

Chinese Law, Trade and the New Century

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I. INTRODUCTION

China crammed a great deal of political activity into the 20th Century. In the year 1900 the Q'ing Dynasty still ruled the remnants of an ancient empire. The Q'ing conspired with rebels in the Boxer Rebellion in the hopes of expelling all foreigners from Chinese soil and returning to splendid isolation. In the year 2000 China is a superpower balancing communist theory and a capitalist market that is about to join the World Trade Organization. The intervening years saw warlords, democrats, fascists, Marxists and all stripes of communists leading the world's largest nation. As China enters the new millennium of the Western calendar, it behooves us to reflect on how we perceive China as participant in the world trading community. In part this will call for an assessment of China as a legal entity. What can we expect from this nation that has proven so volatile in recent decades? Are the fireworks over, or are we just at a pausing point? This essay will approach these questions by looking at the roots of Chinese legality.

II. WHERE THINGS STAND

As the year 2000 begins, trade between the United States and the People's Republic of China ("PRC") continues to grow.¹ Doing business with

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¹The trade statistics for the first quarter of this year, released by the United States Department of Commerce, indicate rapid growth in U.S. trade with the PRC. According to a statement released May 19, 2000 by the Economics and Statistics Administration, imports from China rose more than 21 percent while exports grew nearly 15 percent in the first quarter of 2000. See Robert J. Shapiro, *U.S. International Trade in March 2000* (visited May 19, 2000) <<http://www.esa.doc.gov>>.

the PRC has become a major topic for scholarly and practical discussion. As a corollary, Chinese law has moved into the spotlight. After years of relegation to the periphery of legal scholarship, Chinese law is becoming a mainstream topic. Discussion of Chinese law concerning trade and mediation has produced a welter of literature.² This represents a major shift in emphasis. For more than thirty years, 1949-1979, politics was the center of any discussion of the United States and China. Cold war diplomacy and the vitriolic rhetoric of Chairman Mao guaranteed that global politics took center stage in any discussion concerning the PRC. In recent decades this dynamic has changed. Political leadership in the United States, regardless of political affiliation, has edged trade with the PRC to a different forum from political issues. The collapse of the Soviet Empire and the fading memory of Maoism have abetted in the process. The debate over how closely to link the human rights record of the PRC and its status as a trading partner continue. President Clinton has, however, successfully decoupled the human rights and Most Favored Nation status debate that had been an annual bloodfest for United States and PRC relations.³ In fact, the U.S. House of Representatives has just approved legislation that grants Permanent Normal Trade Relations status (PNTR) to the PRC.⁴ PNTR will end the annual debate over United States-PRC relations that has surrounded approval of the annual extension of Most Favored Nation clause status to China.⁵ The reality is that being a Most Favored Nation means being a

²In 1999, two extensive treatments of Chinese law appeared. Chen includes a bibliography of 39 pages of sources on Chinese law. See JIANFU CHEN, *CHINESE LAW: TOWARDS AN UNDERSTANDING OF CHINESE LAW, ITS NATURE AND DEVELOPMENT* 365-404 (1999). Lubman tops this with a 49-page bibliography. See STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* 383-432 (1999). This level of scholarly treatment indicates the maturity of the field. Each of these books provides an exhaustive list of source material and citations.

³President Clinton offered a persuasive argument in favor of granting the PRC Permanent Normal Trade Relations Treatment (PNTR) in his letter addressed to the United States Congress dated March 8, 2000. See William J. Clinton, *China Trade Relations Working Group* (visited March 8, 2000) <<http://www.chinapntr.gov/messages/presletter0308.htm>>. See also William J. Clinton, *China Trade Relations Working Group: Remarks by the President on Passage of Permanent Normal Trade Relations with China* (visited May 24, 2000) <<http://www.chinapntr.gov/messages/presstatement0524.htm>>. In these comments, issued in response to the House's passage of the PNTR legislation, the President reiterates his belief that increasing trade with China will better position the United States to address China's ongoing human rights issues.

⁴See A BILL TO AUTHORIZE EXTENSION OF NONDISCRIMINATORY TREATMENT (NORMAL TRADE RELATIONS TREATMENT) TO THE PEOPLE'S REPUBLIC OF CHINA, H.R. 4444, 106th Cong. (2000). The text of the bill may be downloaded online at <<http://www.house.gov/rule/s/rule4444.htm>>.

⁵On October 10, 2000 President Clinton signed Public Law 106-286, The Permanent Trade Relations with China Act. At the ceremony, reflective of the arduous series of compromises necessary to pass the Act, the President commented, "In case you all have forgot-

normal trading partner of the United States since only pariah nations have been excluded from this club. This legislation will put the PRC on the same footing as almost every other nation on earth. While we might disapprove of their actions on any number of fronts, we would still trade with them. The bill nonetheless signifies another movement towards expanding trade relations with China. The PRC's entrance into the World Trade Organization ("WTO") is not yet a *fait accompli* but the pieces are all lining up for it.⁶ China has even earned high marks for its responsible actions at the time of the 1998 Asian fiscal meltdown by not devaluing the Yuan.

In light of such a string of positive statements, any essay that examines the prospects for doing business with the PRC should be one of optimistic grandiloquence. Unfortunately, I think that the picture is more complicated than that. Though trade continues to flourish, fundamental problems remain in the United States/PRC relationship that threaten long term dealings. Not only have these problems not been solved, but in some cases they barely have been perceived. The United States has long lacked a coherent China policy, and for their part the PRC leadership often finds the United States baffling. The one thing that is shared on each side of the equation is a cadre of individuals and organizations that seek the potential profit that can flow from U.S./PRC trade. As political leaders dance the confused minuet of international diplomacy, these forces continue to apply pressure toward more trade and more contact.

If the current political status quo were to sail on indefinitely, this situation could continue as well. China has proven to be very adept at accepting contradictions in policy while continuing to do business. The still uncertain fate of Taiwan and the long unwinding of the Hong Kong situation are perfect examples. In the case of Taiwan, while protesting the illegitimacy of Taiwan's very existence as a sovereign entity, the PRC has been content to sit by and deal with the reality of a vibrant Taiwan. As long as certain points of stress are observed, the United States can trade with both the PRC and the ROC, even though each contends the other is an outlaw nation.⁷

ten, this thing was hard to pass." Deb Richman, *Clinton Signs China Trade Bill*, AP WIRE STORY, Oct. 10, 2000.

⁶As of the writing of this essay, the White House maintained a webpage devoted to United States-China trade at <<http://www.chinapntr.gov>>. This website contains press-relevant documents, answers to frequently asked questions and a varied collection of sources on the topic. It is a finely crafted sales pitch for increased trade with China and for the PRC's admission to the World Trade Organization. See *China Trade Relations Working Group, The White House* <<http://www.chinapntr.gov>>.

⁷See *Unreal Semantics: Let Beijing, Rather than Taiwan's Chen Shui-bian, be on the Defensive Over its Words*, FAR E. ECON. REV., July 13, 2000, at 6, which captures the intricacies of this balancing of realities. "The fact is that despite Beijing's adherence to the 'one-China principle' how we conceptualize the big bit on the mainland and the wee one facing the Pacific Ocean is predicated on our understanding of the reality to which Beijing remains blinded. The mainland and Taiwan are vastly different from each other." *Id.* But the PRC can indeed remain blinded so long as its interests are served.

Hong Kong provides an even more pointed example, as the PRC insisted upon the return of Hong Kong under the terms of a treaty that it had refused to recognize. The Chinese can be cold-blooded rationalists when it comes to international relations and trade. There are certain flash points where the Chinese will react with what seems to the neutral observer to be misguided emotion. These flash points make sense in view of China's history, and China's keen sense of that history. Outsiders are not always able to pick out what they might be. In the past decade the benefits of trade have covered over all problems and leant a sense of ever-increasing stability to relations between the United States and China. However, I am profoundly doubtful that the status quo in United States/PRC relations will last for long.

One of the long-term joys of studying China has been the speed and depth of change within China itself. Major changes in policy appear to spring upon us full-blown. The role of the scholar who watches China often becomes that of one who explains why these changes happen, rather than appreciating what is happening in real time. It could be that by the time that this essay sees the light of day the domestic politics of the PRC will have changed drastically.⁸ The complicated stew of Chinese domestic politics could go any way at any time. Yet there are forces within China that are permanent. They lie one level beneath the day-to-day flow of politics. Appreciating these constants can aid one in understanding what is going on and why. One of the points of this essay will be to highlight some of the deep forces in the area of law that may influence such changes.

The PRC is not the only possible agent of change in its positions on trade and international law. These words are being written in July of 2000, a presidential election year in the United States. A presidential election in the United States guarantees oversimplified rhetoric and sloganeering—some unrelated campaign stratagem could alter the United States behavior towards China.⁹ Just as observers in the United States keep close tabs on domestic developments in China, Chinese experts are watching the United States. The United States and the PRC both know that the United States is the world's remaining "Big Power" and that no international agreement counts as much without the participation of the United States. The skir-

⁸The manuscript was last edited on July 25, 2000.

⁹Vice-President Al Gore and Governor George W. Bush, the 2000 presidential frontrunners, supported normalizing trade with the PRC and enabling its accession into the WTO. However, the candidates' recent statements in support of China's WTO entry reveal the underlying political rhetoric that surfaces when they address U.S. policy towards the PRC. See Vice President Al Gore, Press Conference Given at the American Society of Newspaper Editors in Washington D.C. 19-20 (Apr. 12, 2000) (unpublished transcript, on file with author). His response to a question on the PRC's admission to the WTO is a masterpiece of political bafflegab. See also Governor George W. Bush, Speech Given at Boeing Corp. in Everett, Washington (May 17, 2000), available at <<http://www.georgewbush.com>>. His comments reveal the political spin that he uses when discussing the United States' relationship with China.

mishing between the PRC and the United States in arenas like the United Nations and the WTO testify to this. Since United States foreign policy is so often captive to domestic politics, big shifts in China policy can be caused by unrelated political motives. Nor are the Chinese any more deft at understanding how the United States “works” than the United States is in comprehending Chinese motives. In 1998 I met with a high level PRC delegation that was very upset about the publication of a nonfiction book, *The Coming Crisis with China*.¹⁰ The book, filled with dire predictions about relations between the United States and China in the 21st Century, was popular in certain circles at the time. The delegation viewed *The Coming Crisis with China* as a part of a purposely woven tapestry of American foreign policy. They had trouble grasping that the publication of such a book could be unrelated to United States policy. Since Washington cognoscenti were reading the book, the PRC visitors had some merit to their suspicion. But it was clear that the roiling brew that is American foreign policy was opaque to the Chinese. They viewed such a high profile book as necessarily part of a greater plan. Coming from a political culture in which one party rules and strives constantly to control information, their position was sensible. To expect them to react more knowledgeably to campaign bluster is to expect too much. As the overblown rhetoric of the Presidential campaign kicks in, it will be easy for the PRC to jump at a shadow.

With great shifts in motivation and policy so likely, what useful observations can one make about the future of Chinese law? When everything in the game is up for grabs, should one speculate at all? The progress of the PNTR legislation has led to an outpouring of journalism about the rosy future of trade with China, as well as the Siamese twin of such stories, pieces on China’s path to becoming more like the United States. This is the facile kind of literature that makes serious study of Chinese law difficult. China is a richly textured ancient culture, one whose people are justly proud. To the Chinese eye, the entire history of the United States of America has transpired since the founding of the Q’ing Dynasty in 1644. This was the *last* Chinese Dynasty. The United States is a relative newcomer to the world, boasting no cultural roots to speak of. The Chinese *do not* wish to become just like us. They may wish to adopt some of our institutions, and it seems that they very much want our lifestyle, but it will all be done through the prism of Chinese reality. Looking at the PRC to discern the future of its legal system, or its role in world trade is thus a very complex business. The temptation is to throw up one’s hands and abandon the effort. This would be a serious mistake. It is at times like this that the most fundamental analysis becomes most important. Resisting the urge to rush after the chimera of some new development in United States/PRC relations does not mean that important foundation points cannot be found.

¹⁰ See RICHARD BERNSTEIN & ROSS H. MUNRO, *THE COMING CRISIS WITH CHINA* (1997).

There are useful baselines to observe. Some of the most basic concepts that govern Chinese legal thought and international practice remain strikingly the same, and though it is impossible to predict how each of these questions will spin out, one can identify what the questions are. The framework of the questions is, in some cases, consistent over time. It is also possible to identify certain contact points between the United States and the PRC that have endured.

But first there is a caveat. Trade with China is not a simple path to riches. True, doing business in China has long been a rallying cry for the American business community. Over the past two hundred years the idea of China as a vast economic opportunity is one of the real constants in America's attitude towards China.¹¹ The consistency of this obsession with the profit potential latent in China is testimony to the inability to understand history. Since the early fortunes grounded in the opium trade, far more money has been lost on trade with China than has been made. Traders have focused on the size of the potential Chinese market without recognizing that the Chinese are some of the most skilled traders in world history. Indeed it was only opium, an illegal commodity, that allowed 19th century traders to make any profits at all. The current enormous size of the United States trade imbalance with the PRC is testimony to the continued skill of the Chinese. The Chinese have always been wise and tough traders, far more likely to use international trade to turn a profit than to open a market to outsiders.

The backdrop for trade issues today is the strange early history of the PRC concerning international trade. During the first three decades of rule by the Communist Party, China was disinterested even in turning a profit. Mao Zedong, a figure of towering importance who dominated the first three decades of the PRC's history, believed that profit lead to spiritual death. His egalitarian philosophy produced history's largest and most long-lasting regime based on spurning the accumulation of goods. Self-sufficiency and self-sacrifice were the watchwords. In such a society there is no need for international trade. During the years of Mao's theoretical ascendancy China was more interested in turning away from the rest of the developed world. Identifying itself with the developing nations of the third world, China scorned the global club of developed nations. The enormous potential market of China remained cut off from most of the Western world. When the PRC re-opened to the rest of the world in the years following Mao's death, the thrill of gaining access to that market caused enormous enthusiasm. Seeking to get in on the ground floor, many enterprises raced to tap the China market. But China had its own interests at heart. It wanted to protect its domestic market and gain access to technology and capital. A

¹¹ See GRAEME BROWNING, *IF EVERYBODY BOUGHT ONE SHOE: AMERICAN CAPITALISM IN COMMUNIST CHINA* (1989), which explores this phenomenon through the decade of the 1980s and remains my preferred reading on the subject.

long process of each side learning about the other has now lasted more than two decades. A simple fact is that few fortunes have been made in China by Westerners, but the Holy Grail of the China market continues to beckon.

This is all possible because over the past two decades China has turned back to the developed world. Chairman Mao's devotion to egalitarianism, which included getting rid of any legal system that we in the West would recognize, had gone horribly wrong. After Mao's death in 1976, China turned away from the Spartan asceticism of Maoism with an alacrity that amazed China watchers the world over. The Communist Party, first under that great transitional leader Deng Xiaoping, now under his more sedate successor Zhang Zemin, had decided that "to get rich is glorious" is a noble sentiment, both personally and as a nation.¹² China wants to be a player in the global community so badly that it is willing to pay the price of admission. China will accede to the norms of international diplomacy and attempt to develop the infrastructure for international trade. This is despite China's well-earned jaundiced view of the Western powers and their motives and a still powerful aversion to Japanese hegemony.¹³ China is willing to make adjustments as necessary to play the game. The Chinese wish to do as little as possible along these lines, but the fact that they are willing to play at all says a great deal. As these words are written, China is well down the path to membership in the World Trade Organization (WTO). The thought of China placing its hat in the ring of an international trading order run by the United States, Japan and the members of the European Community would have been unthinkable only two decades ago.

These changes and this reality are of special interest to the legal scholar because law and legality are one of the routes that the Chinese government has seen as a means to entry into the world trading order. Indeed,

¹²Dean Orville Schell of the School of Journalism at the University of California, Berkeley, has written a series of books about China that represents a stirring account of this change. Anyone wishing to comprehend the full range of China's travails in this area would be well advised to read them. In *In The People's Republic*, he depicts the Maoist China of anti-materialist prudishness. See generally ORVILLE SCHELL, *IN THE PEOPLE'S REPUBLIC: AN AMERICAN'S FIRST-HAND VIEW OF LIVING AND WORKING IN CHINA* (1977). In *Discos and Democracy*, he observes the clash of old values and new forces in China. See generally ORVILLE SCHELL, *DISCOS AND DEMOCRACY: CHINA IN THE THROES OF REFORM* (1988). In *Mandate of Heaven*, he assesses the PRC at the end of the Twentieth Century. See generally ORVILLE SCHELL, *MANDATE OF HEAVEN: A NEW GENERATION OF ENTREPRENEURS, DISSIDENTS, BOHEMIANS, AND TECHNOCRATS LAYS CLAIM TO CHINA'S FUTURE* (1994). Schell is an acute observer with strong language skills and the books are especially enlightening, yet each book presents an entirely different PRC to view.

¹³China has a deep sense of history, and the past two centuries have been a record of abuse by Western powers and Japan. The West used the trappings of international law to exploit China in every possible manner. While Americans tend to live in the present moment, the Chinese will not soon forget the past. See JONATHON D. SPENCE, *THE GATE OF HEAVENLY PEACE* (1981), for one of the most lyric treatments of the depth of the Chinese misery.

producing a legal system that meets Western and Japanese requirements has been a primary goal of the Chinese government over the past twenty years. Within the last decade there has been a special emphasis on conforming to the rules of the international (read: Western) game. "Indeed, since 1992 when the Party adopted the notion of a 'socialist market economy,' 'assimilation or harmonization with international practice' or 'doing things in accordance with international practice' have become the new most frequently used catchwords and are the topics most frequently discussed in socio-legal studies in Chinese journals and newspapers."¹⁴ Such a conscious policy is explained easily enough by the desire of the current PRC leadership to build an internationally vital nation-state. In a way, the Maoists intended to make China strong by isolating the country and avoiding the pitfalls of Western culture and gamesmanship. The current regime seeks the same goal by making China an influential player in that game.

Beyond international considerations, Chinese domestic lawmaking and legal culture enter into the mix. Here too the Communist Party ("CCP") has led the PRC into a drive for legalization. Though the PRC leadership continues to try to separate the economic and political spheres, the construction of a legal infrastructure for internal matters continues. For both external and internal matters, the legal system grows apace. There are several good reasons for this to be so. Though not each of the motivations relate to trade, each is part of the puzzle that must be worked out if we are to understand Chinese law. Only one who wishes to make a major player error would divorce an understanding of Chinese domestic policies from the world of international trade.

III. THE ROOTS OF CHINESE LEGAL DEVELOPMENT

A. The Need for Order

In the post-Cultural Revolutionary world, the leaders of the Chinese Communist Party perceived a need for order in society, specifically, an order that was based on written rules. Given the excesses of the Cultural Revolution, this perception was quite sensible. Chairman Mao's Great Proletarian Cultural Revolution cannot be summarized easily. By its nature it was a time of chaos and disorder. At its heart was Mao's struggle to retain personal power and his attempt to make his vision for the structure of Chinese society a reality. Mao felt that as soon as societal institutions became rooted, they would become decadent. He believed in the theory of "continuous revolution" that meant that revolutionary ardor could never pale. As such, any entrenched institution was suspect. Constant struggle was needed to keep the flame of revolution alive. This explains Mao's disdain for the legal system. Law by its nature is fixed and anchored. Yet

¹⁴Chen, *supra* note 2, at 48.

more than distrusting legal institutions, in the end this fear of structure led him to suspect the Communist Party itself. In the Cultural Revolution Mao called upon the youth of China to attack established institutions and to instill them with revolutionary fervor. With only the highly abstract nostrums of Mao's Little Red Book for guidance, this led to virtual anarchy. The movement soon descended into violence and tragedy. From the perspective of the year 2000, the depth of the anarchic insanity of the Cultural Revolution is hard to grasp. Even those of us in the United States who were adults during the years of the Cultural Revolution, who spoke to our Chinese friends and colleagues during it, find it hard to recall the depths of the psychosis that gripped China in those years.¹⁵ The relentless lawlessness of that period, combined with the policy of isolation from the culture of the developed world, may be too remote for us. Examined from afar, the deeds that were done may seem awful, but the urgency of the time and the totality of the emotional roller coaster of life in the PRC cannot be recreated. For those who lived it, the scars can never disappear.

Chairman Mao's utopian anti-institutional bias was capable of leading a revolution of true believers, but it was incapable of sustaining order in society. Mao decried the domestic tranquility and the predictability that were introduced by any set of institutions or institutional norms. Mao proclaimed that the masses should always be in control of the state apparatus. This "mass line" philosophy guaranteed constant churning of the infrastructure. The Maoist belief in continuing social struggle and never-ending revolution was even enshrined in the Constitution. The Constitution of 1974 was promulgated only two years before Mao's death. It proved to be such an embarrassment that a new one was produced in 1978, and yet a further refinement in 1982. In the 1974 version, the Preamble is clear on the role of revolution:

Socialist society covers a considerably long historical period. Throughout this historical period, there are classes, class contradictions and class struggle, there is the struggle between the socialist road and the capitalist road, there is the danger of capitalist restoration and there is the threat of subversion and aggression by imperialism and social-imperialism. These contradictions can be resolved only by depending on the theory of continued revolution under the dictatorship of the proletariat and on practice under its guidance.¹⁶

In the final paragraph of Article 25, The Judicial Organs and the Procuratorial Organs, the 1974 Constitution makes clear that judicial institutions are subordinate to the mass line: "The mass line must be applied in procu-

¹⁵See JI LI JIANG, *RED SCARF GIRL: A MEMOIR OF THE CULTURAL REVOLUTION* (1997), for a firsthand account of the author's experiences growing up as a child during the Cultural Revolution. Specifically, Jiang recounts the powerful ideology of the Revolution that molded her personal identity and led her to challenge her loyalties.

¹⁶P.R.C. CONST. (Foreign Languages Press, Peking, 1975), art. 8, p. 17.

ratorial work and in trying cases. In major counter-revolutionary criminal cases the masses should be mobilized for discussion and criticism."¹⁷

The bias towards revolutionary fervor and mass domination of institutions is clearly set forth. Counter-revolutionary crime was anything that the regime said it was, so the judicial system, such as it was, could always be co-opted.

The very fact that an inherently legal, hence conservative, document like a Constitution could call for continued revolutionary struggle is representative of the contradictions of Maoism. The creation of the infrastructure of governing, a seemingly unavoidable attribute of governing a nation of a billion people, was viewed as something to be struggled against. Mao understood that legal institutions in any form stood between the primacy of policy and its enactment. The law could not be fettered by the constraints of any rules. Mao would crystallize the feelings of the masses and implement it as policy. In the end only he could understand what the masses wanted. His conception of the "Mass Line" and purity of Maoist doctrine could brook no interference. Unlike other totalitarian dictators with whom the West was familiar, Mao felt no need for the trappings of a legal system.¹⁸ At the height of ideological convulsion in the Cultural Revolution, the law schools were closed, the courts were inoperative, and no real lawyers were left working at all. Mao felt that society needed constant turmoil to stay on the revolutionary track. Any fixed institution, any written set of norms presented the danger of losing revolutionary fervor. Only Mao himself embodied the correct line.

The level of suffering produced by this set of policies may never be known, though there is a rich collection of Cultural Revolution literature to peruse.¹⁹ The lesson was brought home in a very personal way to Deng Xiaoping's generation of leaders as they personally were humiliated and purged. The pain of this experience left them with a desire for greater control in society. It led them to seek a stable system. Indeed, the swift reha-

¹⁷ *Id.* at art. 25, p. 33.

¹⁸ China's 1954 Constitution, constructed on the model of the Constitution of the Soviet Union, would seem to argue that Mao's PRC did value the ornaments of a Western legal system. The 1954 Constitution represents the deepest penetration of this style of thought, but it was abandoned soon after its promulgation, and was a dead letter after 1957. To even discuss it would have been counter-revolutionary. Therefore I view it as an exception that proves the rule.

¹⁹ I have struggled to find a method to help my students understand this. The depth of the suffering is too deep, too terrible to understand for many of them. In the end I have settled on Wong's *Red China Blues* as my exemplar. Ms. Wong, a Canadian Chinese, studied in China during the Cultural Revolution. Her strikingly honest portrayals of the people that she met, and the conversion that she underwent, is more approachable for a young Westerner. The fact that she participates in terrible deeds brings home the intensity of those years. In the latter part of the book she describes changes in the China of today, collapsing into one volume the process described by Schell in the books listed above in note 12. See JAN WONG, *RED CHINA BLUES* (1996).

bilitation of Deng and his ascent to power are indicia of how painful Mao's policies had been to those leaders lucky enough to survive the Cultural Revolution.²⁰ In his earliest statements Deng Xiaoping called for the legal system to grow. In this call he sought a system of effective social control, not a vehicle for social liberation. The CCP, indeed the PRC as a whole, was exhausted by the excesses of the Cultural Revolution. Deng's policy was to create a set of written rules that could be enforced by central authority. The order component of the American concept of law and order was paramount. The leadership wanted a set of norms that could be enforced and used to control social unrest. Given the CCP monopolization of social institutions in China, this end was no great trick to achieve. A painful example is the Tiananmen incident in 1989. Having crafted a whole new set of codes and laws throughout the decade of the 1980s, the Communist leadership of the PRC faced a great test in 1989. A growing movement demanding more political freedom had been gaining momentum. When Mikhail Gorbachev, then in the middle of his reforms of the Soviet Union, came to visit China, the democracy activists saw a chance to protest before the world. Tiananmen Square, perhaps the most symbolic public space in China, became the scene of a massive demonstration. Embarrassed before the world, the government first negotiated with the protesters, but in the end, ordered them to leave the square. Some protesters refused to disperse. In the end the government brought in troops to clear the square through the use of military force. The incident at Tiananmen highlighted how the CCP would rely on violence and the killing of unarmed civilians to suppress the perceived threat of disorder.²¹ The Party perceived the demonstrators' ideology to be subversive and threatening to its authority. Colleagues of mine in China who were schooled in the Party line told me that the incident was a fine example of how the PRC now had a functioning legal system. Destabilizing forces in society could be silenced using criminal statutes as a basis. The killings illustrated how well the legal system was doing.

One of the continuing justifications for the CCP's retention of power in an environment where daily life is completely divorced from any reality envisioned by Marx or Lenin is the fact that the Party represents social stability. Without the CCP, anarchy like that of the Cultural Revolution, or like that of first five decades of the 20th Century, might return. It is no small irony that the CCP now grounds its power in the very order that its charis-

²⁰ See RICHARD BAUM, *BURYING MAO* (1998), for a vivid chronicle of the internal struggles that produced the ascension of Deng Xiaoping. The speed of the change caught Western observers by surprise.

²¹ The horrors of the Tiananmen Square incident are chronicled extensively in a wealth of books on the subject. See HARRISON E. SALISBURY, *TIANANMEN DIARY: THIRTEEN DAYS IN JUNE* (1989) for a vivid narrative of the author's experience of living through this event. See also DAVID J. FIRESTEIN, *BEIJING SPRING 1989: AN OUTSIDER'S INSIDE ACCOUNT* (1990) and SCOTT SIMMIE & BOB NIXON, *TIANANMEN SQUARE* (1989), for two additional works that provide a personal perspective of this painful incident.

matic former leader once so despised. But so long as Westerners fail to appreciate the divide between law as order and law as bulwark against authority we will misunderstand moves towards building a legal structure in China.

B. Economic Development

After Mao's death in 1976 and Deng Xiaoping's ascent to power in 1978, China had to emerge from a self-conception as a third world revolutionary society.²² Mao had always seen China as a peasant-based society at the vanguard of world revolution. Mao felt that to maintain revolutionary fervor China would have to eschew the trappings of wealth and power. For Mao, the ideal China would have been a network of self-sufficient communes, each of which produced its own food and industrial goods. Mao had no respect for technology or science and with the important exception of those who worked in China's nuclear weapons program, those with technical skills were viewed with suspicion. The model citizen was the poor peasant, politically pure of heart but untainted by education.

Today those who lead in the tradition of Deng Xiaoping and his supporters envision a China that is a world power. The aberrant views of Mao and his followers have been discarded, and the leadership of the PRC very much wants to be a "big power" on the world scene. The current Chinese leadership sees China's growing wealth as evidence of progress. Accumulating a favorable trade balance and being a part of the World Trade Organization are important goals, not evils to be avoided.²³

Deng Xiaoping proclaimed that China must pursue the Four Modernizations if it was to grow in power. These four goals set China's agenda quite well. Progress was needed in industry, agriculture, science and technology, and the military. China had been struggling with issues of modernization for two hundred years. Since the days when the Western powers, bristling with advanced technology and fired with a missionary zeal that told them that their cause was just, encountered a failing Q'ing Dynasty, China had suffered humiliation upon humiliation.²⁴ China's ancient culture, far richer and grander than that of any Western nation, was pummeled by a

²² See P.R.C. CONST. Preamble (1974), ("In international affairs, we should uphold proletarian internationalism. China will never be a superpower. We should strengthen our unity with the socialist countries and all oppressed peoples...").

²³ See Liu Weiling, *Nation Vows to Observe WTO Rules*, CHINA DAILY, July 13, 2000, at A1, for a perfect example of China's eagerness to comply with the rules of trade. "China will surely abide by all or the WTO rules, and fulfill all of its promises," [Premier] Zhu said after his speech." *Id.* *China Daily* is an official publication of the Chinese government and has always been a good indicator of policy.

²⁴ Spence's *Search for Modern China* is an excellent volume of the history of modern China. It carefully chronicles the arrival and intrusion of the West into China. See JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* (1999).

series of embarrassing defeats at the hands of small bands of Western military adventurers and traders. Ultimately even the Japanese, who had proven quicker studies of Western military technology and organizational theories, defeated them. Since the days of Q'ing Dynasty, the one goal that united all Chinese leaders, regardless of their ideologic or political ideal, was to expel the Westerners and Japanese and take back control of China. To this end, any number of schemes were tried.²⁵ In 1949 Mao re-united China, expelled almost all of the foreigners, and began work on restoring Chinese dignity. This accomplishment may place Mao into Chinese history, for all of his horrid failings, as a great figure.²⁶

At the close of the 20th Century the currency of being a modern power is measured by the strength of a nation's economy. Even the military, so long a barometer of national status, is dependent on economic strength. Numbers of troops, no matter how daunting and how inspired, cannot match the power of high-tech weaponry. If post-Mao China was to rebuild its power base it would have to develop its economy. Economic development meant trading with the rest of the world. First, China needed capital and technology from the rest of the world. Its own infrastructure was largely destroyed. China needed the external stimuli that only developed nations could provide it.

To attract foreign investment China had to do several things. The first was change its internal culture, the second was to win the trust of the rest of the world that investing in China was a rational move. The first task proved much easier than almost anyone anticipated. In the aftermath of Mao's death, his intellectual legacy was dismantled with breathtaking alacrity.²⁷ The second task would not be so easy. The rest of the world had watched with dismay and amazement as China went through a series of policy swings in the three decades following 1949. Just because Deng was now in power and saying that China wanted to be a world trading partner was not convincing enough. In hindsight everything looks logical, but in 1980 many thought that Maoists might return to power. Throughout the 1980s a struggle continued within the Chinese leadership over how committed the state should be to international trade and internal privatization. Only in the

²⁵ Spence's, *Gate of Heavenly Peace* is a wonderful retelling of China's agonies and its attempts at solutions in the 20th Century. JONATHAN D. SPENCE, *THE GATE OF HEAVENLY PEACE* (1981). It is a history fraught with tragedy. The depth of the anguish explains the level of Mao's achievement in bringing it to a close. It also adds historical punch to the revulsion against the confusion and pain of the Cultural Revolution. The CCP can claim to be guarding against both evils.

²⁶ The judgment of the CCP is now officially that Mao was 70% good and 30% bad. Many of my Chinese friends have pointed out that he may end up in the same category as Qian Shih Huang Dih, the founder of the Ch'in Dynasty and the maker of modern China. This despot united China, built the Great Wall and was a mighty warrior. He also killed millions.

²⁷ See Baum, *supra* note 20, for a careful recounting of how this happened.

past decade have things settled on a steady, if sometimes wobbly, course. Convincing the world that the wild policy swings were over, that a predictable regime was safely in power and that business could be done was no simple task.

The first Joint Venture law paints a wonderful picture of this desire in action.²⁸ This was the first attempt to create a legal framework for foreign investment in China. It was crude but important. In broad strokes the Joint Venture law showed how business could be done. Western scholars spent many reams of paper analyzing the new law, but its particulars were not what was important.²⁹ What mattered was China signaling that it was ready to do business again. The PRC was saying that it would conform to international expectations.

There is no need to recount the ups and downs that plagued the following years. Through moving two steps forward and one step backward, the Chinese government gradually improved the climate for business in China. Always fueling the outsider's view was the potential of China as a trading partner. The fear of missing out on the ground floor of developing China was always in the back of the Western businessman's mind. During the worst times, when China went through one of its more conservative swings, the pictures of dollar signs floating in the dreams of Western businessmen kept things on track.

Even the darkest days, those of the Tiananmen massacre, did not stop things. Having been in Beijing in the weeks before the demonstration I knew how the air had been filled with energy. In the wake of the massacre, like many who studied China, I was stunned. One of the Chinese visiting scholars at Berkeley at the time came to my office to talk. He was shaken by what he had heard of the events and we commiserated. I remarked that this would kill trade relations between the United States and China. He looked at me and said, "Of course not. You Americans love to make grand pronouncements on moral issues, but in your heart you are a nation of merchants. There will be bad days, but things will calm down. You will come back. There is money to be made. Do you want the Japanese to beat you?" His words were both wise and prophetic. As China groped toward eco-

²⁸See THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON CHINESE-FOREIGN JOINT VENTURES (1979) <<http://www.chinalegal.net/lawdata/c002.htm>>. This law was adopted, as stated in Article One, "with a view to expanding intellectual economic co-operation and technical exchange." *Id.* Its fifteen articles outline the parameters governing foreign investment in the PRC.

²⁹Like many Chinese statutes, it was drawn broadly with much left unclear. Chinese legislation does not follow the American model of precise word use. See ANDREW J. NATHAN, CHINESE DEMOCRACY 107-32 (1985), for an analysis of all the Chinese Constitutions promulgated from 1900 through 1982, documents produced by the final Dynasty, by the Nationalists in the 1930s and 1940s and the four constitutions promulgated by the PRC after 1949 and finds great elements of continuity between them. Failing to precisely enumerate the parameters of legal rights is one constant that he found.

conomic reform, the West was willing to be patient. Even substantial losses could not deter the enthusiasm for investment, for working with China to establish contacts that could lead to long-term gains.

With increasing sophistication the Chinese drafted dozens of commercial statutes. Chinese legal scholars were sent throughout the world to study developed legal systems.³⁰ The existing Chinese legislative opus is a patchwork drawn from both the civil and common law traditions. Each year it grows more complete and its implementation improves. Huge problems remain both in predictability and enforcement but the commercial structure grows more stable.³¹ The legal system is a long way from the entrenched, professionally staffed edifice that the international order might desire, but step by step things are improving. Law schools are flourishing and a new generation of law-trained professionals is entering into the marketplace. The typical informed American businessman knows that he can find legal counsel who can help him invest in China. There are American lawyers who can help him and there are Chinese lawyers who can help him. There are even firms composed of Chinese lawyers who are trained both in China and the United States.³² The road to successful trade may still be rutted, but the pathways have been blazed, and it is possible to travel. It is in everybody's best interest to make this work.

As a final note, it is important to observe that the many steps taken so far have not transformed the legal culture of Shanghai into that of Chicago. The Chinese business community continues to rely far more on interpersonal relations and the use of intermediaries than its United States counterpart. The roots of the Chinese practice can be debated at length, but its existence cannot be doubted. As long as personal contacts and the "guan shi" network exist alongside the legal system, China will be different.³³ Some of my Chinese colleagues say the evolving Chinese legal system will be based on both law and personal relationships in a way different from what Western commentators view as the accepted standard. Whether they

³⁰ See Chen, *supra* note 2, at 317-53, for a detailed listing and discussion of PRC trade laws in force at the beginning of 2000.

³¹ See Lubman, *supra* note 2, for an exhaustive study of the Chinese legal system. Professor Lubman, who has both practiced extensively in China and who has been an active scholar, painstakingly records the progress of the Chinese legal system. Professor Lubman provides comprehensive bibliographic citations for the corpus of writing in this field.

³² The Beilin law firm of *Shang Hai*, where each partner is a member of both the Chinese Bar and at least one state bar in the United States is a fitting example. The law firm of *King & Wood* provides another example with offices located throughout China in Beijing, Shang Hai, Shenzhen, and Sichuan.

³³ The two Chinese characters that express the sound "guan shi" are most frequently translated as "relationships" or "contacts." There is no simple explanation of the concept, but it refers to the network of personal relationships that underpin social and business interactions. A bit like relational contract theory, "guan shi" emphasizes contacts beyond any single transaction. One relies on people, not law, to accomplish one's ends.

are correct or not, presuming that the Chinese legal system, even as it relates to trade, is leaning towards a model based on either the common or civil law may be a dangerous assumption.

C. The Primacy of Policy

Besides the maintenance of order and the mantra of economic development, the most important and consistent factor to consider in dealing with the PRC is the primacy of policy in its legal system. The policy aims of the CCP and the interests of the political leadership of the PRC are paramount. Recent developments in the legal system bend to this fact. This stands in counterpoint to the Western vision of a legal culture. The two points of greatest difference are the separation of the legal system from the interests of the state and the importance of legal language. Each deserves attention. Discussing these two points prepares the way for an assessment of law and policy.

1. *The State and the Legal System*

Western commentators view the law as an independent bulwark between citizens and the state. The law is not an expression of state policy; it is a check upon it. Concepts like an "independent judiciary" are based upon the separation between the law and political policy. Both the law as a separate entity and the primacy of close textual interpretation have been central to the centuries-long disentanglement of the law from the kings, queens or state officials who enforce it. We view law as bulwark against the powers that be. A federal judge can defy the wishes of a President; indeed, the United States Supreme Court could order President Nixon to turn over his tapes. Legality has been the amulet to protect us from oppression. The law stands as a shield between the citizenry and the power of the state.

None of these ideas play a significant role in China's development or social construct. For millennia China was ruled by one form of Emperor or another. The Dynastic system saw all power centered in the Emperor. There were no checks and balances, no independent courts. The local magistrates in traditional China, who we have characterized as judges, were not judicial officers in our sense. The local magistrate, the "father and mother of the people," stood in the place of the Emperor, enforcing the Emperor's commands. There could be no checks upon such power. No lawyer class developed because in a system where the authority relationship between the government and the people was totally vertical, there could be no adversary system. The magistrate *was* the state.

2. *Language and Law*

In Western legal culture, especially in common law countries, the analysis of written documents is paramount. We carefully parse language, and the internal dynamic of our legality is one of controls and precision.

Though terrible deeds are sometimes done in the name of the law, the concern for following the language of legal documents with care is constant. Chinese reliance on precisely worded legal documents was undercut by the Confucian tradition, with its concept of "li."³⁴ Li can be translated in many ways, but at heart it is the right way to do things. Confucius believed that the Ancients understood the secrets of good government and good society. It was up to scholars to study and rediscover the ways of Ancients. This way would be found in all aspects of how they lived, with an emphasis on ritual and status. Such rules could never be written down. To write them down would limit them. Confucius understood that writing down laws would lead to technicality and evasion. He was concerned with the human heart and with personal cultivation. One should do the right thing because it is the right thing. Rules will never heal a human soul.³⁵

There is an ancient school of thought in China known as Legalism, which does believe in written law. Legalism has been paired with Confucianism over the millennia.³⁶ Presentations of paired opposites are frequent in China. With only a few interruptions, Confucianism was the official ethos of China from the founding of the Han Dynasty in 212 BC to the end of the Q'ing Dynasty in 1911. Confucian thought remains a powerful force in Taiwan and is again in favor in the PRC. During much of this time, Legalism, with its fondness for written rules, has been viewed as barbaric. Legalism has been associated with steely edged repression. The core concept of legalism is "fa." It has always stood for harshness and totalitarianism. Sadly, the Chinese character "fa" is the symbol that now stands for "law." This character carries with it the baggage of the Legalists from thousands of years ago. The Legalist creed of simple statutes written for all to see and obey has become associated with harsh punishments and arbitrary political power.

References to Confucianism and Legalism, or mentions of thinkers representative of one of the schools of thought, continue to be a part of public life in China. Confucian doctrine, with its stress on the power of the Emperor as complete, supports a concept of government in which there can be no constraints on the policy choices of the leader. Legalism, though it did believe in written law, also subordinated all law to the desires of the leader of the state.

³⁴There is no simple explanation of the Confucian doctrine of "li." See HERRLEE G. CREEL, *CHINESE THOUGHT: FROM CONFUCIUS TO MAO TSE-TUNG* (1953) (giving a good explanation of "li"). See also WILLIAM T. DEBARY, *SOURCES OF CHINESE TRADITION* (1999) (also giving a good explanation of "li").

³⁵Like the progenitors of other great religious and philosophical systems, Confucius has been ill served by many of his followers. The stuffy, pretentious face of Confucianism has little to do with the voice found in the Analects.

³⁶Legalism is a much more accessible system. See HAN FEI TZU, *HAN FEI TZU: BASIC WRITINGS* (Burton Watson trans., 1964), which presents a clear statement of Legalist norms.

3. Law and Policy

China is thus lacking the tradition of a legal system that is separate from the central power in society. The idea of an institution in society that is separate from and perhaps a challenge to the state is alien. Given the long and winding road that our common law system has taken to evolve the American legal system, it is not hard to see why the Chinese would not create one that mimics it from whole cloth. With no tradition of honoring written legal rules, the Chinese have little rationale for implementing a legal system that emulates that of United States with its emphasis on linguistic precision and objective rules outside the power structure. Over the centuries, the Chinese have learned to handle the same kinds of transactions that are part of every society: issues of property, contract, criminal law, etc. through systems different from those of the West. Delineating just how these systems differ is far too big a task for this essay, but suffice it to say that the Confucian ideal of a government constructed on the basis of men, not laws, is at its center. Relationships between people, and ongoing understandings are paramount. The "guan shi" system, buttressed by Confucian sensibilities, is the foundation. Even in private dealings, existing relationships between people are far more important than any words on a paper. Journals are filled with articles chronicling the frustration of Western attorneys at this habit. The Chinese claim that they have a different and better concept. There is no need to make such a value judgment. What is important is that we note the difference and appreciate it.

All of the above adds up to a system where the policy of the central government, that is, the policy of the CCP, will always trump law.³⁷ The PRC may enact more and more statutes, and in uncontroversial matters award more authority to courts, but the policy card can always trump legality. The wise businessman will rely on his network of contacts and his history with the parties involved more than on the words of his contract. In China, never hope to win on a technicality.

Because the CCP knows that it retains final control of all power, the Party can loosen the reigns on the economy. So long as there is no threat built into the legal infrastructure, that system can be used as an instrument for building China's power. There are those who feel that this infrastructure will take on a life of its own. They might contend that the roots of a new system are developing now, complete with trained personnel and the language and conceptual framework that are needed to build a system. Subject to a barge full of caveats, I agree, but the CCP still retains power today, and that power is so complete that they can tolerate it.

³⁷See Nathan, *supra* note 29, at 107-132 (1985), which compares, in a chapter entitled "Political Rights in the Chinese Constitutional Tradition," the constitutional documents of the Qing Dynasty, the KMT of Chiang Kai Shek, and the PRC of Mao and Deng, and finds striking similarities. All power belongs in the state and is provisionally granted to individuals. *See id.*

There are deeper implications here, and they lead us to the final section.

D. Berring's First Rule of Government

A final reason that the Chinese Communist Party has favored increased legalization is harder to state than the first three. It is not a reason that can be found in the official policy of the PRC or of the CCP. It is a reason inferred by an outside observer, always a dangerous angle of view. Yet it may be the most powerful reason of all. One of the models that I use in my teaching is Berring's First Rule of Government. The rule is simple. A party in power will do everything that it can to retain power. I contend that this rule is almost universal, and that it works in non-political situations as well in political ones. The Chinese Communist Party sees its mission as leading China. It will do whatever is necessary to retain power. There is no subtlety here. The CCP is a Marxist-Leninist Party and believes that it has a historical mission to lead the revolution and bring about socialist utopia. The use of any means necessary to accomplish this end is justified and essential. This makes my Rule especially relevant now because the CCP is having a crisis of authority.

The Chinese Communist Party is facing a serious crisis in theoretical credibility. The central ethos of communist doctrine, the tenets of Marxism-Leninism-Maoism, is losing their relevance to the reality of life in 21st Century China. Marxism dictates state ownership of the means of production; China is currently divesting itself of its state-owned industries as quickly as possible. Maoist theory characterizes individual wealth as evil; the current Chinese government encourages the accumulation of personal property. Conspicuous consumption is rampant in the coastal cities. Whether the Party leadership will admit it or not, the market economy has displaced Marxist institutions in the key roles in the Chinese economy. De jure China is a communist society; de facto China is enraptured with capitalism. This is nothing less than a crisis in legitimacy.

On October 1, 1949, when Chairman Mao mounted Tiananmen and declared the founding of the People's Republic of China, he was able to do so because of military conquest. But he also did so with a central theory in hand, a theory that explained the world. Scientific Marxist theory had the comforting aspect of explaining everything. It provided a blueprint for history, a set of ironclad principles that governed the world. With the considerable addition of Maoist rhetoric and ideas, this amalgam became the center of the Chinese political culture.

When I am asked to speak on a topic like "Doing Business in China," I often begin by reading from the Chinese Constitution. I do this to point out that China is *still* a Marxist-Leninist society, even if it now includes the

more pliable thought of Deng Xiaoping.³⁸ The CCP still monopolizes power and refuses to accept challenges to its authority. The problems swirling around the Falun Gong sect illustrate this monopoly on power. This quasi-religious Buddhist sect, centered on exercises and meditation, was long approved by the government. As Falun Gong began to grow it took on the trappings of an independent entity, apart from the state. This led to complete repression of the sect. Having read the basic documents of Falun Gong, I must admit that I am not sure exactly what the sect is. I am convinced that it is not political and has no discoverable agenda. Yet the CCP reacted violently to the sect's ability to mobilize the citizenry and to serve as a power center. The sect had to be crushed. The CCP has been incapable of tolerating any person or group that proposes an alternative source of authority, be it temporal or spiritual.³⁹ In the days of the Dynasty, this position could be justified by reference to the semi-divine nature of the Emperor and the Confucian order. Since 1949, this centralizing of power could be justified by reference to the principles of scientific Marxist-Leninist-Maoist theory. This theory was true and demanded that no opposition be brooked.

Thus this dictatorial communist regime rides careful herd on a country with a burgeoning economy and a core of outward looking intellectuals. Its theoretical justification is that it is the vanguard of Marxist-Leninist-Maoist thought. Throughout Chinese history a regime has always needed a unifying principle to retain power. This core of the CCP power base is now hollow. Call the current economy "market socialism" if you wish, but it bears no relation to communist or socialist theory. Yet the CCP is weighed down with these old concepts and models. The strain is showing. To rule for the sake of ruling, or for the sake of protecting one's own privilege, is not a preferred justification. The CCP needs a new core doctrine.

A variant of Western legalism is a doctrine that may serve. If the CCP could somehow transmogrify itself into a political party built around certain core legal principles, it might be able to restore its intellectual legitimacy.

³⁸P.R.C. CONST. (Foreign Languages Press, Peking, 1975), Preamble. (1992 rev. of 1982 text):

Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road and to uphold reform and opening to the outside world, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system, and work hard and self-reliantly to modernize the country's industry, agriculture, national defense and science and technology step by step to build China into a strong, prosperous culturally advances, democratic socialist nation.

³⁹See Michael Laris, *Chinese Dissident Jailed for Ties to Banned Party*, WASH. POST, August 7, 1999, at A15. This article discusses the harsh prison sentences that members of the China Democracy Party received as a result of their involvement with the party. *Id.* The government, perceiving the Democracy Party's threat to existing political power, resorted to imprisoning party members to maintain control. *See id.*

To do this it may have to change its name. I could see the CCP reconstituting itself as the new Chinese Prosperity Party. In my giddy moments, I hope that perhaps, like the KMT in Taiwan, it will have to allow opposition to develop, but that is asking a lot and projecting too far. My point is less ambitious. The CCP and the government of the PRC must find some new theoretical basis for governing, and law may look like the ticket. Law can be seen as largely concerned with market issues. It can be characterized as objective and can be loaded with CCP values. Moving towards law would smack of modernism and progress.

Even if such a wild scenario plays out, the law used would be far different than the law that we in the West use. The same conflicts between systems will continue. The slow building of a new legal infrastructure will take longer, though it will be greatly accelerated by law's growing importance. Even if law does not become the central axle, it likely will be part of the solution. The CCP has to find a new theory.

IV. CONCLUSION

The forces of the world economy, as well as the particular interests of the PRC, point to increased trade between China and the rest of the world. Chinese participation in international agreements will continue and likely increase. The only immediate pitfall is the Taiwan issue, where the PRC will stand firm. Hard liners in China, just like hard liners in the United States, are hard to best. The Taiwan issue could upset all calculations. Barring that, though, the PRC has every reason to be interested in increased legalization, so long as it is done on China's own terms. Indeed, legalization may provide the ethos that the current government needs to survive. It is important that in all international dealings with China we realize that the Chinese have their own history and culture and use legal concepts and institutions in ways that are different from those of the West. It is likely that we will influence them; it is likely that they will influence us. Time will tell, but enlightened understanding will make any process easier.

