FROM REVOLUTION TO RENAISSANCE: THE CHINESE SOCIALIST APPROACH TO POWER, LAW AND STATECRAFT

Political Context Study
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From Revolution to Renaissance: The Chinese Socialist Approach to Power, Law and Statecraft

Introduction

The People’s Republic of China (‘China’) is still a one-party State today. Against all odds, the Communist Party of China (‘CPC’) remains steadily at the helm in the Party-state. The CPC is striving to lead China from revolution to renaissance. It is a renaissance in the sense of the country being reborn through a transition from the dark early decades of the PRC to a place at the pinnacle of the modern world. Under CPC rule, China today is not only an economic miracle; it is also witnessing the renaissance of its ancient culture and learning, including the visible revival of Confucianism. The CPC has survived many a political maelstrom and economic disaster at home and ideological isolation and fallout internationally. From the disastrous Cultural Revolution under Mao Zedong to the Tiananmen democracy crackdown and the fall of the Berlin Wall in 1989, the CPC fought it out internally, closed ranks and moved forward under Deng Xiao Ping’s pragmatic leadership. Unfazed, the CPC left the Mao saga behind blaming all tragic atrocities on the Gang of Four and embarked on a monumental task of constructing socialism with ‘Chinese characteristics’. In essence, China is a politically authoritarian state running a liberalised market economy. The Party-state remains in control politically despite the de facto federal system of government, the introduction of grassroots democracy and pressure for greater intra-party democracy more recently. Equally, the Party-State holds sway in all aspects of the people’s lives through the principal/subordinate relationship between the party and social organizations from national right down to the grassroots level. This relationship also constrains civil society

1 For brief account in English of founding, nature, principles, organization and membership of Communist Party of China, see website in English, http://www.cpc.people.com
2 MacFarquhar & Schoenhals Roderick MacFarquhar and Michael Schoenhals, Mao’s Last Revolution, Harvard University Press, 2006
3 Ibid.
which has been developing since the 1990s with China’s about face on human rights and subsequent entry into the World Trade Organization in 2001. Regarded as the most successful of the transition countries in the post-socialist period, China poses a challenge to other political models, mostly democratic. Still, the intriguing question remains – what is socialism with ‘Chinese characteristics’? How will greater intra-Party democracy affect state control? How is state control consistent with grassroots democracy? Will developing or allowing intra-Party democracy and grassroots democracy lead ultimately to socialist democracy? Or is it merely patriarchal authoritarianism in disguise? What is the significance of the revival of Confucianism and other traditions to building socialism with ‘Chinese characteristics’? Is the Confucian concept of a harmonious society solely to entrench the Party-state? Will the fusion of selective Confucian concepts and socialist ideology promote or further constrain civil society in China? Is China moving back to the future with the Confucian revival?

This article focuses on the complex political transition of China in the post-socialist period particularly since the 1990s. It argues that a modernized version of the theory of another ancient Chinese philosopher, Han Feizi, is driving this transition. Han, the most famous scholar of the Legalist School, proposed the theory of government which encompasses power, law and statecraft. Han’s theory of political government has been used by the rulers of successive dynasties since China was united for the first time in history in 221 B.C by Qinshihuang, the founder of the Qin Dynasty. The Legalist School is generally associated with using law and in particular, harsh punishment to exact obedience to the ruler, the administration of the day and maintain order in the political and social system. But in fact, Han synthesized the theories of his predecessors in the Legalist School – the theory of power by Shen Tao, the theory of law by Shen Pu-hai and the theory of statecraft or method by Shang Yang. It is necessary to understand that statecraft goes beyond the method of managing state affairs to mean the art of handling people without their knowledge that they are being handled. Although the ‘rule of man’ has been attributed to Confucianism, it is actually underpinned by the ‘rule by law’ which is central to Han’s theory of government. Rule by law which is based on the power of the ruler or the ruling government is clearly different from the rule of law under which every person is equal before the law. The successful application of Han’s theory today requires

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12 Ibid.
intelligent understanding of when to use law instead of brute force, how to manage people, groups or structures instead of expecting them to follow blindly laws and regulations and most important of all, when to use power instead of law or statecraft. Applying Han’s theory, the ruling Party’s hold on power is being secured through restructuring and modernization of the CPC and extension of Party influence. Furthermore, the recourse to law to institutionalize Party rule and entrench its power is visible in the methodical construction of a socialist legal system based on theories of Mao, Deng, Jiang and Hu. Finally, statecraft is discernible in initial decentralization of power which led to the development of \textit{de facto} federalism and the Party-state’s decision to recognize, engage with and construct human rights. Statecraft is also evident in the selective revival and integration of Confucian concepts to check the increasing influence of human rights concepts which accompany the rising demand for democracy. In other words, the construction of ‘socialism with Chinese characteristics’ boldly proposed by Deng was and remains a monumental task through a delicate calibration of all the elements of wielding power, using law and practising statecraft.

The argument will be made as follows. Part I sets out the recent historical phases under Deng, Jiang and Hu in the way Han’s theory of power, law and statecraft has been and is being applied, and explains briefly the theory and characteristics associated with each period. Part II outlines the developing political system in China, defines \textit{de facto} federalism and describes the contemporaneous development of grassroots democracy. Part III discusses CPC dominance of the political system through the formal political party system. It assesses the strengths and limitations of the political party system through examining the grip of the Communist Party on power, its internal cadre management and its relationship with other political parties and actors through the China People’s Political Consultative Committee (‘CPPCC’). Part IV centres on the Party-state dominance in society through the principal/subordinate relationship between the Party, the State and social organizations and non-government organizations. Part V analyses the political transition in terms of ‘socialism with Chinese characteristics’ as institutionalizing patriarchal authoritarianism. It argues the Party-state is drawing on the Confucian concept of harmony to institutionalize constraints aimed at reducing conflicts in society and to present an alternative image internationally. The alignment of power structures, political and cultural, sets new parameters for civil society participation in the attainment of human rights as China’s renaissance unfolds.

I. From Reform to Renaissance 1978-2012

The seeds of democracy and federalism face an uncertain future in contemporary China. Sown in the dying days of the feudalistic Qing dynasty, democracy and federalism failed to take root during the brief Nationalist period after 1911. Instead the People’s Republic of China was established by the CPC in 1949, based on the Marxist-Leninist theory of contradictions within the capitalistic system and dictatorship of the proletariat. Since then, the fortunes of the socialist State have paralleled those of the CPC. In line with Han’s theory on power, the CPC kept an iron grip on political power with a strong centralised Party/government structure, from national to grassroots level backed by military power, the People’s Liberation Army (‘PLA’) before 1949 and the Central Military Commission (‘CMC’) since then. The country is still recovering from the excesses of the Mao era although the CPC continues to endorse Mao Zedong Thought alongside Marxism-
Leninism, Deng Xiaoping Theory and Jiang Zemin’s Three Represents. Deng’s pragmatic leadership represented the watershed, a break from the traumatic past and a search for new directions while adhering to socialist ideals. With a stranglehold on political power, the CPC used law and statecraft to propel socialist market reforms from 1978, initially decentralizing power and subsequently pulling back, recentralizing power. These moves which drove stunning economic recovery caused intense competition among provincial/local governments which began to act to protect the interests of their regions. Described as *de facto* federalism as China is a socialist and not a democratic state with a federal system of government, this phenomenon is more a display of statecraft as power remains in the hands of the CPC leaders. If at all, *de facto* federalism heightened power struggles within the top leadership of the Party-State during the 1990s but without threatening CPC rule at all.

The CPC remains firmly in control with fairly smoothly coordinated political leadership transition at the top within the Party, the Central Military Commission (‘CMC’) and the Party-state. Cheng & White argued that the ‘broad elite transformation from revolutionaries to technocrats’ signal a shift from strongman politics which has characterised the governance of China for dynasties. While a more modern collective leadership began evolving in the 15th Central Committee of 1997, Cheng and White argued that the technocratic principle began to regularise Chinese politics in a ‘more legal-rational way’, but remained ‘exclusivist and anti-democratic’. Both observations are correct. At the same time, they bear out Han’s theory of political government that a ruler or ruling government must have the power and authority to enforce orders. Hence, unless the CPC has or appears to have the proper technocratic credentials, the Party-state would not be able to respond to the challenges of economic development in the age of modern technology, let alone the power and authority to implement 5-Year Plans. Accordingly, Deng picked successors with technical background to lead China from reform to renaissance. Hu Jintao succeeded Jiang as General Secretary of the CPC in 2002, President in 2003 and Chairman of the CMC in 2004, finally securing his position as paramount leader.


Deng Xiaoping demonstrated the ultimate Legalist art of wielding power, using laws and handling people through initiating a comprehensive transformation of the political,

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15 Ibid, 264.
military, economic and social structures of the Party-state. At the core of his vision is the paramount leadership of the CPC directing and managing this transformation. Hence, Deng’s era saw the selection and emergence of technocrats for key positions in the CPC, the CMC and the Party-State. In 1980, Deng launched the ‘Four Transformations’ programme to produce communist leaders who were ‘more revolutionary, younger, more knowledgeable, and more specialized’. The 12th Party Congress in 1982 is regarded as the watershed for CPC leadership when Jiang, Li Peng (a hydraulic engineer who became Prime Minister) and other technocrats were recruited into the CPC Central Committee. Their common background ensured a measure of political coherence in ruling the country. Jiang and Hu, his successor, were reportedly picked by Deng or identified as prospective future leaders at Deng’s insistence. While this demonstrates his influence as paramount leader and king maker, it is argued that his choice of successors with technical background was also consistent with the uphill task confronting him.

Party control over the military was gradually strengthened under Deng. The PLA, the military arm of the CPC, became the national military when the PRC was set up in 1949. The PLA together with the other armed forces came under the joint Party and State military leadership in 1954. The 1954 State Constitution provided that the State President directs the armed forces and chairs the Defence Commission. In the same year, the CPC Central Committee established the CMC as leader of the PLA and the armed forces. Democratic centralism ensured that the systems merged the party organization with the military leadership which achieved party leadership and administrative leadership. Operationally, the PLA reports to two CMCs, one belonging to the State and the other to the Party, both of which have identical membership. In 1982, the State Constitution was revised at the 5th National People’s Congress institutionalising the State CMC as the leader of all armed forces of the Party-state. Deng went on to ensure that the powers of the CPC and the military would be in the hands of a civilian leader and not someone from within the military ranks. In 1989, Deng’s objective of strengthening Party control over the military was eventually carried out with the appointment of Jiang Zemin as CMC Chairman even though Jiang did not serve a probationary period of 6 months as Vice Chairman.

Vowing to build socialism with ‘Chinese characteristics’, Deng introduced reforms which opened China to the world after three decades of isolation. In retrospect, there was method in his pragmatic approach to reforms. Deng let the world into China but also sent the Chinese people to study other systems and to learn from experiences in other countries. Economic development was the priority in terms of the situation and in line with Marxist analysis that economic and social conditions shape society. Deng shifted the

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country from a planned economy to a market economy which he insisted was a socialist market economy with ‘Chinese characteristics’.

Economic reforms in rural areas led to decollectivization and introduction of the Household Responsibility System. Under this System, collective land was initially leased for 3 years to individual households for farming which stimulated productivity and production in agriculture. But manufacturing was the key development sector as China became the production factory of the world in clothes, shoes and other consumer goods. Millions of surplus labourers from the rural areas – rural migrant workers – breached the hukou (户口) or household registration barriers and flooded the cities for a better life and ended up on the production lines and construction sites. The manufacturing phenomenon also stimulated development and investment in resource sectors and China also became a major polluter of the environment. Nevertheless the economy powered ahead of developing and developed countries and the rest is history.

Deng’s economic reforms were accompanied by wide-ranging institutional reforms in other areas. 1982 was not only a watershed for political leadership personnel. The use of law and the practice of statecraft were visible in the process of achieving economic reforms. The new Constitution adopted in 1982 enshrined the new socialist directions and entrenched State and collective ownership of land and resources and leadership of the CPC. Grassroots democracy made its appearance in the Constitutional provision for village level elections (art 111). This provision addressed rising lawlessness in rural areas 23 and complemented people’s economic participation through the Household Responsibility System. Indeed, village elections channelled and harnessed people’s political participation and enabled the CPC to regain control at the grassroots level.

The intelligentsia were also rehabilitated and carefully prodded towards the right direction. The education system, the legal and judicial systems were rebuilt practically from scratch after Mao’s death in 1976. Tertiary education was revived with nationwide entrance exams held for the first time in 1977. Legal education was restored in universities to equip future judges, procurators and lawyers with the knowledge and skills for their functions and professions. Analysts and China watchers have a litany of complaints about China’s foray into laws and regulations. But in fact they were systematic and approached legal reform very cautiously, borrowing from civil and common law jurisdictions alike and conducting pilot projects to test for efficacy and suitability. Law was used to ensure public security, social control and order, and civil administration. The 1979 Organic Law of the People’s Courts and the 1979 Criminal Law were among the first legislation to be enacted; the Civil Law followed in 1987 and the Administrative Law in 1989. The Organic Law of Village Committees was also adopted in 1989, apparently despite the leftist backlash in the wake of the Tiananmen democracy movement. 24

Significantly, Deng’s era witnessed the turning point in China’s position on human rights. During the Cold War, China was absolutely against ‘Western’ human rights as the US and other Western democracies continuously decried China’s abysmal

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record of civil and political rights violations. That record is well documented and need not be repeated here. After crushing the Tiananmen democracy movement in 1989, the Party State got rid of Premier Zhao Ziyang who sympathised with the students and instead installed Jiang as Deng’s heir apparent. But neither was it business as usual. The Party State grabbed the bull by the horns and put out a White Paper on human rights in 1991.

Consolidating and strengthening the Party fell to Jiang as China stepped further out into the world during his relatively shorter term in power. Deng continued to wield power behind the scenes until his death in 1997 even though Jiang became the official paramount leader in 1993. Jiang was anointed Deng’s successor after the Tiananmen crackdown, assuming the post of General Secretary of the CPC and Chairman of the CMC in 1989 and President in 1993 as China geared up to join the World Trade Organisation (‘WTO’) and made a bid for the 2008 Olympics. An engineer, Jiang represented the third generation of CPC leaders, the emerging technocracy – people with technical education, professional experience and high posts and who demonstrated loyalty to their patrons. Jiang became mayor of Shanghai in 1985. He was Shanghai Party Chief when he was picked to replace Zhao Ziyang as Deng’s successor in 1989. To consolidate his own power, Jiang won 3 major power struggles against his rivals and tried to place his friends referred to as the ‘Shanghai Gang’, in the CPC Central Committee and Politburo. The Shanghai Gang included Wu Bangguo, Huang Ju, Wang Daohan, Zeng Qinghong, Chen Zili and Liu Ji all of who were from Shanghai and all with technical education.

Jiang is credited with coining the phrase ‘socialist market economy’ in 1993. The phrase appears to be an attempt to justify the shift from a centrally planned economy to a market economy. On closer scrutiny, the government is not only regulating the growing capitalist market economy but instead it is deeply involved in the market. Whether this is a betrayal of socialist principles is arguable. This is certainly an indication that the accumulation of economic power is regarded as central to the CPC’s hold on political power as well as to augment the Party-state’s power to enforce economic policies, strategies and laws in a globalised world. It is consistent with Han’s theory that the ruler has the power and authority to enforce orders. It also implies that power and authority are not a given but that without power, the CPC will not be able to impose its will. It further implies that without accumulating economic power, the CPC will be more at risk of losing political power in the face of rising demand for democracy.

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25 BBC, ‘1989: Massacre in Tiananmen Square’
http://news.bbc.co.uk/onthisday/hi/dates/stories/june/4/newsid_2496000/2496277.stm (20 February 2012);
28 Ibid.
29 Ibid, 238, footnote 13.
Jiang also advanced the theory of the ‘Three Represents’ which is the concrete statement of what the CPC has to do to hold on to political power as the ruling government in Han’s theory. This theory was written into Party’s Constitution at the 16th Party Congress in 2002 and subsequently added to the State Constitution. The theory exhorts the CPC to ‘represent the development trend of China’s advanced productive forces, the orientation of China’s advanced culture and the fundamental interests of the overwhelming majority of the Chinese people’.

This implied that the CPC should have the expertise and skills in all spheres of development in order to be the vanguard of China’s transition to the future. In practice, the theory justified opening the doors of the Party to the growing class of entrepreneurs from 2001. But to critics within and outside the Party, this represented a departure from the protection of farmers and workers which was the founding ideology of the CPC.

Jiang’s theory served to consolidate CPC hold on political power as economic development raced ahead in China. From Han’s perspectives of power and statecraft, the competition for economic benefits among provinces produced the new generation of leaders at both provincial and national levels. This is clearly a positive outcome from the CPC’s point of view as internal power struggles appear to have been managed without damaging the Party as a whole. The process is a salutary lesson on the interplay between power and statecraft in motion. Although China is a unitary state, the central government decentralized power to promote economic development. De facto federalism developed as provinces competed for their share of economic development, through shaping policies and laws to support provincial development strategies and plans. Wealthier provinces began to exert greater influence, political and otherwise, at the national level. Since the mid 1990s, the Central Committee has been dominated by the wealthy eastern coastal provinces of Guangdong, Zhejiang, Jiangsu, Shanghai and Shandong. Consequently, the 15th CPC Congress in 1997 witnessed ‘negotiation among political factions, compromises between central and local power networks, opposition to nepotism and the personality cult’ even as Jiang sought to secure personal power. By 2002, the Standing Committee of the Politburo expanded from seven to nine members to accommodate powerful provincial leaders, with six associated with the Shanghai Gang.

Ultimately, all the negotiation, compromises and power struggles resulted in a ‘gradualist approach’ in the post-socialist transition period. For example, contract land and other agricultural experimentations were ready for institutionalisation but in which direction? At the same time, the legal framework and judiciary system were pushed to develop more rapidly and more in step with international standards to secure China’s entry into the WTO. China not only joined the WTO in 2001 but also won the bids to host the 2008 Olympics and the 2010 World Expo. Meanwhile, the rise of the technocrats during this phase also saw a different relationship develop between the new technocratic political leaders and the military. As the political leaders were chosen on the basis of

30 Above n 13.
technical background, the military saw less need to intervene in politics.\textsuperscript{36} In fact, Jiang’s term saw an increase in military spending but a drop in manpower. The military was clearly at the service of their political masters, the CPC.

During Jiang’s term, the Party-state had to contend with old problems that refused to go away and new issues that accompanied liberalization. This is the downside of power, the negative reality of power struggles and a reflection of ugly human nature. The power play challenges Han’s theory of the synthesis of power, law and statecraft. The first challenge is in the way all three elements have been or are being used to dispose of enemies in the quest for power. The second challenge is how all three elements are being used to respond to social unrest, social issues and the rise of civil society. Corruption within the ranks of the Party and of the Party-state at all levels, including the judiciary, was severely damaging the Party’s credibility. Paradoxically, corruption charges were also useful in power struggles within the CPC. For instance, Jiang expelled his rival, Chen Xitong, mayor and Party Chief of Beijing, from the Politburo and prosecuted him for corruption.\textsuperscript{37} Corruption was often linked to major development projects and land expropriation which resulted in millions of farmers losing land and livelihood and forced evictions in urban areas often carried out by local security officials. Social unrest and stability was further exacerbated by migrant workers’ pay disputes with their employers often just before the annual Spring Festival. Civil society was also burgeoning. Women’s organizations proliferated before and after the 1995 Beijing Women’s World Conference and raised a wide range of women’s rights while environmental organisations were also testing China’s rhetoric on environmental protection after China’s acknowledgement of human rights in 1991.\textsuperscript{38} In moves similar to recentralization of power after initial decentralization to stimulate economic development, the Party-state began to restrain NGOs after loosening reins to further encourage civil society in the 1990s. The Party-state tightened regulations on NGOs in 1998 and outlawed the Falungong, a spiritual movement, in 1999.\textsuperscript{39}

Hu’s term saw greater use of law and statecraft with growing confidence in the CPC hold on power. Further institutionalization and consolidation of power through infusing socialist principles with Confucianist concepts characterise Hu’s paramount leadership. It is a comprehensive response to a host of issues inherited from Jiang, as well as demand from within the Party and society in general for greater democracy, transparency, accountability and rule of law. First, Hu acted to consolidate his personal power. Although he began by endorsing Jiang’s Three Represents, Hu has made his own mark in the history of the CPC and the Party State through advocating the path of ‘scientific development’ to build a ‘harmonious society’ within China and ‘harmonious world’

\textsuperscript{36} Li Cheng & Lynn White, ‘The Fifteenth Central Committee of the Chinese Communist Party’, above n 14, 263.
\textsuperscript{37} Ibid, 236-38.
While continuing to study, learn, borrow and adapt from many countries and experiences overseas, Hu’s government looked closer to home and has rehabilitated Confucius to ground a cultural and moral policy response to the multitude of social, political and environmental problems inherited from Jiang’s presidency. Harmonious society anchored by scientific development seems to signal a significant shift from an infatuation with economic growth to pursuit of a more sustainable mode of development. A hydraulic engineer who graduated from Qinghua University, Hu heads the 4th generation CPC leaders and the second generation in terms of technocratic leadership. Analysts disagree over whether Hu’s fairly orderly succession reflects institutionalization of power transition within the CPC and the Party-state.

Social stability is an aim sought to be achieved through the ‘harmonious society’ slogan but more centralised political control is the result as Hu began to rein in the provinces. Hu used statecraft and corruption laws to consolidate his power within the top leadership of the CPC. Eroding the power of the Shanghai Gang and Jiang’s backstage influence could also counter de facto federalism which favoured wealthier and more powerful coastal regions such as Guangdong and Shanghai. So too was Hu’s emphasis on developing the poorer Central and Western regions. It was a case of killing more than two birds with one stone. While developing the poorer regions alone might not bridge the growing gap between the rich and the poor, Hu stood to gain politically and ideologically with provincial leaders and CPC stalwarts from those regions. Hu and Prime Minister, Wen Jiabao, also project a populist persona different from Jiang who has been criticised for lacking the common touch. Hu and Wen are more likely to be seen talking to herdsmen in snowy Mongolia, trudging through a farmer’s muddy field, listening to migrant workers recounting their pay dispute or consoling bereaved survivors after the Sichuan earthquake.

Anti-corruption was part of Hu’s populist strategy which seemed to include greater public discussion, reform, openness, transparency and accountability. Tanner pointed out that this was a risky strategy as it seemed to promise more than what he really intends to deliver. The populist strategy could well be a double-edged sword. But the reality was that he needed a strategy to counterbalance his weak personnel base in the top leadership. In fact, Hu turned transparency and accountability to his advantage in the power struggle after taking over from Jiang. Jiang had stacked the CPC Politburo with his

40 Zheng Yongnian and Tok Sow Keat, ‘‘Harmonious Society’ and ‘Harmonious World’: China’s Policy Discourse under Hu Jintao’, University of Nottingham China Policy Institute, Briefing Series Issue 26, October 2007, 42. (8 February 2010)
41 Ibid. [3.5]
44 Ibid, 6
45 Youtube, ‘Wen Jiabao Consoled Orphans after Sichuan Earthquake’ http://www.youtube.com/watch?v=RvZ3w1ks1jo (20 February 2012)
friends including 5 out of the 9 members of the Standing Committee – Wu Bangguo, Jia Qinglin, Zeng Qinghong, Huang Ju and Li Changchun.\(^{47}\) Hu successfully used corruption charges to eliminate Chen Liangyu, Party chief and mayor of Shanghai, and member of the Shanghai Gang, from the Politburo. Generally speaking, corruption kept pace with rapid economic growth in the past two decades. But the high ranking CPC officials caught out have been significant both in terms of numbers, who they are and where they’re from.\(^{48}\) At least 8 officials at the rank of Vice Minister and higher, including two Central Committee full members and one Central Discipline Inspection Commission (‘CDIC’) member, have been disciplined for their involvement in corruption in 2008/09.\(^{49}\) In September 2009, the CDIC decided that the CPC would investigate corruption cases which triggered public mass protests and requested government and Party leaders to include information on housing, investment and professions of their spouses and children in reports on important personal events.\(^{50}\) The 4\(^{th}\) Plenum of the 17\(^{th}\) CPC National Congress did not recommend social supervision as a principle or adopt concrete measures to subject public officials to such social supervision.\(^{51}\) However, in early 2010, the CPC issued a code of ethics specifying 52 unacceptable practices to ensure government officials work cleanly and to prevent corruption.\(^{52}\) Judicial corruption also hit the spotlight with 2,700 judicial officials investigated for graft and malpractice in 2009 and a former Vice President of the SPC, who had already been disciplined in October 2008, jailed for life in early 2010.\(^{53}\) Corruption could well be the downfall of the CPC unless these and further anti-corruption measures are rigorously enforced. Otherwise, statecraft however skilful is unlikely to save the CPC from imploding.

Hu’s introduction of intra-Party democracy could encourage political manoeuvring among elite power contenders even though the move is meant to meet the demands of ordinary Party members for political participation. It is a demonstration of statecraft in managing calls for greater democracy from the rank and file of the CPC. Steps were announced to promote intra-Party democracy so as to develop people’s democracy and enhance intra-Party harmony in order to promote social harmony.\(^{54}\) The steps included rehabilitating a tenure system for deputies to Party congresses of between three to five years; plenary sessions of the Party Committee will vote on personnel issues which used to be the prerogative of top Party leaders; candidates for Party posts will be democratically nominated instead of being nominated by a few Party leaders; and grassroots deputies and Party members were invited to the 4\(^{th}\) Plenum to underscore importance of intra-Party democracy.\(^{55}\) In the meantime, Xi Jinping has emerged as Hu’s successor when Hu’s term ends in 2012. This implies that leadership succession remains beyond the reach of intra-Party democracy.

\(^{47}\) See ‘Communist Party of China in Brief: Leadership of the 16\(^{th}\) Central Committee’, (July 10, 2007) on website: cpc.people.com (8 February 2010). Huang Ju has passed away since then.
\(^{49}\) Ibid, 2.
\(^{50}\) Ibid, 4[3.3].
\(^{51}\) Ibid, 4[3.4].
\(^{54}\) Bo Zhiyue, ‘The Fourth Party Plenum and Political Succession in China’, above n 22, 4 [3.6].
\(^{55}\) Ibid, 5[3.7], 6[3.8][3.9][3.10]
Socialism with ‘Chinese characteristics’ has taken a definite shape as Hu enters his second term of presidency in 2008. The official rhetoric promises greater democracy, human rights protection and rule of law but in the same breath, the CPC is the anointed leader of the political system. Officially recognized minor political parties will be extended greater participation in ‘democratic consultation’ on major issues through committees, and even given government positions. But competitive party elections are out; the same goes for secession or independence of Tibetans, Uyghurs or other minorities.

Significantly, a Party stalwart was appointed to replace Xiao Yang as the President of the Supreme People’s Court. Unlike his predecessor, Wang Shengjun has no formal legal training. During his term, Xiao Yang emphasized professional competence, individual and collective judicial autonomy. Whereas, Wang launched the campaign of the ‘Three Supremes’ – Party’s cause, people’s interest and the constitution and the laws – which emphasized the Party leadership and urged the courts to focus on economic development and social stability. The transition from Xiao to Wang was accompanied by the fleshing out of the socialist legal framework with the passing of several important laws on property rights, labour contracts and mediation and arbitration in labour disputes and in land disputes in 2007, 2008 and 2009. The Party-state holds on to ownership of state land despite expansion of individual property rights to include land use rights, mortgage and transfer rights. Laws covering labour contracts and mediation and arbitration in labour and land disputes aim at reducing migrant workers’ and farmers’ protests but steering away from litigation to mediation as the primary means of resolving such disputes. The recent spat with Google over hacking of email accounts of dissidents serves to underscore the Party-state’s tightening media control particularly after the Beijing Olympics. There is a sense of one step forward, two steps backwards as well as the sign that the more concessions are made to democratization, the tighter will be the Party’s grip. It is also a clear demonstration of the Party-state’s application of Han’s theory of political government with power of the ruler entrenched through law and statecraft.

II. Unitary State, de facto Federalism & Grassroots Democracy
China’s political system remains dominated by a single Party despite the development of de facto federalism, the presence of at least 9 other political parties and grassroots democracy. It is important to note that China is not only a one Party state but it is also a unitary State. In theory, this means that local governments are subordinate to the central government. This differs from a federation, which is generally associated with democratic

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57 Ibid.
58 Ibid.
systems, where local governments are popularly elected, are autonomous and have the power to make independent decisions, policies and laws within their respective regions. Hence, the development of *de facto* federalism in socialist China appears to be a contradiction in terms. Zheng concedes that the Chinese political system is not democratic but asserts that the evolving political scenario in China meets the criteria of *de facto* federalism. In countries subscribing or claiming to subscribe to democratic principles, political parties usually vie for the right to govern the country through periodic general elections. However, only one General Election has been held in 1953 after the CPC routed the Nationalists and established the PRC in 1949. Indeed, the CPC lays claim to leadership of the people in building a socialist democracy where the people’s congress system is the fundamental political system. Officially, the National People’s Congress is the highest organ of state power but analysts recognize that the most powerful decision-making body in China is the Standing Committee of the CPC, not the State. Furthermore, the CPC controls all other officially recognized political parties through a political advisory body comprising of CPC and non-CPC members, the Chinese People’s Political Consultative Conference (‘CPPCC’) established in September 1949. The introduction of grassroots democracy appears to be an anomaly except that the CPC remains very much in control of grassroots politics. The implementation of village committee elections since the late 1980s and promotion of urban community participatory governance since the turn of the millennium will be discussed in a later section.

CPC control of every level of government begins with a combination of direct and indirect elections to the unicameral people’s congresses from township and county right up to national level. Both direct and indirect elections are held every five years. Voter turnout averages 90% of the 99% above 18 years of age who are eligible to vote. Those who are deprived of political rights are excluded from exercising the right to vote. Deputies to the people’s congresses at county and township levels are directly elected by eligible voters. People’s congresses at county and higher levels then elect deputies to the people’s congresses above their level.

By all accounts, indirect elections seem to be strongly influenced by quotas and Party-provided name-lists. The selection process is generally secretive, and nominations from the floor are unusual and fare poorly. A lack of ‘campaigning’ leads to ‘blind’ voting and Party celebrities are often sent to represent a region in which they grew up or worked but no longer lived. Direct elections to county and township congresses offer greater opportunities for political participation. Initially, manipulation of nomination process was rife, unapproved nominees crossed out or replaced. Elections officials often

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62 Zheng Yongnian, ‘Explaining the Sources of *de facto* Federalism in Reform China’, above n 5, 108.
64 Zheng Yongnian, ‘Explaining the Sources of *de facto* Federalism in Reform China’, above n 5, 119.
68 Ibid, 415.
indicated candidates favoured and voters had little opportunity to meet representatives or find out what they thought. But better informed voters use local congress elections to punish corrupt leaders or promote political change, get rid of or humiliate those they dislike.69

CPC domination of people’s congresses at all level is comprehensive and continuing despite recent changes to accommodate rumblings for fairer representation. Currently there are 2.8 million deputies to the people’s congresses at all levels. Only 176,000 or 0.628% out of 2.8 million deputies were from other political parties or members of the CPPCC.70 As for ethnic minorities (106.43 million or 8.41% of total population), they are represented by a corresponding number of deputies. The law limits the maximum number of deputies to each NPC to 3,000. Workers and farmers formed 18.4% of the total number of deputies to the 10th NPC (2003-2008). Women comprise about 20% of total number of deputies to the NPC. Recently, the NPC Standing Committee revised election laws so that deputies will be elected according to the same population ratio in both urban and rural areas; and increases the proportions of deputies from ethnic minorities, returned overseas Chinese, women, grassroots workers, farmers and migrant workers to peoples’ congresses at all levels.71 Instead of denting CPC hold on power, tweaking the system reflects flexibility in handling demands which could silence or mute criticisms and facilitates consolidation of power.

CPC control of every level of government is further secured through domination of the Standing Committees to the NPC and to people’s congresses which have the most power within the state political system. Members of Standing Committees at and above the county level are elected from among deputies to the people’s congresses in competitive elections and for the same term of 5 years as the NPC and people’s congresses at the corresponding level. As the NPC meets only once a year, the NPC Standing Committee exercises the function and powers of the NPC when it is not in session. The same goes for the Standing Committees at lower levels of government where the people’s congresses meet at least once a year. The NPC Standing Committee meets every two months. The Standing Committee to the 10th NPC had 175 members out 3,000 delegates to the NPC, including the chairperson and 15 vice-chairpersons. Bills are usually passed by the congresses and standing committees according to absolute majority votes except for constitutional amendments which require agreement of two-thirds of all deputies to the NPC.

Finally, CPC’s control of the political system is made absolute through the concentration of powers in the people’s congresses and standing committees. China does not subscribe to the doctrine of separation of powers associated with democratic systems. The concept that an independent judiciary is a check and balance on the executive and legislative powers remains foreign to China. Instead, the people’s congresses and standing committees at national, provincial/municipal, county/district levels have the

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69 Ibid, 415.
powers to legislate, supervise, appoint and remove officials, and to make decisions on major issues. Since 1982, the NPC and its Standing Committee have passed more than 200 laws and over 200 decisions on legal issues. The local people’s congresses and their standing committees passed over 7,500 local regulations and the people’s congresses in autonomous regions passed over 600 regulations. The NPC and its Standing Committee supervise the enforcement of the Constitution through examining enforcement of laws by the local governments, courts and procuratorates and checking reporting of regulations. The Standing Committee of the 10th NPC set up a special committee to standardise the work of checking the regulations. The standing committees at lower levels perform similar functions, supposedly to standardise the legal framework of the state. The NPC Standing Committee examines the judicial interpretations of the Supreme People’s Court (“SPC”) and the Supreme People’s Procuratorate (“SPP”) while the NPC and its Standing Committee hear and review the work reports of the State Council or the central government, the SPC and the SCC. Finally, the NPC elects the President and Vice-President of the PRC, the Chair of the CMC, usually appoint the Premier of the State Council nominated by the President; endorse Vice-Premiers, state councillors, ministers in charge of various ministries or commissions, the auditor-general and the secretary-general of the State Council nominated by the premier, appoint the other members of the CMC nominated by the Chair of the CMC and elects the president of the SPC and the Procurator General of the SPP. This political hierarchy secures total CPC control over executive, legislative and judicial personnel, functions and actions in the Party-state.

Significantly, it is political status and not legal status determines the power relations between state organs in the political hierarchy. This means that the relationship between different state organs in the political hierarchy depends on their relationship with structures in the CPC hierarchy. Since the 1990s, local people’s congresses are under the control of CPC committees whereas the courts are still subject to the CPC’s political-legal committees, which are lower in the Party hierarchy than the former. This implies that the local people’s congresses are of higher political status than either local government or the local judiciary. Nevertheless, the people’s congresses have more difficulties supervising governments which are of the same political status, than they face with the judiciary. Just as the NPC exercises power over the SPC and the SPP, the local people’s congresses supervise courts quite closely especially with increasing public demand. Most of the complaints the local people’s congresses receive concern law enforcement and about half pertain to the courts. The peoples’ congresses’ enthusiasm and legitimacy in supervising the courts was boosted by Party policies on judicial corruption. At the 15th Party Congress in 1997, Jiang called for judicial reform. In 1998, the courts launched a nationwide campaign to educate and rectify judicial cadres. China declared 1999 ‘judgements enforcement year’ under direction of Jiang in January and a special Party circular in July. Finally, the Supreme Court released a 5-year master plan to on judicial reforms in October 1999. Legislative supervision in the form of individual case supervision since the 1990s, has invited criticism of interference with

73 Ibid, 1071.
74 Ibid.
75 Ibid, 1073.
judicial independence, with good reason and giving rise to allegations of ‘supervision corruption’ or ‘legislative corruption’.

The principle of independent adjudication does not exclude legislative supervision pursuant to art 128 of the Constitution. Furthermore, art 129 authorise the procuratorates to supervise the courts, jointly with the people’s congresses. Courts have tried to resist legislative supervision by highlighting local protectionism as key to judicial reform. Basic level courts are vulnerable to this as their personnel and finance are dependent on CPC committees and local governments at the same level. Without an independent judiciary or other organ to check and balance the law-making structures of the Party-state, the CPC stranglehold on power is almost complete.

The CPC stranglehold on power in the Party-state is made complete through its domination of the Special Committees and the State Council which are critical structures at the national level. The State Council is the executive body or central government. Hence the overwhelming majority of these Committees and the State Council, like the NPC are CPC leaders, particular those in key positions. There are Special Committees for Finance and Economy, Education, Science, Culture and Public Health, Law, Nationalities, Foreign Affairs, Overseas Chinese, Internal and Judicial Affairs, Environment and Resources, Agriculture and Rural Areas. Committee members must be deputies to the NPC. The State Council is the executive body of the NPC or the central people’s government consisting of the Premier, Vice Premiers, State Councillors, Ministers of State Council Ministries, Directors of State Council Commissions, Auditor-General and Secretary General. Plenary meetings are attended by 40 members and Executive meetings by Premier, Vice-Premier, State Councillors and Secretary General. The State Council of the 11th NPC comprises the Premier, 4 Vice-Premiers, 5 State Councillors and 27 Ministers and Commissioners. In terms of gender equality, only 1 State Councillor and 3 Ministers/Commissioners are women. Ma Wen is Minister of Supervision, Wu Aiying is Minister of Justice and Li Bin is Commissioner of the National Population/Family Planning Commission. Another 11 women are Vice-Ministers of 9 Ministries (Ministry of Foreign Affairs, Education, Ministry of Civil Affairs, Ministry of Work Resources, National Population and Family Planning Commission, Public Bank, Auditor-General, State-Owned Assets and Tourism).

The powers of the people’s congresses hold the key to de facto federalism. The lack of clear demarcation of powers of the NPC and the provincial people’s congresses particularly in the area of legislative authority spurred the development of de facto federalism as regions compete in the race for economic growth.

1. De facto Federalism?
The CPC management of de facto federalism is a demonstration of deploying statecraft to achieve the aims of economic reforms without losing political power. The development of de facto federalism in authoritarian China implies growing demand for democracy

76 Ibid, 1078.
77 Ibid, 1082.
78 Ibid, 1081.
79 Ibid.
81 Zheng Yongnian, ‘Explaining the Sources of de facto Federalism in Reform China’, above n 5, 103-04
within the Party-state. The pressures are being exerted not only within the political system of the State. The push is also being felt within the CPC as revealed by the expansion of the Standing Committee of the CPC to include leaders from powerful provinces and demand for greater participation by ordinary CPC cadres. Zheng’s argument bears further consideration for a nuanced understanding of China’s developing political system. Basically, Zheng argues that economic decentralization in the 1980s led to *de facto* federalism which has been accelerated by globalization in the 1990s. He rests his thesis on evolving central-location relations. Constitutionally, China remains a unitary state as the local governments are subordinate to the central government. Structurally and legally, provincial governments are local state administrative organs which implement administrative measures, regulations and decisions made by the State Council to which they report and are answerable. The State Council which is the equivalent of central government in democratic states define the specific functions and powers of the local governments, can nullify their decisions, impose martial law in their localities, and direct its auditing agencies to conduct inspections of financial discipline. Furthermore, the Standing Committee of the NPC can annul the legislation passed by provincial people’s congresses which conflicts with national laws. The problem here is that the scope and content of respective legislative authority between the central and provincial congresses is not clearly differentiated. Nevertheless, the consequent development of *de facto* federalism does not weaken CPC control at national or any other level of government.

Ultimately, the CPC is the highest authority at any level of the political hierarchy. At the provincial level, the lawmaking bodies are subordinate to the CPC authority despite the changes in lawmaking processes and relationship between the lawmaking bodies driven by the pursuit of economic development. Provincial people’s congresses have been playing two distinct roles since securing lawmaking authority in the 1990s. These congresses coordinate conflicts of interests but they also represent voices of various social groups. In addition, social organizations are emerging as new forces in lawmaking, supported by local legislatures in their attempt to improve their stand against government dominance in lawmaking politics. In principle, legislatures should report to and get prior approval from the Party in all matters of lawmaking. But in practice, the Party’s leadership has shifted radically from direct participation in making of individual laws to an indirect and comprehensive role that oversees the lawmaking processes as a whole. Legislative-Party relations are not a key issue in local lawmaking unlike relations between NPC and Party. Instead, relations between executive and legislative are crucial. For example, it is pertinent to note that in Shanghai, the cabinet proposed about 90% of the legislative agenda and 90% of what it proposed was adopted. While Shanghai may not be representative of the all the regions, it may be similar in powerful

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82 Ibid, 103 on relationship between provincial governments and State Council. For 2 possible definitions of federalism, see 106.
83 Ibid, 103-04.
85 Ibid, 594.
86 Ibid.
87 Ibid.
88 Ibid, 598.
provinces and municipalities such as Guangdong and Beijing. Generally, the role of the provincial legislature is restricted to economic policy-making. This is driven by the imperative of speeding up regional economic development. In fact, legislature and government, under the leadership of the territorial Party in a province, have made concerted efforts to promote economic-related laws to speed up regional economic development. Both features are consistent with Zheng’s thesis on de facto federalism, particularly the power of wealthy coastal provinces. This also implies that the roles played by local legislatures and social organizations in the lawmaking process although they are important, should not be overestimated. It also implies that all actors in the process are within the palm of the CPC.

Even the consequent rise of local protectionism does not diminish CPC power. On the contrary, local protectionism demonstrates the strength of and strengthens the CPC at local level. Apart from the negative connotations of local officials protecting one another in corruption or other cases involving abuse of power, local protectionism also implies that common interests and local benefits have drawn and can draw local officials and agencies to work together under CPC leadership. However local protectionism generated by economic decentralization in the early stages of reform has since been constrained as decentralization deepened. Central-local relations became highly interdependent. The central government needed provinces to cooperate to govern the country. So as provinces developed and strengthened power bases, the central government had to develop its own independent power to constrain local behaviour. Provinces now influence decision-making at national level. Decentralized political power enabled provinces to initiate economic reforms and counter central bureaucracies obstructing economic reforms. Powerful provinces checked power of central government while protecting local societies from central arbitrary power but remain reluctant to share political power with society. While economic decentralization spawned inter-province rivalry, reduced inter-province interdependence and exacerbated local protectionism it encouraged interdependence between provinces and the outside world. In the aftermath of the 1989 democracy crackdown, conservatives almost put a halt to de facto federalism through coercive means to recentralize economic and political powers. Deng stepped in to save the Communist regime and pushed for radical decentralization in 1992 through the open door policy. The economy boomed with exports and foreign direct investment. In response to globalization pressures, the central government turned to selective recentralization to reconcile the imperatives of decentralization and recentralization. This has resulted in de facto federalism. Selective recentralization concentrated on major reforms in taxation and central banking system. This recentralization is testimony of adroit statecraft in knowing when to let go, what to let go and when to pull back and what to pull back.

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89 Ibid, 608.
90 Zheng Yongnian, ‘Explaining the Sources of de facto Federalism in Reform China’, above n 5, 111.
91 Ibid, 112.
93 Ibid, 116
94 Ibid.
95 Ibid, 117.
96 Ibid, 117-119.
In terms of political central-local relations, it is significant that Zheng argues his case of selective recentralization based on the CPC hierarchy and not political organs of the state; and the CPC cadre management system. Firstly, the majority of CPC Central Committee members are drawn from provinces, particularly the rich coastal ones such as Guangdong, Zhejiang, Jiangsu, Shanghai and Shandong since mid 1990s. Local powers are now competing for national power. In 1980s, local powers were behind localism whereas local strongmen now play important role in formation of national leadership. In 2002, the Standing Committee of the CPC Politburo, China’s most powerful decision-making body, was expanded from seven to nine members. One factor being local strongmen could not agree with party leaders so the former were all given membership. Secondly, the Party strengthened political control through the cadre management system – reemphasizing cadre transfer system to tighten control over local cadres through the 1995 ‘Temporary Regulations on Selection and Appointment of Party and Government Leading Cadres’. Leading members of local committees must transfer to another location after 10 years or maximum of 2 terms of 5 years. There are other reasons too but all aim at control of localism. Cadre transfer system has been an effective means of controlling provincial leaders and soliciting their compliance. For example, Chan argues that as the major thrust was to revamp state-owned enterprises (SOEs), the 1998 nomenklatura reflects the dilemma of the Party State of pursuing economic modernization and continuing political control. Ultimately, the Party State chose to retain central control of strategic SOEs and relaxing hold of lesser enterprises.

Formalizing federalism may be problematic but institutionalization of de facto federalism presents an interesting scenario for ways of challenging power structures and discovering spaces. The problem with formalizing federalism is ideology. Ideologically, federalism is a concept contradictory to the ideology of the CCP. Zheng argues that as long as federalism cannot be legitimized ideologically, a transition from de facto to de jure federalism is unlikely to take place. Top leaders fear federalism will lead to great diversities and disintegration hence de facto federalism gives flexibility as creative ambiguity is implicit in de facto federalism. The leadership priority is to promote economic development not to divide power between centre and the provinces. Ironically, in the transition to a socialist market economy, the Party-state’s first problem is political, not economic. Leading a closed economy in the direction of an open market strengthened instead of diminishing the role of the Party-state. It also strengthened the CPC in many ways.

2. Grassroots democracy?
The introduction of grassroots democracy may have posed a greater threat to CPC stranglehold on power. However, it would seem that the danger is being averted as statecraft is brought into play. Village committees and urban community councils seem to

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98 Ibid, 200.
100 Zheng Yongnian, ‘Explaining the Sources of de facto Federalism in Reform China’, above n 5, 124.
be evolving into state corporatist structures. On the one hand, people are growing more aware of rights, valuing participation and demanding political accountability for both political and socio-economic entitlements. On the other, grassroots democracy is impacting negatively at least on gender equality and women’s land rights in rural areas. This is because their main purpose is to integrate rural and urban residents to forestall the development of alternative associations undesirable in the view of the Party-state. In other words, villagers’ self-governance and urban community construction are adjustments the Party-state has made in the changing environment to retain its dominance. The Party-state gains legitimacy and social stability and external recognition and approval through self-governance at local levels while retaining overall control. The dominance of CPC cadres in these grassroots structures and the principal/subordinate relationship between the Party Committees and Village Committees are continuing issues. Patriarchal traditions at village level exacerbate decision-making by generally male-dominated village committees and economic collectives and village assemblies. Problems confronting urban residents’ councils are providing civil society organizations opportunities to engage with local government through facilitating community participation in finding solutions.

Despite differences between village committees and urban residents’ councils, their development served as evidence of the CPC’s response to the demand for grassroots democracy in the late 1980s and 1990s. The 1982 Constitution provided for both autonomous mass organizations (art 111). 43,000 towns and townships administer 730,000 villages comprising 900 million peasants. There were 119,042 urban residents’ councils with 508,363 appointed committee members all over the country by the end of 1998. Both types of grassroots committees are self-governance organizations in ‘self-management, self-education and self-service’. They mediate disputes, maintain public order and social stability as well as develop public services and reflect public opinions and suggestions to the people’s government. More importantly, they assist the work of government in all ways, including enforcement and monitoring functions; such as compliance with national and provincial laws and regulations, family planning targets and payment of levies and fees; and monitoring those who are deprived of political rights.

The CPC domination of village committees regained Party control in rural areas in the wake of a surge in lawlessness and a crisis of Party legitimacy but encouraged inappropriate application of democratic principles. Even though the 1998 Organic Law of Village Committees upholds democracy in elections, decision-making, management and supervision, the reality is quite different. The Ministry of Civil Affairs pointed out that less than a quarter of village elections meet international standards. The Party Secretary

103 All this and more was anticipated as evidenced by the debate on the implementation of village committees in Daniel Keliher, ‘The Chinese Debate’, above n 23, 70-76.
wields great influence over village committee elections. Cadres are regularly elected to chair village committees. Up to 70% of elected village chiefs were Party members, according to one report. Non-residents or those who do not have hukou or household registration in the village are excluded from voting. The CPC’s core leadership of village committees (art 3) is institutionalized through the two meetings system. Hence, important decisions are first vetted by the Party member representative assembly and the villagers’ representative assembly before submission to the villagers’ representative assembly for approval. The Party secretary often heads the village economic collective which may also have identical membership with the village committee. Although the Organic Law forbids town and township interference in the work of the village committee, they continue to collect different types of fees – santiwutong (三提五统) from village committees. This process of extracting resources from village committees without pay for their administrative functions is fraught with corruption involving village bosses and clans, leading to increasing criminal activities. Paradoxically, CPC control of rural grassroots democracy, far from promoting women’s rights, has sustained gender inequalities. Initially, voting was cast by each household headed by the patriarch. Questions raised by O’Brien led to voting by each member of the household. However, proxy voting discourages women from casting an independent vote. While the Organic Law provide for women representation in village committees (art 9), the numbers are declining and the nominal woman committee member is usually responsible for the population and family planning targets. This is because cadres face pressure from their superiors on state policies on birth planning. The CPC principle of subordination of the minority to the majority has generated adverse consequences for rural women. The two-thirds majority voting system in village committees has deprived various groups of women of their land use, compensation and related rights in rural areas. Yet the CPC has been able to contain these issues through multiple strategies and administrative measures in various provinces and local areas.

CPC control of urban areas was a given since the establishment of the Party-state. This control used to be exercised through the work units but the dwindling number of SOEs has driven an increasing focus on urban residents’ councils. Unlike the Organic Law of Village Committees, the Organic Law of Urban Residents’ Council does not make stipulations on democracy, forbid interference by local government in the work of residents’ councils, nor specify woman representation in councils. But municipal governments provide budgets, offices and salaries to residents’ councils. In effect, they are de facto extensions of municipal government’s administrative apparatus. Work units

110 Robert Benewick, Irene Tong and Jude Howell, ‘Self-Governance and Community’, above n 102, 16-17.
111 Tianjian Shi, ‘Village Committee Elections in China’, above n 6, 408.
114 Robert Benewick, Irene Tong and Jude Howell, ‘Self-Governance and Community’, above n 102, 16.
and not residents’ councils used to take care of basic services such as housing, education, childcare, health care and welfare. The focus now is to improve management effectiveness and efficiency, welfare delivery and promote democratic or participatory procedures. Following reform of state enterprises, workers have to look to market and local government for services SOEs used to provide and private enterprises are reluctant to shoulder. Responsibility for delivery of social services – health and medical – has shifted from work unit to local government. Of equal if not greater importance, loosening Party control and social stability is an emerging issue. There is a need to strengthen Party branches at community level. This includes the fractious relationship between local residents and the increasing numbers of rural migrant workers, their families and their children, many of who are here to stay. While village committees are short of women representatives, it seems that urban residents’ council may be dominated by elderly women. Whether grassroots autonomy is a strategy to tap resources at that level without extra cost to the state, the push for community participation in tackling community issues and problems is providing a golden opportunity to NGOs focusing on participation, environmental issues, women, children and migrant workers. Their knowledge, skills and expertise are gaining them entry into spaces previously non-existent or from which they used to be excluded. This is an area where the CPC is being challenged by civil society on a mission to wrest power from the Party-state and to return that power to the people. This is where CPC statecraft is indispensable to enable the Party-state to deal with NGOs and civil society driving grassroots democracy through the promotion of community participatory governance in urban communities.

II. CPC Dominance

The CPC’s stranglehold on power does not rest only on CPC control of the political system from national to grassroots level, it is further secured through domination and control of the other legitimate political parties in China through the CPPCC. Headed by the CPC and chaired by a key CPC leader, the CPPCC plays a strictly advisory role. Although some individual members and members of the political parties in the CPPCC are elected deputies to the people’s congresses at all levels, their influence and impact is at best limited.

The CPC dominates the party system not only through sheer numbers but also through the political-legal framework. The nomenklatura or cadre personnel management system ensures that key state leadership positions are held by key CPC cadres. Founded in 1921, the CPC has over 66 million members and over 3.5 million primary organizations today. The leadership of the CPC of the working class, the Chinese people and the Chinese nation is proclaimed in the constitution of the CPC. Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Three Represents are similarly upheld as the guiding principles for the CPC in developing China as a modern socialist state. The dominance of CPC is plain from the entrenchment of CPC leadership and the same guiding principles in the State Constitution. Control by the leadership at the top of the

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115 Ibid, 18-19.
116 Ibid, 18.
117 Ibid, 22.
Party hierarchy is established on the principle of democratic centralism.\(^{119}\) In principle, the National Party Congress is the highest ‘leading’ body of the Party and the Central Committee which it elects every 5 years. In reality, the most powerful decision-making body is the Standing Committee of the Politburo, members of which are elected by the Central Committee at the plenary session. The General Secretary of the Central Committee is automatically a member of the Standing Committee. Election as General Secretary of the CPC is the prerequisite to election as the President of the Party-State. Thus leadership succession of the Party-State mirrors that of the CPC. The Chair of the State Central Military Commission and leadership positions in the NPC, the State Council, Media, Banks, Corporations, Diplomatic Corps, Judiciary and Procuratorate also reflect the Party’s iron grip of the State at the national level.\(^{120}\) The stranglehold of the CPC over the party system at the national level is replicated at provincial and lower levels.\(^{121}\)

The CPC domination over other political parties and social organizations is institutionalized through the CPPCC and similarly effected through the *nomenklatura* or the cadre personnel management system. Since Mao was installed as the first Chairman of the CPPCC, every successive chairperson has been and is a key figure in the CPC leadership. The chair of the 10\(^{th}\) and current CPPCC/National Committee/Standing Committee is Jia Qinglin, a member of both the 16\(^{th}\) Standing Committee of the CPC Central Committee and the Standing Committee of the Politburo, who is closely associated with Jiang. The 290 member Standing Committee is proposed CPPCC members and elected by 2,000 National Committee members at a plenary session. The 2005 White Paper on Democracy states that the 2003 CPPCC elections saw 337,000 members of other political parties and persons without party affiliation elected CPPCC members at various levels nationwide.\(^{122}\) Furthermore, 60.1% of the 10\(^{th}\) CPPCC National Committee; similarly 65.2% of its Standing Committee were non-CPC members. However, the CPC also secures the position of the Secretary General in addition to the remaining vice chair and standing committee membership of the National Committee of the CPPCC.\(^{123}\) The National Committee, which serves a term of 5 years, customarily convenes the annual plenary session at the same time as the NPC sessions. It is the Standing Committee of the outgoing National Committee which usually decides on the number and specific candidacy of the participating units and members of the incoming National Committee. Each National Committee also sets up special committees on issues such as proposals, economic affairs, population, resources and environment, science, culture, health and sports, social and legal affairs, ethnic and religious affairs, cultural and historical data, Hong Kong, Macau, Taiwan and Overseas Chinese, and foreign affairs.

Membership of the CPPCC offers legitimacy to the other political parties while effectively constraining their role and participation to that of ‘multi-party cooperation and political consultation’. The original CPPCC was founded during the Nationalist period as


\(^{120}\) Hon S. Chan, ‘Cadre Personnel Management in China’, above n 99, above n 99, 719-24

\(^{121}\) Ibid, 731-33.


a United Front against Japan. On the eve of victory over the Nationalists, the CPC reconstituted the CPPCC which officially established the People’s Republic of China in late September 1949.\textsuperscript{124} The total membership of the other 8 political parties, 412,000, speaks volumes of their limitations and weakness relative to the CPC within the CPPCC as number of delegates to the National Congress is proportional to size of the party or organization. The 8 parties are the Revolutionary Committee of the Chinese Kuomintang (53,000), Chinese Democratic League (130,000), China Democratic Construction Association (69,000), China Association for Promoting Democracy (65,000), China Peasants and Workers’ Democratic Party (65,000), China Zhi Gong Dang (15,000), Jiu San Society (68,000) and the Taiwan Democratic Self-Government League (1,600). The membership of mass organizations – now renamed social organizations – such as the All China Federation of Trade Unions (‘ACFTU’) and the All China Women’s Federation (‘ACWF’) which are associated to the CPC act as a further constraint on the other parties.

The tiny proportion of members from these political parties elected deputies to people’s congresses is matched by the 32,000 or so who hold government and law enforcement positions at and above county level.\textsuperscript{125} Interestingly, in 2003, 7 out of 15 vice chair of the NPC Standing Committee and 50 out of 175 members of the NPC Standing Committee were individuals and members of minor political parties.\textsuperscript{126} The Party-state has also pledged to ‘appropriately’ increase the proportion of non-CPC individuals and members of political parties in leadership position.\textsuperscript{127} While the CPC retain a strong hold, it would appear that something is happening with national leadership of the State. Whether minor political parties are making serious inroads in the political system, breaking the stranglehold of the CPC or whether this reflects struggle within the CPC deserves monitoring and further consideration.

III. Party/Social Organizations Relationship

The CPC control of mass organizations is a feature of ‘socialism with Chinese characteristics’. This control delimits the spaces for civil society despite the proliferation of non-governmental organizations (‘NGOs’) and institutions particularly since the 1990s. This control is exercised through the principal/subordinate relationship between the CPC and social organizations. Firstly, the cadre personnel management system of the CPC institutionalized this control over the ACFTU, the ACWF, the China Disabled People’s Federation (‘CDPF’), the National Work Committee for the Elderly (‘NWCE’) as well as the All China Journalists’ Associations (‘ACJA’), the China Writers’ Association (‘CWA’) and the like.\textsuperscript{128} Secondly, the principal/subordinate relationship constrains not


\textsuperscript{126} Ibid, Part II. The CPC led the People to become Masters of the State, [6] and Part IV. The System of Multi-Party Cooperation and Political Consultation Under the Leadership of the CPC, [6][ii][iii].


\textsuperscript{128} Hon S. Chan, ‘Cadre Personnel Management in China’, above n 99, 724-25.
only these mass organizations but also affects the NGOs, institutions and others that work on issues or social groups over which the social organizations claim to represent.\textsuperscript{129}

The principal/subordinate relationship is a double-edged sword for the social organizations. For example, the ACWF and the CDPF are anointed constitutionally and/or legally as representative as the voice of women and the disabled people respectively.\textsuperscript{130} In theory and in practice, they have a monopoly over the respective social groups and issues affecting these groups. For example, submissions on legislative reforms on women and the disabled must be made through these social organizations.\textsuperscript{131} In reality too, the ACWF in particular, has been the representative and conduit of CPC and State policies to women in China.\textsuperscript{132} Sex equality was assumed to have been achieved with the victory of the CPC and the liberation of the Chinese people in 1949.\textsuperscript{133} For the sake of political survival, the ACWF submitted to the CPC and sex and gender equality and women’s issues and rights took a backseat until the late 1980s and early 1990s.\textsuperscript{134} Ironically, this transpired through the emergence of NGOs and other institutions focusing on women’s issues which challenged the monopoly of the ACWF as the voice of women in China. On the other hand, these women’s NGOs and institutions also found collaboration and networking with ACWF at all levels useful in securing some legitimacy with the Party-state. The impact of the principal/subordinate relationship on the ACFTU and the CDPF’s handling of issues relating to labour rights, rural migrant workers’ disputes and rights of disabled people, is also clear. For example, the ACFTU only opened its doors to rural migrant workers when Party-state gave the green light. As another example, mediation instead of litigation has been promoted by these mass organizations since the adoption of the ‘harmonious’ society and well before institutionalization of the official policy in laws on labour and land disputes.

Clearly aware of the influence of civil society abroad, the CPC has been monitoring closely the growth of NGOs in China. On 26 February, 1998, the CPC Central Bureau and the Ministry of Civil Affairs issued a joint document requiring every NGO with three or more CPC members to establish a party branch to supervise its political behaviour.\textsuperscript{135} This received little attention at the time as implementation of the instruction did not follow. However, in recent years, legal aid NGOs with three or more CPC members, have reportedly been instructed to set up Party small groups or branches.\textsuperscript{136}


\textsuperscript{130} Art 7 of the 2005 Amended Law on Protection of Women’s Rights and Interests and art 8 of the 2008 Amended Law on the Protection of Persons with Disabilities respectively.

\textsuperscript{131} Wang Zheng, ‘Dilemmas of inside agitators’, above n 7; Wang Zheng, “‘State feminism’?”, above n 7, 519.


\textsuperscript{134} Wang Zheng, “‘State feminism’?”, above n 7, 524; Jude Howell , ‘Women’s Organizations and Civil Society’, above n 132, 192-93.


\textsuperscript{136} From meetings with NGO staff in 2009 and 2010.
II. Socialism with ‘Chinese Characteristics’?

Mooted at the 4th plenum of the 16th Central Committee of the Communist Party of China in 2004, a harmonious society was defined as ‘a socialist democracy, with rule of law, social justice, honesty and credibility, balancing human activities and natural resources’. The concept was officially adopted at the 6th Plenum of the 16th Central Committee in October 2006. Hu reportedly said that ‘a harmonious society should feature democracy, the rule of law, equity, justice, sincerity, amity and vitality’. The harmonious society concept reflects Hu’s take of the mounting social unrest. Tanner argues that Jiang’s view on unrest lacks ‘deeper institutional or cultural analysis’.

Briefly put, Jiang insisted that ‘contradictions among the people’ will increase in the course of reform, opening up and development of the socialist market economy and abuses, mishandling and corruption by local cadres exacerbate such tensions; and Party and security officials should look out for ‘enemy forces’ poised to take advantage of these tensions. Hu’s introduction of the ‘harmonious society’ harks back to cultural traditions, which seems to be resonating with the people especially in rural areas. But what is Confucius’ concept of harmony and why is it being revived and promoted by Hu’s generation decades after Confucianism was rejected as feudalistic and oppressive?

According to Fung Yu-lan, a famous Chinese philosopher of the 20th century, the Confucian concept of ‘harmony’ ‘is the reconciling of differences into a harmonious unity’. Furthermore, harmony is different from uniformity or identity: Fung distinguishes between the Chinese words t’ung (tong or 同) and ho (he or 和). ‘T’ung means uniformity or identity, which is incompatible with difference. Ho means harmony, which is not incompatible with difference; on the contrary, it results when differences are brought together to form a unity. But in order to achieve harmony, the differences must each be present in precisely their proper proportion, which is chung (zhong or 中). Thus the function of chung is to achieve harmony. As regards a ‘harmonious society’, Fung postulates that ‘a well-organized society is a harmonious unity in which people of differing talents and professions occupy their proper places, perform their proper functions, and are all equally satisfied and not in conflict with one another. An ideal world is also a harmonious unity....’ Central to Fung’s explanation of the Confucian concept of a well-organized or harmonious society is another Confucian concept, that of ‘proper proportion’. Clearly, such an elucidation of a harmonious society presents a reasonable, rational alternative to social unrest and instability which strikes fear in people’s hearts. Current references by Hu, Wen, the CPC and the Party-state to the ‘harmonious society’ have revamped the Confucian concept, always presenting and

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141 Ibid.
142 Fung Yu-Lan, *A Short History of Chinese Philosophy*, above n 11, 174. The original manuscript was completed in 1947. The author is also known as ‘Feng Youlan’ (冯友兰).
143 Ibid.
144 Ibid.
145 Ibid.
relating it with a mixture of modern terms and traditional notions, particularly democracy and rule of law, and justice and equality. But at the heart of such a vision where everyone, every group and every organ is functioning properly in its proper place is the Party-state. The authority, not just the capacity, to ensure that a harmonious society is running smoothly, is in the hands of the Party-state. This is not just implicit but overtly expressed in the key documents and statements of the CPC and of the Party-state which proclaim the CPC as the leadership of the people. This socialist principle is not inconsistent with a well-known Confucian concept, the ‘Three Bonds’ (‘三綱’ (‘sangang’)) which affirms the authority of the ruler over the minister, the father over the son and the husband over the wife. Advanced by Zhu Xi, a neo-Confucian scholar during the Song-Ming period, this concept is currently being debated by prominent contemporary Confucian scholars such as Tu Weiming. As the Party-state is officially committed to gender equality, it is unlikely that the ‘Three Bonds’ will be openly endorsed by the Party-state. The Party-state’s avowal to eradicate the chronic pervasiveness of sex and gender inequalities is questionable. Before considering the issue of patriarchal authoritarianism, there is the issue of how to reconcile growing democracy and state control.

Greater grassroots democracy has not weakened state control and the promise of greater intra-Party democracy is unlikely to do so. The CPC cadre personnel management system and the interlocking CPC/State structures are central to the strengthened state control even though members of village committees and urban residents’ councils are elected. Party cadres are invariably elected to key positions in rural grassroots committees and the ‘two-meeting’ mechanism operates to make assurance doubly sure. Unless greater intra-democracy leads to such fierce in-fighting and jostling for power and position, a more united, stronger CPC will emerge to exercise even tighter control over the state at all levels. Even another economic crisis is unlikely to crush the CPC; the way the Party-state has weathered all the various economic crises, health epidemics and natural disasters is there for all to see. Corruption might well be the chink in the armour. Huang Zongliang, a professor at Peking University pointed out that the fight against graft and a clean and honest government are crucial to the Party’s survival. China was ranked 79th on the 2009 corruption index of 180 countries and regions monitored by Transparency International, a Berlin-based NGO. Although Chinese analysts are sceptical of the more stringent regulations announced between January and July 2010 to weed out corruption among judges, cadres and government officials, it is too early to tell how serious the CPC leadership is and how effective the measures will be as they still fall short of transparency. Will the CPC fall on its own sword? Or will the Chinese

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147 Li Li, ‘Weeding Out the Corrupt’, Beijing Review, No 4, January 28 2010 (http://www.bjreview.com.cn/print/txt/2010-01/22/content_242249_2.htm);
148 Ibid.
151 Ibid.
Socialist approach to power, law and statecraft enable the CPC to steer the Party-state to genuine renaissance?