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## Party Ideology and Chinese Law

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### 2.1 Introduction

What is the importance of ideology in China's legal and political system? According to much recent academic literature, not much. The post-Deng turn away from Maoism ushered in an era in which many observers opined that China had become a 'post-ideological' state (Brown 2012), whose politics were guided by pragmatic concern or could be explained by more universal theoretical approaches. More broadly, ideology came to be seen as obsolete in the post-Cold War era, where the widely shared idea of the 'End of History' (Fukuyama 1989) posited that the world would converge to the forms of social organisation that had proved optimal: liberal democracy and free-market capitalism. Numerous academics and observers expected that the Chinese Communist Party (CCP or Party) would sooner or later follow the Soviet Union (USSR) and Eastern European socialist regimes into the dustbin of history (Chang 2001; Shambaugh 2015). The subsequent body of literature on 'authoritarian resilience' (Nathan 2003) has attempted to explain how CCP rule could hold off democratizing forces, but, nevertheless, often remains stuck in a paradigm that considers China's status quo as, at best, in flux and, at worst, an aberration. Consequently, academic interest in Party ideology has waned. In his survey of the field of Chinese politics, Lieberthal identifies ideological studies as perhaps the only topic to have disappeared from view (Lieberthal 2010).

In the study of Chinese law, the liberalising paradigm manifests itself in the discussion on the concept of 'rule of law', the usual translation for the Mandarin term *fazhi* (法治). Chinese and foreign scholars alike have discussed the post-Deng reconstruction of the legal system as the beginning of a path towards convergence with, or at least similarity to, the legal systems of developed liberal democracies (Pan 2003; Zou 2006; Cai 2010; He 2012), and the obstacles to achieving that goal (Turner et al. 2015). Even those critical to the narrative of full convergence confirm, at least,

part of the paradigm. Peerenboom, for instance, argues that China would not converge with a ‘thick’ conception of rule of law, laden with liberal values, but a ‘thin’ one, focusing merely on procedural aspects of law (Peerenboom 2002).

However, this analysis seems to presume that China’s legal development process is teleological towards some form of Weberian legal rationality or idealised Western order. Peerenboom’s proposition of the thin rule of law, for instance, is unclear on the extent to which procedural elements themselves reflect particular values, or can indeed be fully separated from values at all. Moreover, it has not paid particular attention to the question concerning which values Chinese law would alternatively embody. He argues that Party interference and Socialist ideology are factors of secondary importance, or ‘easily overstated’ (Peerenboom 2002: 217), in the construction of a law-based order. Instead, he points to institutional and systemic issues, such as an incomplete legislative framework, a weak judiciary, the lack of a civil society, regional discrepancies and corruption (Peerenboom 2002: 11–12). Yet while these elements are undoubtedly of considerable importance, law is not merely a mechanistic or technical exercise. As a form of social practice and social control, it is imbued with meanings that, particularly in the public realm, largely originate from political practice and discourse.

As Clarke (2003) warned, the teleological question of what Chinese law *could* or *should be* in an idealised, often Westernised, future has overshadowed the analysis of the internal logic of Chinese law as it currently *is*.<sup>1</sup> For instance, deLisle (2017) argues that, under Xi Jinping, law in China remains ‘narrowly instrumentalist, uneven across subject matter and region, and beset by both “supply-side” and “demand-side” challenges.’ What remains unclear is the extent to which these phenomena are aberrant or intended. What elements, then, are necessary for a plausible account of the development of China’s legal system? Perhaps the most salient of its characteristics is that it is essentially new. Although Chinese law has a long and sophisticated history, few institutions or legal rules in their current form predate the beginning of the reform era.<sup>2</sup> The People’s Republic of China (PRC or China) didn’t require a Constitution to constitute itself. As Ewan Smith discusses elsewhere in this volume, it took the Politburo until the 2000s to seriously consider the rule of law as

<sup>1</sup> One noteworthy exception is von Senger (2000).

<sup>2</sup> One important exception is the 1958 Household Registration Regulations (*Hukou dengji tiaoli* 户口登记条例), which institute the *hukou* system.

something that might have a profound impact on state structuring and the relationship between state and citizen. The Chinese legal order, much more than in most other systems, emerged only in secondary importance to political imperatives. Therefore, it is necessary to explore the political and institutional context in which this system was created.

This chapter argues that Party ideology provides an important part of an account of the development of China's legal system as intended by those in charge. Ideology does more than simply provide a convenient cover or justification for pragmatic political manoeuvring or the exercise of power. It constitutes an important part of the very definition of legality and legitimacy. Yet this claim requires clarification of what 'ideology' means. Often, the term is used pejoratively to refer to political beliefs that distort reality, for instance, for autocratic, dictatorial or irrational purposes. In that sense, it is juxtaposed with pragmatism or rationalism. However, this paper will use a more neutral definition, developed by Freeden. In this definition, ideology is an interrelated set of concepts, assumptions, norms, values and ideas that (1) provides an explanatory account of reality and (2) outlines a path for political action and change. This, in turn, requires ideological systems to contain programmatic elements, such as claims about the role of the state or socio-economic arrangements on the one hand and epistemological elements, such as assumptions about the nature of truth, knowledge or human nature, on the other. Moreover, as Freeden argues, this definition sees ideology as a crucial part of any political structure and practice. Studying it thus assists us in 'the laying bare of the thought-processes and thought-practices that societies exhibit' (Freeden 2006:16). When it comes to CCP ideology, this means we must look beyond the standard thesaurus of classical socialist terminology, explore how the CCP has created a doctrinal worldview imparted on all its members and inquire what role the phenomenon of law has been given in that worldview.

For its part, CCP has consistently been explicit about the prominence it attaches to ideological affairs. In its near-century of existence, the Party has meticulously built up and continuously revised a sophisticated ideological edifice that is contained within its foundational documents, such as the CCP Constitution and the state Constitution. This edifice is explicitly reflected in its structures, processes and policies: the first substantive section of most important policy documents is usually titled 'guiding ideology'. The importance of ideology is repeated regularly in prominent Party publications, such as the journal *Qiushi* ('Seeking Truth' – 2013, 2014). With regard to law, Smith (2018) suggests, the

consequence is that doctrine about the role and nature of law must be seen as a larger project to formulate doctrine that should be understood and reproduced by cadres.

This chapter will analyse this corpus in the light of the three questions presented above: what is the purpose of politics? who is entitled to political power? and by what method is the purpose to be achieved? To this end, this paper is divided into two further sections. Section 2.2 will review how the CCP has answered these three questions. It will argue, first, that the chief objective of China's political project has been denominated in teleological terms that, while different, share a considerable part of their ideological underpinnings. Second, it will discuss how the CCP uses the Leninist concept of a vanguard Party to legitimise its continued rule, as well as to organise its penetration of society. Lastly, it will analyse the Party's claim to scientific truth as the root of its method for governance. It will also reflect on the epistemological underpinnings of Party ideology. Section 2.3 will discuss how these insights might elucidate our understanding of Chinese law and influence future scholarly work.

## 2.2 Accreted Layers of Historical Meaning

### 2.2.1 *Who Governs, and Why?*

The roots of the CCP's political project must be traced back far before its foundation in the 1920s. As early as the eighteenth century, China faced a political crisis born of a combination of population growth and economic change and the failure of the state to keep up with the new needs this presented (Kuhn 2002). As the nineteenth century unfolded, the crisis deepened: imperialist powers threatened the empire from abroad, while domestic catastrophes such as the Taiping uprising (Platt 2012), as well as the inability of the Qing government to adapt to changing circumstances, eroded the dynasty's domestic authority (Dai 2013). As the crisis deepened, the major political question became how to save the nation (*jiuguo* 救国), and the nature of proposals for political reform escalated and radicalised, criticising in particular the dominant imperial ideology, which was based on Confucian tenets.<sup>3</sup>

<sup>3</sup> The term Confucianism has now become contested among historians of China. It gained currency due to the efforts of late nineteenth-century scholars such as James Legge, who projected onto Chinese tradition a view of religion in the mold of Christianity. Swain (2017) suggests the term 'the way of Ru' might be more apposite.

Successive generations of reformers developed new ideas concerning the purpose of rule. At first, these were incremental. Kang Youwei's *Book of Great Unity* (*Datong shu* 大同书) proposed a utopian model for world governance based on a syncretic integration of Confucian, Buddhist and Western ideas (Knight 2007: 123). As imperial rule waned, however, more transformative thinking emerged. Most notably, Sun Yat-sen, a Hong Kong-trained physician who had spent his formative years in Hawaii, devised the Three Principles of the People (*sanmin zhuyi* 三民主义), first outlined in 1905 (Sharman 1968: 94). The first of these principles, *minzu* (民族) or nationalism, called both for independence from imperial imposition and for the creation of an integrated 'Chinese nation' (*Zhonghua minzu* 中华民族). The second principle, *minquan* (民权) or popular power, entailed the creation of a representative form of government, as opposed to imperial-era elitism. The last principle, *minsheng* (民生) or popular welfare, described the way in which government was supposed to take care of its people.

The political malaise caused by the initial failure of the republic created space for other forms of political thought, the most historically significant of which turned out to be communism. The CCP was founded in 1921, inspired by both Marxist ideas of liberation and the actual success of the Bolshevik revolution. Since taking power in 1949, the CCP has defined as its ultimate objective the realisation in communism.<sup>4</sup> In classical Marxism, this is vaguely defined as a future state of material superabundance, in which no conflicts over material distribution will be necessary and in which the state (which is a reflection of oppressive class relationships) will wither away. It reflects Marx's assertion that history progresses along a predetermined path from capitalism, via an intermediate stage of socialism, to the promised Utopia, driven along by the incessant process of dialectic materialism (Kolakowski 2005; Brown 2010).

Successive generations of Chinese leaders have, however, had different ideas concerning how quickly that process could be realised. The revolutionary fervour of the Great Leap Forward, for instance, was a bid to

<sup>4</sup> The first iterations of the Party Charter primarily focused on organic and organisational matters. In 1945, at the 7th Party Congress, a section entitled 'General Programme' was added. This contains a provision, which has remained unchanged, stating that the establishment of a communist system is the CCP's ultimate objective (*Zhongguo Gongchandang* 1945).

leapfrog towards communism within a generation.<sup>5</sup> Under Deng, however, China's position on the ladder of history was revised. Official ideology now stated that China was at the 'primary stage of socialism', and would remain so for a long time.<sup>6</sup> Yet, while communism remains part of ideological doctrine, it came to be supplemented by other objectives, now sloganised as the 'Two Centenaries Struggle Objective' (*liangge yibainian douzheng mubiao* 两个一百年斗争目标). Having little to do with orthodox Marxism, this approach aims to realise two stages of development, respectively, by 2021 – the centenary of the CCP's foundation – and 2049 – the centenary of the PRC's establishment. The first, intermediary, objective is the realisation of a 'moderately prosperous society' (*xiaokang shehui* 小康社会), a concept derived from Confucian traditions.

To summarise, the driving purpose of Chinese political activity since the decline of the empire has been 'saving the nation' by restoring it to a position of material prosperity and political strength (often abbreviated as *fuqiang* 富强 [Shell and Delury 2013]). This political project has consistently been teleological and collectivist in nature. It focuses on a future to be achieved, rather than a present to be governed; it elevates the nation and its interests over the concerns of the individual, who is expected to perform continuous sacrifice in furtherance of national goals. As Xi Jinping stated, 'Only when the country does well, and the nation does well, can every individual do well' (Xi 2012).

Since 1949, the justification for Party leadership has been that only the CCP had the ability to realise this programme. As a popular revolutionary-era song proclaims: 'Without the CCP, there would be no New China' (*meiyou gongchandang jiu meiyou xin Zhongguo* 没有共产党就没有新中国). During the Second World War, the Party had been able to rectify itself organisationally and ideologically (Cheek 1984), and experiment with governance tools (Goodman 2002) that allowed it to vanquish the Guomindang (GMD) in 1949. Rhetorically, however, Party documents also ascribe this unique position to its identity as an intellectual vanguard that commands the fundamental truths necessary to generate progress. The Preamble of the PRC Constitution (1982)

<sup>5</sup> One of the key documents in the rural collectivisation process states in 1958 that the achievement of Communism 'is not a matter in the distant future anymore' (Central Committee 1958).

<sup>6</sup> This phrase entered into the Party Charter at the 13th Party Congress of 1987. On this process of reframing, see (Sun 1995).

enshrines ‘the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought’, as well as subsequent ideological contributions made by successive Party leaders. The Party Constitution squarely states,

The Communist Party of China is the vanguard both of the Chinese working class and of the Chinese people and the Chinese nation. It is the core of leadership for the cause of socialism with Chinese characteristics and represents 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.

(Zhongguo Gongchandang 2017)

The basis for this claim is an intellectual one: only the CCP possesses the scientific knowledge, based on Marxism-Leninism, to achieve the aim of China’s prosperity.

### 2.2.2 *Science*

The idea that political influence depends on intellectual accomplishments has profound roots in Chinese tradition. For centuries, the only institutionalised route to political power lay through the examination system, which tested knowledge of a defined canon of classical works.<sup>7</sup> Neither land ownership nor religious or military authority automatically entitled the holder to office – even if there have been ample historical examples of such figures, eunuchs or courtiers, wielding considerable influence over rulers. There was equally no notion of representation<sup>8</sup> or political validity of the popular will. Furthermore, this canon closely connected power with morality: the notion of the Mandate of Heaven implied that Emperors obtained and retained power through moral conduct and righteous governance.

As China’s crisis deepened in the nineteenth century, increasingly radical voices called for the expunction of Confucian thought from public life, and began a search for new ideas and theories on how to achieve national salvation. Many sought inspiration from abroad: Yan Fu

<sup>7</sup> As Vivienne Shue (1990) argues, while there are considerable differences in actual policies and forms of interaction during various stages of the imperial period, the consistency throughout this very long period is remarkable.

<sup>8</sup> Representation, as defined by Martin Loughlin (2003: ch 4), refers to the notion that governing power is organised in the name of the people and the common interest, and that therefor the people need to be represented in the structures of power.

translated John Stuart Mill and Adam Smith into Chinese but became particularly influential through his interpretations of social Darwinist thinkers such as Thomas Huxley. Social Darwinism, with its focus on the survival of the fittest, was highly attractive for those intent to cast away 'backward' traditions. Some May Fourth movement thinkers turned towards Marxism. Others, such as Hu Shi, the figurehead of efforts to vernacularise written Chinese, were inspired by pragmatic theories. Hu would even go so far as to invite his old teacher John Dewey to lecture in Shanghai (Chan 1956). While these theoretical approaches vary wildly in their assumptions and implications, what they all share is that they conceive of governance primarily as an intellectual endeavour. It is no coincidence that 'Mr. Science' was supposed to join 'Mr. Democracy' in modernizing the nation (Sun 1999).

For Sun Yat-sen, however, imported social theory would not be helpful in establishing and consolidating a republic on its own. Having concluded that military power would be indispensable in obtaining power, the next question was how to build and maintain political authority. His response (Sun 1924), heavily influenced by Leninist organisational techniques, was a three-step scenario in which military rule was followed by a period of political tutelage, aimed at educating the citizenry about their new political environment. This, in turn, would pave the way for the final stage of constitutional government (*xianzheng* 宪政). Under Chiang Kai-shek, the GMD attempted, at least symbolically, to carry out this process. The GMD-led government promulgated a provisional constitution for the period of political tutelage in 1931 (Zhonghua Minguo 1931), as well as a full constitution in 1946 (Zhonghua Minguo 1946), which was supposed to signify China's entry into the *xianzheng* stage.

After its expulsion from urban China during the 1927 GMD takeover, the CCP was forced to develop new tools and tactics, not just for governance but for its very survival. By 1935, Mao had asserted himself as the Party's leader. Over the next ten years, Mao would create a body of writings that would become enshrined in Party constitutional documents as 'Mao Zedong Thought'. Eclectically borrowing from Marxism and Leninism, actual practice and traditional Chinese writers, Mao Zedong Thought included military and organisational tactics, as well as an epistemological approach to politics. The two related essays, *On Practice* (Mao 1937a) and *On Contradictions* (Mao 1937b) are of particular importance. In the former, Mao argued, with more than a whiff of Comtean positivism, that objective laws underpinned social development. In order to progress towards communism, it was necessary to both

understand these laws and apply them for social change. This, in turn, required knowledge that could be gained through integrating observed practice with the essential truths of Marxism. Pragmatic experimentation was hailed as a crucial way to obtain practical experience.<sup>9</sup> The latter essay further elaborated on these conclusions by identifying contradictions between dialectical opposites as the starting point for action. According to Mao, history progressed through the correct identification and resolution of contradictions in society. More specifically, he argued that contradictions were universal, in the sense that 'there is nothing which does not contain contradictions' (Mao 1937b), and, in particular, in the sense that every contradiction was determined by its context. Furthermore, any historical phase was defined by a principal contradiction that determined the nature of other contradictions. Resolving this principal contradiction would thus enable a transition from one historical period to the next. Mao divided contradictions into antagonistic and non-antagonistic categories; the former could only be resolved by struggle, while the latter could be tackled through diligent thought and reform. Furthermore, organisational techniques such as democratic centralism and intraparty criticism were developed. In 1945, Mao Zedong Thought officially entered into canon through a Resolution on the history of the Party (Central Committee 1945), which imposed an orthodox reading of Party history and cemented the position of Maoist ideology (Saich 1995).

The doctrine of contradictions turned out to be a very flexible tool to justify nearly any measure later on. Mao used it to designate class struggle as the highest priority, with permanent revolution the necessary response. In 1957, a further speech by Mao on contradictions among the people, which seemed to advocate a more open climate for political criticism, resulted in an outpouring of severe criticism against Party rule. While it is still debated whether Mao deliberately lured his critics into the open or was genuinely surprised at the amount of intellectual discontent after eight years of Party rule (Schoenhals 1986), the Party rapidly embarked on a campaign against 'Rightist' intellectuals, followed by the voluntarism of the Great Leap Forward. Equally, the Cultural Revolution was ideologically justified by identifying the principal contradiction as 'the antagonistic one between, on the one hand, the broad masses of the workers, peasants, soldiers, revolutionary cadres and revolutionary

<sup>9</sup> In this regard, Mao seems to have been strongly influenced by Dewey (Heilmann 2008).

intellectuals, and, on the other hand, you the handful of anti-Party and anti-socialist representatives of the bourgeoisie. This is a contradiction between revolution and counter-revolution, an irreconcilable contradiction between the enemy and ourselves' (Peking Review 1966).

With all the attention paid to the discontinuity between the Mao era and the subsequent period of reform and opening up, the extent to which the latter had to be rooted in the context of the former is often overlooked. In the power struggle between Hua Guofeng and Deng Xiaoping after Mao's death, both sought to legitimise themselves by appropriating particular elements of Mao Zedong Thought. Hua was a provincial official from Hunan who lacked a strong powerbase of his own and derived his authority from the fact that Mao had appointed him. His slogan, 'Two Whatever's', implied that the Party would 'resolutely defend whatever policy decisions Chairman Mao made, [and] steadfastly abide by whatever Chairman Mao gave' (Schoenhals 1991). Deng, an ex-senior military commander, ex-senior bureaucrat and Vice-premier, countered by having associates publish newspaper articles proposing a more scientifically grounded approach, based on 'seeking truth from facts' (*shishi qiushi* 实事求是). This phrase, which originates from the *Book of Han*, was inscribed on a school building in Changsha, where Mao resided during his youth. Mao first used it in a speech to the 6th Plenum of the 6th Party Congress (Mao 1938), and the Dengist leadership made it into a central pillar for his pragmatic governance reforms (Hu 1979; Central Committee 1980).<sup>10</sup>

The new leadership issued a resolution on CCP history that passed the authoritative verdict on the previous three decades of Party rule. This resolution celebrated the theoretical contribution of Mao Zedong Thought and employed Mao's theory of history to both condemn the excesses of the Great Leap Forward and justify Deng's reforms: it argued that class struggle could not be the primary contradiction, as the exploiting classes had been eliminated in socialist China. Instead, it asserted that, since the full establishment of socialism, 'the principal contradiction our country has had to resolve is that between the growing material and cultural needs of the people and the backwardness of social production' (Central Committee 1981). In other words, Mao's continued focus on class struggle was deemed erroneous, and the task of the Chinese

<sup>10</sup> 'Seeking Truth' (*qiushi*) has, since 1988, also been the title of the Party's leading theoretical journal. Until then, it was titled 'Red Flag'.

government had always been to embark on the economic reforms that would now start.

Deng's ideological reset also had important consequences for intellectual life within the Party: policy precepts were no longer to be derived from exegesis of Mao's writings and aphorisms but generated through scholarly research. This led to the reinvigoration and expansion of the Party-state's intellectual branch, and the CCP designating itself as a 'learning-type party' (*xuexixing zhengdang* 学习型政党) (Tsai and Dean 2013). The Party School system was restructured to not only indoctrinate cadres with Party ideology, but with a broader curriculum increasingly based on social science research (Shambaugh 2008b). Marxism remains important, as a stated source of basic theory.<sup>11</sup> As the Party Constitution puts it: 'Marxism-Leninism brings to light the laws governing the development of the history of human society. Its basic tenets are correct and have tremendous vitality' (Zhongguo Gongchandang 2017). However, concerning governance and social management, the Party has adopted a complex systems engineering approach pioneered by physicist Qian Xuesen. In this view, complex systems thinking pioneered in the natural sciences applies to social management as well. Society, like nature, is considered to be an integral system that therefore must be managed holistically. Social development is governed by objective 'laws' (*guilü* 规律) that, similar to the laws of nature, are intelligible and can be used to forecast and control social reality (Bakken 2000; Hoffman 2017). On this basis, and echoing the wholesale introduction of foreign knowledge in the late nineteenth century, a new wave of Chinese researchers has also eclectically imported academic tools and approaches in support of the new development agenda.<sup>12</sup> Comprehensive research plans for social sciences and the humanities not only intend to foster policy-relevant inquiry but to cement a position for these disciplines at the same level as the natural sciences (Central Committee 2004).

The importance the Party attaches to its intellectual support is evidenced not only by the fact that both Hu Jintao and Xi Jinping headed the Central Party School before they became General Secretary, but also by the fact that one of the most important symbolic achievements of

<sup>11</sup> Xi Jinping, for instance, underlined the importance of dialectical materialism at a Politburo study session (Xinhua 2015).

<sup>12</sup> One example is the importation and indigenisation of public administration and public management theories (Pieke 2012).

every leader is to have their signature ideological contribution inscribed into the Party Constitution. In this way, it is possible to trace both continuity and change in top-line ideology: Deng Xiaoping Theory built on Mao Zedong Thought but added a focus on pragmatism, economic development and the Four Cardinal Principles.<sup>13</sup> Jiang Zemin's Three Represents (*sange daibiao* 三个代表) focused on opening up the Party to its traditional adversaries: businesspeople and entrepreneurs. Hu Jintao's 'scientific development view', in turn, focused on social harmony (Miller 2017). Wang Huning, the Party's leading ideologue and architect of both the Three Represents and the scientific development view (Patapan and Wang 2017), was promoted to the Standing Committee at the 19th Party Congress. This Congress also approved the addition to the Party Constitution of Xi's theoretical contribution, the verbosely named 'Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era'. This new era referred to Xi's redesignation of the primary contradiction: Deng's prioritisation of economic growth was replaced by a focus on more equitable and balanced development (Xi 2017).

Basing Party ideology on externalised notions of objective and scientific truth simultaneously enables constancy and flexibility. On the one hand, the core assertion of unswerving loyalty to Marxism-Leninism and the accumulated (if sanitised) core of Party insight not only justifies the architecture of the Party-state, it also creates a durable basis for constitutional continuity and stability, even as particular policies change radically. Yet, at the same time, the doctrine of contradictions, and dividing history into phases, provides considerable flexibility for innovation and reform, as well as the ability to respond to changing circumstances. The assertion of truth also implies the depoliticisation of the policy process: if decisions result from the need to conform to historical imperative as understood through the lens of 'science', the people only need to be included or represented as far as that scientific approach requires. In other words, the notion that the CCP 'represents' (*daibiao* 代表) the population (which may be sovereign in name) does not imply or require a direct, institutionalised link between the popular will and policy, legal or regulatory outcomes.

<sup>13</sup> These are: persisting in (1) the socialist path, (2) the dictatorship of the proletariat, (3) the leadership of the CCP and (4) Marxism-Leninism and Mao Zedong Thought (Deng 1979).

### 2.2.3 *The Epistemological Chassis of CCP Ideology*

The teleological nature, primacy of Party rule and scientific characterisation of CCP ideology reflect a central epistemological assertion echoing Berlin's conception of monism, in which

(1) All genuine questions must have a true answer, and one only; all other responses are errors. (2) There must be a dependable path to discovering the true answers, which is in principle knowable, even if currently unknown. (3) The true answers, when found, will be compatible with one another, forming a single whole; for one truth cannot be incompatible with another. This, in turn, is based on the assumption that the universe is harmonious and coherent.

(Cherniss and Hardy 2013)

Again, this idea has profound roots in Chinese political history. In Kuhn's analysis of Qing-era politics, 'only one public interest existed, defined in a righteous rhetoric of personal ethics' (Kuhn 2002:13). Factionalism was abhorred in rhetoric, even if it was inevitably practiced extensively in reality. This had a considerable impact on political discourse and the resolution of political conflicts: factionalism was often associated with political instability and the fall of the Tang, Song and Ming dynasties. It was often used as a brush with which to tar political enemies, accusing them of sowing discord and threatening the stability of the regime. But this had major consequences for the institutionalisation of governance. As Ter Haar puts it, 'it is the tragedy of traditional China that it never succeeded in developing good mechanisms to foster a constructive political debate, which could also lead to good governance' (Ter Haar 2009: 310).

In Party ideology, monism entails that what is scientifically correct is also morally preferable and in the interest of the People (*renmin* 人民), who remain an undifferentiated mass. In some cases, there is recognition of diversity, but not of pluralism. In other words, Party ideology accepts that there are various groups in society who are different in objective terms (due to, for instance, age, class background, socio-economic position, educational attainment, gender or ethnic identity) and attempts to identify and address their special needs. However, any conflicts between those needs are identified as contradictions that need to be resolved, as opposed to legitimate but incommensurable interests that can only be mediated.

This assertion of fundamental harmony and coherence manifests itself in the manner in which CCP policy documents, such as Five-Year Plans,

are composed and hierarchically interrelate. Usually, a first section outlines the status quo, situating the document within the systemic context of present circumstances, as well as the previously established policy direction (for instance, when ministries refer to State Council policies). A second section covers the 'guiding ideology', which lists the slogans and principles that have informed the drafting of the document. Subsequent sections then outline the various objectives and priorities of the plan, followed finally by the organisational and structural measures taken to realise this objective. Legal and regulatory documents nearly always identify explicitly which higher-level policy document they are supposed to execute and to which objective or slogan they contribute.

The essence of the Party's ideological construct can be summarised as follows. (1) The task of rulers is to lead China towards a predetermined, utopian future. (2) The rulers should be those who have the correct knowledge to realise this process, i.e., the CCP. (3) The CCP identifies and resolves its task by way of its correct political theory. The foundations of this are known, but it needs to be researched how these foundations should be turned into action. (4) This question depends on correctly identifying the primary contradiction defining a particular historical period, as well as all its subordinate contradictions. (5) Once these contradictions are identified, they can be tackled by researching the applicable objective *guili*. (6) This requires experimentation and political flexibility, and, when solutions are found, they crystallise into doctrine, as well as stronger legal and policy norms.<sup>14</sup>

### 2.3 How Does Ideology Influence Law?

To understand how ideological norms and concepts influence China's political-legal structure, elucidating their substantive anatomy is merely a first step. It is also necessary to identify how these norms and concepts influence individuals within the systems in practice. In other words, we need to address questions about whether, when, why and how ideas matter. The assertion that they do seems commonsensical. Nevertheless, in the Chinese context, it is often held that the reform era heralded the end of ideology, or that deeply cynical cadres don't believe in socialist ideology anymore and merely play along with the melody for personal advancement.

<sup>14</sup> One example of this in the legal field is Smith's analysis of the evolution of the 'rule of law' concept elsewhere in this volume.

To a certain degree, these criticisms are valid. First, as indicated earlier, the territory for deductive ideological reasoning has been reduced by the re-recognition of the value of scientific and technological insights. The fervent drive to let willpower triumph over natural and social constraints present in the Great Leap Forward would be difficult to envisage in the China of the present. What that means for law is that one cannot accurately predict the substance of legal norms, or their specific application in cases, on the basis of a logical reasoning based on ideological first principles.<sup>15</sup> Yet it may be going too far to claim, as Shambaugh does, that ideology is merely a tool of post-hoc rationalisation or a coded language for legitimisation, obeisance and political conflict (Shambaugh 2008b: 105–6). It isn't because ideology does not always matter, or is sometimes honoured more in the breach than the observance, that it never matters substantially. Hypocrisy, rule breaking, contestation and shirking are part and parcel of human politics everywhere. The huge divergences in outlook between ardent liberation theologians and fire-brand evangelical preachers, the excesses of the Borgias or the child abuse scandals in the Catholic church today do not entail that the content of the Bible is of no value in studying Christianity. Instead, one must attempt to find the way in which ideology is consciously or subconsciously used, resisted, interpreted, followed or contested in a manner that shapes law-related conduct. Sections 2.3.1 through 2.3.3 discuss three ways in which further research could enlighten this question. First, evolving ideological tenets have delineated the sphere in which legal rationality, as generally understood, has been introduced. Second, ideology defines the nature and applicability of legal norms. Third, ideology creates incentives for legal actors' conduct.

### 2.3.1 *Ideology Delineates the Spheres of Law*

As Section 2.2 of this article argues, ideological conceptions of governance evolved in lockstep with changes in political practice, as successive generations of political leaders applied their ideas to ever-changing external circumstances. Each accorded a varying weight to the role of law. Late Qing and early republican reformers saw law as one of the most prominent manifestations of political modernity, and thus prioritised the drafting of constitutional texts, criminal law and civil codes (Hua 2013),

<sup>15</sup> The legal realist school would argue that this is equally true in Western legal systems. See, for instance, Llewellyn (1930).

largely based on foreign models (Chen 2008: 33). Human rights were actively explored in Beijing intellectual circles, even if primarily as an elite concept rather than a universal one (Svensson 2002). However, as Rankin (1997) argues, the legislative assemblies in which these processes took place were among the least well-rooted of political associations during the political transition. The subsequent failure of this early republic, and the descent of the Beijing government into factionalist squabbling (Nathan 1976), taught subsequent GMD and CCP leaders that effective control and authority were far more important than instituting a constitutional order founded on legal rules and rational authority. Moreover, the modernising ethos of both the republic and the People's Republic entailed a comprehensive repudiation of the past: the imperial legal system was cast away with the rest of the nine-dragoned trappings, while the CCP abolished GMD law wholesale, denouncing it as a 'sham' (Central Committee 1949). Yet the CCP didn't create a comprehensive new legal system to replace it: during the Mao era, social and economic processes were largely regulated through administrative and managerial means, while the brunt of judicial work was oriented towards class struggle and dealing with counterrevolutionary elements (Chen 2008: 39). It was only under the Dengist reforms that CCP leaders began consistent and durable efforts to introduce legal rationality in distinct spheres of activity. In other words, law as it exists in the CCP is a fairly recent introduction into an extant architecture of governance that had survived (although not thrived) without it. As a result, the question of where legal rationality has emerged can be restated as a question of where it has been tolerated, encouraged or intended.

This instrumental use of law is most obvious in the areas of public and criminal law. The CCP's Leninist structure entails that constituent power has been absorbed fully by the Party. Consequently, many of the elements and functions of constitutional and, more broadly, public law have been internalised into the Party system and thus often find no, or merely a subordinate, expression in law. As Smith argues in Chapter 4, many of the functions that in Western jurisdictions are governed by legal rules or conventions are in China subject to political rules that often seem less long-lived and less binding. The relationship between the state qua state and its citizens also does not brook judicial or legal scrutiny. The Constitution is not actionable; the National People's Congress (NPC) Standing Committee has yet to use its on-paper powers for the first time to revoke administrative regulations inconsistent with higher-level norms. Party processes, not legal rules, are primordial in the selection, appointment, promotion, dismissal and disciplining of cadres and officials, with law

merely providing its imprimatur after substantive decisions have been taken. Political leaders and officials do not derive their position from explicitly granted consent of the governed but from the combination of asserting authority on the basis of Leninist tenets and the monopolisation of all significant resources of power within the ambit of the Party-state. In criminal law, Sapio has observed ‘zones of lawlessness’, where the normal operation of legal rules is suspended in favour of the exercise of sovereign power. Sapio describes these zones not as an aberration but as an integral component of the legal system (Sapio 2010: 3). For instance, the way in which criminal law is used to deal with ordinary thieves and murderers on the one hand and disgraced senior officials or high-profile dissidents on the other clearly illustrates the boundaries of such zones and can be seen as an illustration of where the requirements of Party unity and discipline override the rational functioning of the legal system.

This limited acceptance of legal rationality in the public law field clearly impedes and constrains not only the judiciary but also the development of China’s legislative processes. In 2008, Supreme People’s Court (SPC) president Wang Shengjun promoted the ‘Three Supremes’ (*sange zhishang* 三个至上) doctrine: in enforcing the law, judges should take into account first the supremacy of the Party’s undertaking, second the supremacy of the popular interest and only third the supremacy of the law (Xinhua 2008). In a 2011 address to the NPC, then-Vice-premier Wu Bangguo ruled out rotational multi-party governance, ideological pluralisation, a tripartite separation of powers and a bicameral system, federalisation and privatisation (Standing Committee 2011). The 2014 Fourth Plenum rendered this reading explicit through the confirmation of Party leadership over legal processes, confirming a more doctrinal reading of institutional monism (Central Committee 2014).

Ideological imprints are less visible in many areas of economic and private law. Partly in order to comply with international regimes and the rules of the global trading system and partly in order to consolidate the gains from economic reform, China committed to a thorough overhaul of its legal and regulatory framework when it joined the World Trade Organization (WTO) (Qin 2007; Zhang 2013). Many technical international regimes, such as telecommunications and civil aviation, are less politically sensitive, and the value of compliance for interoperability is clear.<sup>16</sup> In the realm of family law, the existence of rules concerning marriage enables individuals to render the arrangements they

<sup>16</sup> Even if China emphasises national sovereignty in its engagement with such regimes, which is perhaps the most visible in the area of cyberspace. See, for instance, MFA 2017.

autonomously make legally valid, reducing administrative burdens on the state. Nevertheless, individual provisions in certain areas of law still evince traces of the close bond between law and morality, such as the obligation on children to visit their parents regularly (NPC 2012), while the Copyright Law denied protection to unapproved works until the measure was successfully challenged at the WTO (WTO 2009).

This observation challenges Peerenboom's argument that China would move towards some version of a thin conception of the rule of law, characterised by the presence of formal and procedural elements of legal rationality, but not normative elements such as constitutional rights or commitment to a particular economic system (Peerenboom 2002: 65). The notion that the Chinese state would commit to formal and procedural rationality across the board is irreconcilable with the concept of Party leadership over the law, and the flexibility (or arbitrariness) that the Party values. Instead, we might do better to build on the concept of 'zones of lawlessness'. While Sapio focuses her analysis largely on the area of criminal justice, it can be argued that similar pockets of unevenness exist across all areas of law. In other words, the ideological conception of legal rationality views it as having an important but bounded role in social management. The boundaries of that role vary across legal and policy areas, across regions and across time. Within these boundaries, it is the intention that law is a powerful and effective tool, yet they are meticulously policed to ensure the law stays within its box. In this sense, deLisle's (2017) assessment concerning the instrumentality and unevenness of law is perhaps better interpreted as being a feature of the legal system rather than a flaw.

A similar argument can be made specifically with regard to courts. In the 1990s, certain activist judges and scholars came to see courts as providing a judicial trajectory to sidestep the political imperatives of a single-party system (Fu and Zhai 2018). In the well-known Qi Yuling case, the SPC invoked the Constitution in its ruling, which had hitherto been treated as unjusticiable.<sup>17</sup> Very soon, however, the leadership began to curtail legal activism, leading the SPC to withdraw the Qi Yuling decision (Kellogg 2009). Since then, China's leadership has explicitly rejected a separation of powers in which courts have rule-making, checking or balancing roles. Zhou Qiang, the current head of the SPC, stated,

<sup>17</sup> The author of this decision called it China's '*Marbury v. Madison*' (Huang 2001).

[China's courts] must firmly resist the western idea of 'constitutional democracy', 'separation of powers' and 'judicial independence'. These are erroneous western notions that threaten the leadership of the ruling Communist Party and defame the Chinese socialist path on the rule of law. We have to raise our flag and show our sword to struggle against such thoughts. We must not fall into the trap of western thoughts and judicial independence.

(Xinhua 2017)

Courts do not, in principle, have jurisdiction over regulations issued by ministries or the State Council. Given the fact that many laws do not contain detailed substantive provisions but create mandates to be implemented by administrative agencies, this limits the role courts can play in clarifying law.<sup>18</sup> Courts do not have judicial review powers over laws or administrative regulations. Only the NPC Standing Committee can, officially, rescind administrative measures, but in practice these powers have never been used.<sup>19</sup>

The flipside of this containment of law can be found in the concept of benign constitutional violation (*liangxing weixian* 良性违宪) and, more broadly, in the condoning of legal violations in pursuit of progress (Clarke 2007). The notion of benign violation entails that the Constitution or the law often lags behind the needs of the time. Therefore, breaches should be condoned where they bring about desired social or economic effects. Indeed, some of Deng's core reforms, such as the household responsibility system that greatly improved agricultural productivity, were the result of illegal initiatives that were retroactively blessed and adopted later (Zhang 2012: 59–60). The tradition of experimentation that lies at the heart of the Party's policymaking approach requires the suspension of the existing legal order. Yet this example also displays the paradoxical consequences this notion might have, even to the detriment of Party discipline. As Clarke critiques, 'Taken seriously, this theory means reducing the entire constitution to two principles that can be stated in a single sentence – promote the development of productive forces and serve the basic interests of the state – with everything

<sup>18</sup> The SPC does have the power to issue judicial interpretations that direct lower-level courts with regard to sentencing and punishment standards.

<sup>19</sup> In one well-known case, the Sun Zhigang incident of 2003, the State Council abolished controversial regulations concerning detention and custody after a detained individual was unlawfully killed in Shenzhen. The NPC Standing Committee did not take the initiative to abrogate these regulations, in order to avoid creating a precedent, and to avoid a visible rift between the NPC and the State Council (He 2012).

else handled by statute' (Clarke 2007: 23). Birney goes further and argues that Chinese officials aren't expected to implement and enforce all laws as much as they must prioritise specific mandates (Birney 2014), often to the detriment of legal rationality. Unsurprisingly, this has ensured considerable power is retained by officialdom, leading to endemic corruption, abuse and arbitrariness. The fact that officials can override the law for public purposes means they are often tempted to do so for private ones as well.

### 2.3.2 *Ideology Defines the Nature of Law*

In the Party's conception, law is not a protector of minimal entitlements or standards of treatment but a facilitator of progress along a preordained historical path to a utopian future. It is not created through a legislative process based on the notion of representation or consent of the governed, but it is supposed to respond to objective development circumstances and the scientifically determined *guiliu* that govern specific areas. Law is thus denied autonomy of its own. Chinese Communist Party legal reformer Peng Zhen put it succinctly in 1982, at the establishment of the Law Society of China:

Is it law that should submit to reality, or reality that should submit to the law? Who is the mother, who is the child? Reality is the mother. Reality creates law, law and legal theory are the child. Law has its own independent structure, and it has its own logic, but it must start from social reality and be tested through social practice. If law is not suited to reality and the needs of social development, it must be studied and revised.

(Peng 1982)

More recently, Smith (2018) has found that the Party leadership, in its formation of the *fazhi* concept in the 2000s, does not consider rule of law to be a worthwhile aim on its own terms, merely an instrument for other purposes.

The CCP's focus on the achievement of a collective telos conflicts sharply with liberal democratic notions of the rule of law, good governance and human rights. The latter are usually based on a philosophical framework that places individual well-being and flourishing first, implicitly assumes pluralism, and is largely organised on deontological principles. This has important consequences for the notion of rights. In the pluralist, deontological context, rights can be seen as unconditional and inalienable entitlements against coercive authority and interference

(Dworkin 1977). They also simultaneously legitimise and mitigate social and political conflict by abdicating claims of absolute moral truth and authority. In contrast, China's monist assertion that, in the end, all values are reducible to a singular, intelligible and harmonious conception of the good means legitimate conflicts of values and interests are impossible. Where they arise, someone inevitably made a deliberate or unintended mistake. This has important consequences for the position of citizens in the legal order, and particularly for the conception of rights. The CCP recognises 'rights' (*quanli* 权利)<sup>20</sup> only insofar as their exercise does not conflict with the Party's prerogative. The Constitution tellingly not only outlines citizens' rights, but also their obligation. As I have argued elsewhere with respect to free speech (Creemers 2016), it would be more accurate to see them as conditional privileges, informed by decades of stability preservation and social management practice. He Xin (2009) argues that rights-based, constitutional claims are often recast as administrative or disciplinary rules, implemented through state departments. This implies that, even in cases where the substance of particular claims is recognised, the notion of citizens' fundamental individual entitlement against the state is rejected. Rather, they are translated into enhanced obligations for the state's agents. In other words, law is not a method of limiting the power of the state but of empowering and channelling it.

What then to make of, for instance, Xi Jinping's dictum that power must be caught in a cage of rules? In a teleological, rule-of-law-oriented view, this can easily be understood as a bid to better protect citizens from state action. However, understanding ideology points us to a more subtle reading: in Party politics, state action itself should not be encumbered by legal constraints, but discipline is crucial. Therefore, the power that Xi refers to is not necessarily the power of the state *as such* but as exercised by the *agents acting on behalf of the state*. Ample literature exists on the topic of administrative litigation (Pei 1997; O'Brien and Li 2004; Givens 2013), often starting out from a state–society juxtaposition. Yet from the state's point of view, allowing citizens to challenge administrative acts in court is not only a matter of providing justice, but also one of preventing unrest and disciplining lower-level officials. In other words, administrative litigation largely serves to manage a principle–actor problem, with access to justice for the aggrieved as a collateral benefit.

<sup>20</sup> There is a linguistic point here as well: the Chinese word *quanli*, which is often translated as 'right', also has connotations with cognates of 'power' and 'authority' (Wang 1980; Li 2010).

This point illustrates the difficulties that the Party needs to navigate. On the one hand, its authority must be unassailable; on the other hand, it faces continuous demands for accountability and participation. It seeks both to establish the supremacy of law in particular spheres and to maintain flexibility for Party intervention. Ideology is often the tool by which these tensions are managed, and thus does not have to be intellectually coherent in the detail. Its point is to be useful in informing and justifying political action. Therefore, ideology on the one hand was used to justify the introduction of mediation as described by Minzner (2011), a non-conflictual way to ‘resolve contradictions’, particularly where local government officials are involved. On the other hand, the new focus on ‘putting trials at the centre’, and other court reform measures (SPC 2015) that favour formal litigation and reduce local government influence over courts, mobilises another bit of ideology: the necessity of discipline within a Leninist Party structure. A nuanced understanding of ideological content is thus necessary: in the same way that the Bible preaches both compassion and harsh punishment, ideology contains a plethora of tenets and ideas that can be leveraged in pursuit of conflicting objectives. Nevertheless, it also contains a common core that informs the fundamental division of power between the state and its citizens.

### 2.3.3 *Ideology Conditions and Constrains the Beliefs and Acts of Legal Actors*

A common question concerning Party ideology is whether Party cadres themselves even believe it. To a certain degree, this is a natural and useful question. Certainly, the CCP itself spends significant resources on ideological indoctrination, and it clearly intends Party cadres and members to internalise these lessons. As Pieke (2009) has argued, the Party School system not merely serves to impart professional knowledge and skills but also to inculcate a ‘Party spirit’ (*dang de jingshen* 党的精神) into aspiring cadres and socialise them into its cult of power and eliteness. Yet at the same time, the true believer/non-believer juxtaposition requires some nuancing. First, as Hart discussed, internalisation and acceptance of a particular rule or commitment does not entail full embrace of its complete content. A judge does not need to believe a particular rule is morally optimal, merely that it is a rule that should be applied in a specific case (Shapiro 2006). Similarly, the specific motivation of a Chinese cadre is of subordinate importance, as long as they fulfil their required role in the system well. Second, there are different levels of belief. If ideology

consists of multiple intellectual elements, agreement on the epistemological core does not necessarily translate to full consistency on every question of specific policy.

The primary tool in which ideology manifests itself is through language, and it should therefore be no surprise that ‘doing things with words’ is of great importance in the Chinese context (Schoenhals 1992). Political power and formal language are closely connected, and the ability to propose terms and slogans is a shibboleth for defining political correctness. It is therefore unsurprising that many political debates in China revolve around the use and meaning of particular words and expressions. In law, a well-known recent example is the 2013 controversy over the role of the Constitution in structuring public power (Creemers 2015). This centred on, amongst others, the recuperation of Sun Yat-sen’s term ‘constitutional governance’ (*xianzheng* 宪政). Reformist voices attempted to have it re-enlisted as part of the Party’s carefully manicured dictionary, but failed. While the subsequent Fourth Plenum extolled the Constitution, and even went so far as to institute an annual Constitution Day, a different phrase ‘governing the country according to the Constitution’ (*yixian zhiguo* 依宪治国) entered the jargon. While the superficial reader might notice little difference between these two terms, they represent a world of difference within Chinese circles, as one entails political correctness, the other dissent.

In view of the importance given to discursive meaning, central authorities have considerable power to shape and police official language. Their influence is felt from state-approved textbooks in law schools to the regular training sessions to which officials, lawmakers and judges are subjected, from the Party-dominated *nomenklatura* system to strictly controlled media. Funding for legal scholarship is shaped by ideology, is used to evaluate the ideological quality of researchers and is aimed at enhancing the Party’s theoretical framework (Law Society of China 2005; National Philosophy and Social Science Planning Office 2011). That does not mean concepts and slogans remain static. New slogans arise in the wake of political needs, while others – for instance, classical socialist jargon such as ‘spiritual pollution’ and ‘counterrevolutionary crimes’ – fade from use. It does mean that political language will be framed by the meanings determined through ideology, particularly those epistemological elements that have become a commonsensical and often implicit methodological framework by which reality is understood and debated. In other words, the ubiquity and pervasiveness of Party control over political language sets the most fundamental parameters in which political, legal and societal questions are conceived, debated and addressed.

## 2.4 Conclusion and Implications for Scholarship

While China's current legal system finds its roots in the era of reform that started in the late 1970s, the ideological components that structure it go as far back as, or even precede, the foundation of the Party and the People's Republic. The objective of modernisation – a method that is scientific, at least in name – and the overarching importance of Party rule and Party discipline have created the framework in which Chinese legal rules are made, implemented and enforced. The general philosophical view that connects the various elements of this system is the monist notion of harmony and unity, whereby law serves as one of many tools to engineer a society in which social tensions and conflicts do not occur, or are solved by optimised, technocratic solutions. This means legal rationality is intentionally subordinate to the exercise of power by the Party-state. Legal and regulatory rules merely provide standard norms for behaviour, and can be – and often are – overridden when an individual in a position of sufficient power decides so. Law is but one of many tools at the CCP's disposal, in addition to policy decisions and directing finance, front organisations in different economic sectors and among a number of social groups, state-owned enterprises in which senior appointments are made on the basis of political interests, and, perhaps most of all, the power of the internal Party administrations charged with internal organisation, discipline and propaganda. In other words, laws are created by, not sources of, the organisational principles of the Chinese state order. Courts, in turn, are not powerful rule-making actors but subordinate administrative departments tasked with implementation of specific rules.

This ideological construct bears a heavy burden within the Party-state architecture. It needs to combine constancy with flexibility. The foundations of the Party's authority must endure unchallenged, while at the same time it is necessary to continuously adapt to new challenges and opportunities that emerge as circumstances change. Part of this flexibility is found in the experimental policymaking process, in which law very often forms the closing link in a long process of trial, error and adaptation. Another part lies in the recognition that, while pluralism may be off the table, there are different groups in Chinese society that can, and must, be treated differently. Even so, it remains difficult for Party politics to openly recognise necessary trade-offs and provide reasonable justification for decisions taken. More often, documents exhort that subordinate officials must 'appropriately handle' or 'organically integrate' the relationship between two opposed elements, without further guidance.

These points place strong constraints on the development of China's legal system and on its concept of legality. First, legal rationality is only countenanced in distinct and clearly delineated spheres, and is kept far away from highly sensitive political areas. In other words, ideology defines how far the writ of the law applies. Second, ideology influences the nature of laws and legal concepts. Put bluntly, in a teleologically oriented, monist polity, the concept of fundamental rights is literally inconceivable. Instead, the focus of state–citizen relations as expressed in law is a far more paternalistic one. Lastly, ideology conditions legal actors. It provides a register of jargon that can serve to assess compliance with the official line, rewarding loyalty with promotion and insider status.

This is not to say that law has no importance whatsoever in the real world. Citizens and corporations do turn to courts to solve disputes and defend their interests. Particularly in the area of private and commercial law, progress towards professionalisation, legal certainty and predictability has been notable. Equally, citizens are increasingly demanding the fair implementation of promises and commitments made in legal documents. The legal profession, legal scholarship and legal education have expanded and professionalised at a rapid rate. Yet, this is not inconsistent with the notion of law as one of a number of approaches to social management and the maintenance of the political order, nor with the fact that China's legal system lacks the autonomy and independence present in many other jurisdictions.

For scholarship, this means that analyses of Chinese legal phenomena must take into account their political context. This means first and foremost, bringing in the CCP. China's legislative and judicial bodies are not in charge of their own development nor of the role they play in the overall political process. The role they play in this process is constantly negotiated and contested through Party channels. Judicial doctrine is laid down in the Politburo, and the Fourth Plenum Decision was written by the Central Committee. In this process, the role of ideology is far more than the mere cynical justification of realpolitik measures. Concisely reflecting the CCP's worldview and conception of political truth, ideology is important in this process for at least three reasons. First, understanding ideology can assist in developing an internally justified account of the conception of legal structures and processes. It allows us to reconstruct the internal logic of the legal structure, as Clarke demands, and thus provides an interpretive context for assessing legal developments. In other words, understanding ideology permits us to

assess whether particular theories, hypotheses and expectations make sense within the parameters of the system itself, instead of the expectations of teleological theories of legal developments. Second, to a certain degree, a better understanding of ideology assists us in looking at Chinese legal reality from an internal perspective, through the eyes of its insiders. It enables us to better map the incentive structure that surrounds legal and political actors, and, in an empirical sense, to research how and to what extent individuals respond to these incentives. Lastly, studying ideology allows us to detect doctrinal shifts over time and narrow down the scope of potential futures. While it may not be the case that one can predict what will happen on the basis of ideology, it certainly is the case that it is clear what will not.

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