

An Introduction to Chinese Law: Does it Exist? What Is It? How Is It Interpreted?

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AN INTRODUCTION TO CHINESE LAW: DOES IT EXIST? WHAT IS IT? HOW IS IT INTERPRETED?°

BY RICHARD J. GOOSSEN*

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I. INTRODUCTION

This essay will address three questions with respect to the legal system of the People's Republic of China ("China"). These questions may appear rudimentary and even trivial, but they are often posed in the context of China. First, is there Chinese law? Second, what is it: what is the nature, role and bases of what today's Chinese leaders refer to as the "new socialist legal system"? Lastly, how is Chinese law to be interpreted? My thesis is that these questions can best be addressed by adopting a 'Sinocentric' approach. This means that a Western observer should analyze the Chinese legal system without any preconceived notions. The law should be appreciated within the context of China's rich and diverse influences and ideas. On this broad foundation, the Western observer can then look to his/her own society – in our case, Canada – to determine whether there are parallels that can be drawn with his/her own legal practices. This Sinocentric approach is unlike the more common starting point for analysis which is to adopt the attitude that China is a mysterious land, the fabled "Middle Kingdom," unintelligible to all but the most erudite pundit. This creates the notion that all Chinese practices are somehow unique and only contrasts can be drawn with Western practices. The deficiencies of this analytical framework will be highlighted. In short, the Sinocentric approach facilitates an understanding of the Chinese legal system while addressing the posed questions.

II. IS THERE CHINESE LAW?

"Is there Chinese law?" is a question still frequently asked by the first time investor and by the seasoned yet cynical China trader. An entrepreneur embarking on a business venture into China may pose such a question because of a lack of knowledge resulting from insufficient international coverage of Chinese reforms. He/she will, undoubtedly, know of the landmark *Law of the People's Republic of China on Joint Ventures Involving Foreign and Chinese Investment*

(*Joint Venture Law*)¹ but may be unaware of the substantial legal developments which have taken place since that time². In view of the fact that China's development of foreign economic legislation began primarily in 1979, it is understandable that foreign investors may not know that these new laws have assumed an important role in the modernization process³. Since the legal system in most Western⁴ industrialized nations are established institutions, forming important bases for commercial interactions within these societies, foreigners are often skeptical of the flexible way in which law is

¹ Adopted on 1 July 1979 by the Second Session of the Fifth National People's Congress and promulgated on 8 July 1979. The Chinese text and an English translation appear in CCH Australia Ltd., *China Laws for Foreign Business (4 vols.)* (Sydney: CCH Australia Ltd., 1985) at para. 7,800 [hereinafter *China Laws*].

There was much commentary in scholarly publications concerning the *Joint Venture Law* which lodged similar complaints and assessments. See D.I. Salem, "The Joint Venture Law of the People's Republic of China: Business and Legal Perspectives" (1981-82) 7 *Int'l Trade L.J.* 73; C.A. Jaslow, "Practical Considerations in Drafting a Joint Venture Agreement with China" (1983) 31 *Am. J. Comp. L.* 209; P.D. Reynolds, "The Joint Venture Law of the People's Republic of China: Preliminary Observations" (1980) 14 *Int'l Law* 31; and F.C. Rich, "Joint Ventures in China: The Legal Challenge" (1981) 15 *Int'l Law* 1984. An article from a Canadian perspective is Richard J. Goossen, "Canadian Business Negotiations in Post-Mao China: A Commentary on the New Foreign Economic Legislation" (1985) 31 *McGill L.J.* 1.

² The *Joint Venture Law*, for example, was a brief 15 article text. Legislation relating to the operation of joint ventures has been promulgated at a steady pace since 1979. Major legislated areas include registration procedures, labour management, approval and registration by state officials, accounting guidelines, debt-equity requirements and foreign exchange balancing.

³ The only significant legislation with respect to China-foreign trade before 1979 stretches back to the 1950s: (1) *Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade* enacted on 31 March 1956, and (2) *Provisional Rules of Procedure of the Maritime Arbitration Commission of the China Council for the Promotion of International Trade* adopted on 8 January 1959.

⁴ The term "Western" will be used to refer to the Western European bloc, Canada and the United States. In general terms, Western civilization originated in Greece, moved westward to Rome and spread over Western Europe and into the Americas. Chinese civilization, on the other hand, developed in the Yellow River Valley, moved southward to the Yangtze River Valley and then to other parts of China. This broad dichotomy has a degree of usefulness when some typical Western legal and political perspectives are contrasted with the Chinese approach. Western countries are among the most highly industrialized in the world. But some industrialized countries, such as Japan, are not included. While Western legal systems vary between Anglo-Canadian common law and the continental European civil law tradition, many commercial provisions and practices are comparable with the Chinese approach to such matters.

used in China to restrain and encourage foreign investment. In short, when first-time entrepreneurs query if law exists in China, they are really asking whether their concept of a legal system in the Western sense has been constructed with the same procedural and substantive contents.

Experienced China traders who have been doing business in China since the 1970s also question the effectiveness of Chinese law. Their perspective is not grounded in a lack of awareness of the existence of legislation; their misgivings arise from the discrepancy between the law that is promulgated and the law that is actually implemented. A serious credibility gap is perceived to exist. In other words, if China is to be viewed as having a viable legal system, there must be rules and regulations which effectively govern economic relationships between foreign businesses and Chinese entities. Seasoned China traders can recount tales where written laws assumed secondary importance or were even flagrantly violated in light of actual practice. These "China hands" often suffer from a strain of the same parochialism that afflicts the novice entrepreneur; both dispute the usefulness and very existence of Chinese law judged according to Western standards.

The relevance, therefore, of the Chinese legal system must be assessed. Theoretically, one could examine whether Chinese laws and regulations in practice perform a significant role in regulating business relationships between Chinese enterprises and foreign entrepreneurs. "Black-and-white law" regulates several key areas of modernization. Investors wishing to transfer technology to China, for example, are regulated by national and local rules⁵. There are also provisions for the registration of trademarks and patents. As with any country, tax planning is important and China has enacted

⁵ There are two national rules applicable to foreigners. First, the *Regulations for the Examination and Approval of Technology Import Contracts of the People's Republic of China*, approved on 26 August 1985 by the State Council and promulgated on 1 October 1985 by the Ministry of Foreign Economic Relations and Trade ("MOFERT"). The Chinese text and an English translation appear in *China Laws, supra*, note 1 at para. 6,700. Second, the *Regulations for the Examination and Approval of Technology Import Contracts of the People's Republic of China* promulgated on 24 May 1985 by the State Council. The Chinese text and an English translation appear in *China Laws, ibid.* at para. 6,682. For an analysis of national and local technology transfer rules see, Richard J. Goossen, *Technology Transfer in the People's Republic of China: Law and Practice* (Dordrecht: Martinus Nijhoff, 1987) at 41-78.

several tax laws governing foreigners doing business in China. Numerous laws have been promulgated since 1949 to regulate more and more aspects of joint venture investments in China. Undoubtedly a number of lacunae in Chinese law remain, but many fundamental areas are now regulated. The question whether law actually exists is thus of diminishing importance; more compelling is the issue of the written law's applicability.

When comparing the implementation of law in China with that in Western countries, the issue is not one of difference but one of degree. The difficulties of implementing law in China do not differ greatly from those in many Western countries. Western observers often speak of the Chinese penchant for doing business on a personal level, cemented with a bond of trust and sustained by a cordial relationship. In this scenario, the parties reach an agreement from which to transact business in the future. The form of the agreement is insignificant. Any disputes between the parties are typically viewed within the context of a long-term relationship and, if one side is unable to perform, the other will often revise the contract in order to make future performance possible. This approach is becoming less common in China as contracts are more frequently a strict formal relationship. An indication is that the number of civil and economic cases being tried in Chinese courts is rising dramatically⁶. In addition, a firm handshake will not suffice in the case of a large loan syndication⁷. Nevertheless, some Chinese Foreign Trade Corporations still operate on an informal basis and will continue to do so regardless of their laws⁸. There is no useful

⁶ Edward Epstein, "Long march to the present, long way to go," *Far Eastern Economic Review* (March 19, 1987) at 103-04.

⁷ Richard J. Goossen, *Business Law and Practice in the People's Republic of China* (London: Longman, 1986) at 153-54.

⁸ The Foreign Trade Corporations (FTCs) conduct a large portion of China's foreign trade under the control of MOFERT. The FTCs conduct negotiation with foreigners concerning the price of goods and services, delivery dates and other terms and conditions and sign contracts. The FTCs also act as trading intermediaries for Chinese end-users and manufacturers. Well-known FTCs include China National Light Industrial Products Import and Export Corporation and China National Machinery Import and Export Corporation. For detailed information, see China Council for the Promotion of International Trade, *Directory of Chinese Foreign Trade 1986* (Hong Kong: Longman, 1987).

generalization with respect to the importance of written law in the commercial context.

Is this situation, however, substantially different from that which often occurs in a Western industrialized country such as, say, Canada? Canada has a comprehensive set of business and contract laws governing economic relationships but in practice they are often irrelevant. A residential house contractor, for example, will often engage several subtrades, such as electricians, bricklayers and plumbers to assist in the construction of a building without signing any contracts. The contractor will orally agree with the subtrade that the work shall be performed. The price may not even be negotiated but assumed to be the same as the last job and the subtrade will proceed on that basis. If the contractor decides not to pay for the completed task, the bricklayer will not go to court but will simply not work for that contractor again. Likewise, if the bricklayer breaches the oral agreement by completing the task in a poor manner, the contractor will hire someone else for the next job. Remedies in the event of a breach are pursued without reference to law.

Whatever the reasons, be it costs of litigation, chances of success, or the amount to be gained, many small-scale entrepreneurs will not exercise legal channels available to them. For the contractor and the subtrades, Canadian law is in many ways irrelevant. But at the same time, both parties must have some contact with company law when they incorporate their enterprises and with tax law when they file their tax returns. No one would suggest that commercial law is absent from the Canadian legal landscape. The question is posed, however, in the Chinese context. The issue then is not one of substance but one of degree. The discrepancy between law and practice in China is particularly stark in some areas (see pp. 19-21) but there are often more comparisons with Western legal systems than many commentators are willing to admit.

Assaults on the credibility of the Chinese legal system are typically launched from a Western legal perspective. Two types of criticism can be distinguished. Criticism of conflicts between local and national Chinese legislation or of confusing language is justified in any event from a logical perspective. Other complaints, however, may not be valid. While it is appropriate to pinpoint unclear

provisions in Chinese law, these ambiguities should not always be criticized as they are often deliberate on the part of Chinese officials. The lack of clear stipulations gives added flexibility to Chinese officials in order to adapt the law to changing circumstances. The fact that China is perhaps the most rapidly changing economic, legal and political milieu in the world today justifies this discretion. In other cases, terminology may be deliberately vague as a result of competing ideological forces in the law-making bodies in China, and the implementation of the guidelines is therefore left to the judgment of administrative officials.

The Chinese approach is not radically different from Western drafting practices. Ambiguous provisions in law are often used by a Western legislature because no clear consensus can be reached between competing political parties. An appropriate example in the Canadian context is the *Charter of Rights and Freedoms*.⁹ The draft of the legislation was submitted by the Rt. Hon. Pierre Trudeau and his Liberal Party, and by the time the document was signed by Her Majesty the Queen, the meaning of many clauses was intentionally vague. The Supreme Court of Canada was, therefore, delegated the onerous burden of defining citizens' rights as enshrined in the *Charter*. Five years have elapsed, judges are saturated with *Charter* arguments, more lawyers are employed but many key issues under the *Charter* remain to be resolved. In both China and Canada, legislation is vague in varying degrees and its interpretation is left to the judiciary or with the bureaucrats who produce the regulations.

When examining fundamental aspects of the legal apparatus, a Canadian lawyer may criticize Chinese law because it is merely a tool of the Chinese Communist Party ("CCP") to implement policy goals. The law does not serve an independent role as a buffer between the individual and the state as in Anglo-Canadian common law. While Chinese pragmatists under Deng Xiaoping are attempting to develop the strength of an independent judiciary, it would be inappropriate for a foreigner to criticize the interrelationship of law and state. It is taken for granted within common law systems that there must be an independent judiciary in

⁹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

order to safeguard the rights of the individual against the whims of a government or of anyone else who might influence the judge¹⁰. This approach is grounded in the concept of the freedom of the individual from state control, with a great premium placed upon allowing the individual to act according to his own interest. In China, on the other hand, the 1982 *Constitution* provides that the state represents all individuals and acts in the best interests of each person¹¹. The individual's best interests are equated with the well-being of the collective; and the mass is represented by the state. There is no requirement for a buffer between the state and the individual and thus there has never been a perceived need for a strong judiciary. Assessing the Chinese legal system from a Western perspective may shed some benefits of comparative analysis, but may not reflect the merits of the Chinese approach to law.

On what basis may the Chinese legal system be assessed? The developing legal framework should not be examined paternalistically: "the Chinese are making considerable efforts to promulgate laws and to encourage foreign investment and should therefore be heartily congratulated." Such comments are frequently heard from Western China law specialists. The Chinese legal system may be evaluated in two contexts. First, the question of whether the objectives to be achieved by the formulation of a legal framework as stipulated by Chinese officials are being reached. In other words, can the role of law live up to the potential which the rhetoric of Chinese officials ascribe to it? Second, this analysis must take place in relation to the Chinese environment. Even an examination of the goals sought by the role of law as set by Chinese officials must be carried out in to the Chinese context. One should determine why the statements are being made. Pronouncements by Chinese officials concerning the role of law are often aspirations, not descriptions. Chinese government officials offer words of

¹⁰ Julia Chan, "China needs an independent judiciary" *South China Morning Post* (April 11, 1987) 11.

¹¹ *The Constitution of the People's Republic of China*, promulgated for implementation on December 4, 1982 (Beijing: Foreign Languages Press, 1983). Four constitutions have been enacted since the CCP acceded to power in 1949. For a discussion of this topic, see Byron Weng, "Understanding China's Constitution" *South China Morning Post Features* (February 28, 1986) 4.

encouragement in order to transform their rhetoric into reality. Such statements are not substantially different, however, from the rhetoric espoused by Canadian politicians. Prime Minister Brian Mulroney's oft-cited 1984 campaign promise of "jobs, jobs, jobs" is appearing ever more hollow and prompting Maritime and Western Canadians to ask "where? where? where?" Analyzing Chinese law based on these two criteria will lead to a more balanced assessment of the merits of the Chinese legal system. The context for understanding Chinese law involves a multidisciplinary perspective: an appreciation of legal traditions, of political dynamics, of historical analyses and of sociological insights.

A more thorough framework for foreign investment is gradually being created. The accomplishments of the past eight years are impressive, particularly in light of the ideological battles fought along the way. The seriousness of the Chinese leadership in utilizing law as part of the framework of the modernization program is reflected in the fact that over 45 new laws and 300 administrative regulations have been enacted since 1979. The 1982 *Constitution* is the fundamental law to which all this legislation must, theoretically, conform¹². The recently-adopted *Law of the People's Republic of China Governing Enterprise Bankruptcy (For Trial Implementation)* ("*Bankruptcy Law*") indicates that time has not diluted the intensity of political debates¹³. China's legal system is undergoing steady reform but once again parallels can be drawn with Western nations. China's incomplete legal system does not present a different legal landscape from that of some Western countries although it may differ in degree of development. It is inconceivable, for example, that any Canadian province would claim to have exhausted the need for legislative reform. Law must respond to its environment to be effective; the Chinese milieu is simply changing more rapidly than other countries. Quebec, for instance, is undertaking the massive job of replacing its present *Civil Code* based on the *Napoleonic*

¹² *Constitution of the People's Republic of China, ibid.*, art. 5.

¹³ Adopted by the Standing Committee of the Sixth National People's Congress ("NPC") on December 2, 1986. The English text is taken from *East Asian Executive Reports* (March 1987) at 23-25.

Code of 1804¹⁴. A Civil Code Revision Office has been in existence since 1966¹⁵. Due to the fact that China has only begun to develop a legal framework for foreign investment since 1979, it is understandable that unregulated areas will remain for some time. China's legal system shares similarities with legal systems of the Western world, but too often these go unnoticed and the differences are highlighted.

III. WHAT IS THE NEW SOCIALIST LEGAL SYSTEM?

Premier Zhou Enlai's announcement of the "Four Modernizations" programme in January 1975 at the Fourth National People's Congress (NPC hereafter)¹⁶ gave clear notice that foreign trade was to play an important role in the future economic progress of China. The four targeted areas were agriculture, industry, national defence and science and technology. Since 1975, several issues have arisen concerning the degree to which Chinese society itself must be transformed in order to successfully implement new economic policies. In other words, can economic modernization most readily occur in a capitalistic society rooted in the principles of democracy, the rule of law and the fundamental freedoms of the individual? Or can modernization be facilitated under circumstances where the state exercises a large degree of control over the economy rather than allowing Adam Smith's "invisible hand" to regulate a free market? Deng Xiaoping's pragmatists adopt the attitude that several political and legal concepts common to Western countries are necessary for rapid industrialization and are not merely incidental organizational features of Western society. A legal infrastructure is viewed by the present Chinese leadership as a necessary support for a modernising economy.

¹⁴ For the French and English texts see Paul-A. Crepeau, *The Civil Codes* (Montreal: Chambre des Notaires du Québec, 1983).

¹⁵ Civil Code Revision Office, *Report on the Quebec Civil Code (3 vols.)* (Quebec: Editeur officiel, 1977).

¹⁶ For a relevant article see Kewan Zhang, "The nature of NPC [sic] and its role in China" *China Daily* (April 25, 1986) 4.

A. Modernization: One Legal System, Two Threads

1. Scope

With the death of Mao Zedong and the subsequent trial of the Gang of Four, Deng Xiaoping and the pragmatists assumed leadership of the CCP¹⁷. The pivotal Third Plenary Session of the Eleventh Central Committee of the CCP in December 1978 heralded the beginning of the "open-door policy"¹⁸ and also the development of the new socialist legal system as a new aspect of Chinese society. The 'Communique of the Session' declared the pervasive importance of legislation to ensure "that democracy be systematized and written into law in such a way as to ensure that stability, continuity and full authority of this [China's] democratic system and these laws." Before considering the nature of the new socialist legal system, its scope must be considered. There are two possible approaches. First, the new socialist legal system can be viewed as encompassing all legislation in China, whether for foreigners or for domestic implementation. Thus, the *Economic Contract Law of the People's Republic of China*¹⁹ and the *Foreign Economic Contract Law of the People's Republic of China*²⁰, which govern domestic and foreign contractual relationships respectively, can both be treated as part of the same legal system.

¹⁷ For a discussion, see Immanuel C. Y. Hsu, *The Rise of Modern China*, 3d ed. (Hong Kong: Oxford University Press, 1983) at 792-810.

¹⁸ The use of the term "open-door policy" in the context of this essay is not to be confused with the open-door policy proclaimed by the United States in the late nineteenth century to ensure that trade in China would not be monopolized by any one imperial power.

¹⁹ Adopted on 13 December 1981 by the Fourth Session of the Fifth NPC. The Chinese text and an English translation appear in *China Laws, supra*, note 1 at para. 6,550.

²⁰ Adopted on 21 March 1985 at the Tenth Session of the Standing Committee of the Sixth NPC. The Chinese text and an English translation appear in *China Laws, supra*, note 1 at para. 6,650. For a Chinese perspective on this law, see the five-part series in *China Economic News* entitled, "MOFERT Official's Answers to Questions on the Foreign Economic Contract Law": (I) (July 7, 1985) 2-3; (II) (July 15, 1985) 1-3; (III) (July 22, 1985) (1-2); (IV) (July 29, 1985) 1-2; and (V) (August 5, 1985) 1-2.

A second approach is to view China as having two separate legal systems.²¹ There is the new socialist legal system, which governs all forms of relationships between businesses and individuals in the communist society. In this domestic arena, Western legal concepts can be slowly introduced in a laboratory-type environment. Therefore, a genuine socialist legal system, geared to the Chinese context, can be implemented. The other legal system is that specifically designed for foreigners and which has little impact on the vast majority of the Chinese population. This separate set of laws deals primarily with foreign investment in China.

The difficulty with viewing this second legal system as a wholly distinct entity is that many Chinese concepts which could be treated as part of the new socialist legal system are present in the legislation governing foreign investors. For example, the Chinese emphasis on avoiding disputes and maintaining harmonious relationships is present in almost all commercial legislation. There is an emphasis on friendly consultation and mediation between the parties and arbitration is treated as a last resort measure. Normally, Chinese legislation also provides foreigners with access to the people's courts despite the preference for conciliation between the parties. China can, therefore, be viewed as having two interrelated legal parts.

The new socialist legal system can best be viewed as a single legal system with two threads. Laws may relate specifically to either state enterprises or to foreign investors, but they are interwoven. The interpretation of Chinese law is facilitated by examining the legal system in its entirety. Chinese laws, for example, are best understood by focussing on the domestic context and viewing the legislation relating to foreign investment as an outgrowth of internal concerns. The *Bankruptcy Law* fits this pattern. The *Bankruptcy Law* applies only to state enterprises and is to promote individual responsibility among managers. Once the concept of bankruptcy is established domestically then a bankruptcy law dealing with foreign investment may be implemented. The sophistication of laws

²¹ For an example, see Roderick W. Macneil, "China Needs Only One Legal System" *Asian Wall Street Journal* (November 25, 1985) 6.

governing foreign investment in China are related to the adaptability of the domestic legal business structure.

2. Legislative process

The passage of new legislation involves a four-step procedure: bill proposal and submission, examination and discussion, adoption and promulgation²². The legislative procedure is initiated when the State Council, the NPC (or any other high-level body) outlines the need for a particular type of legislation or for an amendment to existing law. The appropriate governmental organization will be mobilised to submit the bill or amendment. Contrary to the opinion of some commentators, the CCP does not initiate this legislative process²³. The CCP is not involved in drafting legislation as an organization, although individual law-makers are members of the CCP.²⁴

With respect to laws enacted by the State Council, which is responsible for enacting most foreign economic legislation, bills must be submitted: (1) by 10 or more Standing Committee members; or (2) by Special Committees of the NPC, the State Council, the Central Military Commission, the Supreme People's Court or the Supreme People's Procuratorate. In either case, an executive meeting of the Standing Committee decides whether the bill should be submitted to a Special Committee for examination and discussion first or brought directly before the Standing Committee. If a Special Committee is formed, it will report to the Standing Committee and present a draft of the bill.

Secondly, the bill must be examined and discussed by the appropriate government departments, mass organizations and other institutions for suggested revisions. Before the bill is reviewed by

²² For an overview, see Jeanette L. Pinard, *The People's Republic of China: A Bibliography of Selected English-Language Legal Materials* (Washington, D.C.: Library of Congress, 1985) at 3-6.

²³ F.H. Foster, "Codification in Post-Mao China," (1982) 30 Am. J. Comp. L. 400.

²⁴ Conversation with Guiguo Wang of Johnson, Stokes & Master, Solicitors & Notaries, Hong Kong, July 15, 1986. See Guiguo Wang, *Sino-American Economic Exchanges* (New York: Praeger, 1985) at 22-32.

the NPC, a representative of the drafting unit will explain the objectives of the bill to the NPC Presidium (or Executive Meeting).²⁵ A bill may also be submitted to the Standing Committee. In either case, organ drafting the law usually submits the draft to scholars and practitioners for discussion and revision.

The *Bankruptcy Law*, for example, was the result of careful and lengthy deliberation by Chinese drafters.²⁶ A Bankruptcy Law Drafting Group, formed in 1984, seconded staff from the Economic Regulations Research Centre of the State Council, the State Economic Commission, the General Administration of Industry and Commerce and MOFERT.²⁷ After two years of deliberation (Taiwan's bankruptcy law was also examined) a draft law was presented to the Standing Committee in June 1986.²⁸ The draft law went through three revisions before dissension dissipated and the articles were acceptable to the bulk of the NPC members.

Once the Presidium has accepted the draft, the third step is for the final draft to be voted upon by the NPC or its Standing Committee. While amendments to the *Constitution* require a two-thirds majority vote of all NPC members, legal bills may be adopted by a simple majority of all members. The adoption of legal bills by the Standing Committee technically requires the support of a single majority vote of the total Standing Committee members, but conventionally the formulation of law is a consultative process.

Finally, the law will be promulgated, which under the *Constitution* must be performed by the President.²⁹ The date of its coming into force need not be the date of promulgation but should be stipulated in the law.

²⁵ The Presidium is elected at each session of the NPC. See Hsin Chang, "How new laws come into effect" *South China Morning Post Features* (March 14, 1986) 2.

²⁶ For an overview of the drafting process of the *Bankruptcy Law*, see Phoebe Lai, "Bankruptcy" *China Trade Quarterly* (December 13, 1986) at 13-14.

²⁷ "Enterprise Bankruptcy law drafted for better management" *Ta Kung Pao* (January 23-9) 4.

²⁸ Ellen Salem, "Insolvency and the state" *Far Eastern Economic Review* (January 15, 1987) 46.

²⁹ *Constitution of the People's Republic of China*, *supra*, note 11, art. 80.

B. *Bases of the New Socialist Legal System*

The "new socialist legal system" is a term often used by Chinese officials yet seldom explained in detail. Perhaps the complexity of explaining the intricacies of merging socialism with Western legal concepts deters Chinese officials from explaining the process. This discussion of the new socialist legal system is therefore based on its present state rather than upon the aspirations of its creators. The three main principles of the new socialist legal system being developed in China are ideology, political subservience and pragmatism.

1. Ideology

Just as democratic forms of government in Western countries provide the intellectual impetus for an independent judiciary, Marxist-Leninist-Maoist thought in China is the root of the ideological framework for all institutions, including guidelines within which the legal system shall function. The ideological foundation of the new socialist legal system is revealed most clearly in the *Constitution*: "The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants".³⁰ While the interpretation of the *Constitution* in today's China will differ from Mao's approach, the statement is still the underpinning of Chinese political theory.

Communist concepts permeate various types of legislation. The *Constitution* states that "the system of socialist public ownership supersedes the system of exploitation by man".³¹ A practical manifestation of this is that land may not be bought and sold since all land is owned by the state. Foreigners investing in China in a joint venture may therefore never own the land upon which the enterprise is situated but may only lease it for an extended period of time. Communist ideology does not readily accommodate many

³⁰ *Constitution of the People's Republic of China, ibid.*, art. 1.

³¹ *Constitution of the People's Republic of China, ibid.*, art. 6.

economic concepts which are used to encourage foreign investment and Chinese communist doctrine has been liberalized accordingly. According to Marxist theory, law as found in capitalist societies is the harbinger of decay; it presages the accelerating control of the elite over the proletariat. The pragmatists argue, however, that the law represents the will of the people and therefore, is a positive force.

2. Political subservience

The Chinese legal system must be understood in relation to the CCP. As in most communist states, there is a dual system of government by the party and by the state apparatus. The Party is theoretically responsible for policy formulation and for providing ideological leadership, while the state executes party policy through administrative acts. The stated objective of the CCP is to lead the people to fulfill specified economic and social goals; these party policies are selectively turned into law. In a real sense, the law is party policy in legal form. The integration of the CCP and judiciary has practical consequences. For example, it is inconceivable that an accepted practice in the United States of citizens suing the government would ever occur in China. Likewise, lawyers are the state's legal workers and act to further state policies, rather than an independent profession.³²

3. Pragmatism

Perhaps the most striking aspect of the new socialist legal system is the pragmatic manner in which the law is made to conform with state policy. The pragmatism of Chinese leaders can be seen most readily in their attempt to modernize the economy. Foreign economic legislation is mainly for the benefit of outside entrepreneurs who facilitate investment. For example, since 1979, foreign investors have claimed that a patent law was necessary to import technology into China. After five years of discussion and

³² See Goossen, *supra*, note 7 at 215-24.

twenty drafts the *Patent Law of the People's Republic of China* was enacted on the 1st April, 1985.³³ This new legislation alleviated some of the concerns of foreign investors. At the same time, however, Chinese entities may be granted a compulsory license to exploit a patent which has not been used during the three years from the date of the grant of the patent right.³⁴ This reflects the determination of the Chinese leadership to implement economic reform in a manner consonant with national interest.

C. *The Role of the New Socialist Legal System*

Indicative of the role to be played by the legal system within the domestic context, and the importance the Chinese leadership attaches to that function, was a resolution passed on 22 November 1985 by the NPC Standing Committee to initiate a five-year public education program on China's laws and legal system.³⁵ The drive is aimed at educating all citizens, including government officials. This program is to last from 1986 to 1990 and is to educate Chinese citizens regarding the importance of the legal system and the number of purposes which it is designed to serve.

1. Socialist democracy

At the heart of China's concept of a socialist democracy are the constitutional ideas that "all citizens of the People's Republic of

³³ Adopted 12 March 1984 at the Fourth Session of the Standing Committee of the Sixth NPC. According to Article 69 the *Patent Law* became effective on 1 April 1985. The Chinese text and an English translation appear in *China Laws, supra*, note 1 at para. 14,201. For the legislative background, see Frankie Leung, "A Legal Opinion" *China Trade Report* (May 1984) 13, and Eugene Theroux & B.T. Peel, "China's Coming Patent Law" *East Asian Executive Reports* (April 1983) at 7-10.

³⁴ *Patent Law, ibid.*, art. 51-58.

³⁵ See Zhiguo An, "Legal Studies: A Nationwide [sic] Assignment" *Beijing Review* (December 23, 1985) at 4-5; and "Cadres Lead in Learning Law" *Beijing Review* (January 27, 1986) at 28-29.

China are equal before the law"³⁶ and that "all power in the People's Republic of China belongs to the people".³⁷ As Deng Xiaoping explained, "Democracy has to be institutionalized and written into laws so as to make sure that institutions and laws do not change whenever the leadership changes, or whenever the leaders change their views or shift the focus of their attention." The five-year legal education program in some way harkens back to the 1950s mass education of the Chinese populace in the doctrine of Marxist-Leninist-Maoist thought. The CCP idea of reshaping the personality to acquire the correct proletarian attitudes, according to one scholar, stretches back to "the Confucian emphasis on self-cultivation and molding of the personality as the basis for moral and political life."³⁸ The current leadership uses the law to inculcate its ideas in Chinese citizens. The law is to contain the idea of socialist democracy and the law is to be ingrained in the minds of citizens. Whereas in Western countries the law may be viewed as reflecting what is just and proper, and is an attempt to encourage socially acceptable behaviour, the law in China is engineered more deliberately to educate citizens.

The precise meaning of a "socialist democracy" as used by Chinese officials creates confusion. The term is not clarified with reference to Western concepts. "Democracy" in the Western sense refers to individuals being governed voluntarily by those whom they have chosen to lead them. In China, on the other hand, "democracy" appears to refer to the idea that the CCP is governing in the best interests of the people, even though the citizens have no significant role in determining the Party's policies. The Chinese leadership through its use of the term "socialist democracy" appears to be attempting to make a greater distinction between the CCP policy and the legal system. In Western countries, the legislature (the law-making body) and the judiciary (the organization which interprets the law) are two distinct entities. In China, the two institutions are still inseparably linked. The process of developing the judiciary and magnifying the role of positive law as an

³⁶ *Constitution of the People's Republic of China*, *supra*, note 11, art. 33.

³⁷ *Constitution of the People's Republic of China*, *ibid.*, art. 2.

³⁸ Raymond Dawson, *Confucius* (Oxford: Oxford University Press, 1981) at 86.

independent force, free from political pressure, would require a radical diminution of the influence of the CCP.

2. Implementing the rule of law

Efforts have been made by the Chinese leadership to institutionalize the concept of rule of law (judicial independence and equality under the law) among Chinese citizens and cadres. Such attempts have not been successful.³⁹ The rule of law demands that political power be within the law, not above it. In view of China's historic and ideological fabric, it is not certain when the concept of rule of law will be effectively inculcated into Chinese society. At present and in the near future, the lack of rule of law will be a feature of the new socialist legal system. The fragile nature of the rule of law has been highlighted since 1979 in criminal cases. A 1983 campaign instigated by the Chinese leadership against crime resulted in a major increase in the severity of punishments which had been decreed, including an alleged quota of 5,000 executions.⁴⁰ The faith of Westerners in the impartiality of the judiciary and its freedom from the dictates of the CCP was seriously undermined.

Chinese commentators advance several reasons to explain why the Chinese populace has not yet fully accepted the new socialist legal system. First, legislative reform has surpassed the adaptability of the populace which is not familiar with the concept of the rule of law. Due to China's long feudal history, individuals still act according to the will of the ruler rather than in conformity with an impersonal process of law. The rights of citizens in the past did not depend on the automatic implementation of laws and regulations, but upon the discretion of an individual thought to be morally superior. Secondly, a substantial number of CCP members lack sufficient understanding of the importance of building a legal system. Some cadres today, like the ancient monarchs of old, neither tolerate disobedience to their words nor heed whether their

³⁹ See K.C. Tsang, "Uphill struggle to set the law above the party" *South China Morning Post* (June 10, 1986) 10. See also Anthony Dicks, "A Legal Opinion" *China Trade Report* (August 1982) 13.

⁴⁰ Karl P. Herbst, "A Legal Opinion" *China Trade Report* (December 1983) 13.

opinions conform to the legal system. A third problem is that this individualistic style of leadership among cadres, which substitutes a leader's words for the law, demoralizes the legal profession and impairs the handling of disputes. The final obstacle in implementation is a lack of knowledge of how the legal system may protect an individual's rights. Chinese officials argue that the law should be followed, implemented by state organs, enterprises, social groups and government workers so that all citizens are aware of their rights and duties under the law. Striking differences between Chinese and Western concepts of law are evident. While the concept of the enforceable rights of the individual before a court is a foundation of Western societies, in China, the populace has functioned on other assumptions, but no less cohesively.

3. Behaviour modification

Perhaps due to the success of Mao's massive indoctrination of the Chinese population in the methods of Communism, great faith is placed in the power of training as a means of altering behaviour. Chinese officials and editorialists emphasize that the problem is that Chinese citizens do not know the law, rather than the fact that they do not wish to follow the law. Chinese officials argue that juvenile delinquency can largely be cured by a knowledge of law.⁴¹ Local authorities are urged to adopt various ways to give young people legal education so that they can comply with the law during their childhood, and hopefully thereafter. The Chinese leadership appears to be placing too much faith in the power of law.

A major educational role contemplated for the legal system is to prevent corruption among Chinese officials. This has become a major problem for the current leadership, and some commentators claim that corruption is the greatest challenge facing the CCP since it came to power in 1949.⁴² The corruption of Chinese officials was

⁴¹ "Legal ignorance breeds problems" *China Daily* (November 29, 1985) 4.

⁴² Corruption in the CCP galls the Chinese leadership since the party ousted the corrupt Nationalists to provide a government for the benefit of the entire populace, not an elite minority. J.K. Fairbank, *The Great Chinese Revolution: 1800-1985* (1986) explains at 279:

most blatant in the case of the Hainan Island scandal. There, a large number of automobiles were imported, sold at exorbitant prices and the money kept by officials instead of using the funds to develop the Island's economy. Such corruption has tarnished the image of the Chinese leadership and the credibility of the economic reforms. Legal education among the cadres is intended to sharpen their sense of law and discipline and to instil in them a duty and responsibility to abide by the law. In addition, the cadres' social responsibility is to work only within the limits of the law. A fundamental problem exists, however, in implementing the rule of law among Chinese officials.

While there is an emphasis upon bringing to court those who have committed social and economic crimes, some high-ranking officials are exempted from legal prosecution when party discipline has been applied. The heaviest penalty in such cases could be expulsion from the CCP.⁴³ As a result, some high-ranking CCP officials who have committed offences such as bribery and the embezzlement of state funds were subject only to party disciplinary action as the legal system could not reach beyond their membership. Other government officials, such as the major participants in the Hainan Island car scandal, have been prosecuted despite their ostensible immunity. Just as socialist democracy depends, to a great extent, upon the separation of the powers of the state and the CCP, so does the effective prosecution of corrupt party officials. Many observers are justifiably skeptical of superficial measures such as re-education of cadres rather than a fundamental shift in the state apparatus such as establishing a greater distinction between the CCP and the judiciary. The new socialist legal system may be attempting what in fact is impossible: establishing the rule of law in a society which is predicated upon the dominance of the CCP in all aspects of state administration.

The initial phase of public sentiment in the cities after 1949 was one of euphoria, based on growing confidence in the CCP. Here was a conquering army of country boys who were strictly self-disciplined, polite and helpful, at the opposite pole from the looting and raping warlords and even the departing Nationalists.

⁴³ Tsang, *supra*, note 39.

4. Economic development

The most significant role of the new socialist legal system is to promote economic development. The Chinese desire for foreign investment and the Western need for a stable legal framework has led to the creation of volumes of commercial legislation. This process, which began in 1979 with the adoption of the *Joint Venture Law*, heralded the advent of the open-door policy. The foreign investors' criticism of this law as imprecise was addressed in part in 1983 with the promulgation of the *Regulations for the Implementation of the Law of the People's Republic of China for Joint Ventures (Joint Venture Regulations)*.⁴⁴ Chinese drafters are slowly addressing the deficiencies in Chinese legislation in response to the concerns of foreign investors.

As part of the drive for economic development, cadres stress that agreements signed by Chinese enterprises should be fully implemented. The Chinese press has emphasized the importance of economic contracts as a means of fixing the rights and obligations of enterprises. The Editors of the *China Daily*, for example, argued that "it is necessary to take contracts as the basis for production plans, sources of economic information and means to analyze and control economic activities."⁴⁵ While the theoretical importance of law as part of a framework for investment has been grasped by the Chinese leadership, the law is often flouted in practice.

IV. HOW IS CHINESE LAW INTERPRETED?

There is disagreement over the importance of China's history and culture in determining the role of law in Chinese society. On the one hand, some commentators argue that the traditional Chinese approach is based on honour, with less emphasis on written legal

⁴⁴ Promulgated on 20 September 1983 by the State Council. Article 100 was amended by the State Council on 15 January 1986. The Chinese text and an English translation appear in *China Laws, supra*, note 1 at para. 7,910.

⁴⁵ "A broken contract leads to damaging loss of face" *China Daily* (December 13, 1985) 4.

details than in Western countries, and that such informal arrangements create binding obligations. Further, the Chinese are not typically legalistic but believe that commercial relations are best conducted on a personal level. It is, however, questionable whether this has been the traditional Chinese approach. Contracts have formed a legal bond between parties for some time, although these contracts are generally simpler than Western agreements and with less exclusionary clauses. A personal bond has not traditionally been a prerequisite but it will eclipse the written agreement when the relationship is sufficiently strong. But such a fluid framework also characterizes legal relations in most countries.

Others argue that, due to the influx of foreign investment and ideas since 1979, the Chinese now emphasize the legal basis of an economic relationship, and that this departs from previous practice. Increased exposure to Western methods of doing business, and the resulting detailed commercial arrangements, have necessitated thorough documentation in many cases. Further, due to cultural differences between Western investors and Chinese parties, it has been often necessary to endure lengthy negotiations and reduce the consensus to a written format, not as a reflection of distrust but as a record of the terms agreed upon. Regardless of the parties' views of legalism in contractual relations, an oral agreement is simply not sufficient any longer.

Whatever the traditional approach, current Chinese practice is to adopt some Western legal techniques and business methods. The degree of departure from time-honoured traditions will vary depending upon the geographic location of the Chinese officials and their degree of experience with foreign investors. For example, in the Shenzhen Special Economic Zone, where much foreign investment has been directed, officials are familiar with a wide array of foreign practices. But Chinese officials from a city in the hinterland would not have as much investment experience.

The adherence to the traditional way of conducting commercial relationships and an antipathy towards litigation is thought, by many scholars, to be partially due to the Confucian

background of China.⁴⁶ Confucius lived, according to some estimates, from 551 – 479 B.C. during the late stages of the Chou dynasty (1027 – 256 B.C.). Confucius and his followers argued that if everyone observed his moral code, also referred to as "The Way", then there would be no need for reliance on the processes of law. Confucianism stressed the emulation of virtuous models. The Legalists, on the other hand, who gained pre eminence during the Chin dynasty (221 – 206 B.C.), believed that it was necessary to control people through fear of punishment.⁴⁷ Confucianism rebutted penal laws proposed by the Legalists on three grounds.⁴⁸ First, universally applied laws would militate against the 'natural' distinction in society between the noble elite (who lead by moral example) and the majority. Second, since laws cannot foresee every eventuality, matters are better left to the judgment of morally qualified persons. The mechanical application of a legal code would be unjust. Third, the law controls through fear of punishment and does not mould the character which is a central aim of Confucianism. The philosophical confrontation between the Legalists and the Confucians resulted in a hybrid form of law: the administration of the law in Imperial China required a pervasive legal system, but the law acquired a Confucian complexion.⁴⁹

Although law existed, the hostility towards litigation expressed by Confucius persisted. As Confucius stated, "At hearing legal proceedings I am just like anybody else, but what is necessary is to bring it about that there is no litigation."⁵⁰ This adage was a specific application of the general emphasis on moderation and a desire to maintain harmonious relationships. Confucius established a pattern of compromise; of always seeking the middle path. As the *Menicus*, the book of a later Chinese philosopher Menicus (370 –

⁴⁶ Conversation with Wang, Guiguo of Johnson, Stokes & Master, Solicitors & Notaries, Hong Kong, July 20, 1986.

⁴⁷ For a discussion of the role of the Legalists, see John K. Fairbank & Edwin O. Reischauer, *China: Tradition and Transformation* (Sydney: George Allen & Unwin, 1979) at 53-54.

⁴⁸ Dawson, *supra*, note 38 at 72.

⁴⁹ *Ibid.*

⁵⁰ Arthur Waley, *The Analects of Confucius* (London: Allen & Unwin, 1956) at 12-13.

290 B.C.), aptly states, "Confucius did not go to extremes."⁵¹ The hostility towards litigation expressed by Confucius continued to be a characteristic of Chinese society until recently. The preservation of this approach may be less out of Confucian principle than the harshness of the state's legal process and the extortions of officials.⁵²

What is the influence of Confucianism on the new socialist legal system? The Confucian influence within Chinese society is said to affect the application of law in a number of ways. For example, the stress on mediation and the friendly resolution of disputes which pervades much legislation.⁵³ Further, lawyers are held in low esteem in China as they are a disruptive influence in the social equilibrium.⁵⁴ Lawyers were traditionally referred to as "litigation-tricksters". One, however, can only draw on Confucian concepts in the most general sense to explain current Chinese approaches to business and law. China has sprouted an innumerable variety of philosophical perspectives during its long history. Confucianism flourished at approximately 500 B.C. and was only one of the so-called "Hundred Schools" extant in an age when rulers patronized learned men. China's unregulated business environment has also been due in part to the country's long isolation from foreign ideas and investment. Evidence of Confucian thought may be found today in "a diffused form rather than as an established and formally recognized doctrine."⁵⁵ It may, therefore, be more appropriate to concentrate on establishing the contents of the Chinese value system, which may or may not contain Confucian elements.

The cultural context of Chinese law must also be borne in mind when addressing certain legal concepts. Terms which may be familiar to a foreign business executive or lawyer may have different meanings in China. For example, the interpretation of the term

⁵¹ Fairbank & Reischauer, *supra*, note 47 at 46.

⁵² Dawson, *supra*, note 38 at 73.

⁵³ An apt example is the arbitration legislation referred to in note 3. For a discussion, see Richard J. Goossen, "Non-Judicial Dispute Resolution in the People's Republic of China" (December 1986) 7 *Bus. L. Rev.* at 331-35.

⁵⁴ For a discussion, see Jenkin Shiu-fan Chan, "The Role of Lawyers in the Chinese Legal System" (1983) 13 *Hong Kong L.J.* 157.

⁵⁵ Dawson, *supra*, note 38 at 86.

"force majeure," which typically in Western countries includes what is unforeseeable and unavoidable, would not, in China, incorporate the concept of a radical change in government policy. In addition, contracts are formed in a different manner.⁵⁶ Whereas a contract in the Western sense involves a "meeting of the minds" between two individuals, in China a contract is actually consummated when the necessary Chinese governmental approvals have been received. While contracts in Western countries may involve subsequent governmental agency approvals, this generally occurs after both parties have assumed contractual obligations. In China, the proper governmental approval is a condition precedent to the creation of a binding legal obligation.

The precise nature in which laws are promulgated may cause concern to foreign investors. Some commentators aver that the permanence and reliability of various laws are betrayed by the explicitly transitory nature of their enactment. There are, for example, *Provisional Regulations of the People's Republic of China Regarding Lawyers* which were adopted on 1 January 1982.⁵⁷ The adjective "provisional" or the phrase "for trial implementation" indicates the fluid nature of the legislation rather than any inherent incompleteness.⁵⁸ In a relatively stable Western legal system, such phrases would imply a temporary law as a stopgap measure until more comprehensive legislation could be passed. In the rapidly evolving legal framework of China, the permanency of laws can be gauged by political stability rather than by titular phraseology.

There are several other aspects of interpreting Chinese law which should be taken into account by the foreign investor. First, all Westerners may during the formative stages of the new socialist legal system see Chinese law 'as through a glass dimly'. The Chinese may base their interpretation of certain provisions on internally circulated documents. These internal guidelines are not

⁵⁶ A.R. Dicks, "Economic law and the state-run society" *South China Morning Post Features* (May 23, 1986) 1. See also Richard J. Goossen, "When to Enforce Contractual Rights in China" *East Asian Executive Reports* (April 1986) at 8, 16-17.

⁵⁷ The Chinese text was published by the Legal Press in China in October 1980.

⁵⁸ Mu Rui, "The Chinese Conception of Law and Its Meeting With That of Corresponding Legal Systems" in *Symposium on Chinese and European Concepts of Law* (March 20-25 1986, Hong Kong).

available to foreigners. In other cases, unregulated areas may be governed by a body of common practice which has developed. This "trial-by-error" treatment, then, forms the basis for future legislation, such as the *Foreign Wholly-Owned Enterprise Law*. In instances where no formally enacted law regulates a particular business format in China, such as contractual joint ventures, the Chinese may apply other legislation by analogy, such as the *Joint Venture Law* which is directed at equity joint ventures. Secondly, as the court system is used more frequently, case law may develop whereby foreigners will be able to understand the application of law in a variety of instances. Judicial precedents will not, of course, be binding but the foreigner will have an additional source upon which to found his understanding of Chinese law. Thirdly, Chinese legislation is often followed by implementing regulations which clarify a number of topics discussed in the basic law. An example of this is the *Joint Venture Regulations*, promulgated four years after the *Joint Venture Law*, which clarified a number of ambiguities encountered by foreign investors. This method of formulation of law based on an experience of its deficiencies and strengths in practice may be the most appropriate way for China to develop its legal system in a relatively short time. Once again, a comparison with Western nations is apt; Western legal systems do develop in the same manner. Fourthly, foreign investors should take into account international conventions and customary international law which may be useful in defining their rights in China. For instance, China is a signatory to the *Paris Convention for the Protection of Industrial Property*⁵⁹, which facilitates the cross-registration of patents from other countries. In addition, under the *Foreign Economic Contract Law*, international practice may apply in cases where no relevant provision is stipulated under Chinese law.⁶⁰ Legal interpretative skills are no less vital in China than in Canada.

⁵⁹ *Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967.* An English text appears in E.W. Ploman, ed., *International Law Governing Communications and Information* (London: Francis Pinter, 1982) at 311-33.

⁶⁰ *Foreign Economic Contract Law, supra*, note 19, art. 5.

V. CONCLUSION

This essay has provided responses to three questions frequently directed toward the Chinese legal system. First, there is law in China. Law exists but its relevancy will depend upon a host of factors, including its invocation by commercially intertwined parties. In addition, the question, "Is there Chinese law?," reveals more about the questioner than it is likely to elicit about China's nascent legal framework. Cynicism or naivete of the foreigner, rather than a dearth of legislation, will prompt a question concerning the existence of Chinese law.

With respect to the second question, this essay argued that China has a single legal system with two threads. Foreign business people, however, usually concern themselves only with foreign economic laws and ignore domestic legislation. In order to understand the role of the legal system in China, foreign investors must appreciate the impact of domestic legal reform on foreign economic legislation. It is inadequate to regard the legal system in China as simply those laws enacted for the benefit of foreign business people. While at present many economic laws are directed solely toward foreign investors in China, the future role of law, both in a foreign and domestic context, will be dictated by the interrelation of the two strands within the single legal system. As foreign investment in China increases, the new socialist legal system is slowly being nurtured.

Understanding the new socialist legal system necessitates reference to historical, political and sociological elements in Chinese culture and tradition. China's historical context clarifies the difficulty of establishing a legal system. China's long history of feudal rule left it without democratic or legal traditions and the Communist takeover in 1949 was completed only after long, armed struggle. Citizens are consequently hostile to the old legal system. At present, it is difficult for individuals to distinguish between the merits of the old approach to law and the new socialist legal system. Further, since 1949 disputes have been handled in line with CCP policy rather than using legal procedures. Both CCP officials and the Chinese citizenry did not develop the idea of problems being solved by law but were accustomed to having matters resolved on an

ideological basis. Chinese officials, therefore, assert that a knowledge of law must be systematically spread among the populace in order to assist them in distinguishing between legality and illegality. The historical perspective is particularly important in the case of China because few other nations have endured the trauma of a Cultural Revolution and the total anarchy engineered by the state itself.

Finally, some guidelines were proposed for interpreting Chinese law. For example, how stable is the Chinese legal system? Just as foreign investors ponder the consequences of Deng Xiaoping's death upon the modernization drive, similar concerns are rife with respect to the permanency of the legal reforms currently being implemented. If the political changes instituted in China are justified by the success of the modernization program, then the development of the legal infrastructure will be vindicated by its actual use and the degree to which it takes hold among the populace as an integral part of Chinese society. It is only when the legal system becomes part of the fabric of Chinese society and is seen as relevant to individuals that its permanency will be more assured rather than when relying upon the continuity of political leadership. Of concern to foreign investors is that the law presently remains unfamiliar to the majority of the Chinese people and the importance of law rests solely with the emphasis of today's pragmatists. As a result, there is a discrepancy between the promulgation of law and its actual implementation. While the central government may establish guidelines based on a uniform policy for the development of a particular aspect of the modernization program, this legislation may not always be implemented at the local level. Local officials may either prefer their own legislation if such exists, or they may simply be unaware of national guidelines. While in many Western countries, the actual legislation may not always be faithfully implemented in practice, the divergence in China has been substantial enough to result in a credibility gap for Chinese law.

In conclusion, understanding Chinese law is facilitated by adopting a Sinocentric approach. Doing business in China need not be fraught with mystery and anxiety. The dynamics of the China trade can be grasped. But it is still common among foreign investors to be awed by China, the fabled Middle Kingdom, the

home of one billion people and the birthplace of Mao. The ostensible mystery of investing and trading in China, like a cangue on the neck of foreigners, needs to be removed.