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Explaining China's Continued Resistance Towards International Human Rights Norms: A Historical Legal Analysis

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Research of the Program in Arms Control,
Disarmament, and International Security

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ABOUT THE AUTHOR

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ABSTRACT

The People's Republic of China has made significant strides in updating its commercial law, introduced a series of environmental regulations, and utilized international legal statutes to reform various aspects of its municipal legal system. However, problems persist in the area of compliance with and implementation of international human rights regimes. This article examines why China is wary of international human rights law and why it has difficulties complying with international human rights norms. Specifically, this article seeks to understand why PR China is antagonistic towards human rights law, while it has been welcoming of other forms of legal reform, institutional development, and foreign cooperation. I argue that China's compliance problem and its inability to fully internalize international human rights norms can be explained by the combination of the following three factors: (1) Confucian influence and imperial institutionalist heritage, (2) Maoist socialist order, and (3) authoritarian-developmentalism. These three structural factors have interacted in complex ways at different political junctures to inhibit China from fully internalizing international human rights norms, thereby affecting its ability to successfully comply with its treaty obligations.

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This manuscript began as an investigation into China's participation in human rights regimes from an international relations perspective. I had no intention of delving into the wealth of Chinese history, but as this manuscript developed I was confronted with the enormous task of navigating China's rich history of culture, social organization, and politics to understand the attitude of modern China towards international human rights regimes. During the process of writing this monograph, I became deeply interested in China and its astonishing economic growth and modernization, which resulted in a few other papers on China's participation in international environmental regimes that have appeared elsewhere.

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SRINI SITARAMAN
Worcester, MA
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PART ONE

Introduction

Of all China's problems, the one that trumps everything is the need for stability. We have to jump on anything that might bring instability; we can't give ground on this point, can't bend at all...all this boils to one thing: China can't take chaos. We can't allow chaos, and we have to keep saying so, bluntly and openly. We'd be wrong not to.

Vice-Premier Deng Xiaoping, during the 1989 Tiananmen Crisis¹

Any crime which the law regards as serious should certainly receive serious penalties, and any crime which is punishable by the death penalty according to law, should certainly receive the death penalty. This will ensure the healthy progress of strike hard.

President Hu Jintao, remarks made while he was the Secretary of the Standing Committee of the Central Political Bureau Chinese Communist Party (CCP), 4 May 1996

The People's Republic of China has witnessed a spectacular economic and international resurgence since 1978 after Deng Xiaoping introduced a series of sweeping reforms. Today China is experiencing blistering economic growth; its trade surplus is continuously expanding, its manufacturing capacity is interminably widening, and its global economic reach has catapulted China from a third-world state to near first-world status. Nevertheless, daunting challenges confound China in undertaking environmental clean-up, enforcing banking regulations, guaranteeing intellectual property rights, and especially, in the area of human rights. The People's Republic has to grapple with widespread corruption, white-collar crime, and growing economic inequality, which is placing enormous pressure on its weak institutional foundations and eroding the ability of the central government to effectively manage the transition from a communist dictatorship to a neo-authoritarian capitalist state. Of all the challenges confronting China today, its inability to address its persistent human rights problems has prevented it from attaining international prestige and respect. China's human rights violations and the inadequacies of its judicial system have received widespread international opprobrium. PR China has not only attempted to introduce legal reforms, such as abolishing the *hukou* (household registration system), but it has also countered international criticism by joining various human rights treaties, attained membership in the newly formed United Nations Human Rights Council, hosted global rights conferences such as the Beijing Women's Conference held in 1995, and mounted a carefully coordinated strategy of countering its critics through international policy networks. Nevertheless, persistent and systematic human rights abuses continue, and criticisms of China's human rights policies have not abated.

This article sets out to examine why China is wary of making international human rights law an effective component of its domestic legal system and why it has failed to pursue sincere efforts to reform its criminal law, improve its human rights record, and fully comply with international norms. Specifically, this article seeks to investigate why China is antagonistic towards human rights regimes, while it has been welcoming of other forms of legal reform, institutional development, and foreign cooperation. To answer this question, this article generates an explanation relying on the following three interrelated historical and contemporary factors: (1) Confucian influence and imperial institutionalist heritage, (2) Maoist socialist order, and (3) developmental-authoritarianism.

Confucianism and Legalism, which evolved as competing legal paradigms in ancient China, influenced the development of legal thinking and institutional structure over three millennia. Legal discourse during the eighteenth and nineteenth centuries became infused with mistrust of foreign laws and Western governments because of China's poor experience with European laws and coerced entry into various unequal treaties. Subsequently, anti-colonialism, distrust of international law, and historical legalism merged with nationalism and socialist thought, resulting in renewed emphasis on the primacy of state and national sovereignty, which in

turn furthered the animus towards international law and organizations. This antipathy towards formal law in general, and international law specifically, was further reinforced by Maoism, which was based on rule by diktat, nonchalant dismissal of international law, use of law as an instrument of social control, and mass mobilization to suppress individualism to propagate the narrow ideological objectives of the Communist Party. The pre-Mao imperial political system, Maoist socialist order, and the post-Mao political organization are structured on a legal philosophy that does not recognize the concept of individual civil and political liberties. Both the imperial political order and the Maoist socialist order did not contain political mechanisms that could potentially capacitate the individual against the state. Unlike Western political systems, which have evolved to construct a legal infrastructure as a free-standing institution to mediate relations not only among individuals, but also between the state and the citizen, the Chinese state has always been beyond the admonition of its citizens or other states. As a result, Qin, Han, Tang, Ming, and Qing emperors never tolerated criticism, dissent, or legal challenges to their supremacy and neither have Chairman Mao and the Communist Party of China (CCP) countenanced dissent and political challenges lightly.

Lastly, the authoritarian political structure and the new developmentalist ideology have presented new hurdles to China's compliance with global human rights standards. Leaders in Beijing are deeply wary of the heavy emphasis on individual rights because they fear that it will lead to *luan* (chaos), i.e., widespread social upheaval, which will destroy the collectivist culture of Chinese society, destabilize economic reforms, and erode the unitary framework erected by the Chinese Communist Party. The new political orthodoxy in China puts primary emphasis on Deng Xiaoping's slogan "to-get-rich-is-glorious," and not on enabling individual liberties and promoting more political openness because of the overwhelming concern that civil and political liberties will engender organized political opposition against the party. Economic rights have been significantly expanded, but the party-state continues to repress political rights and individual freedoms, and has used the judiciary and police to suppress dissent. Hence, China's fourth generation leaders have increasingly resorted to emphasizing economic development with Chinese characteristics and re-directed the authoritarian edifice of the state to enable and encourage economic gains at the expense of political development. Party leaders are more interested in strengthening the protective shell of authoritarianism and reinforcing state power, while simultaneously transforming the Chinese society to become a highly competitive player in the global economic system.

Discussion that follows in this research monograph is divided into five main sections with appropriate subsections. The first section (Part Two) focuses on how Confucian philosophy influenced the development of Chinese legal doctrine, and how the political experience of Imperial China affected its attitude towards international law and Western legal traditions. Next, Part Three discusses ultimately unsuccessful attempts during the interregnum between the fall of the Qing dynasty and the birth of the People's Republic of China to reform the Chinese legal system based on principles derived from Western legal codes. Part Four examines how Maoist thought influenced attitudes towards international human rights law and how it led to the underdevelopment of the domestic legal system. The next section, Part Five, is divided into multiple subsections, which describe how the transition engineered by Deng Xiaoping propelled China towards the market economy accompanied by an incomplete reform of the political and legal system. This section also discusses how international economic and political pressure compelled the People's Republic to make subtle, but important, changes to its domestic legal system through the incorporation of international human rights norms. Although China has ratified some of the major human rights treaties, it has engaged only in procedural cooperation with the treaty bodies and it has failed to introduce corresponding refinements in the area of domestic human rights law. The last main section, Part Six, concludes by examining China's human rights policies in the post-Tiananmen era and discusses how economic reforms and the excessive importance placed on social order and political stability combined with institutional bottlenecks have hindered full compliance with human rights conventions.

PART TWO

Notions of Law and Order in Imperial China: Confucianism and Legalism

China's conception of public etiquette, law, order, punishment, and rights has been shaped by the doctrine of legalism and competing legal doctrines derived from the writings of Confucius and Mencius.² Confucianism is primarily concerned with the moral code of conduct and empathy or humanism (*li*) or (*lizhi*) documented in the classic text the *Analects of Confucius*.³ It embodies the rules of "propriety, ethics, and moral rules of conduct." Importantly, the code of *li* represents social norms that are internalized through routine social practices such as greeting strangers on the street.⁴ The legal structure (*fa*) or (*fazhi*) operates to punish transgressors of *li* or disturbers of social harmony. According to the traditional Chinese legal system, the code of *li* is enforced by society and the state enforces *fa*, but various Chinese emperors, beginning with the Qin Emperor in 221 BC, have tended to emphasize *fa*, the system of punishments and fines, over *li*, the socially enforced system of moral code, to varying degrees.⁵ Confucius urged more emphasis on *li* (moral code) and less insistence on *fa* (positive law) because reliance on a system of severe punishments involved use of coercion and force, which Confucius argued would only breed resentment and anger towards the ruler.⁶

Confucian thought did not consider legalism to be an ideal method for attaining social order because it required only external compliance and not true reformation of the individual character or the spirit of the social system.⁷ Under the Confucian scheme, the ruler was expected to lead by example, demonstrate his virtue, and assist in the cultivation of superior moral values among his subjects.⁸ The Confucian model of social organization was based on harmony and on a hierarchical system of ethics, which assigned pre-determined social roles to every individual in the society. It privileged certain members of the society according to family and social status.⁹ Importantly, the Confucian social order was based on the fulfillment of certain social and familial roles according to each individual's position within the family and society. It was believed that if individuals fulfilled their social obligations or performed their social roles properly, harmony would naturally prevail obviating the need for reform of the formal legal system.

The idea of harmony is central to Chinese societal organization. Harmony is essential for family life, kinship, and the relationship between ruler and his subjects.¹⁰ Individuals are expected to place collective interests, i.e., the interests of family and society ahead of personal desires. Preoccupation with one's personal interests is considered to be selfish, immoral, and detrimental to the overall welfare of the society. If someone is entangled in a conflict, it is generally imprudent to pursue the conflict to its bitter end, even if the law favors one party over the other because it would only worsen the enmity and lead to a breakdown of social relations.¹¹ The notion of resolving conflicts in a non-confrontational and face-saving manner is widely practiced even today. Emphasis is placed on resolution of conflicts in a non-adversarial manner through informal mediation schemes; hence, legal wrangling and lawsuits are highly discouraged. Confucian practice of reciprocity and compromise is meant to encourage social harmony. Pursuit of private interests is thought to produce social disharmony, which underscores the need for *fa*—the system of punishment imposed by the state.¹² The Confucian system emphasized the importance of subordinating individual interests to the collective goals of a society.

Individual Rights in the Chinese Legal Tradition

The notion of individual rights as espoused by Western thinkers is fundamentally irreconcilable with Confucian social order because it is based on different assumptions about freedom and rights. In the Confucian or in the Chinese legal order, "individual rights" or "individual sovereignty" as understood in Western societies is a foreign concept. Notions such as "political freedom" and "freedom of expression" as described in liberal political thought are not clearly identifiable in the Confucian analects.¹³ To Confucius, "to be free from everything—free from other men, free from law, free from thought, free from sense...is to be nothing."¹⁴ The idea of unlimited freedom is considered to be unrealistic, almost nihilistic, and it is not sanctioned by Confucian ethics. Freedom in the Confucian ethical scheme is characterized by the freedom to do good (*ren*) or the freedom to choose what is good.¹⁵ However, this freedom is governed by *ren*—the need to do the right deed—

and by the constraints of family, society, and government. An individual is never viewed in isolation from family or society; he/she is always regarded to be a part of the larger social collective. Every person in a society has assigned social roles and efficient functioning of a society depends on every person fulfilling his or her assigned duties within the immediate social collective.

Emphasis is placed on performance of duties in a harmonious way. According to Confucian ethics, performing one's duties is more important than claiming one's rights.¹⁶ The Confucian hierarchical system assigned defined roles based on the *wulan* or five paired relationships: (1) emperor/minister; (2) father/son; (3) elder brother/younger brother; (4) husband/wife, and (5) friend/friend.¹⁷ These paired relationships signified the hierarchical consonants through which the emperor's position in the society trumped the ministers', or that the son must defer to the father and the younger brother must obey the elder brother. Hierarchical order was so carefully calibrated that there are no proper Chinese language characters for the term "brother"; characters are only available for younger or older brother.¹⁸ It was expected that by fulfilling the social duties assigned to each relationship, an individual contributed towards the overall development of the family and society. Confucianism saw family and social rules to be a self-regulating system based on moral rules of propriety. Furthermore, Confucian social order stressed the importance of selflessness, the art of compromise without losing face, and adjustment for social harmony. A person's social worth or status was determined by his or her contribution to family and society. Chinese political order has always been based on the assessment of hierarchy and social status.¹⁹ Confucius regarded individuals as roots and the society as leaves.²⁰ Hence, duty to regulate oneself, i.e., self-introspection, was primary, followed by duty to family, clan, village, society, and government. A central element of Confucianism involved education for the purposes of internalization of the prevailing social norms, acceptance of social hierarchy, and obedience to the ruler.

The idea of individualism articulated by Confucian social ethic is radically different from the political philosophies of Locke, Hume, and Rousseau, which overtly emphasized the importance of individual rights. Particularly, characterization of individuals as roots or as foundations for the development of a functioning society reflects China's hierarchical and authoritarian value system.²¹ Chinese society has always been hierarchical and social roles depended upon individuals knowing their place.²² Even during Mao's time Chinese society was hierarchically organized with the Party and its Chairman at the pinnacle, and all social roles were politicized and mobilized to serve the larger ideological objectives of the Party. Over a period of three millennia, Confucian elites and later the Chinese Communist Party leaders were highly successful in developing specialized rituals, rules, and techniques of legitimating myths that supported the rulers and enabled them to control China's vast peasant communities.

In contrast to the Western legal order, which emphasizes protection of individual rights and seeks to empower individuals against the tyranny of the state, the Confucian system placed value on collective interests and saw the ruler as a benevolent protector who defends collective interests and punishes individuals who deviate from established social norms. Need for law and sanctions arises only when social deviance and disharmony prevails or when individuals deviate from established social norms, whereas modern Western legal systems operate horizontally, i.e., proceeding from autonomous individuals, to society, and then to the state.²³ Chinese political philosophy did not factor in the possibility of an errant emperor and an aberrant state producing chaos or disharmony; only individuals acting on selfish impulses and deviating from established norms could produce *luan* or chaos in society. Hence, the Chinese legal and political order has been devised to protect the state from the citizens and not the other way around. Individual impulses had to be suppressed either by Confucian moral code (*li*) or by the deterrent power of legalism (*fa*) because of the presumed disruptive effect on the state of those impulses. However, this hierarchical political order lacked a very fundamental tool—a mechanism to remove the ruler from power and a system to protect citizens from the tyranny of the state. Pious legitimation of the ruler and his elevation to the position of divinity (*son of heaven*), and governance of the state, which is mandated by heaven itself, meant that the Chinese emperor was beyond human reproach.

Confucianism became the dominant philosophy because various rulers favored it and, principally, it evolved as the primary legal orthodoxy because of the codification or transformation of the Confucian ethic into formal legal code (*fa*) beginning with the Han period (206 B.C.-220 A.D). Subsequently Tang (618-907 A.D), Ming (1368-1644 A.D) and Qing (1644-1911 A.D) dynasties were continually involved in the process of "Legalization of Confucianism," or "Confucianization of law."²⁴ This process is also described as "Yin-Yang Confucianism," in which Confucian moral code became polarized into morality and law; while morality was

governed by individual actions, law or penal code became the domain of the state.²⁵ Any violations of Confucian morality became automatically punishable by law. In fact, expansion of Han, Tang, Ming, and Qing empires was made possible not through the private practice of Confucian ethics, but through the means of a penal system and coercive use of state power, which reserved harsh punishment for violators of legalized Confucian ethics. Legalists asserted the importance of having a well-defined formal penal code containing a list of punishable offenses and appropriate rewards for proper behavior to reduce ambiguity in assessing sanctions. Utility of a formal penal code enabled the impartial application of state control—*fazhi* or rule by law—to tame the natural instincts of human beings to pursue narrow self-interested gains. Draconian punishments were not only seen as an attempt to rectify disharmony in the social order, but were also designed to serve as a deterrent to others in the society. Furthermore, the existence of a formal legal code enabled smoother transition and continuity of governance from one ruler to another irrespective of the individual talents of each ruler.²⁶

Legalization of Confucian morality actually led to the complete subordination of the individual to the collective—the state—which became an omnipotent entity that rejected “private standards of right and wrong,” and decreed that there was “no authority above the state,” and no law superior to the “positive laws of the state.”²⁷ As Bill Alford points out, law in China always aimed “to buttress rather than supersede” the state.²⁸ Positive law was a tool of the state and it did not have an existence as an independent and impartial arbiter of relations between the sovereign and his subjects.²⁹ The emperor, after all, ruled with the *mandate from heaven* (*tianming*), which concentrated extraordinary amounts of power in the police, judiciary, and other institutions of the state. Transcription of Confucian thought into formal penal codes enabled the development of totalitarian and militaristic culture, produced a merit-based bureaucracy, and resulted in a unified ideology, which has survived into modern China.³⁰

Legal Codes of Imperial China: Legalized Confucianism

Historians concur that China's imperial era began in 221 BC after the end of the Warring States period (403-220 BC). The first emperor, Qin Shi Huangdi, is generally credited with territorial consolidation, and developing a unified Chinese state by standardizing and rationalizing bureaucracy, language, and legal systems. The imperial era ended with the slow demise of the Qing dynasty in 1911 AD. One of the single most remarkable aspects of the imperial period is that the continuity of the legal codes and maintenance of the basic structure of the government and bureaucracy from one dynasty to another were preserved, notwithstanding modifications, revisions, and additions by different emperors.³¹ During the Qin emperor's reign, legalism became embellished with the ethical teachings of Confucius and achieved the status of official orthodoxy. This process is referred to as “Legalization of Confucian Thought,” “Confucianization of Law,” or “Imperial Confucianism.”³² Confucian legal codes became highly prominent and the subsequent dynasties carried forward these legalist foundations, Confucian ethical patina, and totalitarian framework for governance established by the first emperor.

The *sui generis* quality of China is embodied in the uninterrupted continuity of Confucianism and imperial institutionalism. There is evidence to suggest that techniques for trying law cases were developed during the Chou dynasty (1122-256 BC).³³ Interestingly, modern Chinese language (standard Mandarin) still retains the scripts developed during the Chou dynasty to represent legalisms such as litigation, accusation, and interrogation.³⁴ Although positive law (*fa*) became a common tool of social control and governance employed by various Chinese emperors, they retained a critical Confucian trait—the principle of “legalized inequality.”³⁵ This is one of the most recognizable attributes of the legal continuity that was preserved for much of the imperial era and into Mao's chairmanship (1948-1976), albeit in the latter case in a different format as a principle of “legalized differentiation.” During the Mao era, the principle of “legalized differentiation” manifested itself in the form of class status. This technique was singularly important in determining sanctions both during the imperial and revolutionary era. Issues such as property disputes, marital discords and divorce, inheritance and kinship relations were generally addressed within the parameters of civil adjudication and informal mediation.³⁶

Criminal law fell exclusively within the formal realm of the imperial state. During the peak of Qing rule (1644-1911 AD), civil codes demonstrated high sophistication and the courts routinely handled civil cases on a variety of issues that dealt with property, trade, and social relationships.³⁷ Qing laws were almost entirely borrowed from the Ming code of 1585. The Tang dynasty (618-907 AD) passed on the structure of its police

and judicial system and legal statutes to the Five Dynasties (907-960 AD) and subsequently to the Song dynasty (960–1279 AD).³⁸ Imperial China relied on four types of legal documents: (i) statutes, (ii) edicts, (iii) precedents, and (iv) refined or clarified instructions.³⁹ The importance placed on each of these legal documents varied from one dynasty to another. For instance, clarified interpretations or private commentaries were more common during the Qing period, but the tradition of placing considerable importance on legal statutes (*li*) was continued by all the imperial dynasties.⁴⁰

Penal codes of imperial China imposed sanctions based on hierarchy of the familial relations and social status of the perpetrator and the victim of a crime. Social groups, such as the Mandarins or state officials, were highly privileged and enjoyed special protections from prosecution compared to a commoner.⁴¹ If a commoner committed a criminal act he was more severely punished than an individual enjoying high social status. Specially, if a commoner were to commit an offense against a high status person, the punishment could range from execution to permanent exile. Similarly within a family, if the head perpetrated an offense against a junior member he was punished less severely, but if the roles were reversed and a son committed the same offense against his father, the punishments were rather excruciating. Punishable crimes included rebellion, disloyalty, desertion, parricide, massacre, sacrilege, impiety, discord, insubordination, and incest.⁴² As the list indicates, there were three general categories of offenses: (i) crimes against the empire, (ii) crimes against the society, and (iii) crimes against the family. The Han dynasty (206 BC-220 AD) legal code contained more than 400 offenses that could be punished by death penalty.⁴³ By the early 1800s, Qing rulers had developed penal codes, which dealt with general laws, military laws, criminal laws, civil laws, and fiscal laws, covering 600 pages of an English translation by Sir George Staunton in 1810.⁴⁴

Charged offenders were subject to corporal sanctions such as caning with the light or heavy end of a bamboo stick ranging from 10 to 100 strokes. The number of strokes from the cane varied with the type and severity of the crime, and social status of the offender. A combination of caning and exile was often used to make atonement for the crimes. Permanent exile, in particular, was considered to be a very serious form of punishment because it prevented a person from being buried in their ancestral land; such denial is said to force the spirit to wander forever without a final resting place.⁴⁵ In the case of heinous crimes, the accused were often immediately executed; in other instances, the prisoner was publicly executed either by strangulation or decapitation after a formal legal review and pronouncement of guilty verdict by the emperor.⁴⁶ The emperor wielded final authority in ratifying death sentences and granting clemency, but petitions were only entertained if the status of the offender exceeded the status of his/her victim.⁴⁷ Simultaneously, another distinguishable Confucian humanitarian influence was the inclusion of special legal provisions dealing with women, children, disabled, and the elderly.⁴⁸

On special occasions, China's imperial rulers granted an assortment of amnesties and engaged in "acts of grace" during which the emperor pardoned the criminals and commuted their sentences and extended special benefits to reabsorb criminals back into the society.⁴⁹ These acts of forgiveness were an attempt by the imperial rulers to periodically rely on their celestial powers to cleanse the depraved and immoral individuals and provide them with a second chance. Granting of amnesties also enabled the portrayal of the emperor as merciful, just, and noble, and demonstrated the redemptive power of the Confucian morality and humanitarianism. Imperial China's rulers also relied on a series of moral exhortations (*li*) to build virtue and loyalty among subjects. These exhortations asked citizens to perform their filial and fraternal duties with due diligence, encouraged generosity, promoted social harmony, instructed elders to teach children rules of propriety and customs, and required all individuals to abstain from individual aggrandizement, and pay taxes without official urging.⁵⁰

Traditional legal positivism has had a long history; the concept of law played a central role in the governance structure of imperial China. Unlike Western systems, law in imperial China had broader connotations and it is intimately associated with social practice, customs, and formal legality. The character for positive law (*fa*) is formed using three elements: (i) a model or an ideal representation, (ii) stroke representing the flow of water, which captures the idea of fairness and balance, and (iii) and a stroke representing linearity, which emphasizes the notion of justice and veracity of the ruler.⁵¹ Law attained an overt positive dimension as the administrative complexity of the various imperial empires increased with time and population growth, and *li*—the moral code—became mere complement.⁵²

Imperial China, Western Powers, and International Law: The Manchu Period

China's understanding of international law is deeply influenced by its historical experience with Western powers and by its Confucian roots. During the imperial era, Chinese *weltanschauung* was not adjusted to the idea of treating maritime Western powers as sovereign equals, and according them the same respect and treatment that visiting diplomatic envoys enjoyed in other European capitals. Imperial China's binary categorization of foreign states into tributaries and barbarians made it difficult for the Qing imperial court to accommodate the demands of customary European diplomatic practices, which required treating visiting emissaries as co-equals. The principle of co-equality in international diplomacy, which formed the basis of interaction among European powers, was simply an alien concept to the imperial Chinese administrators.

European nations regarded modern international law, which resulted from their common experience, as a mechanism to regulate relations among sovereign nations. A state's association with international law to a large extent depends upon its relationship or sense of identity with the community of nations within which it functions.⁵³ However, imperial China's historical experience was completely different; it had become accustomed and comfortable in its role as the Middle Kingdom in which the Chinese emperor was at the center of universe and all power and wealth was thought to flow from the emperor. According to imperial China's hierarchical worldview, all other regions of the world were fundamentally subordinate and they could never be regarded as a commensurate power. This assumption and Qing China's frustration with the European nations for failing to recognize the emperor's exalted position blinded the Manchu rulers from recognizing that they were not dealing with "outer barbarians" who could be easily disposed.

Modern international law, as many legal scholars have pointed out, emerged out of wars and diplomatic interactions among continental European powers and Great Britain. Law that governed relations among sovereign states was based both on customs and treaties negotiated to define specific aspects of inter-state relations that were unique to the European nation-state experience. International law grew out of the customary interaction of European states, which was predicated on the need for order, predictability, stability, and recognized standards for official conduct of business among sovereign entities.⁵⁴ Since modern international law emerged out of the practices of European states, it retained its distinctive European cultural and diplomatic ethic. When the international state system began expanding and when the colonial empires of European powers began to grow, they increasingly came into contact with East Asian kingdoms and empires that were based on a completely different political order. The ascendant European powers attempted to spread their version of state practices to East Asia, which amplified contradictions between European and Asian powers.

Qing officials' understanding of international law, particularly treaty-based international law, developed under circumstances of coercion and from a position of inherent weakness and vulnerability.⁵⁵ This Western incursion into Chinese territories was the result of intra-European competition for new lands and trading partners, which led them to discover new maritime routes to previously unknown lands. Imperial China was highly reluctant to engage with Western maritime powers and did not demonstrate any curiosity or urgency in learning about their technology, governance, and legal systems.⁵⁶ Much of Imperial China's dealings with Western powers were characterized by violence and war, in which the Chinese felt that they had been forced into unequal bargains.⁵⁷ Hence, post-Manchu governments were highly distrustful of international law and viewed it as a tool of Western imperialism and conquest.⁵⁸ Initially the Western powers were limited to small trading posts along the South China Sea coast. Foreigners were confined to the trading posts in places such as Guangzhou and Fuzhou, and they were forbidden from traveling to interior regions or inter-mingling with locals, and trading was conducted only through established Chinese trade guilds called *cohong*.⁵⁹

The Guangzhou system was aimed at restricting political, cultural, and religious influences of the Westerners. Qing governors hoped to deal with the Europeans as they had dealt with the northern barbarians, by isolating the European powers, specifically the British, and restricting their encroachment to the coastal regions.⁶⁰ However, this variation of the tribute system broke down when the British traders achieved a near monopoly through opium trade. Growing appetite for opium, which enriched the British Empire and attracted more traders to China, heralded the decline of the Qing dynasty.

All treaties that China concluded from 1840 to 1890 are commonly referred to as unequal treaties.⁶¹ Prior to its dealings with Western powers, Chinese emperors always dealt with client states that bowed to the emperor and paid tithe and other gifts. China considered herself to be unequalled and unrivalled in power and wealth,

and the divine mandate from heaven provided Chinese emperors the right to rule over their subjects as they deemed fit.⁶² Before 1500 AD, China's contact with the external world was limited; formal relations were restricted to its tributary states. When contacts with Western governments increased, China was so imbued with the superior-inferior relationship that the Manchu administrators expected Western governments to accord the Chinese emperor the same deference and respect shown by its tributaries.⁶³ Many Western emissaries were particularly opposed to performing the ritual act of *kowtow* before the Chinese emperor. They found the act of *kowtow* to be inappropriate for receiving foreign dignitaries, and they also found Qing administrators' unwillingness to allow permanent diplomatic missions in the capital city to be rather puzzling and frustrating.

The unequal treaties conferred most-favored-nation (MFN) status on the Western powers, fixed tariffs, and the ability to move commodities in and out of China without the formal permission of the Chinese trade guilds or provincial governors.⁶⁴ Moreover, these treaties also gave Western powers extra-territorial jurisdiction, i.e., the power to try European citizens under Western civil and criminal code and not under the prevailing Chinese penal system.⁶⁵ In other words, the European states were able to carve out mini-fiefdoms along the South China Sea coast. Negotiation of the MFN clause singularly weakened the bargaining position of the Qing because the extension of MFN meant that imperial China could not negotiate separate treaty agreements with other European states.⁶⁶ If a particular trade benefit was granted to one European country, it had to be extended to all others. However, the Manchu mandarins did not view granting MFN status to be a political blunder. Extension of most-favored-nation status was conceptualized as a traditional dynastic policy of treating all "outer barbarians" uniformly and keeping them content, fighting among themselves, and out of central China.

Despite the deep distrust of Western legal principles, Manchu officials realized the strategic advantages of learning and utilizing international law for the purposes of negotiation. Two authoritative texts on Western international law—*Wheaton's International Law* and *Vattel's International Law*—were translated into Chinese.⁶⁷ The translation process was apparently fraught with confusion and misinterpretation of Chinese characters because Qing administrators could not comprehend concepts such as sovereignty and territorial jurisdiction, since such notions did not exist under Confucian legal order.⁶⁸ To overcome these technical difficulties the Manchu emperor established a centralized foreign office in 1861 to translate Western legal materials and train Chinese officials in international law.⁶⁹ China attempted to apply international law in its disputes with Japan in 1874, but it was not as adept as Japan in manipulating international law.⁷⁰ China's major international legal dispute began when some local Chinese killed Japanese merchant sailors. Japan criticized China for its inability to protect foreigners in Chinese territory and sought extra-territorial protection for its nationals. However, Qing dynasty's Prince Kung failed to understand the nuances of extra-territoriality and extradition laws. This proved to be particularly costly in the long run. Imperial Chinese administrators failed to utilize international law to its fullest extent because it appeared to emphasize issues that seemed trivial. Ceremonial matters such as the formal presentation of diplomatic accreditation and audience with the emperor without *kowtow* slighted Manchu officials, whereas they seemed relatively less concerned about tariff restrictions, consular jurisdiction, and most-favored-nation privileges.⁷¹ This and other experiences reinforced the general feeling among Manchu officials that international law would never be applied even-handedly vis-à-vis China because of its weak bargaining position. Manchu officials did not fully comprehend how international law is deeply intertwined with European *realpolitik*, which emphasized the value of territorial rights, sovereignty, and national interests. The inability of Manchu officials to grapple with the nuances of international law, the complexities of European politics, and the officials' clumsy efforts to accommodate international law within the bounds of Confucian order led them to conclude unequal treaties that tipped the balance in favor of the Western powers.⁷²

PART THREE

Legal Reforms: The Republican and the Nationalist Eras

The Qing dynasty's reign formally ended in 1911 with the Imperial Edict, which resulted in the abdication of the throne by the child emperor *Puyi*. Before the collapse of the Qing dynasty, a Law Commission was established to codify and modernize Chinese law and bring it into conformity with Western jurisprudence.⁷³ The idea of legal reform was mooted by Qing ministers to end the practice of extraterritoriality, which disallowed Westerners from being tried in Chinese tribunals.⁷⁴ Reformation of the Chinese legal system began as a component of the formal re-negotiation of China's commercial treaties with foreign nations.⁷⁵ Principally, reformation of the Chinese legal system was targeted to end to the practice of extraterritoriality and special considerations for treating Western dignitaries. Extraterritoriality was dictated by the Western powers as a primary component of the unequal treaties because Chinese laws were thought to be primitive, unsophisticated, barbarous, and unsuitable for Western denizens of China. Specifically, (1) the concept of collective or joint responsibility, which imposed punishments on relatives, neighbors or superiors at work for the actions of a criminal; (2) magistrates were allowed to impose punishments at will through the publication of new edicts; (3) liberal use of capital punishment even for minor offenses; (4) reliance on judicial torture to obtain forced confessions both from the accused and witnesses; and (5) widespread corruption that delayed administration of justice deterred foreign powers from subjecting its citizens to the Chinese judicial system.⁷⁶

The principle of extraterritoriality, which allowed the practice of Western laws within Chinese territory, was thought to highlight the backwardness of China. Hence, the Imperial Law Codification Commission was established in 1904 with drafting assistance from American, European, and Japanese legal experts to refashion and modernize Chinese law by reforming and systematizing the judicial institutional structure and its austere penal code.⁷⁷ Reform efforts principally focused on abolishing the antiquated Qing laws on topics such as *sale of persons* and simultaneously reducing the number of offences that could be punishable by death penalty, discontinuing the practice of relying on harsh corporal punishment, and limiting dependence on judicial torture to extract confessions.⁷⁸

After the inauguration of the new Chinese Republic in 1912, Dr. Sun Yat-Sen sought to place China among the group of legitimate and "civilized nations" of the world.⁷⁹ Reorganization and overhaul of the Chinese judicial system was planned even before investiture of the new Chinese Republic. A series of legal orders—Provisional Regulations of the High Courts and the Subordinate Courts (1907), Law of the Organization of the Judiciary (1909), and the Provisional Criminal Code (1909)—were promulgated.⁸⁰ The objectives of these resolutions were to create a tiered system of courts—Supreme Court, High Court, District Court, and Local Court—with a built-in appeals system, train Chinese judicial officers in Western juridical principles, establish a professional bar, increase the output of lawyers and legal scholars, and develop a tradition of judicial impartiality and independence.⁸¹ The Imperial Law Codification Commission issued a new criminal code in 1912 and undertook further revisions in 1914 and in 1921. In addition, the Republican government began Constitutional reforms in earnest and a new Constitution was announced in October 1923 and it was revised again in 1925.⁸²

Sun Yat-Sen's goal was to create a unitary republic with a parliament. But progress in amending Chinese law to bring it in conformity with Western law was unsuccessful because the influence of Republican central government did not extend beyond the coastal provinces, and the unremitting civil war and political disruptions did not allow for any sustained implementation of legal reforms.⁸³ Furthermore, many of the provinces were unwilling to break sharply away from their imperial legal past and traditionalists resented uprooting China's historical traditions and replacing it with an alien legal system. Traditional Chinese law, which was based on Confucian thought, ancient customs, harsh penal measures, and modern versions of Chinese law introduced by the new Republic—derived from German, Japanese, Swiss, English, and French civil and criminal codes—seemed incompatible.

The provincial governors and judicial officers were unfamiliar with the new codes and found them to be unsuitable for effective domestic governance or suppressing political unrest and widespread crime. Even in the

major urban centers, transition to modern courts seemed difficult. When Kuomintang nationalists took control of China in 1928, legal reforms suffered further setbacks as China increasingly leaned towards the dictatorial Soviet model of law and government. Overall, legal reforms attempted during the Republican and Nationalist periods failed to have any meaningful impact on Chinese political or legal systems because of chronic civil rebellions, political uncertainty, Japanese aggression, the Second World War, and the meteoric rise of the Chinese Communist Party (CCP). Neither the Kuomintang nor the Republicans were able to pursue Sun Yat-Sen's ambitious goal of modernizing China by drawing inspiration from Western legal thought. Opportunity for legal reforms during the interregnum between the fall of the Qing dynasty and the birth of the People's Republic of China was lost. With the ascendancy of Mao Tse-Tung and the Communist Party, Chinese legal reforms underwent another radical reorganization. This time revolutionary China sought all its inspiration from the Stalinist totalitarian model within an imperial overlay.

PART FOUR

People's Republic of China: Rule by Man Over Rule by Law

Marxist ideology and the aspirations to build a bottom-up totalitarian state led China's communist leaders to de-emphasize law, lawyers, and rights as conceptualized by the Kuomintang politicians. None of the top leaders of the CCP had any formal training or practical experience in law.⁸⁴ Therefore, they did not feel the need to develop strong legal institutions or produce lawyers. Mao and senior Party leaders were acutely sensitive to the criticism that traditional Chinese law was backward; however they did not want the new revolutionary state to adopt Western legal methods because of their disdain for its capitalist foundations. Mao's imprint on the post-1949 approach to law was unmistakable; it retained a distinctive socialist anti-elitist character with mass appeal. As one of its first acts, the Chinese Communist Party (CCP) abolished the set of laws introduced by the Kuomintang government, and started creating a new system of people-oriented socialist laws.⁸⁵ Yet, during the immediate post-revolutionary period, the CCP operated in a legal-institutional vacuum.⁸⁶ Justice was carried out on an ad hoc basis in the form of mass trials, special tribunals, and large-scale political campaigns against class enemies, capitalists, landowners, and petty criminals. Party cadres determined the prevailing mood among the higher echelons of the party in passing judgments; in situations where laws were unclear or nonexistent, the cadres simply imposed their own brand of justice.⁸⁷ From 1949 to 1953, the Chinese legal system reflected Mao's mass-line approach, which sought to obtain and incorporate ideas and views of the masses or the proletariat into policy making and legal work.⁸⁸

Formal and elaborate legal institutions were eschewed in favor of the informal and direct campaign method that had catapulted Mao to power. Chiefly, Mao held a strong anti-bureaucratic bias and preferred localized means of preserving social order based on mediation, education, criticism, and flexibility in conducting political-legal matters.⁸⁹ Primarily, CCP leaders wanted to sustain their objective of building a people-oriented socialist government that sustained contact with its mass rural base.⁹⁰ Critically, Mao believed that an overarching legal structure and detailed penal codes were unnecessary and that the Party could mobilize and marshal individuals to pursue the collectivist goals of the newly created Chinese state. Put another way, one could argue that Mao seemed to have more faith in socialist *li* or socialist morality, instead of *fa* or state backed positive law. The similarity between Confucian and socialist morality is particularly striking because both systems relied heavily on "persuasion and education rather than on force, and upon the use of social pressure rather than governmental power."⁹¹ As in the Confucian social order, class status and privilege were important in determining sanctions in the Maoist social order, but now the economic hierarchy was reversed.

The class backgrounds of peasants and rural workers were highly privileged over other economic groups, especially landowners, capitalists, and petty bourgeois. Overt class-based character and the mass-line campaign approach was an idiosyncratic feature of the communist legal structure. Law was viewed as a social tool to make the masses "conform to the communist-party-dictated policies."⁹² Study and practice of law was not considered to be a "major social achievement and a symbol of rectitude," instead it was considered to be a regrettable necessity.⁹³ Chinese legal theory developed during the Mao era viewed "law as tool of the ruling class placed in the service of politics and rejected sharp differentiation among judicial, legal, and administrative processes."⁹⁴ Principally, law was regarded as an instrument of state power to regulate the behavior of individuals who had not submitted to other means of social control. In the Western legal systems, law is considered to be a set of authoritative rules legislated by the state through the political process. These rules are understood and relied upon by legal professionals in the conduct of social, political, and economic affairs: for deploying judgments against individuals who commit crimes, for settling disputes in the society, and for settling any disputes between the state and the individual. In the Western context, application of law is divorced from day-to-day political vicissitudes and the judiciary functions independently without direct interference from political leaders. There is a distinct demarcation among the different branches of the government: framers of law (legislators), enforcers of law (police), and interpreters of law (the judiciary). The judicial branch is charged with application and interpretation of law based on jurisprudence and on the merits of each case presented to the court. During the Mao era there was no separation between Party and State, and there was little institutional autonomy among framers, enforcers, and interpreters of law.⁹⁵ Formal separation and independence among the

different agencies of the government were thought to be unnecessary. Shen Chün-ju, the former President of the Supreme People's Court, suggested that law and judicial work "must serve political ends," and it "must be brought to bear on current political tasks."⁹⁶ Law and politics during Mao's rule became inseparable from one another philosophically, institutionally, and operationally. As Victor Li puts it, China's communist leaders failed to understand the importance, nature, and utility of law in developing a robust society.⁹⁷

From 1953 to 1957, there was a brief flurry of experimentation in the development of constitutional and juridical models. But, this development came to an abrupt end with the launch of the Anti-Rightist campaign to counter the growing criticisms from the Hundred Flowers Campaign. Legal reforms and institutional development suffered a serious setback with the launching of the Anti-Rightist campaign and it worsened with the inauguration of the Cultural Revolution. At the start of the Cultural Revolution, Mao called for *kung-chien-fa*—a complete smash of public security, procuratorate, and judicial organs.⁹⁸ In addition, Mao also called on the nation to "depend on the rule of man, not the rule of law."⁹⁹ Legal institutions such as the Ministry of Justice and the Procuratorate were abolished, and the courts functioned sparingly. The CCP increasingly relied on revolutionary committees and the military to conduct mass trials, public judgment meetings, and struggle sessions.¹⁰⁰ Establishment of "joint-work groups" and the running of local study-groups allowed the Party to control all aspects of law-making and law-enforcement operations. Party cadres relied on their personal discretion to sentence individuals to reform by labor.¹⁰¹

In the West, it is generally understood that a legal system should be devised in such a manner that its primary task is to determine validity of individual claims (or rights) against other individuals and those between the state and the individual. Such a conception of law in China, especially during the peak of Mao's rule, was considered to be "rightist heresy"¹⁰² or "bourgeois law," which was inconsistent with the principles and goals of the socialist system.¹⁰³ Red Guards attacked the bourgeois system of "equal justice" and the idea of providing defense counsel or rights of formal legal representation to every individual. The Guards succeeded in launching vitriolic broadsides against counter-revolutionaries for opposing the supremacy of the Party over all matters of state policy. The Cultural Revolution was a period of unrestrained radicalism. Formal legal bureaucracy was completely destroyed, legal publications were suspended, and legal scholars and jurists were either forced underground or banished to labor camps for reeducation.¹⁰⁴

Four basic characteristics defined the Maoist legal structure. First, class background determined the guilt of individuals before the law. Second, law was treated as a tool of social engineering and mass mobilization. Third, formal legal institutional structure was thought to be wasteful, bureaucratic, and alienating. Fourth, legal work was thought to be ideologically inseparable from the political process. Mao's word overrode the written Constitution and other legal documents. His position within the communist empire and his word was similar to imperial Chinese emperors, wherein rulers were considered to be above the law and their word represented the will of the state. Despite various political upheavals, leadership changes, and ideological revolutions, one of the most remarkable features of Chinese civilization is its administrative continuity. An overarching and unimpeachable political authority always enforced public order.¹⁰⁵ Chairman Mao governed by relying on a mixture of "neo-legalism" and "neo-Confucianism."¹⁰⁶ Much like the earlier imperial dynasties, the Maoist legal apparatus functioned primarily as a penal tool of regulation. But, more importantly, under Mao's chairmanship, legal order assumed an extra-judicial disposition and a doctrinal character. Communist China under Mao reverted back to its imperial heritage in which the emperor ruled by fiat.

The Concept of Individual Rights in Revolutionary China

Socialist and Maoist thought mixed with historical Confucianism constitute significant influences in the design of domestic law in China. Communist China placed enormous emphasis on the idea of collective interests and stressed the role of collectivism in addressing the welfare needs of its citizens. The communist regime believed that individual rights and interests needed to be subordinated to the wishes of the party-state.¹⁰⁷ The CCP took it upon itself to promote proper modes of behavior not through the establishment of a legal system, but through relying on mass propaganda. Chinese nationals were expected to learn socialist morality and internalize values and norms propagated by the CCP and faithfully follow them.¹⁰⁸ When internalization failed, social pressure was exercised and when social pressure failed, enforcement was handled at the community level.¹⁰⁹ However, unfortunately the boundaries separating learning, internalization, exertion of social pressure, and communal

enforcement often collapsed onto each other. Formal separation of these socio-legal processes existed only in discourse. The excessive importance placed on collective interests reflected the influence of Confucian thought on the development of the Chinese legal system. Notions of law and order contained in communism were analogous to Confucianism because both privileged collective welfare over individual rights, and favored the state over the individual.¹¹⁰ More importantly, it was believed that collective welfare could only emerge if individual rights and freedoms are subordinated to the objectives of the party-state.

Every version of the constitution of the People's Republic contained a clause that points out that the exercise of rights by citizens of China "may not infringe upon the interests of the state, of society, and of the collective."¹¹¹ This article further stipulates that the PRC government may at any time suspend the practice of individual rights, if such rights are perceived to be detrimental to the interests of the state and realization of collective welfare.¹¹² Exercise of individual rights is permitted only as long as it does not threaten collective interests as identified by the party-state. According to Confucianism, exercise of rights must be governed by its essential goodness of purpose determined by personal morality. However, under the communist system, boundaries of right and wrong were loosely demarcated and the parameters of "right" and "wrong" were continually modified without any advance warning. The element of choice offered by Confucian ethocracy was completely amputated in the communist social order.

Various Chinese constitutions give absolute authority to the CCP because the party-state alone was thought to have the right to determine and define both collective and individual interests.¹¹³ Emphasis was laid on "class struggle" and rights were accorded only to the proletariat and other class allies; class opponents such as feudal landlords and bureaucratic capitalists were to be attacked and denied any rights because their actions were considered to be in opposition to collective welfare.¹¹⁴ Similar to the Confucian system, which emphasized collective interests over personal objectives, the communitarian objectives of the Party viewed collective goals to be of paramount importance. In fact, to have too much liberty or rights was considered to be harmful to the individual and society because it had the potential to produce social disharmony.¹¹⁵ But, the idea of collective interests promoted by Mao was much more rigid and narrow compared to Confucian social order.

Under Mao, the Party dominated every aspect of social and political life and it retained the power to grant and withdraw rights as it pleased.¹¹⁶ During the Anti-Rightist Campaign and Cultural Revolution, party elders exercised extraordinary and arbitrary power over ordinary Chinese through the coercive mechanisms of the state. In particular, the Communist Party systematically identified and punished those thought to be pursuing individual interests over the interests of the collective through re-education camps, hard labor, and intense sessions of self-criticism. The concept of "individual rights" was fundamentally incompatible with Mao's China. Unlike liberalism, which propounds that "individual rights" are fundamental and inalienable and that they are grounded in the innate moral worth of the individual, Chinese intellectuals refute the idea of natural rights and innate rights of the individual.¹¹⁷ Chinese discourse on individual rights does not concur with the idea that rights are individualistic, innate, and natural.¹¹⁸ In the Confucian ethocracy, an individual's worth is determined by his or her social role and contribution to the society, whereas according to Maoist orthodoxy, rights can be only conferred or granted by the state.¹¹⁹ Confucian social order, however, allowed more freedoms, mainly in the area of personal attire, accumulation of wealth and property, art and music, and in other areas of social life as long as the supremacy of the emperor was not challenged and taxes were regularly paid. During Mao's rule, every form of individuality and economic choice was subordinated to the prevailing state ideology. Every right, every action, and every thought flowed from the state; from 1949–1979 the Chinese state developed into a domineering institution enveloping all aspects of social, economic, and political life.

Communist China and International Law

Imperial China's complicated relationship with international law and PR China's doctrinal assessment of law as an instrument of suppression by the dominant classes led the People's Republic to assume an antagonistic position towards international law and international organizations. But Communist China's leaders were savvy enough to realize that they could not afford to completely dismiss international law or isolate themselves as the Qing mandarins once did. Mao eagerly sought PR China's formal international legal recognition by other nations.¹²⁰ Chiefly, CCP leadership grasped the utility and importance of depending on international law to address numerous outstanding territorial and border issues with its neighboring states. The official CCP position

towards international law was an amalgam of Marxism-Leninism-Maoism accompanied by resurgent nationalism, and strong articulation of state sovereignty, which reflected the prevailing political mood within China.¹²¹ The Chinese view of international law concurred with the Soviet model, which characterized international law as a special branch of law that expresses “the agreed will of a number of states,” which should seek to promote foreign policy and national objectives of the state.¹²²

At the level of day-to-day diplomatic action, China recognized the existence of international law and it relied on international law to conduct routine external relations such as exchange of foreign counsel, diplomatic missions, bilateral treaties, and consular activities. References to international law were included in translated legal texts; the People’s Republic condemned the actions of other states employing international law; it relied on international law to resolve territorial disputes with its neighbors and other states; and offered courses in international law in institutes of higher learning.¹²³ But the Chinese government was especially wary of customary international law and expressed strong reservations regarding the universality, generality, and applicability of international law to all situations; hence, international relations were almost exclusively conducted through treaty-based law.¹²⁴ International law was perceived as an instrument to settle differences among nation-states and provide a protocol for conducting mutual business.¹²⁵ Doctrinally speaking, however, international law presented a special challenge because China’s Soviet-trained foreign policy analysts and legal scholars had trouble accepting the fact that international law was universal and that the same set of laws governed relations among socialist and capitalist countries.¹²⁶ Chinese academics such as Lin Hsin, Ho Wu-Shuang, and Ma Chun suggested that international law should be separated into “bourgeois law” applicable only to capitalist countries and “socialist international law” applicable only to relations governing socialist states.¹²⁷ China’s legal thinkers argued that international law as practiced by the Western powers was bourgeois in character and that it was a tool of the capitalist, which had no place among socialist nations that followed the science of proletarian international law aimed at ameliorating the welfare of struggling masses.¹²⁸

Revolutionary China’s new leaders harbored deep skepticism about international law because of the historical experience with unequal treaties, colonialism, and apprehension that international law was being deployed as an imperialist tool to influence China’s socialist character.¹²⁹ Expansion and deepening of international law was characterized as a cynical attempt by Western powers to expand their class interests, acquire new territory, and oppress emerging nations.¹³⁰ Chinese scholars argued that relations among states should be determined on the basis of absolute sovereignty, true equality, and complete non-interference in internal affairs.¹³¹ In various international forums China’s diplomats proclaimed the importance of respecting the sanctity of national sovereignty and free will of all states to determine their political, legal, and economic systems without external interference.

Human rights regimes promoted by Western nations, especially by the United States, and its excessive emphasis on civil and political rights and individual liberty were perceived as a deliberate policy of targeted hostility towards China. During the peak of Chairman Mao’s rule, human rights vocabulary completely disappeared from public discourse in China.¹³² The Party dismissed international human rights “as a bourgeois slogan,” which lacked any relevance to socialist objectives.¹³³ Party elders rejected the universality of human rights norms. This rejectionist policy was in many ways similar to other post-colonial nations, which also gravitated towards socialism, communism, and state-centered developmentalism accompanied by strident nationalism, anti-colonial rhetoric, and denunciation of capitalism.

In Mao’s China, party and state meshed together as the central institution representing the collective interests and common will of the people; CCP ideologues believed that economic, political, and social development could be sustained only by the state, which was indistinguishable from the Communist Party. Individuals who privileged personal gains over collective welfare were chastised as counter-revolutionaries seeking to subvert communitarian objectives of the state. Subversion of communitarian goals was a punishable offense and the state declared that it had the right to “discipline” anyone seeking to challenge its pre-eminence. The collectivist ideals drawn from Marxist and Maoist teachings were easily reflected in China’s rejectionist and isolationist international posture and resonated through its anti-Western and anti-colonial pronouncements. People’s Republic of China became an ardent advocate for communist and socialist regimes in the developing world.

International human rights law, which seeks to regulate relations among individuals within the territorial jurisdiction of a state, and relations between individuals and the state, has been particularly problematic for China. Notably, the disproportionate emphasis of the Western powers on the International Covenant on Civil and Political Rights (ICCPR) was viewed as a political ploy to gradually dismantle the communal ideals of the Chinese state. The Chinese government also adopted a dualist position towards international law, in which municipal (domestic) law and international law are said to operate in mutually independent domains without any formal influence on each other. Endorsement of the dualist position on international law enabled Chinese diplomats to argue that international human rights did not have any *locus standi* or bearing on its internal laws of China because they functioned in two separate spheres of influence.

Key events that occurred in the middle of 1970s elicited increasing international scrutiny of China's human rights policies. The death of Mao Zedong in 1976, subsequent arrest of the "gang of four," and return of Deng Xiaoping to power signified a critical turning point in modern Chinese history.¹³⁴ Mao's death and the capture of the "gang of four" increased the flow of information emerging from China, which chronicled the excesses and gross human rights abuses committed during the Cultural Revolution.¹³⁵ Furthermore, rehabilitation of political prisoners who suffered during the Cultural Revolution generated renewed enthusiasm in restructuring the Chinese legal system. This culminated in the adoption of a new Constitution in 1978, which significantly modified the radical tone of the 1975 Constitution. A new criminal code was also promulgated in 1979.¹³⁶ Deng Xiaoping initiated a process of economic modernization, which encouraged private accumulation of wealth and individual property ownership. In addition, the state began to divest its holdings in certain industrial sectors.

During the early part of the 1970s, human rights emerged as a major global policy issue accompanied by democratization and economic liberalization. The United Nations made human rights a dominant theme with the creation of the Sub-Commission of Human Rights. Moreover, the United States under the Reagan Administration (1980-1988) began a campaign to promote freedom, democracy, and human rights in an effort to influence communist regimes in Eastern Europe and in the developing world. Earlier, the Carter Administration (1976-1980) had made human rights a central component of American foreign policy. In 1979, the United States Department of State began publishing its *Annual Report on Human Rights* and China featured prominently in many of these reports as a country with a poor human rights record. China's human rights practices also attracted the attention of non-governmental human rights organizations (NGOs) such as Amnesty International (AI), Human Rights Watch (HRW), and Human Rights In China (HRIC).¹³⁷ Simultaneously, Beijing also demonstrated a renewed interest in breaking out of its self-imposed isolation. It began by establishing diplomatic ties with the United States and many other countries, while joining different human rights bodies in the United Nations.

In the early 1980s, China started to join major human rights conventions, such as the Torture Convention that China ratified in 1988, less than a year before the Tiananmen Square massacre. During the decade of the 1980s, China signed and/or ratified seven different human rights treaties (see Table 1). This change in behavior towards the human rights regimes seemed to coincide with reformist economic policies introduced by Deng Xiaoping. In addition, these efforts were aimed at placating international criticism, while simultaneously deepening China's economic reform for which the country required international assistance. The reorganization of the economy, de-regulation of state ownership, and steady inflow of foreign direct investment produced a series of interactions that caused unintended consequences for the Chinese legal system and impacted the human rights discourse in China. Economic liberalization had an inevitable impact on the political structure because introduction of the free-market economic model, however restrained, led to greater emphasis on individual freedoms in economic decision-making rather than on collective welfare and selflessness, which were the long-standing ideological underpinnings of the Communist Party.¹³⁸

Economic liberalization, nevertheless, did not automatically translate into greater political openness or an increase in civil liberties for Chinese citizens. According to Article 51 of the 1978 and amended 1982 Constitutions, the Party still retained the ultimate authority to grant and rescind "rights" as it deemed appropriate.¹³⁹ Both Mao and Deng were equally fearful of any organized dissent, newspaper articles critical of CCP rule, and activities that contradicted or questioned the usefulness of the public policies.¹⁴⁰ Formal expressions of dissent particularly in public spaces were viewed with the same apprehension and alarm that the Democracy Wall movement (1978-1980) encountered. The period from 1978 to 1982 was an intellectually vibrant period because the Democracy Wall movement spawned a serious debate on China's political future. The Deng government was intolerant of criticisms and in many ways encouraged the democracy movement to spread only because it allowed Deng to use the protests to oust Mao loyalists and old guard conservatives,

consolidate his own power within the Party, and promote his vision for China's modernization. Deng referred to his reform policies as the "four modernizations," which involved the modernization of agriculture, industry, science and technology, and the military.¹⁴¹ However, when Wei Jingsheng, a Beijing electrician, wrote an article titled *What Do We Want: Democracy or a New Dictatorship* in which he criticized Deng Xiaoping pointedly, the Democracy Wall movement crossed a critical threshold.¹⁴² Democracy activism was permitted as long as it suited Deng's attempt to consolidate his political power, but when the movement turned against Deng, it became a threat to his policies and political survival.¹⁴³ Therefore, Vice-Premier Deng did not hesitate to crush the Democracy Wall movement and re-assert his political authority.

Table 1: Human Rights Conventions Signed and Ratified by China

	Signed	Ratified
1 Convention on Civil and Political Rights	Oct 05, 1998	No
2 Genocide Convention	Jul 20, 1949	Apr 18, 1983
3 Convention on the Status of Refugees	No	Sep 24, 1982
4 Convention on the Political Rights of Women	No	No
5 Amended Slavery Convention	No	No
6 Convention on the Status of Stateless Persons	No	Sep 24, 1982
7 Supplement to the Slavery Convention	No	No
8 Convention on Consent to Marriage & Minimum Age	No	No
9 Optional Protocol on Civil and Political Rights	No	No
10 Convention on Economic and Social Rights	Oct 27, 1997	Mar 27, 2001
11 Convention on Racial Discrimination	No	Dec 29, 1981
12 Convention on Torture	Dec 12, 1986	Oct 04, 1988
13 Convention on Non-Applicability of Statutory Limitations	No	No
14 Convention on the Elimination of Apartheid	No	Apr 18, 1983
15 Convention on Elimination of Discrimination Against Women	Jul 17, 1980	Nov 04, 1980
16 Second Optional Protocol on Abolition of Death Penalty	No	No
17 Convention on the Rights of the Child	Aug 29, 1990	Mar 02, 1992
18 Convention on the Sale of Children	Sep 06, 2000	No
19 Convention on Rights of the Child in Armed Conflict	No	No
20 Rome Statute International Criminal Court (ICC)	No	No

Source: Data gathered from United Nations Treaty Index and UN High Commissioner for Human Rights (Data accurate as of 2005)

Viewed through the Confucian moral prism, the democracy activists had crossed the moral barrier that divided good from bad, which opened them to sanctions from the state. Deng believed in four basic principles: (1) economic development and political stability should be the primary goal of the nation; (2) only the Party has the ability and capacity to lead China to success; (3) the authority and legitimacy of the Party are supreme; (4) and Western-style democracy is unsuitable and unworkable in the Chinese political context.¹⁴⁴ Deng's

principles formed the basis of China's new reform policies, which placed paramount importance on economic welfare and subsistence rights over civil and political liberties. Achievement of economic welfare was considered to be the necessary first step towards the realization of political or individual rights. According to the *White Paper on Human Rights* published by the PRC government, "safeguarding and promotion of the people's rights to subsistence and development" is the principal human rights concern.¹⁴⁵ Hence, economic welfare takes precedence over all other rights. Democracy was conceptualized as socialist democracy that emphasized the collective aspirations of the people and the nation. Individual rights, political freedom, and democracy were portrayed as bourgeois rights that are inconsistent with the aspirations of the Chinese people.¹⁴⁶

The Democracy Wall movement, unlike the other democracy movements such as the short-lived and spontaneous effort to commemorate and mourn the death of Zhou Enlai in 1975, was one of the few efforts that continued for a relatively long period of time largely because it suited the political goals of the Party. However, other freedom and democracy movements that emerged after 1983, including the massive Tiananmen Square gathering in 1989, were ruthlessly put down because all these movements constituted direct challenges to the supremacy of the Communist Party of China and the set of elite leaders who control the party. Today, however, Chinese citizens enjoy unparalleled personal freedoms both in economic and social arenas, but civil and political liberties and judicial rights still remain seriously circumscribed.

Human Rights and Rule-of-Law: International Pressure Linkages

After Deng's assumption of power in 1978, China's record on human rights was subordinated to Cold War politics.¹⁴⁷ China's support in the United Nations was crucial to counter-balance the Soviet Union and its satellite states. Besides, China was engaging in active human rights diplomacy by playing off the United States and the Soviet Union against each other. China entered a series of human rights treaties in the 1980s, and it also participated in the United Nations multilateral human rights monitoring efforts by joining the UN Human Rights Commission (see Table 1). In 1984, China nominated a representative to serve in the panel of experts of the Sub-Commission of Human Rights on the Prevention of Racial Discrimination and Protection of Minorities.¹⁴⁸ Moreover, China supported the UN resolution for sending a special human rights monitoring group to Afghanistan. Despite protests from the former Soviet Union, it also endorsed the move to investigate human rights violations in Chile.¹⁴⁹ China also shifted its strategy from absents to abstaining when human rights issues came up for a vote in the UN General Assembly.¹⁵⁰

Since China's entry into the United Nations Human Rights Commission in the early 1980s, Chinese diplomats have diligently attended almost every session of the Human Rights Commission and the Sub-Commission.¹⁵¹ During these meetings, China's human rights concerns largely centered on issues such as the right to self-determination, elimination of racial discrimination, and discrimination against women.¹⁵² The primary task of Chinese diplomats attending these sessions was to represent the official Chinese position on human rights, which was often at odds with the broader human rights discourse because it focused intently on the issue of individual rights and on guaranteeing physical integrity of the human being.¹⁵³ Although China seemed to recognize the international legitimacy of UN human rights organizations, it expressed considerable reservation over what it characterized as the politicization of human rights, expressed concerns about erosion of state sovereignty, and chided Western powers for their excessive focus on civil and political rights and their attempts to push these rights upon developing nations.¹⁵⁴

Chinese diplomats have registered strong objections over the interference of international human rights organizations into the internal matters of sovereign states. Specifically, the Chinese government has consistently objected to the United Nations' policy of incorporating NGO reports into formal UN reports produced by the Human Rights Commission. It has expressed deep concerns regarding how human rights NGOs operating through a network of informants inside China were able to gather information about human rights practices, embarrassing the Chinese government in international forums. Mainly, Chinese diplomats are particularly distressed that the UN has accepted the veracity and authenticity of these reports in effect chastising China's human rights policies in formal UN publications and in other public forums by relying on data gathered through unofficial sources.

Both at the domestic and international levels, China's human rights policies have reflected Deng's philosophy of maintaining the dominance of the Communist Party. Punishing dissidents and criminals without

any regard for their human rights is considered to be within the prerogative of the Chinese state. At the domestic level, a citizen-led democracy reform movement was allowed to flower for a few years as this policy suited the purposes of the ruling elite. In fact, the domestic human rights and democracy movement was manipulated to discredit Mao loyalists and isolate them from centers of power. At the international level, as long as attention was primarily focused on the former Soviet Union during the Cold War, criticism of China's human rights policies did not attract much international attention. However, Chinese human rights practices during the post-Mao era have received much international scrutiny as the government began the process of engaging with select multilateral human rights treaties (see Table 1), accompanied by an ambitious task of overhauling its domestic legal system. It is difficult to identify explicitly the correlative impact of China's entry into international human rights treaties and trace the corresponding impact on the domestic legal system. However, undoubtedly the Party leadership has taken significant steps to modify the domestic legal system since 1978 without derogating the autonomy or the supremacy of the Communist Party.

Saving Face and Cultural Sensitivity to Foreign Criticism

China invariably reacts very harshly with counter-criticism if its human rights practices are attacked in international forums.¹⁵⁵ Addressing an international conference on human rights in 1993, the former Vice-Foreign Minister, Liu Huaqiu rejected foreign criticism by arguing that to “wantonly accuse another country of abuse of human rights and impose the human rights criteria of one's own...is tantamount to an infringement upon the sovereignty” of the Chinese nation.¹⁵⁶ Minister Huaqiu, further added that interference in internal matters “could result in political instability and unrest” in China—a concern repeatedly asserted by all Chinese officials. Similarly, former Chinese President Jiang Zemin issued numerous public statements expressing his strong resentment of foreign interference in internal matters in the name of human rights.¹⁵⁷ Although all of the post-Mao leaders have unquestionably increased their engagement with human rights regimes, they have consistently held that China's domestic politics is beyond the purview of other states or international organizations. Imposition of draconian legal sanctions is regarded entirely as a domestic matter, and individuals held in prisons are given no rights because the government argues that prisoners abrogate such rights when they engage in criminal acts; rights are only accorded to law-abiding citizens. Human rights in the Chinese context refer to collective interests aimed at improving the communal welfare. Since the strike-hard anti-crime campaigns target drug peddlers, looters, prostitutes, pimps, corrupt bureaucrats, and counter-revolutionaries, the state, after all, is protecting the rights and interests of the collective. Officials in the Bureau of Public Security contend that China has a serious crime problem, especially in major cities, such as Beijing, Shanghai, and other major cities clustered along the South China Coast. Therefore, Public Security officials contend that it is necessary to rely on deterrent counter-strikes and demonstrate the state is able to maintain law, order, and stability.¹⁵⁸ Although this logic seems to be consistent with Chinese views on law and rights, it is distinctly different from the generally accepted interpretation of universal human rights promoted by the United Nations.

This stark difference in the interpretation of international human rights norms has produced the so-called universalist versus cultural relativist debate.¹⁵⁹ The Chinese position on human rights falls under the relativist category. According to this argument, each country's human rights norms are determined by its unique historical and cultural experiences, and by the constraints placed on its institutional structure. In other words, the Chinese government explicitly denies the existence of any “universal human rights or legal norms” that are applicable to all countries in a homogeneous manner. Chinese authorities dismiss the idea of universal human rights “as an imperialist manifestation of a hypocritical West.”¹⁶⁰ The Chinese government believes that its domestic activities are beyond the influence of external authorities, and that China is within its sovereign right to define “rights” and “wrongs” according to internally-generated rules, and then impose sanctions that it considers to be appropriate and justified within the domestic context. Rejection of international human rights norms is primarily driven by a combination of powerful historical and contemporary forces; namely, historical humiliations suffered by the Qing dynasty during the period of unequal treaties, and civil wars during the post-Qing era instigated by Western colonists, coupled with anti-internationalist Marxist ideology and resurgent nationalism energized by the Communist Party.

During the rule of Deng Xiaoping and Jiang Zemin, human rights conditions in China improved moderately compared to earlier periods; millions of political prisoners from the Cultural Revolution were rehabilitated, the class-system that privileged the proletariat was abolished, and Chinese citizens began to enjoy broad economic

and personal freedoms.¹⁶¹ However, in the post-Mao era, efforts to create a functioning and independent legal system has not fully succeeded because of the concern among CCP officials that law might be used by “autonomous entities” to protect the interests of vested groups opposed to the Party.¹⁶² Hence, China’s criminal laws have been purposefully designed to be vague, internally inconsistent, and contradictory.¹⁶³ The courts and the legal system in China are regarded as tools to reaffirm the authority of the state; they are not regarded as institutions to protect citizens from the tyranny of the state or mediate relations among citizens.¹⁶⁴ There is great reluctance to introduce true reform in the criminal legal system because of the fear that it will effectively cede control over critical sectors of the government, which might conceivably lead to chaos (*luan*) and displace the Communist Party as the central political force and organizing authority, impairing the economic reform process. The fear of chaos (*luan*) or turmoil is prominent among CCP leadership. During discussions among party leaders—Li Peng, Deng Xiaoping, Yang Shangkun, Li Xiannian, Peng Zhen, and Bo Yibo—to determine a course of action to deal with the June 4th Beijing Democracy Movement in 1989, Deng repeatedly invoked the words “chaos and turmoil,” and forcibly argued that stability should be achieved at any cost.

Deng’s concerns of “chaos and turmoil” were also subsequently expressed by Jiang Zemin and Hu Jintao, illustrating that the issue of political instability is of such sustained importance to the party leadership that they are willing to do anything to quell any challenges perceived or real to the paramount position of the Communist Party. Former Premier Li Peng and President Jiang Zemin justified the imposition of martial law as the Tiananmen protests grew in size and strength because they were concerned that instability would be transmitted to other areas.¹⁶⁵ They echoed Deng’s belief that resolutions condemning China or the imposition of international sanctions are “no big deal for us.”¹⁶⁶ The Chinese Politburo has always vociferously asserted that China should either ignore the threat of international sanctions or fight back, but never allow other countries to interfere in its internal political matters. China’s fourth generation leaders, led by president Hu Jintao, have continued the policy of maintaining the supremacy of the Communist Party while managing citizen demands, suppressing dissent, and controlling political activity, but this policy has not had meaningful impact on China’s human rights practices as the following sections will demonstrate.

PART SIX

Political Order and Human Rights in Post-Revolutionary China

The June 4th Tiananmen Square protests were a product of limited political and partial economic reforms initiated by Deng. These reforms provided some political space for open intellectual debate on the issue of democracy and freedom within China in the 1980s, as long as the discussions did not explicitly criticize the Party, its policies, or its leaders. Simultaneously, the economic reforms, which were implemented in an uneven fashion, led to widespread corruption, accentuated the differences between rich and poor, and increased resentment and discontentment among large groups of people. These popular frustrations manifested themselves in the form of small student protests beginning in April 1989, which increased in size with every passing day, before the movement was decisively crushed by the first week of June 1989. When the reform process threatened to overturn the legitimacy and power of the Communist Party, Vice-Premier Deng did not hesitate to extinguish the democracy movement. Overthrow of the Communist Party was not the goal of the June 4th democracy protesters; the objective of the various student groups was aimed at pushing the government to extend the benefits of economic reform to all sections of the population and seek greater citizen input in the public policy-making process.¹⁶⁷ However, ideological contradictions within the higher echelons of the Party over the direction and limits of reform, and the unwillingness to fully reform all sectors of the economic and political system generated social forces that choked the reform process, which eventually culminated in the June 4th movement.

In the post-Mao reform period, Vice-Premier Deng promoted his “Four Cardinal Principles.” These principles called for the continuation of the socialist road and re-emphasized the importance of maintaining the dictatorship of the proletariat over the bourgeois, continuing the doctrinal commitment to Marxism-Leninism-Maoism, and upholding faith in the paramount leadership of the Communist Party. These “Four Cardinal Principles” were considered to be the cornerstone of China’s post-Mao reform policy, but they seemed fundamentally contradictory. Neither Deng nor his followers ever really fully explicated or sought to resolve these contradictions. Deng’s slogan “to get rich is glorious” seemed inconsistent with some of the cardinal principles that he had outlined earlier.¹⁶⁸

Economic ideas such as reducing the share of the public sector in industrial activities, dismantling collective agricultural communes, and supporting private accumulation of property ran counter to the principle of maintaining the socialist path, continuing the dictatorship of the masses over the elite, and sustaining the commitment to Maoism. Once the reform process was underway, the value and importance of Maoism markedly declined, except among hard-core loyalists. Petty bourgeois, entrepreneurs, and landlords, who were completely wiped out during the Mao era, rapidly reappeared.¹⁶⁹ The slogan of proletarian dictatorship over the bourgeois quickly disappeared from official policy discourse because every proletarian wanted to become a capitalist.¹⁷⁰ Lastly, the idea of free-market economy in which forces of supply and demand determined commodity prices seemed inconsistent with the principle of following the socialist road as promulgated by Deng. Development with “socialist or Chinese characteristics” did not translate very effectively into practice, except that it hampered the pace of economic reforms, and inspired the Tiananmen democracy protests. The hard-line Communist Party elites hampered the economic reform process because of their strong motivation to maintain control and dominance over all areas of social, economic, and political life. Internal political debate within the party during Deng’s rule centered on controlling the pace of economic reform and the degree to which the party needs to exercise control over the reform process. Two factions sought control of the reform movement during Deng’s rule—the Deng loyalists and the Chen Yun Group. The Deng faction favored broad-based and expansive economic reforms, while the Chen Yun group called for a more conservative pace of reform, tighter management and control of the reform process by the party, and continued commitment to socialist thought.¹⁷¹ Socialist ideals did not translate into any meaningful policy solutions, but it did influence the pace and scope of the reforms.

After the 1989 Tiananmen Square massacre, Deng’s power significantly weakened. Some members of the Politburo and the Standing Committee, the two leading political organs, believed that reforms needed to be

curtailed and that the state should maintain greater control over the reform process. The Chinese leadership strongly believed in the *luan* scenario, especially after witnessing the rapid disintegration of the Soviet Union in the wake of radical political and economic reforms launched by Mikhail Gorbachev. The breakup of the Soviet Union convinced Party elders that if the reforms were not properly managed, China would disintegrate. Hence, disproportionate importance was placed on maintaining political stability while relaxing economic controls. Deng Xiaoping favored strong punishments for the June 4th demonstrators. Above all, the Vice-Premier believed that punishments should specifically target leadership elements within the June 4th movement. In addition, Deng argued that post-Tiananmen laws should be structured in a very careful manner, especially laws governing “assembly, association, marches, demonstrations, journalism, and publishing.”¹⁷² He believed that such strong measures were necessary to make both external and internal actors understand that the Chinese government was “tightening controls for the sake of stability,” and for the “sake of reform and opening and modern construction.”¹⁷³

Deng personally selected the former Mayor of Shanghai, Jiang Zemin, to the Chairmanship of the Chinese Communist Party to continue the reform process and ensure stability during the political transition. Jiang Zemin replaced Zhao Zhiyang as the Party Secretary-General in 1989 during the aftermath of the Tiananmen Square incident. Zhao Zhiyang was purged from power and arrested for trying to introduce political reforms and for sympathizing with student leaders of the democracy movement.¹⁷⁴ Jiang Zemin was selected because of his ability to manage a market-economy as he had done as the Mayor of Shanghai, his mastery over elite politics, and for his ability to maintain political stability and social order. In the Chinese context, stability and social order meant that CCP was not going to permit any political activity that challenges the party or its leadership. The capability to maintain stability and order was one of the paramount concerns of the Chinese leadership in the wake of the Tiananmen Square riots. Hence, under Jiang Zemin’s rule, China continued to pursue economic reform and liberalization, while the party began to tighten its control over critical sectors of the state, such as media and political institutions. Jiang Zemin single-handedly launched the effort to identify and prosecute the Tiananmen student leaders and subsequently began the bloody and brutal crackdown on the Falun Gong spiritual movement.

Similar to the Mao regime, the post-Mao leaders of China did not tolerate any form of organized political dissent or criticisms of its policies. The party continues to suppress all direct opposition to its supremacy, but it has co-opted vital sectors of the society and improved its strategic alliance with the entrepreneurial class.¹⁷⁵ Since Deng assumed power, the Party has transformed itself from a revolutionary party to a ruling party, while the Chinese state has transitioned from a totalitarian communist state into an authoritarian-developmental state, in which the primary objective is to enable economic prosperity, but also maintain political domination. Importantly, during this transition, the CCP shed its socialist ideology and allegiance to Maoism. All of China’s post-Mao leaders have made references to socialist ideology and incorporated socialist principles in their formal political discourse and public rhetoric, but in practice, socialist ideology has had minimal influence on policy matters, especially on economic policy. During Jiang Zemin’s rule, socialist ideals started to disappear from formal political announcements and the economic reforms that began in 1978 produced unparalleled economic freedoms for the Chinese citizens and engendered one of the greatest economic revivals, catapulting China into a major economic power.¹⁷⁶ Jiang Zemin’s formal theory of “Three Represents” places more emphasis on the “advancement of productive forces.”¹⁷⁷ Presently, under Hu Jintao, China has transformed itself into a technocratic state and has shed its overt ideological commitments. The country is fully focused on economic growth, while the party tightly controls the degree of political openness.

Reforms and Social Stability—Strike-Hard Campaigns and the Death Penalty

After the Tiananmen protests were subdued, the coercive apparatus of the state became overt and strong; to maintain stability, prevent chaos, and continue with economic reforms, the Chinese government introduced a series of law enforcement tools, and defined a wide-range of political and social activities as a national security threat. The party-state relied on a variety of repressive measures such as detention without charge or trial, supervised residence, shelter and investigation, post-arrest detention, denial of access to lawyers, torture and physical duress to extract confessions, presumption of guilt on arrest, witness intimidation, reeducation through labor, and imposition of the death penalty to suppress political dissent and control crime.¹⁷⁸

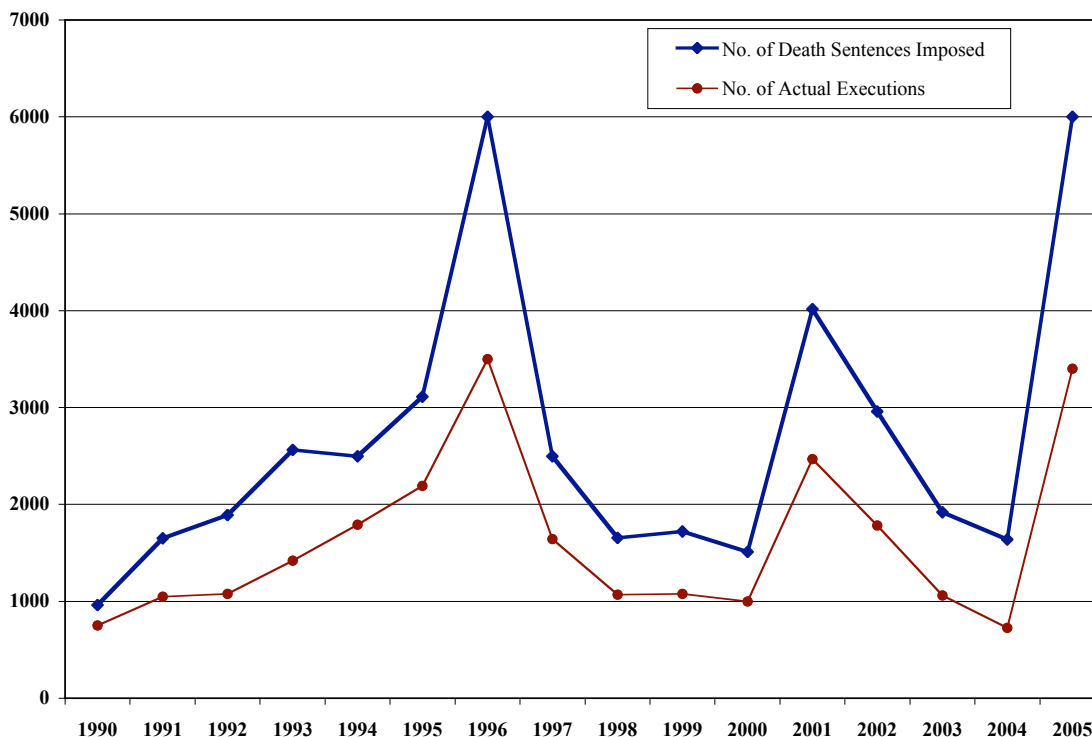
These coercive instruments are deployed against a broad range of activities such as public protests; printing pamphlets; organizing labor groups; participating in demonstrations and rallies; seeking membership in unregistered religious groups; and leading, aiding, supporting, and participating in separatist movements (largely applied to the autonomous regions of Tibet and Xinjiang). Activities aimed at disturbing peace and stability, publishing and distributing seditious or subversive materials, maintaining contact with hostile foreign elements, spying, and revealing state secrets are identified as crimes to curtail a range of civil and political liberties that might potentially jeopardize the stability of the state. Those thought to engage in these activities are branded as “counter-revolutionaries,” or “enemies of the state” for “endangering national security,” and they are detained indefinitely and banished to labor camps. In addition to these crimes, harsh penalties are also imposed for general social crimes, such as corruption, robbery, rape, drug abuse and trafficking, prostitution, and other petty crimes.

Interestingly enough, the clamp down on the fledgling democracy movement in the early 1980s coincided with the start of anti-crime (*yanda*) campaigns launched in the mid-80s, and it was periodically re-deployed in 1990, 1996, and 2001.¹⁷⁹ The strike-hard campaigns and public sentencing rallies (*gonkai xuanpan dahui*) became a popular legal tool and political tactic to combat unprecedented increase in crime and corruption produced by economic reform. The *yanda* crime-control campaign relied on “mass arrests, swift and harsh sentencing, mass rallies, and extensive propaganda work.”¹⁸⁰ One of the signature features of the strike-hard campaign was the widespread and indiscriminate use of the death penalty. It is estimated that during these strike-hard campaigns, the death penalty led to the deaths of “tens of thousands of people,” and the list of offenses punishable by death increased to sixty-eight categories.¹⁸¹ Although Articles 61, 48, 236, and 239 of the Chinese Criminal Law specifically limit the application of capital punishment to what is termed as “especially aggravated cases,” or “serious circumstances,” there is widespread evidence to indicate that the punishment of death is liberally applied to violent and non-violent economic crimes.¹⁸²

People's Republic of China is one of the few countries in the world with a high death penalty/imprisonment ratio; more prisoners are executed compared to the size of the total incarcerated population.¹⁸³ China has consistently topped the list of countries with the highest number of executions, but estimating death penalty imposition and actual execution rates is a wild guessing game because official statistics are state secrets.¹⁸⁴ Estimates of average per annum execution figures range from a high of 15,000 to a low of 10,000 per year.¹⁸⁵ An internal report prepared by the office of the Secretary of the Central Politics and Law Committee, Luo Gan, who is one of the nine members of the Chinese Politburo (PBSC), estimates that 60,000 people were executed between 1998 and 2001.¹⁸⁶ According to Chief Justice Xiao Yang, the President of Supreme People's Court, a total of 767,951 criminals were convicted by all of China's courts in 2004, of which “19.04 percent were sentenced to more than five years imprisonment, life imprisonment, and death penalty.”¹⁸⁷ In other words, 146,218 individuals received a sentence of 5 years to life or the death penalty. It is not exactly clear as to what percent of the 146,218 received a death sentence. However, even a conservative estimate of 10 percent means that at least 14,621 individuals might have been sentenced to death. This number is considerably higher compared to one of the most commonly used numbers made available by Amnesty International (AI), which is based on estimates generated through eyewitness accounts, other observations of publicized death sentences, gathering of news reports from provincial dailies, and informants within the Chinese criminal justice system.

Amnesty International estimates are rather conservative and flawed at best, but are nevertheless the most comprehensive numbers available so far. For instance “group executions” are counted as a “single execution,” which vastly underestimates the total number of executions.¹⁸⁸ However, even these conservative estimates reveal the staggering executions that take place every year in China. If one were to base calculations on the bold estimates that put execution rates from 10,000 to 15,000 per annum, then over a 16-year period from 1990 to 2005 one can extrapolate that anywhere between 160,000 to 240,000 individuals were executed. According to some AI estimates, from 1997-2001 at least 15,000 executions were carried out.¹⁸⁹

Figure 1: Number of Death Sentences Imposed and Actual Executions Carried Out between 1990-2005 in the People's Republic of China



Source: Data collected from Amnesty International Annual Reports, China (1990-2005)

Calculations based on estimates gathered from the Annual AI Human Rights Reports put the number of death sentences imposed at 2,662 and the average execution rate at 1,625 per year (see Figure 1). By this count, 42,589 death sentences were imposed and 26,002 executions were carried out from 1990 to 2005. This number is significantly lower and demonstrates the challenge of accurately assessing the number of death penalty cases. Irrespective of the difficulty of gathering accurate data, the enormity of the death penalty problem is revealed even by the conservative estimates that put the average number of executions at about 1,625 per annum. Figure 1 also suggests that the spikes in the chart for the years 1996, 2001, and 2005 are strongly associated with the launch of the strike-hard anti-crime campaigns, which further suggests a direct correlation between the launch of anti-crime campaigns and liberal imposition of capital punishment.

Mostly, the death penalty is deployed as a coercive device; in particular, it serves as a deterrent to demonstrate the effectiveness of state power in controlling growing crime and corruption, which ironically developed as a result of new spaces created by unfettered economic growth and expanding inequality.¹⁹⁰ It is employed as a propaganda device to intimidate citizens and carry out education campaigns to establish the preponderant power of the state.¹⁹¹ Undoubtedly, imposition of the death penalty is also driven by populism and strong public attitudes towards crime, even petty crimes and other utilitarian considerations.¹⁹² Local media frequently report that the masses often demand a tough response to crime. According to Mao Shulong, a Professor of Public Administration in Beijing's People University, "when the Chinese see a thief, they want him beaten to death."¹⁹³ There is widespread coverage of death penalty sentences in the local media to demonstrate that the state is punishing wrongdoers and simultaneously asserting control over society.

Death sentences are carried out very swiftly; often executions are conducted in a stadium or in other public places.¹⁹⁴ The two most popular methods of execution are death by shooting and death by lethal injection. In the case of death by shooting, prisoners are forced to kneel down and shot in the back of the head or neck. However, in instances when body parts of the prisoners are harvested appropriate adjustments are made to prevent injury to vital organs.¹⁹⁵ If a prisoner's eyes are being harvested, then the point of execution is either the neck or the heart. Although harvesting of organs is not specifically forbidden under Chinese law, it is not subject to any regulations and does not conform to international standards laid out by the World Health Organization.¹⁹⁶ In the last few years, in order to increase efficiency and reduce the cost of executions, and also make them more humane, prison authorities have shifted to lethal injection as the primary form of execution, which includes the use of mobile execution vans.¹⁹⁷ In a windowless van, the prisoner is strapped down and injected with a lethal drug. The execution can be monitored and recorded through a television set located next to the driver's seat.

One of the most problematic aspects of Chinese death penalty practice is the arbitrary, indiscriminate and gruesome manner in which the death penalty is exercised. Families receive notice only a few days before the execution, which gives them very little time to arrange for defense or plead with the authorities, because condemned prisoners are executed immediately on conviction.¹⁹⁸ Oftentimes bodies of the executed prisoners are not returned to the families and executions are performed in main thoroughfares or in public grounds, ostensibly to achieve the necessary deterrent effect. Following sentencing, prisoners are routinely paraded through the streets on their way to the execution grounds. Placards detailing information regarding their crimes, including personal information such as names and place of birth of the shackled prisoners, are placed around their necks.¹⁹⁹ In addition, photographers and TV crews are invited to take pictures and widely publicize the sentencing rallies. Sentencing and execution rallies serve multiple objectives; they demonstrate the effectiveness of the provincial governments in striking hard at crime, humiliate and shame the condemned, and serve as a warning to the local communities.

Liberal application of the death penalty without proper judicial safeguards principally results due to the lack of transparency, consistency, and independence of the Chinese judicial and penal system. It is not entirely clear as to which crimes warrant the imposition of the death penalty and whether persons charged receive proper legal representation and right to appeal. According to Article 49 of the Criminal Procedure Law (CPL), the death penalty is not applicable to crimes committed by perpetrators under the age of 18 and women who are pregnant at the time of trial.²⁰⁰ Otherwise, there are no sentencing guidelines or uniform national standards governing the scope of death penalty imposition. As Professor Liu Zuoxiang of the Chinese Academy of Social Sciences points out, "due to varied standards, people who commit similar crimes are put to death in some provinces, but kept alive in others."²⁰¹ Hence, capital punishment is imposed on a wide number of crimes such as purse-snatchers in Guangzhou, embezzlement, corruption, various drug related offenses, and high crimes such as rape and murder.²⁰² Whether a crime warrants the sanction of death entirely depends on the discretion of the provincial courts.

According to official statistics released by the Supreme People's Court, all of the Chinese courts were able to secure convictions in 99.1 percent of the criminal cases from 1998 to 2002.²⁰³ Chinese criminal laws do not contain provisions for presumption of guilt or innocence. The guiding legal principles suggest that "all facts" must be taken into consideration while arriving at a decision.²⁰⁴ However, since convictions are secured in nearly all the cases that come up for trial, there is a natural tendency towards presumption of guilt that automatically predisposes the prisoner to condemnation; all the presiding judge has to do is to impose a sentence reinforcing the procuracy's findings.²⁰⁵ Public trials are held only when the court is convinced of the guilt of the accused; if the guilt of the accused cannot be established then the trial is adjourned for further investigations or the trial is closed to the public.²⁰⁶ Even if the trials are public, family and the counsel of the accused are denied entry to such public trials and in many instances not even notified.²⁰⁷ The whole trial process is strongly slanted in favor of the prosecution and it is designed to generate a guilty verdict. Courts rarely act as independent arbiters of facts and laws; instead they merely function as handmaidens of the police and procuratorate in affirming the pre-determined guilty verdict.

In the Chinese legal system, an adjudication committee that operates independently of the trial court determines the verdict in criminal cases. This makes the adjudication committee highly vulnerable to political pressure.²⁰⁸ The adjudication committee does not rely on trial proceedings or on the verdict of a jury of peers,

but it arrives at decisions entirely on the basis of case files without hearing from the defendant or from the defense lawyers. As a consequence, final indictments reflect the original case as presented by government prosecutors with very little input from defense lawyers or from the defendant. Moreover, defense lawyers are not provided access to case files; they are not allowed to confront prosecution witnesses during court proceedings, and they are barred from challenging the verdict of the adjudication committee.²⁰⁹ There is also growing evidence that defense lawyers are not allowed to function effectively; they are threatened and dissuaded from defending their clients or they are discouraged from defending the accused and pursuing the case earnestly. Correspondingly, defense witnesses are persuaded from testifying against the prosecution, and defendants are allowed to consult an attorney only seven days before the start of a trial, which effectively prevents a successful defense because of insufficient time to make case preparations.²¹⁰ Three major provisions in the Chinese Criminal Law—*Article 306 of the Criminal Law*, *Article 38 of the Criminal Procedure Law*, and *Article 45 of Lawyers Law*—permit state criminal prosecutors to arrest lawyers representing individual clients on grounds of “perjury,” “fabricating evidence,” providing “false testimony” and “forcing or inciting a witness to change testimony.”²¹¹ These provisions are used to target Chinese lawyers and transform them into defendants instead of legal representatives and limit their capacity to function effectively and independently. According to authoritative estimates, more than 100 lawyers have been prosecuted under Article 306 and 307 since 1997 for the crime of falsification of evidence.²¹² In particular, lawyers who pursue criminal cases or other cases that are deemed to be “sensitive” are specifically targeted for harassment and prosecution. Also the fee for retaining a lawyer is highly prohibitive. On average, hiring legal services could cost anywhere between 300 to 650 dollars, whereas the average income of workers in China is less than 2 dollars a day in the rural areas.²¹³ Lawyer intimidation and denial of legal counsel are clear violations of Lawyers Law, the revised Criminal Procedure Law of 1996, and China’s 1982 Constitution, which states that courts shall operate without interference from any political or administrative organization. Yet, political interference seems to be routine despite significant developments in the legal profession, law-making, and judicial reform.²¹⁴

Arrest, Arbitrary Detention, and Suppression of Dissent

Political opposition, dissidence, and open religious expression generate a repressive response from the Chinese state in the name of maintaining social stability. Every year many individuals are either arrested or indefinitely detained for counter-revolutionary activities, which are primarily political crimes.²¹⁵ These crimes could range anywhere from writing subversive poetry to unfurling a banner with a political message in a public square. Chinese nationals are also arrested for forming labor unions, complaining about corruption, filing too many petitions, and attempting to form political parties or post articles related to human rights and democracy on Internet bulletin boards. Overseas Chinese scholars and journalists are harassed and detained or even arrested when they visit China to collect research materials on sensitive political topics.²¹⁶ Censorship, although not absolute, is widespread and severely limits freedom of expression, press freedoms, and rights of religious expression, all of which are guaranteed by the Convention on Civil and Political Rights signed by China in 1998. The crackdown on civil and political liberties is largely driven by the Communist Party’s growing concern that increasing social instability caused by widening income inequalities and rural unrest will potentially threaten the legitimacy of the party and derail China’s peaceful emergence as a superpower.²¹⁷ The CCP’s apprehension over the possibility of large-scale social turmoil became decidedly urgent after the Tiananmen democracy movement.

Immediately following the protests, China’s Supreme People’s Court issued a memorandum that was circulated to all the local courts. This memorandum instructed the local courts to strictly follow the line established by Deng Xiaoping and promptly hand out “severe punishments” to those who are responsible for causing “social turmoil” or disturbing social stability.²¹⁸ Over the last two half decades, the paramount concern has been on managing the economic transition of China without allowing any overt challenges to the supremacy and legitimacy of the Communist Party. According to official statistics released by the Ministry of Public Security, the number of mass-public incidents witnessed a 50 percent jump from 43,500 in 2003 to 87,000 in 2005.²¹⁹ Today China encounters three kinds of challenges that could produce social turmoil: (i) ethnic separatism in Xinjiang and Tibet, (ii) expanding demands from Chinese citizens seeking freedom of religious expression and civil liberties, and (iii) social unrest caused by growing income inequalities both within urban areas and between urban and rural districts.

In an effort to confront these challenges, the Chinese state relies heavily on Reeducation through Labor (*laojiao*), Reform through Labor (*laogai*), and Custody and Repatriation (*shourong qiansong*).²²⁰ With the exception of Reform through Labor, which is a form of criminal punishment, Reeducation through Labor is a form of administrative sanction that circumvents the formal criminal legal process. Custody and Repatriation is a type of warehousing technique used to round up urban homeless, vagabonds, and undocumented migrant workers, and hold them in administrative detention until they can pay for their release or they are returned home.²²¹ One of the unfortunate outcomes of this detention scheme is that detainees have no rights to legal aid and access to justice is exceedingly limited. It is estimated that more than two million people are detained every year under Custody and Repatriation. Reeducation through Labor (RTL) has become a widely used tool of social control especially after the suspension of the dreaded practice of Custody and Investigation (*shourong shencha*, also known as Shelter and Investigation) because of sustained international pressure.²²²

Shelter and Investigation allowed police to hold individuals in custody for three months for suspicion of being involved in a crime.²²³ Although Article 14 of the 1979 Criminal Law forbids such detentions for more than ten days without charge, the police, nevertheless, depend excessively on this procedure because Shelter and Investigation can be utilized without any judicial review or other legal interference.²²⁴ Shelter and Investigation was abolished during the 1996 revision of Chinese Criminal Law, but Reeducation through Labor has filled the vacuum. RTL is largely directed against two segments of the population: (a) petty criminals, such as drug addicts, sex workers, brothel visitors, and other offenders who commit larceny, fraud, and assault, and (b) political troublemakers accused of counter revolutionary activities, endangering public security or disturbing public order. Generally, the majority of the second group consists of Falun Gong practitioners, and Tibetan and Uighur nationalists. According to the 1979 Criminal Procedure Law, the crime of counter-revolution is defined as an act that seeks to topple “the political power of the dictatorship of the proletariat and the socialist system.”²²⁵ In 1994 more than 2,800 people were detained for counter revolutionary offences and in 1995, according to the Ministry of Justice, 2,768 people were imprisoned for counter revolutionary activities.²²⁶

Tibetan and Uighur nationalists, pro-democracy activists, leaders of underground churches, and editors of independent press are the primary targets of detention under RTL. The PRC government has long equated all types of political dissent, open criticisms of the Communist Party, and autonomous religious activity with separatism and terrorism.²²⁷ Political dissenters are held incommunicado under charges such as “subversion,” “incitement to subversion,” “inciting splittism,” and “disturbing public order.”²²⁸ The crime of “endangering public security” is sufficiently vague so that it provides wide latitude for interpretation such that any words, actions, or associations both formal and informal, can be construed as being “disruptive of public order or critical of official policies.”²²⁹ Leaders of unregistered religious associations and other non-governmental organizations who “have contacts with or receive financial support from any organization, within or outside the country” can also be detained under RTL because they come under jurisdiction of China’s state security law, which makes it a crime for Chinese nationals to have associations with foreigners who endanger national security.²³⁰

Under RTL detainees can be held indefinitely without charge or trial, tortured and forced to give false confessions, and sent to forced labor camps (*laogai*) for reformation.²³¹ These detentions are not subject to judicial review, and those accused don’t have access to legal assistance and they are not allowed to defend themselves.²³² Official statistics indicate that 200,000 people were being held in various RTL camps in 1996 and that number has since increased to 310,000 by 2001.²³³

Torture, Ill-Treatment, and Coercive Extraction of Confessions

PR China was one of the first states to ratify the *International Convention on the Prevention of Torture and other Cruel, Inhuman, and Degrading Punishments* in 1988 (see Table 1) after it was opened for signature. However, since the end of the Tiananmen movement, instances of torture and reliance on physical force to extract confessions have become systematic. Use of torture and coercion has coincided with the recurrent implementation of the strike-hard anti-crime campaign. According to the United Nations Special Rapporteur on Torture, use of physical pain or torture (*kuxing*) to extract confessions or coerce statements from detainees is so widespread that authorities are not able to clearly distinguish between what is considered as torture and what is not.²³⁴ Under Article 1 of the Convention on Torture (CAT), “any act by which severe pain or suffering,

whether physical or mental, is intentionally inflicted on a person” for such purposes as obtaining information, seeking confession, and intimidating or coercing a third person “with the consent or acquiescence of a public official” is prohibited.²³⁵ However, instances of torture and ill-treatment of prisoners and arbitrariness in the administration of justice is systematic and rampant. Belatedly, Wang Zehnchuan, Deputy Procurator General of China, admitted that at least “30 wrong verdicts were handed down each year because torture had been used.”²³⁶ He also acknowledged that the use of torture to extract confessions was so pervasive that it undermined the effectiveness of the judicial system.²³⁷

The case of She Xianglin exemplifies the serious troubles confronting the Chinese legal system. Mr. Xianglin, a 39-year old man was charged with the murder of his wife, despite the fact that his wife’s body was never recovered, and was sentenced to a 15-year prison term. While serving his prison term Mr. Xianglin’s murdered wife suddenly re-appeared after an 11-year absence, which forced the central prison in the northern Hubei province to quietly release Mr. Xianglin, who in turn sued the state for 4.37 million *yuan* for his wrongful conviction.²³⁸ Xianglin’s arrest and conviction was based on confession extracted through torture.²³⁹ The case took an even murkier turn when Pan Yujun, the investigating police officer charged with arresting and wrongfully convicting Xianglin was found hanging by the neck at a graveyard in Hubei province a few months after Xianglin’s release; two other police officials involved in the case have since been promoted and moved to a different district.²⁴⁰ More than six months after his release and restoration of normal citizenship rights, Xianglin is still shadowed by local police officials and prevented from speaking to reporters.²⁴¹

In another case of gross miscarriage of justice, Nie Shubin, a 21-year old man, who also hails from Hubei province, was executed for rape-murder of a young woman in 1995. Ten years after Nie Shubin’s execution, another man, Wang Shujin, was arrested for an unrelated crime and confessed to the police for the rape-murder. Since then the Hubei police department has come under heavy scrutiny for overzealous prosecution and wrongfully executing Nie Shubin.²⁴² State parties to the Convention on Torture (CAT) are expected to prevent the occurrence of such events and implement appropriate legal measures to punish perpetrators of torture in the administration of justice. In May 2000 the Committee on Torture—a UN body, which examines compliance with the torture convention—recommended that China completely re-structure its criminal law to fully comply with the Torture Convention.²⁴³ Article 136 of the 1979 Criminal Procedure Law prohibits torture to “coerce a statement or extract confession” and Article 189 prohibits the use of “corporal punishment and abuse” of prisoners.²⁴⁴ Correspondingly, Article 247 of the revised Criminal Procedure Law also forbids “extortion of confession under torture by a judicial officer,” and “extraction of testimony by the use of force by a judicial officer.” Furthermore, Article 248 abjures “physical abuse of inmates as well as instigation of detainee-on-detainee violence by policeman or other officer of an institution of confinement like a prison, a detention or custody house.”²⁴⁵ The revised Criminal Law also includes several other provisions that seek to criminalize intentional negligence, injury or death while in custody, verbal abuse and insults, and physical intimidation.

Police personnel who violate these provisions can be punished with a minimum of fifteen days to six months of “criminal detention” or up to three years of imprisonment; plus, heavier punishment is reserved for severe cases of torture that cause disability to the prisoners.²⁴⁶ But punishments are rarely imposed on prison officials for using torture; usually they are threatened with lighter punishment of “criminal detention,” which also is seldom enforced. Lack of insufficient sanctions and enormous pressure on the judicial bodies to crack down on crime has enabled prison officials to rely on torture with impunity. Moreover, the scope of Article 189 of the Criminal Law, which seeks to punish official misconduct, is so narrowly defined that it is applicable only to “judicial personnel,” thereby exempting prison guards and policemen, and the law is only applicable under special circumstances, such as extreme cases of torture, abuse, and other forms of ill treatment. It is inapplicable in cases where handcuffs and leg-irons are routinely attached to prisoners because prison regulations allow such usage.

China’s criminal law contains built-in vagueness, various loopholes, and serious structural weakness that allow prison guards to use handcuffs and leg-irons in such a way that it inflicts severe pain on prisoners. Common forms of torture include regular beatings with fists or with a variety of instruments, use of electric batons or cattle-prods that cause severe electric shock, use of handcuffs and leg shackles to suspend prisoners in painful positions, incarceration in tiny and filthy cells, forcing prisoners to work under extremely inhospitable conditions, food and sleep deprivation, and denial of medical care.²⁴⁷ According to the United Nations Special Rapporteur on Human Rights, the use of various methods of torture include regular beatings, use of electric

shock batons, cigarette burns, hooding, drowning in raw sewage, forcing prisoners into uncomfortable positions such as “tiger bench,” “exhausting an eagle” “reversing an airplane,” sleep deprivation, starvation, and hard labor are routine and common throughout the Chinese detention system.²⁴⁸ Another practice that allows the prison guards to circumvent the implications of the Criminal Procedure Law is through the use of “cell bosses” or “prison trustees” to commit acts of torture and pain to extract confessions or inflict punishment on other prisoners and detainees.²⁴⁹ Cell bosses or prison trustees are prisoners favored by the prison authorities to supervise and terrorize other prisoners at their behest. They are employed to do the dirty work, which allow prison authorities to deny responsibility for “acts of torture,” and absolve themselves of any formal wrongdoing. Using cell bosses permits prison wardens to stay within the bounds of law, while enabling them to use coercion to extract confessions. This problem is compounded by the fact that procurators charged with the task of supervising law-enforcement activities do not act or are otherwise powerless to act, because procurators are also expected to work closely with the police to investigate and prosecute criminals.²⁵⁰

The three principal organs of the Chinese criminal justice system—the police (arrest and detention), the procuratorate (investigation), and the judiciary (law and sanctions)—are expected to operate independently of each other, but this independence rarely manifests in practice. It is highly unusual for the judiciary to question the investigative abilities of the procuratorate or challenge the guilty verdict prescribed by the police. Unfettered police powers are the primary explanatory variable for the miscarriage of justice and violation of human rights within China’s criminal justice system. Failure to implement legal protections guaranteed by the various laws make prisoners exceedingly vulnerable to police brutality and torture. Prisoners are routinely held incommunicado for months before they are granted trial or formally charged. Although access to legal counsel is allowed under Article 96 of the revised Criminal Procedure Law, it does not provide immediate or easy access to lawyers, doctors, or the family after detention.²⁵¹ While a prisoner is in custody he or she has to apply for permission to seek access to legal counsel, and such legal counsel is only available when the case moves from the procuratorate to the judicial branch for trial. However, if the case is concerned with “endangering state security,” “preservation of state secrets,” or “political sensitive cases,” the law is not clear on access to legal representation; lawyers are intimidated and bullied from representing such clients, and their roles in formal criminal trials have been seriously circumscribed.²⁵² Since prisoners are held captive by prison guards for months they become highly susceptible to torture and other coercive techniques. Lack of adequate legal protection and insufficiency of laws to criminally prosecute torturers allow security forces to use torture with impunity.²⁵³ Besides, the structure of an authoritarian country—which disallows any form of public scrutiny of its human rights practices or free discussion of the inadequacies of the legal system in the domestic press—shields the government and its policing agency from sustained public scrutiny. The police, procuratorate, and the judicial organs are not subject to any independent oversight; hence they are tremendously vulnerable to political influences and local protectionism, and become easily corruptible. In addition, the lack of sufficient procedural safeguards, routine official cover-up of incidents of torture, and the misuse of the penal system to suppress political dissent has emboldened security forces to act with impunity.

Torture has become routine and institutionalized in the Chinese penal system, which prevents the PRC government from complying with the provisions of the Torture Convention, despite various attempts to reform its criminal law. Some government officials have begun to openly acknowledge that the torture problem is “highly widespread,” “deeply entrenched,” and that this problem has been exacerbated by the ineptness and corruption of the local governments.²⁵⁴ Legal scholars have specifically pointed to the excessive concentration of investigative and detention powers in the hands of public security organs as one of the critical institutional weaknesses of the Chinese legal system.²⁵⁵ Lack of counter-balancing institutional safeguards to check the tendentious and overzealous behavior of the policing agencies has rendered the amended criminal laws largely moot. Additionally, local protectionism and clan politics have prevented the ability of the Beijing government to monitor the compliance of provincial authorities with the criminal laws and international human rights conventions. The People’s Republic has also refused to recognize the competence of the Committee Against Torture (CAT) to directly receive individual complaints from Chinese citizens under Article 22 of the Torture Convention on the grounds that it violates national sovereignty. The Chinese government has also exempted itself from the obligations under Article 20 and 30 of the Torture Convention, which behooves the state party in question to cooperate with the convention to investigate allegations of systematic torture.²⁵⁶

Repression and Control of Religious Activities

China signed the International Covenant on Civil and Political Rights (ICCPR) on October 1998 and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in March 2001 (see Table 1). The signing of the Civil and Political Rights treaty and the ratification of the Economic and Social Rights convention is a significant step forward. Nevertheless, various reports show that genuine change in human rights practices is yet to emerge; importantly in the areas of religious freedoms and civil liberties little improvement has occurred despite some positive developments in other areas of the criminal justice system. According to the provisions of Article 18 of the ICCPR, “everyone shall have the right to freedom of thought, conscience and religion,” which includes the freedom to “adopt a religion or belief” either individually or in a group and practice a “religion or belief in worship, observance, practice and teaching.”²⁵⁷ In addition, Article 18 of ICCPR requires participating states not to interfere or use coercion to impair the freedom of individuals in either choosing or practicing their religion.

Similarly, provisions of ICESCR also indicate that state parties are expected to respect basic social and cultural rights of its citizens and not discriminate on the basis of religion. Since reforms began there has been steady increase in the number of adherents to Buddhism, Taoism, Islam, Catholicism, and Protestantism—the five major religions officially acknowledged by the 2004 Regulation on Religious Affairs (RRA).²⁵⁸ However, according to regulations passed in 1994, the PRC government claimed that religious activities would be regulated and monitored by state authorities to ensure that such activities do not “undermine national unity and social stability.”²⁵⁹ To facilitate monitoring, all places such as, “temples, monasteries, mosques, churches, or other fixed locations where religious activities are conducted” must be registered with the Religious Affairs Bureau.²⁶⁰ Any religious activity that is conducted without the explicit sanction of the Religious Affairs Bureau is considered to be illegal, and involved individuals or religious groups are subject to sanctions.

Religious activities of Tibetan Buddhists, Uighur Muslims, and Chinese Catholics are strictly controlled and monitored. The PRC government is chiefly concerned with the allegiance of local populations with religious figures such as the Dalai Lama and the Pope. Followers of the Dalai Lama and the Pope are referred to as “splittists” due to their allegiance to foreign religious leaders intent on splitting China. Tibetan Buddhists and Catholics are attacked for failing to demonstrate patriotism in all religious activities.²⁶¹ The separatist movements in Tibet and Xinjiang are closely woven with religiosity and the public security agencies have not been able to discriminate among peaceful expressions of religiosity, regional separatism, and terrorism. After the 9/11 terrorist attacks, the crackdown on the Xinjiang Muslims has been exceptionally severe. In an effort to stanch religious extremism in Xinjiang, authorities have begun to closely supervise private activities such as religious ceremonies, weddings, funerals, circumcisions, and house moving rituals. Overt expressions of religious loyalty such as wearing a veil or other religious attire are forbidden. In addition, Uighur language instruction has been banned at Xinjiang University and Uighur language books were burnt in a public ceremony.²⁶² The Chinese government has also openly tangled with the Vatican Church by establishing its own bishops in contravention of the Catholic Church. It also cracked down on groups and individuals expressing loyalty to the exiled Tibetan Buddhist leader, the Dalai Lama. Organized religion is viewed as a threat to national security because religion is closely associated with ethnic identities that may involve legitimate separatist claims, which contrasts sharply with the idea of a unitary Chinese state that encompasses all autonomous regions including the renegade island of Taiwan.

Chinese delegates to the UN Commission on Human Rights have consistently argued that “no one, no association and no religion can be allowed to violate national law, infringe upon the interests of the people, foment splits among nationalists, and sabotage national unity.”²⁶³ Former Chinese President Jiang Zemin wrote an article in 1996 in the *People’s Daily* in which he stressed the need to “unite and educate religious personalities in a planned way,” and assist religious groups that promote patriotism and national solidarity. Although Article 36 of the Chinese Constitution guarantees protection of rights of believers as well as non-believers, it points out that “freedom of religious belief” is not equivalent to “freedom for religion.” Put differently, Article 36 can be interpreted to mean that everyone is free to have religious beliefs of their choice, but they are not allowed to organize and practice their religion without official sanction from the state. Internal documents of the Communist Party smuggled out of China and published in various media outlets have revealed that a sustained campaign to disbar unauthorized religious groups is underway.²⁶⁴ In this regard, the *Falun Gong* spiritual movement, singularly, has borne the wrath of the Chinese Communist Party because of the intense

concern that well-organized groups pose a potential political threat to the party, destabilize economic reforms, and produce social disorder.

China's human rights troubles are variegated, deep-seated, complex, and intimately intertwined with its economic and political transformation. Broadly, there is the issue of the Chinese legal system, especially its criminal law, which is plagued with problems of corruption and local protectionism. The judiciary lacks transparency and independence, and the policing agencies often rely on physical coercion to extract confessions; arbitrary detentions are common, and capital punishments are used rather indiscriminately. The nascent legal profession lacks autonomy, independence, and proper professional status; Chinese lawyers are subject to various political interferences, especially criminal lawyers.²⁶⁵ In addition, there is the suppression of political and cultural freedoms of Uighurs in Xinjiang, Buddhists in Tibet, Christians in Southern China, and Falun Gong practitioners. The rapid and radical economic transformation is causing immense problems in administering justice and providing compensation to rural peasants and urban dwellers displaced by monumental public work projects and illegal land seizures. This has sparked sporadic episodes of violence in various parts of the country, which have been viciously put down by the public security agencies. According to official Chinese government sources, it is estimated that last year alone there were more than 80,000 incidents involving public protests often accompanied by violence. These cases of mass public incidents invariably result from spontaneous outpouring of displeasure at governmental misuse of power, land seizures without compensation, and expression of anger at poor distribution of social services.

At a more structural level, there is a systemic problem of silencing all forms of dissent critical of public policies and the Communist Party. All varieties of media discussions and public criticisms of government policies, the CCP and its leaders, as well as academic or intellectual discourse on the Tiananmen massacre and Cultural Revolution are prohibited, and a general ban on discussing topics such as democracy and human rights persist. Recently, a series of media sanctions preventing any discussion of "sudden events" or cases of public protests that might be damaging to the credibility of the party-state was announced.²⁶⁶ Unmitigated persistence of human rights issues and the failure of the PRC government to address them in a meaningful, transparent, and coherent manner is puzzling, troublesome, and contains serious implications for China's global leadership and its continued economic dominance. This leads to the central question posed at the beginning of this article: why, despite reforms, modernization, scorching economic development, participation in international legal regimes, and China's emergence as a major international actor have not produced a meaningful impact on China's human rights policies and practices? Put another way, why is PR China continuing to resist or unable to make changes in the human rights arena?

In this review article, I have argued that China's inability to implement genuine and full reforms in human rights and internalize international human rights norms can be explained by a combination of three determinative factors: (1) Confucian influence and imperial institutionalist heritage, (2) Maoist socialist order, and (3) authoritarian-developmentalism, which have interacted in multiple ways at different critical junctures and inhibited the Chinese state. The Confucian and socialist-collectivist values are embedded in the public and private sphere and the continuity of the imperial institutional heritage continues to influence the organization and functioning of China's political-legal structure. These values have circumscribed the ability of the different governments—Republican-Nationalist, Communist, and post-Communist—to break away from the institutional and cultural weight of historical, social, cultural, and political practices. Importantly, the institutional factors have manifested themselves in the form of extraordinary sensitivity and even resistance to the underlying values and principles of foreign legal institutions.

Post-1949 revolutionary China considered human rights promoted by the Western nations, especially the excessive focus on civil and political rights and individual liberty, to be antagonistic to the Maoist conception of the state. Mao's China was based on the edifice of state ownership of production, equality in the distribution of resources and wages, access to social welfare, and guarantee of the right to work. Collectivist ideals are reflected in China's international posture, particularly in the form of anti-Western and anti-colonial pronouncements. The People's Republic became an advocate for communist and socialist regimes in the

developing world. Notably, the disproportionate emphasis of the Western powers on civil and political liberties was interpreted as an intentional political ploy to erode the collectivist ideals of the Chinese state. The reluctant signature of the United States on the Economic, Social, and Cultural Rights Convention and its continued refusal to ratify this convention have only bolstered China's argument that international human rights regimes are slanted heavily in favor of civil and political liberties. Since the introduction of reforms in 1978, the PRC government has placed extraordinary emphasis on economic growth and the expense of political development.

All of the post-Mao governments have allowed Chinese citizens to enjoy unprecedented economic freedoms and extraordinary latitude in social relations. However, both Mao's regime and the post-Mao governments are undifferentiated when it comes to their overall human rights policy, although the relative scales of human suffering have been drastically reduced after the conclusion of Chairman Mao's rule. During the revolutionary era both economic development and human rights suffered, whereas the post-Mao governments have made enormous gains in the economic sector, but retained the authoritarian governmental structure and placed considerable restrictions on civil and political liberties and legal rights. This new authoritarianism is now directed towards sustaining the blistering economic growth and maintaining social stability as inequality expands and rights consciousness of the Chinese citizens increases.

China's international accession has also been accompanied by a surge of reactive nationalism—periodically expressed in the form of anti-Japanese and anti-American outbursts—which has emboldened China's leaders to dismiss international criticism of its human rights policies. Specifically, the party-state has found success through intensifying Chinese national pride to deflect international criticisms of its human rights violations. China's behavior towards the human rights regimes is largely influenced by the shifts in the political philosophy of the ruling party as it embarks on a massive transformation towards a market based economic system. Furthermore, historical experience and homegrown intellectual discourse on law and politics have influenced China's combative posture towards the international human rights organizations. Although China has ratified nine major human rights conventions, it has engaged only in procedural cooperation.

Overall, in this article, I have presented an argument that emphasizes the *sui generis* character of China's imperial heritage, its authoritarian political edifice, and Confucian political philosophy. The distinctiveness of Confucianism and its myriad influences on the evolution of the Chinese society and its legal system, three millennia of autonomous political development, and colonial experience cannot be easily ignored while understanding China's attitude towards international law and human rights regimes. Human rights discourse and rule-of-law movement derived from Western political thought and its distinctive European and American political experience when juxtaposed against three millennia of Chinese political development is likely to be indubitably discordant. Besides the inimitable influence of Chinese legal thought and the uniqueness of local institutions, this article has emphasized the marriage of authoritarianism and the new developmentalist ideology, which emerged after 1978, as a crucial factor in understanding why China has failed to fully embrace international human rights and introduce judicious legal reforms. Today Beijing is more interested in consolidating its economic gains, reasserting its power, and fulfilling its national strategic objectives such as finding suppliers for its growing energy needs, politically isolating Japan, and incorporating Taiwan into the mainland. Given these strategic goals, Chinese leaders are less interested in creating a system that will generate or tolerate more political dissent.

NOTES

PART ONE

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PART TWO

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¹⁶Hsieh-Yu-Wei, *supra* note 14, at 314.

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²¹Y.P. Mei, “Status of the Individual in Social Thought and Practice,” in *The Chinese Mind* (see note 10), p. 327.

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²⁵*Id.*, 344.

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²⁷Wu, *supra* note 10, at 342.

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³³Jerome A. Cohen, “Introduction,” in *Essays on China’s Legal Tradition*, ed. Jerome A. Cohen, Randle Edwards & Fu-mei Chang Chen (Princeton, NJ: Princeton University Press, 1980), p. 9.

³⁴*Id.*

³⁵Derk Bodde, "Age, Youth, and Infirmary in the Law of Ch'ing China," in *Essays on China's Legal Tradition* (see note 33), p. 137.

³⁶Civil Law codes seemed to have been relatively well developed during the Qing reign, but it is entirely unclear whether unambiguous and formal demarcation between civil and criminal cases existed during the previous dynasties. It can be deduced that most civil cases were settled through private mediations or by following the code of ethical conduct.

³⁷Karthyren Bernhardt and Philip C.C. Huang, *Civil Law in Qing and Republican China* (Stanford, CA: Stanford University Press, 1994), p. 9.

³⁸Fu-mei Chang Chen, "The Influence of Shen Chih-Ch'i's Chi-Chu Commentary Upon Ch'ing Judicial Decisions," in *Essays on China's Legal Tradition* (see note 33), p. 170–172; Brian E. McKnight, "From Statute to Precedent: An Introduction to Sung Law and its Transformations," in *Law and the State in Traditional East Asia* (Honolulu, HI: University of Hawaii Press, 1987), p. 112.

³⁹McKnight, *supra* note 38, at 113–117.

⁴⁰Chang Chen, *supra* note 38, at 170.

⁴¹Creel, *supra* note 31, at 26.

⁴²Jean Chesneau, "Scales of Punishments and Crimes in the Qing Dynasty Code," in *China from the Opium Wars to the 1911 Revolution* (New York: Pantheon Books, 1976), pp. 34–37.

⁴³S. E. Finer, *The History of Government from the Earliest Times* (Oxford, New York: Oxford University Press, 1997), p. 757.

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⁴⁶*Id.*

⁴⁷Bodde, *supra* note 35, at 157.

⁴⁸*Id.*, at 136–138.

⁴⁹Brian E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu, Hawaii: The University Press of Hawaii, 1981).

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⁵¹Mei, Ju-Ao, "China and the Rule of Law," *Pacific Affairs* 5, no. 10 (October 1932): 864.

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⁵⁵Paul N. Stearns, *World History in Brief: Major Patterns of Change and Continuity*, 3rd ed. (New York: Addison Wesley, 1999), pp. 251–261.

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⁶⁶Grasso, *supra* note 18, at 40.

⁶⁷Hsiung, *supra* note 53, at 140.

⁶⁸*Id.* at 139.

⁶⁹Cohen & Chiu, *supra* note 63, at 7.

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⁷¹Hsiung, *supra* note 53, at 139.

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⁷⁵F.T. Cheng, "Law Codification in China," *Journal of Comparative Legislation and International Law* 6, no. 3 (1924): 283.

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¹⁰¹Tao, *supra* note 90, at 749.

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¹⁵²*Id.*, at 7.

¹⁵³It needs to be noted here that the UN Commission on Human Rights is composed of national governments and it is a political body, whereas, the Sub-Commission is composed of independent experts who are elected on a regional basis to represent the different regions of the world.

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¹⁵⁶Congressional-Executive Commission on China, Annual Report 2003, 108th Cong. 1st Sess., 2 October 2003, p. 6.

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¹⁵⁸Mary Kwang, "Death Penalty Still Favored by Chinese," *The Straits Times*, 22 February 2003.

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¹⁶⁸Goldman and MacFarquhar, "Dynamic Economy, Declining Party-State," in *The Paradox of China's Post-Mao Reforms*, p. 8.

¹⁶⁹For a concise discussion of China's economic reforms, see Barry Naughton, "China's Transition in Economic Perspective," in *The Paradox of China's Post-Mao Reforms*, p. 30–44.

¹⁷⁰More recently, the Communist Party formally agreed to open its doors to businessmen and entrepreneurs who were barred from becoming CCP members because of their bourgeois status. This development has been formally enshrined in the outgoing President Jiang Zemin's philosophy of "Three Represents" introduced in the 16th National People's Congress in 2002.

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¹⁷³*Id.*

¹⁷⁴Nina Halpern, "Economic Reform, Social Mobilization, and Democratization in Post-Mao China," in *Reform and Reaction in Post-Mao China: The Road to Tiananmen*, ed. Richard Baum (New York: Routledge, 1991), p. 48.

¹⁷⁵John Promfret, "Under Jiang, Party Changed to Remain in Power: Communist Apparatus Still Rules China, Though Country has been Transformed," *Washington Post*, 7 November 2002, p. A14.

¹⁷⁶David Shambaugh, "The Chinese State in the Post-Mao Era," in *The Modern Chinese State* (Cambridge, UK: Cambridge University Press, 2000), pp. 161–187.

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¹⁷⁸These different law enforcement tools are identified in various Amnesty International (AI) Reports that are published annually. AI also publishes various other reports that detail specific instances of human rights violations such as torture, detention, and execution (available online at <http://www.amnesty.org>).

¹⁷⁹Susan Trevaskes, "Public Sentencing Rallies in China: The Symbolizing of Punishment and Justice in the Socialist State," *Crime, Law & Social Change*, Vol. 39, No. 4 (June 2003), p. 359.

¹⁸⁰Marina Svensson, *State Coercion, Deterrence, and the Death Penalty in the PRC*, Paper Presented at the *Annual Meeting of the Association for Asian Studies*, Chicago, Illinois, 22–25 March 2001, p. 3.

¹⁸¹*Id.*, 10; the issue of estimating death penalty sentences remains difficult because of the tight control over the judiciary system exercised by the party. The estimate of tens of thousands of people is based on Amnesty International reports and other private sources. For a discussion of death penalty statistics see, Harold M. Tanner, *Strike Hard: Anti-Crime Campaigns and Chinese Criminal Justice, 1979–1985* (Ithaca, NY: Cornell University Press, 1999); Murray Scot Tanner, "State Coercion and the Balance of Awe: The 1983–1986 'Stern Blows' Anti-Crime Campaign," *The China Journal*, 44 (July 2000), pp. 93–125; John T. Boxer, "China's Death Penalty: Undermining Legal Reform and Threatening National Economic Interest," *22 Suffolk Transnational Review*, 593 (1999).

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¹⁸³*Id.*

¹⁸⁴Congressional-Executive Commission on China (CECC), *Annual Report 2006*, 109th Cong. 2nd Sess. 20 September 2006, p. 58.

¹⁸⁵The number of 10,000 to 15,000 is reported by various media organizations. In 2004, AI quoted a delegate named Chen Zhonglin attending the National People's Congress from Chongqing municipality in March last year, who apparently said that "nearly 10,000" people were executed every year in China. Subsequently, this number was reported by most Hong Kong and Western press sources. A BBC news service report date 12 October 2006 by its China correspondent puts the number between 8,000–10,000 and describes the death penalty imposition as an industrial operation. For a discussion of Chen Zhongling's quote, see Human Rights in China (available online at <http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/NewsUpdate6.2004.pdf>).

¹⁸⁶Andrew Nathan and Bruce Gilley, *China's New Rulers: The Secret Files* (New York: New York Review of Books, 2003), p. 217–218.

¹⁸⁷*People's Daily*, "China's Chief Justice Pledges to Improve Death Penalty Review Process," 9 March 2005 (available online at http://english.people.com.cn/200503/09/eng20050309_176152.html).

¹⁸⁸Amnesty International (AI) believes that its numbers are far from accurate and that execution figures are a rough estimate and do not reflect the seriousness of the death penalty problem.

¹⁸⁹AI, *People's Republic of China: Executed "according to law"?*—*The Death Penalty in China*, 22 March 2004 (available online at <http://web.amnesty.org/library/index/engasa170032004>).

¹⁹⁰See the chapter titled "Parting Shot: A Beijing Executioner" in Sang Ye, *China Candid: The People on the People's Republic* (Berkeley: University of California Press, 2006).

¹⁹¹Svensson, *supra* note 180, at 5.

¹⁹²*Id.*, at 2.

¹⁹³Jim Yardley, "Issue in China: Many in Jails Without Trial," *New York Times*, 9 May 2005; Congressional-Executive Commission on China (CECC), *After the Detention and Death of Sun Zhigang: Prisons and Detention in China*, 108th Cong., 1st Sess., 27 October 2003.

¹⁹⁴Jasper Becker, "One Chinese Lawyer's Crusade," *Christian Science Monitor*, 3 July 2002, p. 6.

¹⁹⁵AI, *Executed according to law*, *supra* note 189.

¹⁹⁶CECC, *Annual Report 2006*, *supra* note 184, at 59.

¹⁹⁷AI, "Chinese use Mobile Death Vans to Execute Prisoners," *Amnesty Wire*, May 2003 (available online at <http://web.amnesty.org/>); Hamish McDonald, "Chinese Try Mobile Death Vans," 13 March 2003, *The Age* (<http://www.theage.com.au/articles/2003/03/12/1047431092598.html>).

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Penalty in China 2000," September 2000 (available online at [http://news.amnesty.org/library/pdf/ASA170322002ENGLISH/\\$File/ASA1703202.pdf](http://news.amnesty.org/library/pdf/ASA170322002ENGLISH/$File/ASA1703202.pdf)).

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²⁰¹"China Should Revise Death Penalty System: Experts," *People's Daily*, 26 December 2004 (available online at http://english.peopledaily.com.cn/200412/26/eng20041226_168653.html).

²⁰²Michael Sheridan, "Chinese City Will Execute Purse Thieves," *The Sunday Times*, 05 March 2006 (available online at <http://www.timesonline.co.uk/article/0,,2089-2070005,00.html>).

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²⁰⁴Jonathan Hecht, *Opening to Reform? An Analysis of China's Revised Criminal Procedure Law* (New York: Lawyers Committee on Human Rights, October 1996), p. 61.

²⁰⁵*Id.*, at 53.

²⁰⁶Lubman, *supra* note 22, at 164.

²⁰⁷Jim Yardley, "China Tries Rights Lawyer, Barring His Kin And Counsel," *New York Times*, 14 December 2006; Joseph Kahn, "Chinese Crackdown on Rights Lawyers Signals Effort to Deter Increasing Legal Challenges," *New York Times*, 19 August 2006; Jim Yardley, "China Detains Lawyers for Peasants' Advocate," *New York Times*, 18 August 2006.

²⁰⁸Amnesty International Special Report, *China—No One is Safe: Political Repression and Abuse of Power in the 1990s* (London, UK: Amnesty International Press, 1999), p. 12.

²⁰⁹*Id.*, at 13. Because of the enormous inconsistencies in the application of the death penalty by the local courts, the Supreme People's Court has decided to strip the local courts of the power to impose the death penalty. From 1 January 2007 all death penalty decisions were to be reviewed by the Supreme People's Court.

²¹⁰United States Department of State, China—Country Reports on Human Rights Practices, 1999 (Washington, DC: Bureau of Democracy, Human Rights, and Labor, 1999), p. 6 (available online at <http://www.state.gov>).

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²¹³Veron M. Hung, "Protection of Human Rights in the Context of Punishment of Minor Crimes in China," Testimony before the Congressional-Executive Commission on China, Washington DC, 26 July 2002 (available through Carnegie Endowment for International Peace at <http://www.ceip.org/>).

²¹⁴AI, *No One is Safe*, *supra* note 208, at 13.

²¹⁵United States Department of State, China—Country Reports on Human Rights Practices, 1999 (Washington, DC: Bureau of Democracy, Human Rights, and Labor, 23 February 2000), p. 12 (available online at <http://www.state.gov>).

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²¹⁸AI, *No One is Safe*, *supra* note, 208, at 13.

²¹⁹Xinhua Net, "China Strives to Handle Mass Incidents," *China Daily*, 9 December 2006 (available online at http://www.chinadaily.com.cn/china/2006-12/09/content_754796.htm).

²²⁰See CECC Annual Report, 2002, 2003, & 2006.

²²¹Congressional-Executive Commission on China (CECC), Annual Report 2002, 107th Congress, 2nd Sess., 2 October, 2002, p. 29.

²²²Human Rights in China, Reeducation Through Labor: A Summary of Regulatory Issues and Concerns, 01 February 2001 (available online at <http://hrichina.org/public/contents/article?revision%5fid=14287&item%5fid=14286>).

²²³AI, *No One is Safe*, *supra* note 208, at 8.

²²⁴AI, *No One is Safe*, *supra* note 208, at 10.

²²⁵AI, *No One is Safe*, *supra* note 208, at 6.

²²⁶AI, *Annual Country Reports-China* (London: Amnesty International Press, 1996), p. 119.

²²⁷Nicolas Becquelin, "Criminalizing Ethnicity: Political Repression in Xinjiang," *Human Rights in China*, No.1, 2004.

²²⁸CECC, Annual Report 2003, *supra* note 212, at 15.

²²⁹AI, *No One is Safe*, *supra* note, 208, at 6. Although the crime of counter-revolution was re-christened as "crimes endangering state security," individuals arrested for the crime "counter-revolution" as per the 1979 Criminal Law Procedure are still under imprisonment. Many of the individuals were arrested in a nation-wide sweep following the Tiananmen Square incident (see U.S. Department of State, China—Human Rights Practices, p. 12).

²³⁰AI, *No One is Safe*, *supra* note 208, at 7.

²³¹Rose Tang, "Beijing Forced Detained Scholar to Confess, Husband Says," *CNN.com*, 23 March 2001 (available online at <http://archives.cnn.com/2001/WORLD/asiapcf/east/03/23/china.scholar.husband.01/index.html>).

²³²AI, *People's Republic of China, Continuing Abuses Under a New Leadership—Summary of Human Rights Concerns*, 30 September 2003.

²³³*Id.*

²³⁴United Nations Commission on Human Rights (UNCHR), *Special Rapporteur on Torture Highlights Challenges at End of Visit to China*, Beijing, 2 December 2005; *Statement by Working Group on Arbitrary Detention of the United Nations Commission on Human Rights Following Visit to China*, 4 October 2004.

²³⁵Convention on Torture (CAT), (available online at <http://www.ohchr.org/english/law/cat.htm>).

²³⁶BBC Online, "China Official Admits to Torture," 20 November 2006 (available online at <http://news.bbc.co.uk/2/hi/asia-pacific/6164408.stm>).

²³⁷Joseph Kahn, "China: Judicial Official Calls for End to Torture," 21 November 2006, *New York Times*, p. A14.

²³⁸BBC News, "China 'wrong killer' Seeks Amends," 12 May 2005 (available online at <http://news.bbc.co.uk/2/hi/asia-pacific/4539365.stm>).

²³⁹Liu Li, "Wrongly Jailed Man Freed After 11 years," *China Daily*, 14 April 2005 (available online at http://www.chinadaily.com.cn/english/doc/2005-04/14/content_434020.htm).

²⁴⁰*China Daily*, "Cop in Unjust Case Found Hanged in Graveyard," 27 May 2005 (available online at http://www.chinadaily.com.cn/english/doc/2005-05/27/content_446268.htm).

²⁴¹Joel Martinsen, "She Xianglin after Six Months on the Outside," *Danwei.org*, 28 October 2005 (available online at http://www.danwei.org/ip_and_law/she_xianglin_after_six_months.php).

²⁴²*China Daily*, "Media's Frequent Exposure of Unjust Cases Promotes China's Judicial Reform," 19 December 2005 (available online at http://english.people.com.cn/200512/19/eng20051219_229034.html).

²⁴³AI, *Judges and Torture* (London, UK: Amnesty International Press, January 2003), p. 4.

²⁴⁴AI, *People's Republic of China—Torture and Ill-Treatment: Comments on China's Second Periodic Report to the UN Committee Against Torture* (London: Amnesty International Press, April 1996), p. 4.

²⁴⁵UNCHR, *Special Rapporteur on Torture*, *supra* note 234, at 8.

²⁴⁶AI, *Torture and Ill-Treatment*, *supra* note 244, at 5.

²⁴⁷*Id.*, at 31–32.

²⁴⁸UNCHR, *Special Rapporteur on Torture*, *supra* note 234, at 16.

²⁴⁹AI, *Torture and Ill-Treatment*, *supra* note 244, at 3.

²⁵⁰*Id.*

²⁵¹UNCHR, *Special Rapporteur on Torture*, *supra* note 234, at 9.

²⁵²CECC, Annual Report 2002, *supra* note 221, at 28.

²⁵³AI, *No One is Safe*, *supra* note 208, at 41.

²⁵⁴UNCHR, *Special Rapporteur on Torture*, *supra* note 234, at 14.

²⁵⁵Congressional-Executive Commission on China-Roundtable, *China's Criminal Justice System*, 107th Congress, 2nd Sess., 26 July 2002, p. 16; Sarah Biddulp, "Mapping Legal Change in the Context of Reforms to Chinese Police Powers," in *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reforms*, ed. John Gillespie and Pip Nicholson, (Canberra: The Australian National University Press, 2005), pp. 212–238.

²⁵⁶*International Convention on Torture* (CAT), December 1984 (available online at <http://www.ohchr.org/english/law/cat.htm>).

²⁵⁷*International Covenant on Civil and Political Rights* (ICCPR), adopted and opened for signature 16 December 1966, (available online at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm).

²⁵⁸Exact numbers are not available because the PRC government does not maintain such records, and the people of China are also reluctant to provide any information to the government that would identify them with a particular group or community because of the fear of prosecution or intimidation.

²⁵⁹Amnesty International, *People's Republic of China: Religious Repression in China* (London: July 1996), p. 4.

²⁶⁰*Id.*, p. 4.

²⁶¹The term "splittists" is a unique Chinese construction, which literally means to "split" or separate the country. This term is particularly reserved for the Tibetans and Uighur Muslims because of their continuing efforts among the residents of these two autonomous regions to seek independence from China.

²⁶²CECC, Annual Report 2002, *supra* note 252, at 4; also see, Congressional-Executive Commission on China, *Roundtable on Religious Freedom in China*, 107th Congress, 2nd Sess., 25 March 2002.

²⁶³AI, *PRC-Religious Repression*, *supra* note 259, at 2.

²⁶⁴Philip P. Pan, "China Deepens Assault on Faith: Documents Confirm Resolve to Expand Crackdown," *Washington Post*, 13 February 2002, p. A01.

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²⁶⁵William P. Alford, "Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers," *The China Quarterly*, No. 141 (March 1995): 22–38.

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