao legal reforms. Echoing provisions dating to the 1950s, the 1978 and 1982 Constitutions formally recognized rights to personal property. These were entrenched yet further in the 1986 General Principles of Civil Law. Property rights were later extended through legal protections for patents, trademarks, copyright and other intellectual property rights. Property rights in corporate assets have also been strengthened through a securities regulatory regime, and through the enactment of a Company Law (1993) and the Securities Law (1998).

The recognition of private property rights is particularly important in

12. For examples, see Huang Yanming, "The stylization and regularization of the management and operation of the Chinese arbitration institute," *Journal of International Arbitration*, Vol. 11, No. 2 (1994), p. 77.

the area of land use. While the PRC Constitution and the GPCL held that land ownership was the exclusive province of the state and the collective, land use rights were granted for private farming and business operations.[13] In 1990, China enacted regulations permitting businesses to take long-term interests in land for the purpose of sub-division and development. The Law of the PRC on Urban Real Estate (1994) expanded the possibilities of private land use rights, but also tightened state control over the granting and exercise of these rights.

The expanded recognition of property rights remains conditional upon deference to state interests. The Constitution extends protection to property, but only to the extent that it is "lawful property," the definition of which remains the exclusive province of the state.[14] Constitutional requirements that the exercise of citizens' rights, including the right to own property, do not conflict with state or social interests grant the state a monopoly to interpret those interests and thus to determine the extent to which private property rights will be recognized and enforced.[15] A constitutional amendment in early 1999 recognized private property rights for the first time since the end of the Mao period, although the state will retain significant discretion to determine the conditions under which these rights may be exercised.

China's contract law system also emerged during the 1980s, driven by the needs of economic reform. The Economic Contract Law (1981) served as a basis for domestic transactions, while the Foreign Economic Contract Law (1985) was aimed at transactions involving foreigners. The Technology Contracts Law (1987) covered domestic agreements for the sale and licensing of technology. In addition, the 1986 GPCL contained a number of general principles applicable to contract relations. The legislation on contracts in the PRC reflected efforts to balance imperatives of state control with the need to promote autonomy in contract relations. The original 1981 Economic Contract Law went to significant lengths to retain state approval authority even while recognizing increased autonomy for contracting parties. The 1986 GPCL characterized contracts as civil law obligations, suggesting greater autonomy for contracting parties and their transactions. The 1993 revisions to the Economic Contract Law of the PRC reduced the influence of state planning on contract relations, but still made contracts subject to state policies, and retained general restrictions against contracts deemed contrary to state and public interests.

Efforts to draft a unified contract law began nearly simultaneously with the enactment of the 1993 Economic Contract Law revisions, and reflected an ongoing effort to harmonize norms of freedom of contract with the requirements of the state-managed economy. A draft of the

13. Pitman B. Potter, "China's new land development regulations," *China Business Review*, March–April 1991, pp. 12–14; Donald C. Clarke and Nicholas C. Howson, "Developing PRC property and real estate law: revised land registration rules," *East Asian Executive Reports*, 15 April 1996, pp. 9–17.

14. Constitution of the PRC 1982, Art. 13.

15. *Ibid.*, Art. 51.

statute released in August 1998 and the final text enacted in March 1999 emphasized principles of fairness, good faith and the protection of social and economic well-being as limits to contract autonomy.[16] Thus, the imperative of state control remains in evidence, even as the government has shown a willingness to permit expanded autonomy in contract relations.

The use of legal reform in support of the economic reforms extended to foreign economic relations – particularly foreign investment and trade.[17] Apprehensive about the potentially deleterious effects of direct foreign investment, the Chinese government initially imposed significant controls. Direct foreign investment in equity joint ventures, co-operative enterprises and wholly foreign owned enterprises faced limits on size, duration and scope of business. Representative sales offices were permitted but were accorded generally less favourable treatment than foreign investment enterprises. In the 1990s, foreign investors were encouraged to participate in portfolio investments in Chinese securities, and also allowed to establish holding companies as vehicles for co-ordinating investment networks. Despite these efforts, in many cases the content of particular laws and regulations lagged behind actual business and regulatory practices, and the implementation of the regulatory regime has been uneven.

Reform also extended to the foreign trade area, with reorganization of the administrative apparatus; enactment of laws and regulations on trade licensing, customs procedures and the like; and an application to resume a seat at the GATT and to join the WTO. The Foreign Trade Law (1994) clarified the decentralization in China's foreign trade companies, while also affirming China's right to restrict imports and exports in pursuit of national policy goals. Yet, as indicated by the WTO Working Party's Draft Protocol on China (1997), China still has not conformed to GATT requirements on transparency and enforcement of trade regulations.

In the regulation of foreign economic relations, the state retains a prominent role. State control over foreign investment projects is exercised through the processes for approval and supervision, targeting economic sectors for foreign investment, and finance and tax supervision. In foreign trade, licensing and customs requirements, import substitution rules, formal and informal quotas, and other measures enable the state to direct transactions. Law remains dependent upon policy, but the state's apparent commitment to policies of economic reform has lent relative stability and effectiveness to the legal system governing foreign economic relations.

The use of law for political control. Drawing on a legacy of public and punitive typologies of law from both the Republican and Imperial periods, the PRC has long emphasized law as an instrument of social

16. "Zhonghua renmin gongheguo hetong fa (caoan)" ("Contract Law of the PRC – draft") (Legal Affairs Committee of NPC Standing Committee, 20 August 1998).

17. See generally, Pitman B. Potter, *Foreign Business Law in China: Past Progress, Future Challenges* (San Francisco: The 1990 Institute, 1995). Also see *Doing Business in China* (looseleaf, Interjura).

control. Recurring references to the legal system as a tripartite network of *Gong-Jian-Fa* organs, comprising in descending order of importance the Public Security Bureaus (*Gongan*), Procuracy (*Jiancha*) and Courts (*Fayuan*), suggest a viewpoint that the legal system is primarily about criminal law enforcement in pursuit of social control.

During the first three decades of the PRC, social control and public security were achieved primarily through administrative regulation and political campaigns.[18] Driven in part by the need to protect itself, and also by the need to build legitimacy, the post-Mao regime enacted a Criminal Law Code and a Code of Criminal Procedure in 1980, which followed closely the 1979 Regulations on Arrest and Detention (replacing measures enacted in 1954). With broadly worded provisions of flexible application, these measures had little to do with protecting the rights of criminal defendants, but instead were aimed primarily at re-establishing the state's monopoly on legitimate use of coercive force in the aftermath of the Cultural Revolution.[19]

Supplementing these efforts, administrative detention remained the dominant mechanism for social control, under the Regulations of the PRC on Security Administration and Punishment (1957, rev. 1986, rev. 1994).[20] The 1980 Criminal Law of the PRC permitted administrative detention to be imposed in lieu of criminal sanctions where the circumstances of a person's crimes were deemed to be minor and not requiring criminal punishment. The more severe administrative systems for reform and re-education through labour, which had been established pursuant to regulations issued by the State Council in 1957, were continued under new rules enacted in 1979.

In addition, the process of "shelter for investigation" (*shourong shencha*) authorized discretionary arrest and detention of suspicious individuals with little if any legal restriction imposed.[21] A legacy from the early 1960s, "shelter and investigation," was used to round up unemployed migrants and other perceived ne're-do-wells, who might be detained for a few months but who might also be sent to re-education through labour facilities. Repeated attempts have been made to formalize the process, most notably in a set of regulations issued in 1985 by the Public Security Ministry regulations which conferred oversight authority on the People's Procuracy. Although separate notices issued in 1990 by the Procuracy and the Public Security Ministry attempted to curtain abuses of *shourong shencha* procedures, there was still little if any meaningful external

18. See generally, Shao-chuan Leng and Hungdah Chiu, *Criminal Justice in Post-Mao China* (Albany, NY: State University of NY Press, 1985); Victor H. Li, "The evolution and development of the Chinese legal system," in John M. H. Lindbeck (ed.), *China: Management of a Revolutionary Society* (Seattle & London: University of Washington Press, 1971).

19. For general discussion of criminal justice in China under the 1980 legislation, see Donald C. Clarke and James V. Feinerman, "Antagonistic contradictions: criminal law and human rights," *The China Quarterly*, No. 141 (March 1995), p. 135.

20. Amnesty International, "China – punishment without trial: administrative detention," 1981.

21. Tao-tai Hsia and Wendy I. Zeldin, "Sheltering for examination (*shourong shencha*) in the legal system of the People's Republic of China," *China Law Reporter*, Vol. 7 (1992), p. 97.

scrutiny, and abuses multiplied.[22] With the revisions to the Criminal Procedure Law in 1996, "shelter and investigation" was to be eliminated, although many of the flexible provisions of the process were incorporated into the revised statute.

Revisions made in 1996 to the Criminal Procedure Law, and the subsequent amendment of the Criminal Law in 1997, were part of a broad effort to reform the criminal justice system in response both to international criticisms and to domestic pressures. Revisions to the Criminal Procedure Law purported to eliminate unregulated administrative detention and to curtail the prosecutory powers of the Procuracy. Criminal defence counsel were granted earlier access to prosecution evidence. The determination of criminal liability was reserved exclusively for the courts, thus doing away with the Procuracy's previous powers to determine guilt or innocence. The revisions also imposed on prosecutors the burden to produce reliable and ample (*queshi, chongfen*) evidence of the guilt of the accused – a far cry from the "presumption of innocence" trumpeted by some optimistic observers, but a significant step nevertheless.

The revisions to the Criminal Law also reflect an effort to reduce the potential for arbitrary punishment. They provide that an act is not criminal unless specifically stated in the law – thus eliminating the "rule of analogy," which under the 1980 law had permitted criminal conviction for acts not expressly identified as criminal, by reference to the most closely analogous provision of the law. However, despite these reforms a criminal conviction may still be had for acts for which the defendant is not charged, but which are punishable under other provisions of the Criminal Law.[23] While eliminating the crime of counter-revolution, the revised law uses instead the crime of endangering state security, which is not limited by the intent requirement that informed the counter-revolution provisions of the past.

While efforts to reform the criminal justice system may improve the treatment of common criminal defendants, they appear to have little effect in the area of political offences. The regime's recent responses to efforts to establish a China Democratic Party suggest that legal requirements will bow to the needs of political supremacy. The arrest, prosecution and sentencing of activists Xu Wenli, Yao Wencai and Qin Yongmin appeared contrary to the requirements of the newly revised Criminal Law and Criminal Procedure Law.[24] The right of the defendants to hire their own attorneys was nullified through political pressure, and in at least one case active obstruction prevented the retained attorneys from acting effectively. The defendants were allegedly denied the right to

22. Lawyer's Committee on Human Rights, "Opening to reform? An analysis of China's revised Criminal Procedure Law," 1996, pp. 22 *et seq.*

23. "Zuigao renmin fayuan guanyu zhixing 'Zhonghua renmin gongheguo xingshi susong fa' ruogan wenti de jieshi" ("Interpretation by the Supreme People's Court on certain issues related to the implementation of the 'Criminal Procedure Law of the PRC' "), *Zhongguo fazhi bao* (*China Legal System Gazette*), 9 September 1998, p. 2.

24. See e.g. Amnesty International, "Heavy prison sentences on Chinese dissidents," *Presswire*, 22 December 1998; Michael Laris, "Retreating from reform: China tries two dissidents," *Washington Post*, 18 December 1998.

speak in their own defence. The evidence upon which they were convicted appeared not to satisfy the requirements of law, and the sentences were widely viewed as excessive. Thus, the regime appears quite ready to ignore the requirements of its own laws when confronting challenges to its political monopoly.

The comparisons between the roles law plays in regulating the economy and in protecting the political supremacy of the party-state suggest that despite important achievements in law-making and institution-building, law remains politically contingent. Where state policies of economic development support reliance of formal rules and procedures, the legal system governing contracts, property and foreign economic relations has been relatively effective. By contrast, the criminal justice system, despite undergoing many changes of content and structure, appears still unable to constrain the exercise of political power by the party-state.

Summary

On the 50th anniversary of the founding of the PRC, the legal system plays an increasingly significant role in social, economic and even political relationships. Legal norms drawn largely from foreign experiences have been selected and applied through a plethora of newly established institutions. The role of law as a basis for government authority has become a legitimate and significant issue in the broader political discourse. Despite these achievements, law in China remains dependent on the regime's policy goals. Particularly where political prerogatives are at stake, legal requirements appear to pose little restraint on state power. In this sense, the ten years that have passed since Tiananmen appear to have had little impact on the willingness of the party-state to dispense with legal requirements in pursuit of political expediency. If we are to rely upon Dicey's dictum on the rule of law being in effect when the state becomes just another actor, the rule of law in China still seems a distant prospect indeed.