LAW'S RELATION TO POLITICAL POWER IN CHINA: A BACKWARD TRANSITION

Jerome A. Cohen*

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EMAIL COMMENTS TO JEROME.COHEN@NYU.EDU

I. INTRODUCTION

By and large, for the past dozen years, China's professed transition toward the rule of law has witnessed more setbacks than progress. The extent to which the exercise of governmental power should be subject to domestic and international legal restraints continues to be a matter of enormous importance. This is true in every country and in relations among countries in our increasingly interdependent world. The earthshaking impact of Donald Trump's election to the American presidency has made the relationship of law to power as preached and practiced by the United States a virtually universal concern. Yet, as Americans and others strive to cope with this new challenge, the world is also increasingly anxious about how a rising China—with more than four times the population of the United States and almost as much economic strength—respects the "rule of law" at home and abroad.

This essay, building on the excellent analysis by Jean-Philippe Béja (Social Research: An International Quarterly, this issue**)** updating his earlier overview of the political situation in the Central Realm, will focus on China's domestic legal situation. In doing so, we must be fully aware that the People's Republic of China (PRC)—an increasingly oppressive Marxist-Leninist dictatorship—denies foreign scholars, and even its own people, the opportunities for knowledge and analysis that American freedoms of expression and transparency offer domestic and foreign observers of the United States. I regret the limitations that these restrictions impose upon my comments.

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* Professor of Law and Faculty Director of the US-Asia Law Institute at New York University School of Law. This essay is an updated and substantially revised version of a lecture I presented at National Taiwan University College of Law in January 2017 as part of the Sixth Herbert Han-Pao Ma Distinguished Lectureship. I am very grateful to Dr. Yu-jie Chen of the Law Institute of Academia Sinica in Taiwan and the US-Asia Law Institute for her thoughtful cooperation in its preparation.

II. THE CURRENT POLITICAL-LEGAL CONTEXT

Attempting to assess the state of law and government in any nation is hazardous, since reality is usually messy and contradictory, and surely this is the situation in contemporary China. In 2014, the fourth plenary session of the Chinese Communist Party's eighteenth Central Committee, in unprecedented fashion, devoted itself to stressing the importance of the rule of law (*fazhi*) —in the sense of government under law, not merely rule by or through law (Central Committee of the Communist Party of China 2014; Peerenboom 2015[1]). Moreover, Party general secretary Xi Jinping on many occasions has admonished the administrators of the judicial system to strive to respect the Constitution and legislation, and to render justice in every case (see Zhou 2014, who quotes Xi Jinping: "let the public feel fairness and justice from every case"). Yet, at the same time, Xi Jinping and the current leaders of Chinese legal institutions, including the judiciary, have relentlessly emphasized that the legal system, as well as the government, the legislature, the media, and all social and economic organizations, must always operate under the Party's strict control (see Speech at the Central Political and Legal Work Conference 2014; Compilation of Xi Jinping's Expositions on Rule of Law: Chinese Law and Government 2016, 468–74, in which Xi states "the political and legal front must unequivocally uphold the party's leadership"; Finder 2017a; Zhou 2016[2]).

The amendments to the Chinese Constitution that were adopted in early 2018 vividly illustrate both trends. On the one hand, the existing commitment to "improve the socialist legal system" was replaced by a commitment to "improve the socialist rule of law." (NPC Observer 2018) All state employees were required for the first time to take an oath to support the Constitution, and the name of the Law Committee of the National People's Congress (NPC) was changed to the "Constitution and Law Committee." On the other hand, other amendments made central the constitutional assertion of the absolute domination of the Chinese Communist Party over all government institutions. This was made shockingly clear to the country and even to the party elite by a surprise amendment that eliminated the previous restriction limiting China's president and vice president to two successive five-year terms in office. This has made possible the life tenure of President Xi Jinping, the Party's undisputed and all-powerful leader, assuring his continuing control over the government as well as the Party (NPC Observer 2018).

[1]Peerenboom argues that the Decision of the Fourth Plenary Session sets out a blueprint for restricting the government under the law, despite the contradiction within the phrase "socialist rule of law."

[2] Justice Zhou Qiang's 2016 report emphasizes that court functions must serve the Party and uphold its leadership (citing [最高人民法院工作報告] Zhuigao Renmin Fayuan Baogao, http://www.court.gov.cn/zixun-xiangqing-37852.html).

To consolidate the Party's and Xi's absolute domination not only of the government but also of all facets of society, perhaps the most significant constitutional amendment established a new branch of government—a National Supervision Commission (NSC) and lower supervision commissions at every level of government with awesome powers to investigate and detain public officials, both Party and non-party members. Much more will be said below about this radical innovation in the Soviet-type structure that Chairman Mao Zedong originally imported into China, and that Deng Xiaoping re-established after the end of the Cultural Revolution. Here I would merely note my disappointment that, in amending the Constitution, the Party failed to come to grips with the apparent inconsistency between the detention powers of the NSC system as set forth in subsequent NPC legislation and the provisions of Article 37 of the Constitution, which prohibits "unlawful detention or deprivation or restriction of citizens' freedom of the person" except with the approval of the Procuracy (the prosecutors' office) or the courts.

In recent years, despite the efforts of some courageous Chinese scholars to develop theories that might lead to the real-life application of constitutional protections (see, e.g., Hand 2011, 52), there have been intense campaigns against what have been condemned as "Western" or "universal" legal values, such as constitutionalism itself, judicial independence, the separation of powers, political and civil rights, and the protection of human rights lawyers who seek to defend these fundamental principles (see Human Rights in China 2017b; Finder 2017b[3]). Even mere discussion of the Constitution has often been banned in practice by Beijing. The heavy hand of censorship and self-censorship, always present in China, has recently further narrowed the interpretation and application of many law reforms, not only in popular books and essays but also in professional and academic publications, and the media have had to exercise greater caution than ever in reporting on relevant events and developments. Law teaching and research have also been adversely affected. For Chinese scholars, discretion is clearly the better part of valor, as even classroom performance, social media commentary, and law review articles are restricted and closely monitored (see, e.g., Yu 2015[4]).

Academic conferences, especially those with foreign legal experts, have also become much more difficult to arrange in China. Although university-to-university cooperation does not technically fall under the new law regulating Chinese cooperation with overseas

[3] President Zhou Qiang is quoted saying, "show the sword to mistaken Western ideas of 'constitutional democracy,' 'separation of powers,' and 'judicial independence.'"

[4] Professors were prevented from teaching or writing about topics deemed "Western," like constitutional theory and human rights law.

nongovernmental organizations, international conferences, workshops, and seminars on legal topics to be held in China now take a much longer time to be approved, and many proposals are never approved, expiring amid stony official silence. The subject matter of approved meetings is also often circumscribed. For example, I recently took part in a Chinese labor law conference that took almost a year to be approved and that turned out to be quite lively, but collective bargaining and independent unions were prohibited subjects. Similarly, some social topics, such as LGBT rights, may also be removed from conference agendas, and not merely if foreigners are slated to attend.

In PRC publications and lectures, it has always been forbidden to mention certain historical events, such as the horrific Party-inflicted military slaughter of June 4, 1989, near Beijing's Tiananmen Square and the terrible repression that followed. I shocked a hall full of Fudan University Law School students in Shanghai some years ago when I referred to "June 4th." Now, as I discovered in 2016, simply referring to the Anti-Rightist Movement of 1957–58 and the Cultural Revolution of 1966–76 in an essay (solicited by a new Chinese-language journal sponsored by the Supreme People's Court) was unacceptable.

III. CONTINUING LEGISLATIVE AND JUDICIAL PROGRESS

Nevertheless, despite this very hostile political and ideological environment, apart from the constitutional amendments mentioned above, quite a few legislative and judicial reforms continue to take place, at least on paper, and sometimes in practice. Both the National People's Congress and the Supreme People's Court have improved the norms regulating many areas, including criminal justice, as well as civil, economic and administrative law and procedure (see Blacklock 2015–16, n. 9, which describes recent improvements). Notably, the substantially revised Criminal Procedure Law (CPL) of 2012 not only confirmed the ban against the admission of illegally obtained evidence into criminal trials but also prohibited police, except in three prescribed situations, from subverting the ordinary criminal process by using the practice of "residential surveillance" to confine people incommunicado for up to six months not in their own homes but in special police facilities (CPL Part 1, Chap. V, Art. 50 [banning illegal evidence] and Chap. VI [prescribing restrictions on residential surveillance]).

Measures also have been taken to more efficiently process the ever-expanding number of court cases of various types, including the reconciliation of offenders and victims in minor criminal cases, the speedier handling of most criminal cases, and the introduction of procedures that appear to constitute Chinese-style plea bargaining under another name. In a renewed effort to realize significant popular participation in court trials, the institution of "people's assessors"—lay judges designated to join professional judges in decision-making—

has again been revised in an effort to make it more effective and credible. And the role of courts in disposing of civil disputes through formal adjudication in accordance with legislated substantive standards has once again been stressed, rather than the often-revived emphasis on informal mediation of disputes outside or inside the courts, frequently without reference to existing legal norms (Finder 2015[5]). "Trial-centered justice" rather than dispute resolution behind closed doors has become the fashionable cry.

In the hope of bolstering the legitimacy of China's courts and government policies in the eyes of the masses, the Supreme People's Court has launched a huge program of "judicial transparency," featuring live television broadcasts of various kinds of politically uncontroversial court trials. Moreover, literally tens of millions of court judgments—but far from all judgments—have now been made available online for the edification of the public, Chinese and foreign scholars, and lawyers who were formerly starved for materials that offered insight into the operation of the legal system.

In an effort to improve the efficiency, prestige, competence, and compensation of Chinese judges, local courts have been withdrawing the appellation of "judge" from over half of those who have previously enjoyed that status, particularly those whose duties have been largely administrative rather than adjudicative. Understandably, this effort has created severe morale problems within the judiciary, especially among younger recruits who, even if better educated and abler than some more senior personnel, lack the experience and network of relationships necessary to assure timely promotion in a more intensely competitive environment. This has led many younger recruits to abandon the judiciary in favor of greener pastures, such as law practice, business, and academic life (see, e.g., Finder 2015; Lubman 2015).

It is too early for outsiders to tell whether recent reorganization of the judicial structure to establish regional and circuit courts is proving satisfactory, but the creation of additional specialized divisions within local courts seems to have fostered a higher degree of professionalism in some of these courts, for example with respect to intellectual property cases (see Cohen 2015, which describes positive reforms in specialized Intellectual Property courts).

The courts have also made progress in certain other areas. Some significant obstacles to the successful enforcement of environmental protection norms have been eliminated, and the courts have gradually been opening to complaints of invidious discrimination against women

[5]Finder notes that shows the significant dip in mediation because it is no longer emphasized as the dominant dispute resolution method.

and against those engaged in same-sex relationships and to litigation alleging wrongful criminal convictions (see Wang 2013, 436, on new rules permitting environmental regulation enforcement through the courts; Branigan 2014; Richardson 2016).

A major development in the reform of administrative sanctions was the 2013 termination of the notorious, supposedly noncriminal punishment of "re-education through labor." For over half a century this practice had empowered the police, without meaningful opportunity for defense or review by other official agencies, to detain people in the equivalent of a prison or a labor camp. Originally there was no time limit to the detention period, but more recently it had been limited to three years (see, e.g., Cohen and Lewis 2013a and 2013b).

To be sure, as the attempt to exclude illegally obtained evidence from judicial proceedings has illustrated, implementation of some of these reforms has proved difficult or even illusory. In many areas, foreign scholars have only had occasional and limited access to substantial implementation data, but contacts with Chinese scholars and lawyers make clear that, certainly regarding criminal justice, many reforms have not been effectuated to a significant extent. Or, as in the case of "re-education through labor," the elimination of one abusive administrative punishment has sometimes been counterbalanced by greater resort to similarly problematic institutions, such as those for confining minor drug offenders, prostitutes, and others deemed in need of coercive "legal education" (Amnesty International 2013). The now widely reported abominable detention of roughly a million Chinese Muslims in the Xinjiang Autonomous Region of China's northwest demonstrates what amounts to the return of "re-education through labor." The authorities even use similar language that fails to mask the violations of China's own laws and its international human rights obligations on a scale that dwarfs the last decades of "re-education through labor." And the actual implementation of some reforms, such as the reduction in the number of judicial personnel entitled to bear the label of "judge," has led to undesirable consequences, such as the aforementioned resignation from the judiciary of many better qualified younger people.

IV. POLICE DISTORTION OF LEGISLATIVE ATTEMPTS TO CURB THEIR POWER

The police have continued to demonstrate their mastery of the art of distorting legislative attempts to curb their arbitrary powers. They have long known how in practice to transform narrow exceptions to rules designed to restrain them into previously unimagined broad mandates of their authority. For example, the 2012 CPL provides that, in most cases after detaining a suspect, the police must apply for prosecutorial approval of arrest of the detained

person within three days. Certain exceptions allow the police to take up to seven days before submitting their application, and only in three very specific instances—the proposed arrest of "a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang"—are the police allowed up to 30 days (see Criminal Procedure Law Part 1, Chap. VI, Art. 89). Nevertheless, they routinely allow themselves thirty days whenever they choose, regardless of the circumstances of the case, and are never successfully challenged on this gross distortion of legislative intent. The police took similar liberties with the detention time limits in previous versions of the CPL.

What is more distinctive and even more disturbing is the interpretation police have given to the 2012 CPL's previously mentioned new provision authorizing them, in only three situations—cases of suspected violations involving national security, terrorism, or major bribery—to inflict "residential surveillance" in a police-designated incommunicado location on suspects for up to six months (RSDL) before deciding whether to treat them in accordance with the detention time limits prescribed for ordinary criminal cases (see Criminal Procedure Law Part I, Ch. VI, Art. 74 and 77).

Indeed, it seems that, without announcing the practice, the police, in some cases that they regard as unusually important or difficult, may repeat the initial extraordinary six-month detention and give certain suspects, including some Chinese human rights lawyers as well as their clients, one or more additional terms of RSDL. Interviews with Chinese legal experts confirm that one technique available to rationalize such outrageous, low-visibility action is to claim that the detainee may have committed a second, separate offense that supposedly justifies a new term of RSDL. Another possible technique is for the police to ask prosecutors, with whom they usually enjoy close cooperation, to exercise the power that the new CPL also confers upon the procuracy to impose a term of RSDL.

Thus, RSDL can be manipulated to deny detainees even the protection of the distorted 30-day pre-arrest detention "rule" applicable to most criminal cases. All that law enforcement officials need to do is to satisfy themselves alone that the case might, for example, involve a violation of "national security," which, given the breadth of the country's relevant legislation and practice, is easily accomplished. As with other dubious interpretations of the CPL, although the procuracy is under statutory obligation to supervise the legality of law enforcement, because of the Party-backed political power enjoyed by the police, there appears to be no way in practice for suspects, their lawyers, or others effectively to challenge such official distortions, either through the procuracy, the courts, the media, nongovernmental organizations, or the Party (see Chen and Cohen 2019).

V. THE SUPPRESSION OF HUMAN RIGHTS LAWYERS

One of the most discouraging aspects of PRC legal developments has been the government's steadily increasing attack upon human rights lawyers and related advocates, which on July 9, 2015, became an all-out nationwide campaign. Almost four years later, this brutal "709 campaign" shows no sign of diminishing. Despite its oft-professed intention to strengthen the rule of law, Xi Jinping's party-state is plainly seeking to destroy this small but gallant group within the legal profession whose active participation is essential to the fair functioning of the judicial system that the party claims is its goal. Human rights lawyers and their clients have been subjected to terrible ordeals designed to break their wills as well as their bones and to expose them to public infamy in the hope of deterring others from following in their footsteps (see Human Rights in China 2017b).

Lawyers bold enough to defend unpopular causes or people have often been removed from their clients' cases—without the consent of family who have retained them—and replaced by unwanted court- or government-appointed lawyers who barely go through the motions of waging a defense. The human rights lawyers, women as well as men, are frequently detained by the police and held incommunicado for long periods without opportunity to meet their own defense counsel, family, or friends. They are often tortured in various ways, both physically and mentally, and forced to make videotaped "confessions" that repudiate their previous beliefs and practices and that are notoriously broadcast on television long before they have been indicted or even formally arrested (Chinese Human Rights Defenders 2016, providing a summary of the "709 campaign" against human rights defenders, with many examples).

Such abuses have become so common that some defenders, anticipating their arbitrary detention, have issued predetention declarations proclaiming that, if as a result of subsequent confinement and coercion, so-called confessions are attributed to them, those statements should not be believed. Some lawyer-defendants, after long confinement, coerced public confessions, and farcical trials, have received seemingly "mild" suspended sentences that guarantee continuing police control of their lives for years after their so-called "release." Others have received criminal sentences of more than seven years. All are subject to disbarment from further law practice if they have not already been disbarred, and the families of all—spouses, children, parents, and siblings—also usually suffer various informal, illegal punishments regarding their activities, livelihood, housing, education, and travel (see, e.g., Cohen 2015; Wang 2015).

Perhaps most shocking are the government's efforts to destroy the minds of some of the most courageous human rights lawyers. Gao Zhisheng, once recognized by the government

as one of China's leading lawyers and later a hugely brave defender of even the Falun Gong, which has been denounced as a "cult" by the regime for almost two decades, was transformed into a virtual vegetable through repeated horrendous tortures inflicted during imprisonment. Because he has never actually been freed from his supposed post-prison "release" in imposed rural isolation, we cannot verify the extent of his recovery (Ramzy 2014[6]).

More recently, the tale of two brothers, both rights lawyers, is also nauseating. The younger brother, Li Chunfu, who was inspired by his brother Li Heping's example to enter the human rights practice, was the first of the two to emerge from police captivity. Although recognizable in appearance, he returned home a babbling schizophrenic, unable to maintain normal communication with his family, and reports fail to make clear whether the medicines to which he was forcibly subjected were required by his condition or, as is more likely, a cause of it (see Human Rights in China 2017a, which details Li Chunfu's release).

His brother, Li Heping, whom I have known and respected, was subsequently released looking unrecognizably gray, emaciated, and seemingly 25 years older than the vibrant person detained less than two years earlier. It is not yet clear what effects the "high-blood pressure medicine" forced upon him from day one of his detention, despite his normal blood pressure, may have had on his debilitation. It is already clear, however, that the torture inflicted on him, including binding his wrists to his ankles for an uninterrupted month, contributed to his condition (see Lau 2017, which details Li Heping's release).

Human rights lawyers have also been the victims of totally lawless kidnappings by police and the thugs often hired to aid them. My dear friend Teng Biao was a dynamic professor of Law at the China University of Political Science and Law before being ousted from that post because of his many human rights activities. In an email to me, he writes that he was twice kidnapped in frightening fashion, the second time kept for 70 days in an undisclosed location, where he was constantly pressured and abused in an effort to silence him. Like many other human rights lawyers, he subsequently had to leave China to avoid formal criminal punishment. His wife and a daughter were refused permission to join him and a younger daughter abroad, and only managed to do so a year later, after a long and harrowing secret escape.

VI. EXPANSION OF THE PARTY DETENTION SYSTEM TO PUNISH OFFICIALS

[6]Austin Ramzy describes severe psychological and physical health effects on Gao Zhisheng from torture.

One might think that the all-powerful police described above would meet the needs of even the most dictatorial government to impose its will upon its people. Yet there now is even more potential for arbitrary detention because of the unprecedented innovation in the Chinese criminal justice system wrought by the Xi Jinping administration. As mentioned above, in early 2018 it directed the National People's Congress first to adopt a constitutional amendment establishing the National Supervision Commission system and then a statute outlining its nature, functions, procedures, and powers. This novel institution, unknown in the Soviet Union or until now in any of the countries that imported the Soviet model of a legal system, may well become the most sinister formal legal instrument in the PRC's 70-year history.

The 90 million members of the Communist Party have long been subjected to a special type of lawless informal punishment—the dreaded "*shuanggui*" or "double designation"—an order to appear at a time and place designated by the Party. Well over a million Party members suspected of corruption or other violations of broadly conceived "Party discipline" have been notified to appear before local Party "discipline and inspection" commissions that have served under the Central Party Discipline and Inspection Commission in Beijing and that have been empowered by the Party to indefinitely confine Party members incommunicado in secret Party—not government—facilities. There, for as much as a year or two, the detained members have undergone investigation and interrogation by various methods that have often included torture of one kind or another until their captors decided what to do with them. Many detained members, after being deprived of their Party membership and government positions, have eventually been handed over to the formal criminal justice system for prosecution, trial, conviction, and sentencing to prison and confiscation of allegedly ill-gained assets. Many more have instead received administrative or other punishments that have included loss of government and Party jobs and Party membership as well as confiscation of assets. So feared has been this secret process of indeterminate length that some who have been summoned have committed suicide rather than endure it (see Sapio 2008, which gives an overview of *shuanggui*).

Although purportedly conducted in accordance with Party rules but without any government legal authorization, in practice the *shuanggui* system has failed to provide its targets with any of the protections against arbitrary action found, at least in principle if not in practice, in the Criminal Procedure Law. Thus, it has been widely condemned not only by foreign critics but also by many scholars, officials, lawyers, and human rights advocates within China. This condemnation seems to be reflected in the recent Constitutional amendment creating the central National Supervision Commission (NSC); it is also reflected

in legislation aiming to give the process of punishing Party members—and now many others as well—a veneer of legality by placing it, at least nominally, in the hands of the NSC.

Many of the personnel recruited by this new institution have served until now with the existing Party discipline and inspection commissions, while others have been employed in the Central Government's Ministry of Supervision or under it at provincial and local levels. The Ministry of Supervision has long been the government face of the Party's Central Discipline and Inspection Commission, and its officials have often shared quarters and worked with the Party discipline and inspection commissions, with many government officials actually wearing a second Party "hat" (see, e.g., Zhiqiong 2017[7]).

What appears to be especially significant in the new arrangement is that large numbers of prosecutors, particularly those charged with dealing with corruption, have been transferred from the Procuracy to the various levels of "supervisory commissions" to assist in the investigation and handling of cases. What these prosecutors currently do and how their new work at the supervisory commissions relates to the work of their former colleagues when cases are forwarded to the Procuracy for prosecution is only one of many fascinating and important questions raised by the new arrangement.

Presumably, if a supervisory commission decides that a Party member or other official under investigation deserves criminal punishment, the file will be transferred to the Procuracy, as has long been customary with the discipline inspection commissions. This will present the same question that the customary Party procedure has presented—one that has been obscured from public view and that Chinese officials have declined to answer when I have asked them: Does the Procuracy simply accept and make full use of the evidence compiled by supervisory investigators, including their former colleagues? Or does it independently review that evidence and the legality of the measures used to obtain the evidence, including possible torture and illegal search and seizure? Or, much less likely, for purposes of determining whether prosecution should be brought, does it simply ignore the supervisory dossier and start the interrogation and investigation process all over again? For example, if the Procuracy is allowed to choose the middle option rather than merely accept the supervisory commission's evidence and recommendation to arrest and indict the suspect, must it, in considering whether to approve arrest and indictment, exclude confessions coerced in the course of the commission's detention of the suspect?

Perhaps even more crucial than the issue of the power of the supervisory commissions to influence the decisions of the Procuracy and, at least indirectly, the decisions of the trial

[7] Zhiqiong describes the founding and implications of supervisory commissions to oversee *shuanggui*.

court, are the issues involving their power to detain suspects. How different is their power compared to the virtually unfettered power exercised by the Party discipline and inspection commissions? The NPC's authorizing legislation for the NSC system uses a relatively novel term to describe the commissions' power to confine suspects—"*liuzhi*." Nevertheless, *liuzhi*, like terms more commonly used, also seems to mean detention, but as described and limited by the authorizing law. Although the new law fails to provide much guidance, it does make clear that the detention is to be restricted in time to a period of six months. It also very importantly authorizes the commissions to investigate, detain, and make recommendations about not only Party members but also anyone who exercises some type of government or public responsibility. This represents a potentially vast expansion of the use of this powerful weapon of the party-state.

Although the NSC, like the State Council, the Procuracy, and the Supreme People's Court, is required by the Constitution to report to the NPC, as well as have its leadership formally appointed and removed by the NPC, its powers to investigate and detain all government and public officials, including members of the NPC, may make it the Party's most powerful governing instrument. Presumably the NSC, which is plainly subject to Party control, will in reality only be accountable to the Party leadership and not to any government institution, even the NPC. Whether this momentous innovation will enhance good governance by including desirable new legal restraints upon the imposition of administrative punishments or in effect entrench and expand the existing Party punishment system under the fig leaf of government action remains to be seen. But it is unlikely that in substance rather than appearance it will significantly restrain the Party's capacity to exercise arbitrary power (see Horsley 2018, who gives an excellent detailed analysis of the NSC).

VII. CONCLUDING THOUGHTS

This returns us to the broader question, raised above, with regard to the success of the police in distorting and minimizing reforms prescribed by the legislature. Will the Party and the formal legal system that it dominates implement in practice some of the most meaningful reforms to which it has committed on paper—whether the reforms concern administrative detention or efforts such as those to expand the participation of the masses in the administration of justice, to boost the competence and status of the judiciary, or to reduce the number of wrongful convictions?

The biggest obstacle to genuine progress toward the rule of law today in China may be ideological—the absence of agreed ideals, goals, and principles to guide the formulation and implementation of legal norms. Perhaps it would be more accurate to say that there is

currently considerable conflict and confusion over these matters in official Chinese circles. For over 30 years, prior to the ascent of Xi Jinping in 2012, Chinese judges, prosecutors, lawyers, legislators, officials, law professors, and even police were, by and large, increasingly educated to respect Western legal values that, since the end of World War II, have gradually become universal.

More recently, even while purporting to endorse the Constitution, the rule of law, and the importance of achieving fairness and justice in every case, Xi Jinping and the Party have periodically denounced international legal values. They have condemned constitutionalism, the separation of powers, judicial independence, and the critical role of human rights lawyers, while preaching and practicing the absolute domination of the Party.

Yet Party domination has thus far failed to provide an adequate replacement for universal legal values. The old Soviet justifications of Party rule have lost their persuasive force in China as elsewhere. Moreover, intermittent attempts by Xi Jinping and his comrades to invoke China's ancient legal traditions in order to fill the void with nationalist pride have not won acceptance. The hoary maxims of Confucianist humanism, until recently denounced by the Party as pernicious feudalism but now revived by Beijing, evidently do not meet the felt needs of the contemporary Chinese legal community. And Xi Jinping's occasional invocation of Confucianism's greatest opponent—the notorious Legalist philosophy of government that featured dictatorial rule by harsh application of law during China's first imperial dynasty over two thousand years ago—is too close to the reality of Xi's rule to offer the increasingly sophisticated and restive Chinese people—and even many Party members—much comfort.

China's continuing struggle over the rule of law is far from over. We can only hope that, before long, new leadership will reverse the current backward transition.

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