

THE UNIVERSITY OF CALGARY

IDEOLOGY AND THE POLITICS

OF CHINESE "SOCIALIST LEGALITY" 1978--1987

BY

SEN LIN

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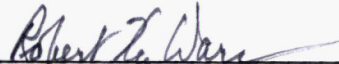
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Chairman, Dr. Ronald C. Keith
Department of Political Science



Dr. Bohdan Harasymiw
Department of Political Science



Dr. Robert X. Ware
Department of Philosophy

Date Jan. 8, 1988

ABSTRACT

This thesis examines the relationship between current Chinese ideology and the strengthening of Chinese "socialist legality" in the period from 1978 to 1987.

The strengthening of "socialist legality" has been characterized by both the formal and practical enhancement of the authority of law and judicial organs, and the twin processes of institutionalization and professionalization of the Chinese legal system. This is not only an extension of the policies in the mid-1950s, but also a manifestation of the new leadership's perspectives on law, as it relates to the reform of the Party-state relationship. Moreover, the process of the strengthening of "socialist legality" reflects the new leadership's concern to achieve greater levels of "rationality" within the Chinese political and economic system.

This issue of "rationality" is among the central issues in Western literature on the process of modernization. This discussion will explore the Weberian literature in this regard, particularly with reference to current discussion of "rational-legal authority". This theoretical literature has generally discussed both the negative and positive attributes of ideology in the

modernization process, however, the specific Western comparative politics literature on the contemporary Chinese legal system has paid insufficient attention to the relevance of contemporary Chinese ideology to the development of Chinese law. The question is herein put whether the current development of Chinese socialist ideology supports the rational development of the legal system within the dynamic context of the "four modernizations".

Both the past inadequate development and the recent strengthening of "socialist legality" requires close examination of Chinese ideology as an explanation of Chinese politics. The "left" ideology was a critical factor in the past underdevelopment of "socialist legality". This thesis will examine the extent to which ideology, as re-evaluated by the contemporary Chinese leadership, justifies and facilitates the strengthening of "socialist legality" in the current period of political and economic reforms.

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CHAPTER ONE

INTRODUCTION

Since Mao's death China's new leadership(1) has constantly advocated the strengthening of "socialist legality" shehuizhuyi fazhi. This was formally initiated by the Third Plenary Session of the 11th Central Committee of the Communist Party of China (CCCPC)(2) in 1978 and was reaffirmed by the Enlarged Meeting of the Politburo of the CCCPC at which the former General Secretary Hu Yaobang resigned.(3) It seems that the strengthening of "socialist legality" will continue regardless of major leadership change.

This thesis will examine the relationship between Chinese ideology and the strengthening of "socialist legality". As a matter of fact, the inadequate development of the Chinese legal system in the past may be partly attributed to ideological influences. However, these influences have been considered by the new leadership as

(1) This term refers to the post-Mao leadership headed by Deng Xiaoping.

(2) See Peking Review, No.52, December 29, 1978, pp.6-16.

(3) See Renmin ribao, haiwaiban, (People's Daily, overseas edition), January 17, 1987.

the effects of the "left" ideology.(4) Mao is still considered as the main architect of Chinese ideology. Most of his elaborations on Chinese ideology are acknowledged by the new leadership. Nonetheless, Mao's emphases on issues such as class struggle, "integrated Party leadership" dangde yiyuanhua lingdao, the mass movement and "politics in command" are now seen as deviations from the "scientific system of Mao Zedong Thought" and as the source of "left" ideology in the past. The "Gang of Four" are now held responsible for "ultra-left" ideology, which had an especially serious impact on "socialist legality". Since the Third Plenary Session of the CCCPC, the new leadership has refined Chinese ideology by renouncing "left" ideology in the context of "correctly and comprehensively understanding the system of Mao Zedong Thought" zhenque guanmiande lijie Mao Zedong sixiang tixi or "seeking the truth from the facts" shishi qiushi.(5) Ideology as

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- (4) This is a term by which the new leadership refers to the ideological deviations since the late 1950s. It has variety of connotations. Among them are the emphasis on class struggle, failure to appreciate the priority of economic construction and stress on "politics in command" in every profession.
- (5) This Chinese phrase is taken by the new leadership as an expression of basic ideological policy. It means that "Marxism-Leninism and Mao Zedong Thought" should not be a "dogma"; the understanding of "Marxism-Leninism and Mao Zedong Thought" should be dynamic and consistent with changes in social reality.

refined by the new leadership highlights selected emphases on democracy in the dialectical relationship between the two sides of "democratic centralism", and on the institutionalization of "mass line" and expertise in the dialectical relationship between "redness and expertness". These emphases are designed to facilitate political efforts to strengthen "socialist legality" by removing past ideological reservations and creating general commitment and social consensus concerning "socialist legality" among the cadres and the public.

The current Western literature on Chinese "socialist legality" has offered various explanations as to the recent strengthening of "socialist legality". At the risk of over-generalization, two theses, the "stability thesis" and the "modernization thesis", appear to stand out among these explanations.(6) These two are often interwoven together. Apparently, modernization needs a stable social environment, thus the strengthening of "socialist legality" is a response to the political chaos of the Cultural

(6) For example see Stanley Lubman, "Emerging Functions of Formal Legal Institutions in China's Modernization", in China under the Four Modernizations--Selected Papers Submitted to the Joint Economic Committee Congress of the United States, Part II, December 1982, pp. 235-289; Richard Baum, "Modernization and Legal Reform in Post-Mao China: the Rebirth of Socialist legality" in Studies in Comparative Communism, Vol. XIX, No. 2, Summer 1986, pp. 69-103.

Revolution. "Socialist legality" is, in this view, a mechanism which guarantees social stability in order to meet the requirements of the modernization drive. The strengthening of "socialist legality" is certainly a result of the political lessons drawn by the Communist Party of China (CPC) from the past. These explanations seem to be sound and analytically powerful; the present discussion will occasionally adopt these theses for explanation. However, the literature has not analysed in detail the ideological justifications of the new Chinese leadership as to the strengthening of "socialist legality".

The contemporary Chinese literature offers various definitions of "socialist legality". One of these appears to be particularly comprehensive. According to this definition, "socialist legality" refers to "the laws and the systems which are created by the socialist state organs"; it requires that "all of the state organs, the armed forces, all political parties and public organizations, all enterprises and undertakings and all citizens abide by the laws and [respect the integrity of] the systems".(7) The past eight years of the development of "socialist legality" have been characterized by the enhancement of the authority of law, the development of the

(7) See Faxue jichu lilun (The Basic Theory of Law), The Beijing University Press, Beijing, 1984, pp.316.

legally sanctioned institutions and the professionalization of the legal organs. All of these efforts towards the rationalization of Chinese politics are related to the new leadership's re-evaluation of several major theoretical problems in "Mao Zedong Thought" which is the Chinese understanding of Marxism-Leninism.

The relationship between democratic centralism and the "socialist legality" in Chinese politics is the first problem to be re-examined. Democratic centralism is perceived as a dialectical relationship between "democracy" and centralism. This relationship is described as: "Democracy is given full play, a high degree of centralism is practised on the basis of democracy".(8) The Chinese understanding of democratic centralism is not confined to Party organization. It is taken as both the "organizational principle of the party and the basic system of the state".(9) It is applied to many of the dual relations by which the Chinese leadership conceptualizes the plurality of the social reality, such as the relationship between superior and subordinate, central and local, the Party and the government, the Party and the

(8) See "The Constitution of the CPC" in The Twelfth National Congress of the CPC, Foreign Languages Press, Beijing, 1982, pp. 89-130.

(9) See Faxue cidian (The Dictionary of Law), Shanghai Dictionary Press, Shanghai, 1984, pp.252.

other social organizations and the government and the other social organizations. Among these dual relations the former is usually the side to exercise the centralization and the latter the side to exercise democracy. For the purpose of the present analysis, the Party leadership as the "core" in exercising the power of centralization in its relationship with state organs especially the judicial organs will serve as the primary focus in discussion. The relationship between the government and economic enterprises will also be examined.

At the theoretical level, it is very clear that the current strengthening of "socialist legality" does not formally challenge the CPC's leadership in Chinese society. China's new constitution, promulgated in December 1982, clearly cited the "four cardinal principles", namely, "to keep to the socialist road", "to uphold the dictatorship of proletariat", "to uphold the leadership of the Communist Party" and "to uphold Marxism-Leninism and Mao Zedong Thought". The leadership of the CPC as stated in constitutional law is one of the characteristics which differentiate the Chinese "socialist legality" from the legal systems in the Western world. The effort to combat the "bourgeois liberalization" at the beginning of 1987 is yet another clear indication that the Party would not allow any deviations from its guidance. Nonetheless, the recent

strengthening of "socialist legality" reflects some new perspectives on the Party's leadership. China's new constitution stipulates:(10)

All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the constitution and the law.

According to Peng Zhen, the Chairman of the Standing Committee of the National People's Congress (SCNPC), "all political parties" include the CPC.(11) The CPC constitution also says that the CPC must conduct its activities within the limits permitted by the state constitution and law.(12) For the first time the CPC's activities have been explicitly rendered as subject to the state constitution and the laws in both the state constitution and the Party constitution. This has been hailed by Chinese officials and scholars as one of the great developments in the "socialist legality". It is also understood as one of the basic principles of "socialist legality".(13)

(10) See The Constitution of the People's Republic of China, Foreign Languages Press, Beijing, 1983, pp. 14.

(11) See Guangming ribao, (Enlightening Daily), April 6, 1986.

(12) See supra, note 8.

(13) See Liu Hengxuan et al., "Lun dang bixu zunshou xianfa

Apart from the considerations that this principle is not only a direct response of the CPC to its own historical experience since it became a ruling Party, but also an integral part of the current project to improve the Party leadership in the process of the "four modernizations", one may suggest that both "socialist legality" and the current project to improve the Party leadership should be analyzed in the context of the new leadership's understanding of democratic centralism as an important part of "Mao Zedong Thought". The new leadership's understanding of democratic centralism has justified the change of the definition of the Party's "guidance" from "integrated leadership", which led to the Party's interference in virtually everything in society, to general policy guidance and disciplinary supervision. This change implies the decentralization of power. Decentralization may require that "socialist legality" serve as a compensating mechanism of social control since the power of the Party and the government are to be confined to some extent. The theoretical refining done by the new leadership in this case assumes the importance and necessity of the strengthening of "socialist legality".

he falu" (The Party Must Abide by the Constitution and the Law), in Xianfa lunwenxuan (Selected Essays on the Constitution), Law Press, Beijing, 1983, pp.259-264.

The second problem is the relationship between the mass line, a major conception in Mao Zedong Thought, and the recent strengthening of "socialist legality". According to the Party's official definition, "The mass line means everything for the masses, reliance on the masses in everything, and 'from the masses to the masses'".(14) The mass line assumes two responsibilities. One implies the flow of mass opinions upward and the consideration of those opinions by the leadership in its policy deliberation. The other is the mobilization of the masses in carrying out Party policy and completing the tasks defined by the leadership.

The mass line is perceived by the new leadership as one of Mao's most important legacies. The CCCPC and the State Council recently called for the application of mass line techniques in the crackdown on economic crime.(15) However, there is a difference between the mass line as the large-scale political movement in "left" ideology and the new leadership's commitment to the mass line in the context of the strengthening of "socialist legality". The new leadership has insisted that mass participation should be orderly and disciplined so as to sustain social stability.

(14) The Resolution on CPC's History, Foreign Languages Press, Beijing, 1981, pp.69.

(15) See Lubman, in *supra* note 6.

Legally sanctioned institutions rather than the large-scale political mass movements are considered as appropriate channels for mass participation.

The third problem involves the relationship between "red and expert" and the recent pattern of professionalization within legal institutions. "Redness" relates to the issue of political consciousness. The new leadership is still interested in the "red-expert" issue. The emphasis on the four cardinal principles and the political direction of the professionalization suggest the commitment to "redness". The recent dismissal of one of the vice presidents of the China Science and Technology University, Mr. Fang Lizhi, who has advocated liberal pluralism, also shows that the new leadership will not tolerate the undermining of basic political principles by experts and professionals.

However, current Party interpretations differ from the "left" ideology on the "red-expert" issue. The unprecedented enhancement of expertise is one of the main results of the new leadership's emphasis on expertise in the modernization drive. Although the above-mentioned vice president has been dismissed and politically criticized, he still retains his job as a senior research fellow in China Academy of Science and attends academic meetings both domestically and abroad. As for the professionalization of

the legal institutions Deng Xiaoping remarks that China needs millions of professional workers in the field of legal affairs.(16) The recent effort in the training of legal affairs personnel including the training of lawyers, is remarkable and unprecedented. The expansion of expertise on legal affairs relates to the larger redefinition of the position of expertise in Chinese society..

The three elements in the strengthening of the Chinese "socialist legality" namely, the enhancement of the authority of law, and the twin processes of institutionalization and professionalization might be considered as part of a general trend towards the rationalization of Chinese politics. Although "rationalization", lixinghua, has not been an extensively discussed topic in Chinese literature, it has been defined by one of the China's senior leaders. Wan Li, one of the vice premiers of the State Council, has discussed the rationalization of policy-making as an essential part of the current political reform. Wan Li writes that the rationalization of policy-making must exclude personal favouritism and emotion.(17) He discusses the

(16) See Deng Xiaoping, Selected works of Deng Xiaoping, Foreign Languages Press, 1984, pp.248.

(17) See Wan Li, "Juece minzhuhua he kexuehua shi zhengzhi

rationalization of policy-making in the context of four other factors:

A. Policy-making must be scientific; it should not be based only on the leaders' personal experience. The policy-makers must rely on the knowledge of modern sciences and social sciences; the making of the important policies must be based on expert research.

B. The political environment should be characterized by democracy, equality and consultation in order to guarantee the full play of the role of the experts in the process of policy-making.

C. Policy-making should be institutionalized. There should be policy-making systems; the making of policy within the systems must follow a strict procedure.

D. The democratization and the scientification of the process of policy-making must be guaranteed by law.(18)

These four factors, relevant to the rationalization of policy-making, may also relate to the rationalization of the whole Chinese political life. The afore-mentioned three elements in the strengthening of "socialist legality" certainly agree with these factors.

tizhi gaigede yige zhongyao keti" (The Democratization and the Scientification of the Policy-Making Is One of the Important Topics of the Reform of the Political Structure), supra, note 3, August 15, 1986.

(18) Ibid.

A problem that arises here is the importance of Chinese ideology in the process of the rationalization of Chinese politics. Some of the Western literature has taken the new leadership's renewed commitment to ideology as an impediment to the general process of the rationalization.(19) Max Weber's discussion of the "ideal type" of "rational-legal authority" is often taken to support this point of view.

On the other hand, Chinese ideology, as it is understood by the new leadership, may be a positive contributing factor in the recent process of the rationalization.

Weber's rationalization includes the process by which calculable rules and procedures are increasingly substituted for sentiment, tradition and rule of thumb in all spheres of activity. According to Weber, rationalization enhances the position of specialized science as the major source of intellectual authority. It leads to the substitution of the trained expert for the cultivated man of letters and the replacement of traditional judicial wisdom by impersonal, systematic

(19) See for example Harry Harding, "Political Development in Post-Mao China", in Modernizing China, Doak Barnett et al. Westview Press, Boulder, 1986. pp.13-38.

statutory codes.(20) One may consider that Wan Li's "four factors" in fact share some of the similarities with Weber's description of rationalization. Despite these similarities, the new leadership's emphasis on "socialism with Chinese characteristics" differentiates Chinese from Western rationalization. This emphasis is consistent with modern Chinese nationalism which purports to learn from the West while rejecting anything that is considered as inappropriate to the Chinese society. The effort to resist blind Westernization started at the beginning of 1987 has not yet become a brake on the strengthening of "socialist legality" and the rationalization of the Chinese politics, but it strongly indicates the conscious distinction between "rationalization" and "Westernization". The aim of the Chinese leadership's recent effort to rationalize political life in Chinese society is not to imitate the ideal type of rational-legal rule which was viewed by Weber, himself, as a generalization based on the experience of the Western society. This is the factor that can account for Wan Li's insistence on the problem that the rationalization, i.e., the "democratization" and "scientification" of

(20) Weber has defined different connotations of rationalization in his writings. For a good summary of Weber's term of rationalization, see Dennis Wrong, Max Weber, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1970, pp.26.

policy-making must be under the guidance of Marxism-Leninism and Mao Zedong Thought which, he further points out, should be understood according to the principle of "seeking the truth from the facts".(21)

The literature on political development has suggested that modernization in the developing countries need not repeat the process experienced by the Western countries.(22) So rationalization as a part of the modernization process in the developing countries (if it occurs) can have its own characteristics. Certainly, the new Chinese leadership has assumed that Chinese ideology can support such rationalization.

Secondly, the existing literature has already argued that a certain ideology can facilitate the process of the rationalization in a general sense, although a certain ideology may obstruct the process of the rationalization.(23) One may consider that it is not the facilitating ideological element that differentiates the

(21) See supra, note 17.

(22) See Vicky Randal et al., Political Change and Underdevelopment, Chapter II, Duke University Press, Durham, N.C., 1985, pp.34-64.

(23) Weber analysed Confucianism as an impediment to the rationalization of modern capitalism in China. A summary of this view of Weber is available in Anthony Giddens, Capitalism and Modern Social Theory, Cambridge University Press, Cambridge, London, 1971; pp.177.

process of Chinese rationalization from Western. It is the Chinese ideology's special content and special issues that make the difference.

Weber himself has considered ideology as conducive to the process of Western rationalization. Weber considered that a variety of historical factors contributed to the rationalization of Western capitalism. Among these were the rational state with its professional officialdom, rational law created by jurists, the occidental city and its burghers, rational science and technology. He was especially concerned about the Protestant ethos in promoting the rationalization.(24) Weber elaborates how the Protestant, especially the Calvinist, ethos, which took asceticism, hardwork and rational acquisition of wealth as the indications of "election", made the Puritans especially receptive to the rational spirit of capitalism. Weber further points out:(25)

One of fundamental elements of the spirit of modern capitalism and not only of that, but of all modern culture: "rational conduct on the basis of the idea of the calling", was born--that is what this discussion has sought

(24) For reference, see Guenther Roth et al., Max Weber's Vision of History, University of California Press, Berkeley, 1979, pp.188.

(25) See Max Weber, The Protestant Ethic and the Spirit of Capitalism, translated by Talcott Parsons, Charles Scribner's Sons, New York, 1958, pp.180.

to demonstrate--from the spirit of Christian asceticism.

By doing this, Irving Zeitlin points out: "Weber tries to shed light on the process by which ideas become effective forces in history." (26)

Ann Swidler's discussion of Weber's "Sociology of Religion" in her article further elaborates Weber's idea on the relationship between ideology and Western rationalization. She finds that, in Weber's analysis, rationalization has its most important and typical meaning with reference to the systematization of ideas. Rationalization is the key process which gives ideas the capacity to influence social action. (27) She quotes Weber as saying: (28)

Not ideas, but material and ideal interests, directly govern men's conduct. Yet, very frequently the "world images" that have been created by "ideas" have, like switchmen, determined the tracks along which action has been pushed by the dynamic of interest.

(26) See Irving Zeitlin, Ideology and the Development of Sociological Theory, Prentice-Hall, Englewood Cliffs, N.J. 1981, pp. 130.

(27) See Ann Swidler, "The Concept of Rationality in the Work of Max Weber", In Sociological Inquiry, Vol. 43 (1), 1973, pp. 35-42.

(28) See Max Weber, Essays in Sociology, Bedminster Press, New York, 1968, pp. 280. Quoted in *ibid*.

Swidler also finds that rationality in Weber's work refers to a particular relationship between ideas and action--the control of action by the systematized ideas. She quotes Weber as saying:(29)

"For the ascetic, the certainty of salvation always demonstrates itself in rational action, integrated as to meaning, end, and means, and governed by principles and rules".

Swidler's interpretation explicitly reveals the relationship between ideology and rationality in Weber's analysis. Swidler also extends her revelation of Weber's idea to the relationship between ideology and the bureaucratic rationality. She states: "We may however, get a new perspective on the question of bureaucratic rationality...by starting with Weber's analysis of the sources of rationality." She argues that bureaucracy as the most rational form of administration realizes the control of ideas over action in institutional form. If rationality consists in the control of action by thought rather than technical efficiency, (though Weber emphasized the technical advantages of bureaucracy), we may better understand Weber's ambivalence toward bureaucracy. On the one hand, Weber is aware of the efficiency of bureaucracy,

(29) See Max Weber, Economy and Society: An Outline of Interpretive Sociology, Guenther Roth eds., Bedminster Press, New York, 1968, pp.549. Quoted in supra, note 27.

on the other hand he considers that bureaucracy may act like an "iron cage", which binds creativity and intelligence.(30)

Swidler's interpretation seems to be inconsistent with Weber's argument in light of Weber's remarks as to the withering of ideology in the routinization of bureaucratic rule; on the other hand, it appears to be consistent with Weber's ambivalent attitudes towards bureaucracy. Ideology, "like switchman", may make the "iron cage" of bureaucracy less formidable.(31)

The above discussion of Weber and the interpretation of the literature suggest that ideology is not necessarily antagonistic to rationalization. This discussion is open to the consideration of current Chinese ideology as a positive factor in the general attempt to achieve Chinese rationalization.

Ascetic Protestantism was not the only factor that facilitated the rationalization of modern capitalism. According to Weber, other social conditions, especially the

(30) See *supra*, note 27.

(31) Edward A. Shils' discussion on charisma in modern bureaucracy also supports the relevance of ideology to bureaucracy. See his article "Charisma, Order and Status" in American Sociological Review, Vol. XXX, April, 1965, pp. 199-213.

economic conditions, should also be taken into account.(32) The analysis of the current rationalization of Chinese politics can not be confined to ideology either, but the present discussion is focused on how Chinese ideology facilitates the process of rationalization.

The origins for some of the views in the current literature that takes the Chinese ideology as a disruptive negative factor in the current effort towards the rationalization may lie in two aspects of the perception of ideology. One is the belief that ideology only consists of distorted ideas of reality which are antagonistic to rational rule. The other is the exclusive tendency to relate ideology to revolution. As for the latter point the previous examination of Weber's literature may serve as a counterpoint. The following discussion focuses on the first point--how ideology should be understood.

The definitions of ideology are quite diverse and controversial in the current literature. However the following definitions specially relate to the present analysis. Karl Mannheim has offered two definitions of the term "ideology". He distinguishes between the particular

(32) See *supra*, note 25, pp.183.

and the total concepts of ideology.(33) The latter concept is especially relevant. Mannheim points out:(34)

We refer to the ideology of an age or of a concrete historico-social group, e.g. of a class when we are concerned with the characteristics and composition of the total structure of the mind of this epoch or of this group.

He also points out that, in order to analyse the thought of a group, the will of this group to change the surrounding world of nature or society, or to maintain it in a given condition should be taken into account, because "...it is the direction of this will to change or maintain, of this collectivity, which produces the guiding thread for the emergence of their problems, their concepts, and their forms of thought."(35)

Mannheim further distinguishes "ideology" and "utopia" by asking whether thought is to maintain or change the existing order. The former is ideology; the latter is utopia.(36) Chinese ideology has been an instrument by which the CPC creates the consensus among the cadres and the masses to sustain the political and economic system set

(33) See Karl Mannheim, Ideology and Utopia, Harcourt, Brace & World, Inco., New York, 1968, pp.49-50.

(34) Ibid.

(35) Ibid. pp.3.

(36) See Louis Wirth's preface, in *ibid*, pp. XXIII.

up in 1949. On the other hand, it has constantly generated the political and social actions to change the reality of Chinese society. Since Chinese ideology is concerned with both maintenance and reform of the existing system, it is not exclusively "ideology" or "utopia" in Mannheim's sense. Chinese ideology is, as Schurmann points out, "a systematic set of ideas with action consequences".(37) Franz Schurmann divides Chinese ideology into two parts. "Pure ideology" is essentially derived from Marxism and Leninism; whereas "practical ideology" is Mao Zedong Thought. He refers to "pure ideology" as a set of ideas designed to give the individual a unified, and conscious world view; "practical ideology" is a set of ideas designed to give the individual rational instruments for action. This classification may have exaggerated the distinction between Marxism-Leninism and Mao Zedong Thought. Marxism-Leninism is certainly also taken as ideas which direct actions;(38) "Mao Zedong Thought" is also taken as a unified and conscious world view.(39)

(37) See Franz Schurmann, Ideology and Organization, University of California Press, Berkeley, 1968, pp.18.

(38) Mao Zedong's well-known metaphor that takes Marxism-Leninism as an arrow which should be used to shoot the target of the Chinese revolution is a good example of this attitude.

(39) See supra, note 14, pp.72.

However, two points of Schurmann's comments on Chinese ideology are convincing. First, he points out that the values and norms of Chinese ideology are tools with which individuals are motivated to commitment and are given rational ideas for action. Secondly, he reveals that the ideas of Chinese ideology are ever-changing and ever-expanding.(40) It is the practical responsibility of Chinese ideology in directing action in the process of both maintaining and changing the existing order in Chinese society which connects ideology with the strengthening of "socialist legality". The CPC considers that the basic principles elaborated by Chinese ideology reveal the objective laws of reality. Thus the policies of the Party on practical problems must be subject to the guidance of these principles in order to make these policies consistent with the objective laws of reality so as to achieve successful results. The "socialist legality" has been taken as one of the important problems that must be dealt with in the process of the political and economic reforms; it should also be subject to ideological guidance.

The relationship between ideology and action is the motivating force for the ever-changing and ever-expanding characteristics of Chinese ideology. Social reality is

(40) See supra note 37, pp.45.

complex and ever-changing. Thus the concrete content of ideology should change in correspondance with changes in reality. In Chinese ideology, the basic objective laws or the plurality of social reality are often conceptualized in the dialectics of dual relationships such as the relationship between democracy and centralization, mass mobilization and institutionalization and "redness" and "expertness". The changes of ideology particularly relate to the changing understandings of these dialectical relationships. The balance of emphases should shift back and forth in the practical context of political problems.

However, because of the complexity of these problems and the leadership's epistemological errors, there may be misunderstandings of these dialectical relationships. Such misunderstandings may result in either an emphasis on the wrong side or an over-emphasis on one side of the dialectical relationships. The criterion by which to judge "correct" or "incorrect" understanding is the effect produced by the social practices under the guidance of the understandings, as stated in the Chinese: Shijian shi jianyan zhenlide weiyi biao zhun. (Practice is the only criterion of testing truth.) Generally, misunderstandings in ideology often led to the formulation of policies which produced the undesirable social effects such as the devaluation of "socialist legality" by "left" ideology.

The art of leadership lies in discerning and rectifying the misunderstandings as soon as possible. This is the working mechanism which may account for the ever-changing characteristic of Chinese ideology. With the change of social reality, new problems may emerge. The new problems must be perceived within the framework of dialectics too. Then the dialectical understandings of the new problems may add new content to the ideology in guiding practice. This may account for the ever-expanding characteristic of Chinese ideology.

Another point relevant to the present analysis is the general effect of ideology in the process of social change. According to Harry Johnson, ideology has both positive and negative effects. He points out that ideology sometimes helps in achieving desirable social change, sometimes facilitates undesirable change, and at other times facilitates desirable or undesirable resistance to social pressure for change. As for the positive effects ideology may help a social system to achieve greater integration or greater adaptation, because it is able to motivate people according to a common definition of the situation and a common plan.(41)

(41) See Harry Johnson, "Ideology and Social System", in David Sills ed. The International Encyclopedia of Social Sciences, The Macmillan & The Free Press Company, 1968, Vol.7, pp.76-85.

Thus, if rationalization is viewed as part of the process of social change, one should not simply consider ideology as the negation of rationalization. Whether it is a disrupting or a facilitating force towards rationalization needs concrete analysis. In the Chinese case, the assumption is that the understandings of the three sets of dialectical relationships between democracy and centralization, mass mobilization and institutionalization and "redness" and "expertness" may be decisive.

The continuity and the discontinuity of the Chinese efforts toward rationalization is closely related to the Chinese leadership's understandings of the afore-mentioned dialectical relationships. Since the late 1950s, and especially during the period of the Cultural Revolution, the "left" understandings of these relationships together with other factors disrupted the process towards rationalization. After Mao's death, the new leadership renounced the "left" understandings in the context of "correctly and comprehensively understanding the system of Mao Zedong Thought" or "seeking the truth from the facts". These renewed emphases have facilitated the recent strengthening of "socialist legality".

This thesis will examine in detail the relationship between the current theoretical change in the Chinese

ideology and the strengthening of "socialist legality". With reference to the current political context the following chapters will provide a brief review of the evolution of the theoretical literature on the problems of democratic centralism, the mass line and the "red-expert" issue, and its relationship with the strengthening of "socialist legality" in Chinese politics.

The second chapter focuses more exclusively on the relationship between the Party leadership and the supreme authority of law. This chapter examines the recent theoretical discussion of democratic centralism in China insofar as this discussion relates to the redefinition of Party leadership and the strengthening of the legal system in the current project to improve the leadership of Party and state.

The new elaboration of the dialectical relationship between democracy and centralism emphasizes the following points: the Party should not be the manager of everything in Chinese society; the Party leadership should be confined to proper scope and adopt appropriate ways such as collective leadership and the division of powers between Party and state organs including the judicial organs; the arbitrary personal rule which caused so much social distress in the Cultural Revolution should be prevented. The legal system as a mechanism to institutionalize

democratic centralism(42) is supposed to check the arbitrary over-concentration of power in the hands of individuals and Party organizations, through the enhancement of the dignity and authority of the legal system including "judicial independence", but it is also supposed to sustain centralized leadership through the expansion of formal legal obligations and the enforcement of laws.

The Third Chapter of this thesis examines the new leadership's understanding of mass line and the process of institutionalization within the framework of the legal system. The central problem here concerns the issue of how to organize mass participation. It is a well-known fact that Mao favoured the large-scale mass movements. The new leadership takes a different view on the mass movements in light of avoiding the instability and unpredictability produced by the large-scale mass movements in the past. As the substitute for large-scale mass movement, institutionalized participation is vigorously advocated by the new leadership. Institutions such as the people's congresses, electoral system, etc., are considered as

(42) See Commentator's article, "Yifa banshi, zhengque chuli minzhu yu jizhongde guanxi", (Conduct Activity according to Law, Correctly Handle the Relationship between Democracy and Centralism), *supra*, note 11, January 17, 1987;

appropriate forms to channel mass participation. Laws are important in defining these institutions' structures, responsibilities and working procedures. It is also observed that the court system and the procuratorate system are supposed to be the institutions that can be used by citizens and other organizations to challenge the "bureaucratism" of the Party and government.

The new leadership's understandings of class struggle and dictatorship in Chinese society should be differentiated from the "left" understandings in the past. In the late period of his life Mao considered that "socialist democracy" could be best carried out in turbulent class struggle. In the context of this understanding, the legal system was confined to a large extent to repression of class enemies. It was hardly considered as an instrument to channel mass participation. On the contrary, legal regulations and institutions were sometimes negatively viewed as an excessively binding force on mass participation. The new leadership insists that the large-scale class struggle is over in Chinese society. With the new understanding of class struggle, the importance of the legal system in organizing institutionalized participation and protecting the citizen's rights is increasing. Repression of the enemy of socialism has become a matter of legal procedure.

The Fourth Chapter examines the relationship between the new leadership's understanding on the "red-expert" issue and the recent momentum of professionalization within legal institutions.

The "red-expert" issue is also related to class struggle in Chinese society. Mao Zedong recognized that China's economic construction needed technical experts; he also agreed that the management of Chinese society required expertise. However, his views on class struggle resulted in a stress on "redness" rather than "expertness" since the late 1950s.(43)

The new leadership's view is different from that of Mao in its greater focus on the economic construction. The class struggle is no longer the principal contradiction in Chinese society. In this circumstance, expertise is stressed more than ever before. Although the "redness" is still important in guaranteeing the socialist direction of the economy, the over-stress on "redness" at the expense of the expertise is regarded as counterproductive to the specialized division of labor and expertise associated with modernization. The examination of the professionalization of the legal institutions must be understood in the context

(43) See James R. Townsend et al., Politics in China, Little, Brown and Company, Boston, 1986, pp. 349.

of the new understanding of the dialectic relationship between "redness" and "expertness".

Another theoretical issue that relates to the professionalization of the legal institutions is the position of the Chinese intellectuals in the society. Mao viewed the Chinese intellectuals as an indispensable resource in China's industrialization. However, as far as political consciousness was concerned, the intellectuals were the most vulnerable to the influence of the "bourgeoisie", and generally speaking, were inferior to the workers, peasants and soldiers. This theoretical understanding underlay the policy that rejected the professionalization of the legal institutions. The new leadership now classifies the intellectuals as members of the working class. The intellectuals as a whole are no longer taken as special subjects of reform but as "the force which is reliable in the socialist cause". This is another theoretical problem that should be examined regarding the professionalization of the legal institutions.

In summary, Chinese ideology may facilitate the recent effort to strengthen the "socialist legality", though the explanations of the strengthening of "socialist legality" can not be confined exclusively to the sphere of ideology. "Left" understandings of Chinese ideology used to impede

the development of the formal legal system, the development of the institutionalization within the framework of the legal system and the professionalization of the legal institutions. However the recently refined ideology has removed the previous theoretical reservations towards the strengthening of "socialist legality". The refined ideology that emphasizes democracy, institutionalization and expertise provides the theoretical justification for the recent strengthening of "socialist legality"; these justifications may help to generate a consensus among the cadres and masses and make them committed to the current Party's policy concerning "socialist legality".

China has been committed to Marxism-Leninism and Mao Zedong Thought for several decades. During this period, China has made strides towards unity, stability, independence and economic development. This ideology has fostered several generations of Chinese cadres; the masses have already been subject to the indoctrination of this ideology for a long time.(44) The complexity and the ever-changing characteristic of Chinese ideology allow the

(44) Schurmann has observed that the people who emigrated from China to Hongkong, even though some of them were hostile to the Chinese leadership, still could not get rid of the influence of Chinese ideology. Supra, note 37. The strong and enduring influences of the Chinese ideology on the Chinese thinking may be a factor conducive to the new leadership's commitment to the ideology.

new leadership to rectify the "left" understandings of Chinese ideology without changing its general framework. These are the factors which can account for the new leadership's renewed commitment to Chinese ideology even though some policies, including the policy concerning the "socialist legality", are different from those Mao pursued in his late years. By being committed to Chinese ideology, the new leadership is hoping to maintain the solidarity among the cadres and stability in the society when there are rapid social changes; it also enables the new leadership to focus on "Chinese characteristics" at a time when political and economic reforms and the strengthening of "socialist legality" may result in China sharing more similarities with the advanced countries both in the Western world and the Eastern Europe.

CHAPTER TWO

DEMOCRATIC CENTRALISM AND THE LEGAL SYSTEM IN THE CURRENT REFORM

The recent strengthening of "socialist legality" has been characterized by the enhancement of the judicial independence and the authority of law in the economic sphere. The current reform program and the strengthening of the legal system within this program are related to the new leadership's understanding of the dialectical relationship between the two aspects of democratic centralism--democracy and centralism.

The Chinese ideological emphasis on praxis enables the CPC to formulate several important dual relationships in Chinese political life within the framework of democratic centralism. Among those dual relationships two of them are especially relevant to the present discussion. The first is the relationship between the Party and the state organs; the second is the relationship between government and enterprise. Within the first duality the Party is considered as the body that exercises the centralized leadership. This is also the case with the government in the second relationship. The state organs exercise democracy in the first relationship and the enterprises in

the second. These relationships are supposed to be dialectical: only if there is a full play of democracy can there be a correct centralization; only if there is a correct centralization can there be a appropriate democracy.

As a matter of fact, the selected emphasis on one side of the dialectical relationship is almost inevitable given the needs of praxis. However, the over-emphasis on one side at the expense of the other side will result in either ultra-democracy or over-concentration. Both excesses are considered as deviations from the correct relationship between democracy and centralism. The new leadership considers that one of the major shortcomings in the past was the consistent tendency of over-emphasizing centralization since the late 1950s. This tendency has resulted in the over-concentration of power in Party organizations and even in the hands of the Party chairman and Party secretaries in the first dual relationship and the over-concentration of power in the government in the second dual relationship. Such over-concentration promoted ten years of Cultural Revolution and the long period of economic inefficiency.

In order to overcome the over-concentration, the new leadership has sponsored a program aimed at reforming the over-centralized political and economic structures. The

emphasis of the reform program has been democracy. This emphasis has initiated the effort to delegate former powers of Party organization to the state organs in the first dual relationship and the former state powers to the enterprises in the second. However, the ultra-democracy that may emerge in the process of the decentralization may disrupt social stability and the reform itself. Thus, the "proper" centralization by the Party in the first relationship and by the government in the second relationship has also been stressed.

The legal system, viewed by the new leadership as an institutionalized and systematized embodiment of the principle of democratic centralism in legal form, has great significance for guaranteeing democracy, on the one hand, and ensuring appropriate centralization on the other. One may argue that this responsibility of the legal system is one of the factors that have facilitated the recent strengthening of "socialist legality".

With regard to further examination of the significance of democratic centralism in the recent strengthening of the "socialist legality", some new tendencies of the "socialist legality" need to be further examined.

A. There has been an enhanced "judicial independence" in the process of the strengthening of "socialist legality". The relationship between Party leadership and

"judicial independence" has been a controversial issue since the promulgation of the first constitution of the People's Republic of China (PRC) in 1954. According to the first constitution of the PRC, "People's courts shall conduct adjudication independently and shall be subject only to the law".(45) However, judicial independence in China is subject to Party leadership. This is justified in Lenin's theory on proletarian dictatorship. The courts are integral to state organs which act as the instruments of the proletarian dictatorship. Since the Communist Party is the vanguard of the proletariat, it must exercise leadership over the courts. However, the Party leadership, according to Dong Biwu who was then the President of the Supreme People's Court, should confine itself to political leadership rather than taking on the specific responsibilities of the state organs.(46) Dong implied that the Party should not interfere in individual court cases. According to Cohen's research, the courts did enjoy the power of making autonomous judicial decisions in a

(45) Quoted in Jerome Cohen, "The Party and the Courts 1949-1959", in China Quarterly, No.38, April-June 1969, pp.120-157.

(46) See Dong Biwu xuanji, (Selected Works of Dong Biwu), People's Press, Beijing, 1985, pp.414.

period after the promulgation of the first constitution.(47)

This power was interrupted in the "Anti-Rightist movement" in 1957. In this movement the mere mention of "judicial independence" was considered as erroneous. The Party extended its leadership to the adjudication of individual cases.(48) Those who opposed the local Party committees' interference in concrete cases by arguing that there must be judicial independence and a separation between the Party and law, were denounced as "rightists".

During the period of the Cultural Revolution, the court system, which was criticized as the "instrument of implementing Liu Shaoqi's black line", was disbanded along with the systems of procuratorate and public security. When the court system was restored, the system of the Party committee's approval of judicial decisions in individual cases was also restored. The second constitution of the PRC, promulgated in 1975, and the third constitution of the PRC, promulgated in 1978, failed to incorporate any provision for judicial independence.

The period after the Third Plenary Session of the Eleventh CCCPC, convened in December of 1978, has seen the

(47) See supra, note 45.

(48) Ibid.

resurrection of judicial independence. In 1979, the CCCPC declared that the judicial decisions in individual cases would no longer need the approval of the Party committees.(49) In 1982, the fourth constitution of the PRC reinstated the provision for judicial independence. This recent resurrection should be understood as a restoration of the experience in the period subsequent to the promulgation of the first constitution, because the Party leadership is still retained. However, judicial independence is currently in a more positive position as the principles of the Party leadership are more rigorously defined than in the 1950s. The Party leadership is now confined to three areas of jurisdiction: (A) The Party defines the general direction of judicial work by its general policy. The recent crack-down on serious economic crime and other criminal offenses are the examples of the Party's policy guidance. (B) The Party supervises the strict implementation of law by the judicial organs. This policy guidance requires the courts to address properly those issues that are crucial to the implementation of law. Once the crucial issues are properly addressed, the Party

(49) See Wang Guiwu, "Jianjue zhixing dangzhongyang guanyu dangwei bu shenpi anjiande zhishi", (Resolutely Implementing the Instruction of the Party Central Committee Concerning the Party Committees No Longer to Approve Judicial Decisions in Individual Cases), in Qunyan, (Public Speech), No.8, 1986. pp.29-30.

organizations assume only the responsibility to ensure that the laws are strictly implemented by the staff in the judicial organs. This supervision is to prevent the misuse of legal proceedings for the purpose of private interest, and the interference in legal proceedings by individual leaders in either Party or government organization. (C) The Party recommends the candidates for the important judicial posts. The Party certainly aims at ensuring that the courts are politically responsible to the Party political line. However, the political loyalty is not the only criterion; the recommended personnel must also be professionally capable of implementing the laws properly. Moreover, this recommendation is subject to the approval of the concerned People's Congress according to legal procedure. The latter has the power to reject the Party's recommendation.(50)

Some of the cases reported in the Chinese press have shown that the recent definition of the relationship between the Party and court is to enhance court's

(50) For Chinese discussions on the relationship between the Party leadership and the judicial independence, see Zhang jinqing et al. "Duli shenpan yu dangde lingdao" (Judicial Independence and the Party leadership), in Faxue yanjiu (Legal Research), No.2, 1980, pp.27-28; Huang Ziyi, "Dang bixu zai xianfa he falu fanweinei huodong" (The Party Must Conduct Its Activities within the Limits of the Constitution and the Law), in Lilun yuekan (Monthly Theory), No.10, 1984, pp.32-36.

independence vis-a-vis the Party committee. For example, a Renmin ribao (People's Daily) report denounced a county Party committee secretary for violating both the Party constitution and the state constitution, because he had pressured the president of the county court to convict an innocent citizen. The court president was subsequently praised for his refusal to comply with the Party secretary's illegal requirement, and he was reinstated in his original post. Thus the principle of independent adjudication of individual cases was re-affirmed.(51)

B. The recent strengthening of "socialist legality" has also been reinforced in the current definition of the relationship between the Party policy and the laws. Law is taken as a body to "legalize" and "regularize" Party policy. Fa shi dangde zhengcede faluhua, gudinghua (Law is the legalization and regularization of Party policy). This expression implies that some Party policies may serve as the general basis for state legislation. The latter is to embody the spirit of the former. For example, recently-enacted laws concerning foreign investment are the embodiment of the Party's open-door policy in legal form. Another recently-enacted law concerning bankruptcy in enterprise is viewed as the "regularization" of the Party's

(51) See *supra*, note 3, November 8, 1986.

reform policy which promotes competition among Chinese enterprises. However, not all Party policies can be "legalized"; for example, those policies concerning inner Party affairs cannot be legalized.

Law, as the legalization of Party policy, is not new. Since 1949 it has acted as a form by which the Party exercises leadership over the legal system. However, some new perspectives concerning the relationship between Party policy and law have recently emerged. Peng Zhen, in one of his recent speeches, points out that only those Party policies that have been proved to be "mature" and "correct" over an extended period of time can be incorporated into state legislation.(52) This remark seems to imply that the state legislature can act as a check against bad policy. Since law is the legalization and regularization of "mature" and "correct" Party policy, the Party organizations and the Party leaders must observe the laws. This argument has often been used in the current Chinese literature to justify the dignity and the authority of the laws vis-a-vis the Party committees.

An issue that arises here is that, if the changing Party policy comes into contradiction with the laws, which

(52) See Fuyin baokan ziliao, Zhongguo zhengzhi (Collection of the Materials in Newspapers and Journals), the Section of Chinese Politics, No.3, 1985, pp.71.

one should prevail? The Chinese literature has debated this problem. One point of view argues that Party policy should prevail, particularly when the new policy that contradicts the old laws is a response to a new situation. The out-of-date law is to give way to new policy which deals with new problems. A second point of view takes an intermediate position which argues that when there is a contradiction between the Party policy and the laws, the one which is correct is to prevail. A third point of view insists that the law has a higher authority than Party policy when there is a contradiction between the two. The last viewpoint, however, does not directly challenge the guidance of Party policy in legislation. The party can recommend that the legislative organ change out-of-date law according to the spirit of new Party policy. However, until such time as the law is amended through legislation it has to be observed. Otherwise the principle that requires the Party to conduct its activities within the limits of the laws will be undermined.(53)

(53) See Li Buyun, "Zhengce yu falu", ("Policy and Law"), in his Fazhi minzhu ziyou, (Legality, Democracy and Freedom), Cichuan People's Press, Chengdu, 1985, pp.62-75; Zhang Youyu, "Yige bixu renzhen yanjiu tansuode wenti", ("A Problem That Must Be Studied And Explored Seriously"), in Zhongguo faxue, (China Law Study), No.1, 1987, pp.1-9.

The third point of view seems to be closest to the concerns of the new leadership. The new leadership has not specifically commented on the academic discussion, but it has criticized views which would "untie" the reforms from the laws. According to Deng Liqun, the reforms must be undertaken within the limits of the laws.(54) It seems that the new leadership will not accept policy change in the dynamic process of reform as justification for the evasion of the laws.

During the period of the Cultural Revolution, Mao also considered that the Party policies could be erroneous. However, he perceived this problem within inner-Party "two-line" struggle. Erroneous policies were traced to the "revisionist" line, and all correct policies were defined by the revolutionary leaders especially Mao himself. There was no room left for state legislature deliberation of Party policy.

A comparison of the new leadership's perspectives on the relationship between Party policy and law with the perspectives of the Cultural Revolution, suggests the enhanced position of the laws and the state legislature. The emphases on the maturity and correctness of the Party

(54) Deng, at that time, was a member of the Secretariat of the CCCPC. For his speech, see Zhongguo fazhibào, (China Law Daily), June 24, 1985.

policy which serves to guide the legislation and on the high authority of the laws may sustain a legislative ability to check the arbitrary change of the Party policy while allowing the Party to continue in its guidance of law-making.

C. The recent strengthening of "socialist legality" is related to an unprecedented request that all Party organizations and all Party members especially the Party leaders, observe the constitution and the law. The Party constitution has insisted on compliance with the law, and the Party has established assessment and promotion criteria requiring that leading cadres and candidates for leading posts acquire a knowledge of law and learn to handle affairs according to law. Deng Liqun has pointed out:(55)

Whether or not to have the knowledge of law, whether or not to handle affairs according to law should be one of the basic considerations in assessing and selecting the cadres.

In fact most CPC cadres do not have any legal education. In the past few bothered to concern themselves with legal problems. These criteria are quite demanding to most cadres. In order to help the cadres to meet these requirements the CPC has systematically organized law classes for cadres. According to one report in July 1986,

(55) See Ibid.

the secretaries of 24 out of 29 Party committees at the provincial level had attended law classes as did the chairmen of the standing committees of the people's congress and the governors of the governments in the same provinces.(56)

Cases revealing the arbitrary interference of some Party committees and Party secretaries in the work of the state organs have appeared in the Chinese press. Harsh criticisms have been featured in editorial and commentator's article in influential newspapers such as People's Daily and China Law Daily. One case concerning the judicial independence has already been discussed in a previous part of this chapter.

D. Recently there has been a rapid expansion of the jurisdiction of the legal system in the economic sphere. The involvement of law in the management of economy was earlier advocated by Dong Biwu in the 1950s. He then noted that the failure to honour contractual economic obligations was a common phenomenon, and he concluded: "This phenomenon of neglecting the legal system and violating the legal system is harmful to the development of the national economy."(57) In the past, there were random

(56) See Renmin ribao, (People's Daily), July 1, 1986.

(57) See *supra*, note 46, pp.414.

administrative regulations concerning the management of economy, but there were no comprehensive codes. According to contemporary Chinese scholarship, this was due to the lack of autonomous management in enterprise. Virtually all of the operations of enterprise were subject to the direct administrative control of the government, thus there was no urgent need to enact laws to regulate the relations between the government and the enterprises and between the enterprises themselves.

Significant development of legislation concerning the economy started in the late 1970s. Since 1979, the National People's Congress and its Standing Committee have enacted 58 laws. Half of them are classified by the Chinese as "economic law" jingji fa.⁽⁵⁸⁾ The law is to act as a mechanism to adjust and to sustain the contractual relations between the enterprises and the government organs and between the enterprises themselves.

According to the work reports made by the present President of the Supreme People's Court to the plenary sessions of the National People's Congress convened in the last two years, the courts all over the country received

(58) Supra, note 3, August 18, 1987. Jingji fa (economic law) also includes the the "economic regulations" jingji faqui promulgated by the State Council. There have been hundreds of such economic regulations in recent years.

more than 44,000 cases concerning economic disputes in 1983, more than 85,700 in 1984, almost twice as many as that in 1983, more than 226,600 in 1985, more than 322,000 in 1986, more than 7 times as many as the figures in 1983.(59) Through handling these cases the courts as the third party have become significantly involved in resolving the economic disputes. For example, the government of Yinchuan city, which is the capital of Ningxia Autonomous Region, lost a law suit concerning a economic dispute at the high court in that area.(60)

The afore-mentioned tendencies in the recent strengthening of the "socialist legality" are related closely to the current reform program. The program is at least in part a leadership reaction to the over-concentration of power in the Party in the previously discussed first relationship and in the government in the second relationship, thus it has required the division of labor between the Party and the state organs dangzheng fengong, and between the government and the enterprises zhengqi fengong. These terms currently imply the delegating of power previously over-centralized by the Party or the government to the state organs or the

(59) See *supra*, note 11, April 20, 1986; *supra*, note 3, April 16, 1987.

(60) *Supra*, note 3, April 6, 1987.

corresponding enterprises. This is the immediate background which explains recently enhanced judicial independence vis-a-vis the Party committee, the enhanced position of the laws and legislature vis-a-vis Party policy, the unprecedented legal training requirements within Party organization regarding the observance of the law and the increasing importance of the laws and courts in economic sphere.

Both the reform program and "socialist legality" are supported in the new leadership's understanding of the dialectical relationship between the two aspects of democratic centralism and the responsibility of the legal system in practising democratic centralism. The historical weakness of the legal system is partly related to Mao's perspectives on Party leadership and democratic centralism.

As early as the 1930s, Mao brought out a formula concerning the relationship between the Party and the government set up by the communists in the base area. He pointed out:(61)

The Party must perform the mission of guiding the government. [However,] The implementation of the ideas and methods

(61) Quoted in Deng Yingxiu, "Jianchi dang zheng fengong, jiaqiang dangde lingdao" (Adhering to the Division of Labor between Party and State, Strengthening the Party Leadership), in Beijing Shifan Daxue xuebao (The Journal of Beijing Teacher's University), No.2, 1986, pp.73-78.

suggested by the Party, except for propaganda, must go through the government.

This formula, according to the explanation of Chinese scholarship, subordinated the government to Party leadership on the one hand, and required the division of labor between the Party and government on the other.(62) In the 1940s, Mao further justified this formula with reference to efficiency. He said that the labor force should be divided among the various branches of the Party, government and army, so as to promote organizational activism and enthusiasm.(63)

However, the definition of the relationship between the Party and the government within this formula was too abstract and the organizational limits were loosely defined. This formula allowed an infinite variety of formulations and shades of emphases. One may consider that such a loosely defined formula allowed Mao to over-emphasize the centralization of the Party.

In the 1940s the CPC's base areas were fragmented, often isolated and exposed to enemy attack. Under such circumstances, the various agencies of political, economic

(62). Ibid.

(63) See Stuart Schram, "Decentralization in a Unitary State: Theory and Practice, 1940-1984", in his edited book The Scope of State Power in China, School of Oriental and African Studies, University of London, London, 1985, pp.81-126.

and administrative control could scarcely be effectively integrated. Thus, Mao conceived a design of "integrated Party leadership" to emphasize the Party's co-ordination of all governmental and social organizations.(64) This "integrated Party leadership", although it did not reject the division of labor between various organs in theory, allowed "a unified Party committee to exercise leadership over everything".(65) Government organs were largely confined to implementing the Party committee's decisions.

This "integrated Party leadership" was again emphasized when the Party took over the power in the whole country. This legacy has been justified in current Chinese scholarship on the basis of the practical need to consolidate the new regime in the prevailing context of political and economic instability.(66) Current Chinese scholarship considers that this state of affairs should

(64) For a detailed discussion on the "integrated leadership", see *ibid.*

(65) Quotation is from a Party resolution in 1942. An English translation can be found in Boyed Compton, Mao's China: Party Reform Documents 1942-1944, University of Washionton Press, Seattle, 1952. pp.161-175. Quoted in *ibid.*

(66) Zhou Huizhen, "Dangzheng bufen shi woquo lingdao tizhi gaigede zhongyao neirong" (The Confusion of the Functions between Party and State Is an Important Subject of the Reform of Our Country's Leadership Structure), in Shehuizhuyi yanjiu (The Study of Socialism), No.5, 1985, pp.15-17.

have changed after the completion of the "socialist transforamtion" in the mid-1950s. At that time the consolidation of the new regime had been completed; the socialist system had been set up; and the complexity of the economic construction required the improvement of Party leadership so as to make the state organs work more efficiently. "To improve the Party leadership" implies to change "integrated leadership" that allowed the "Party committee to excercise leadership over everything" and acknowledges certain decision-making power of the state organs.(67) As a matter of fact, Mao took a different view on "integrated Party leadership". In 1958, Mao emphasized his own view of organizational matters in the following saying: "Great Power is monopolized, small power is dispersed; the Party committee takes decisions, all quarters carry them out."(68) Since the decision-making power was monopolized by the Party, the state organs were in a purely passive position.

Mao's insistence on "integrated Party leadership" was more emphatic as a result of his focus on the class struggle in the early 1960s. In order to prevent the country from changing the "political color" like the Soviet

(67) See Deng Yingxiu, in *supra*, note 61; *ibid*.

(68) Quoted in *supra*, note 63.

Union, Mao argued that both the dictatorship of the proletariat and "integrated Party leadership" had to be strengthened.

In the early Cultural Revolution, the rebels smashed the Party committees all over the country and this seemed to represent the abandonment of "integrated Party leadership". However, as a response to the disorder created by the rebels, there was an exceptional emphasis on "integrated Party leadership" after the restoration of the party organizations in the late 1960s. "Integrated Party leadership" appeared as a basic principle for the first time in the Party constitution passed by the Ninth National Party Congress in 1969 and it also appeared in the Party constitution passed by the Tenth National Party Congress in 1974. The "Integrated Party leadership" monopolized an ever-larger scope of powers in the early 1970s.

The emphasis on "integrated Party leadership" after the mid-1950s has been designated as a manifestation of "left" ideology. "Integrated Party leadership", according to Chinese scholarship, led to the confusion of responsibilities of the Party and the state organs dang zheng bufen, the substitution of the state organs by the Party organizations in handling the governmental affairs yi dang dai zheng and the over-concentration of power into the hands of one or a few individuals. These were the causes

of the long time inefficiency and the ten years of tragedy in the period of the Cultural Revolution.(69) "Integrated Party leadership" and over-concentration of power were among the main causes of the underdevelopment of the legal system in the past. The over-concentration of power, for example, inhibited the development of judicial independence. The Party committee would not allow the courts to make independent decisions.

It is clear that the over-concentration of power in the Party which caused the underdevelopment of the legal system was related to Mao's over-emphasis on centralization in the dialectical relationship between democracy and centralism. It is true that Mao was the architect of democratic centralism in Chinese politics. Occasionally, he warned the Party of the danger of neglecting democracy. However, generally speaking, Mao tended to put centralization in first position. "Consistently, Mao regarded centralized leadership as in the last analysis even more important than democracy".(70) This was the

(69) For reference, see supra, note 66; Liu Chunjian, "Gaige dangde lingdaodao tizhi shi jianshe you zhongguo tese shehuizhuyide zhongyao baozheng" (The Reform of the Structure of the Party Leadership Is the Important Guarantee of Constructing the Socialism with Chinese Characteristics"), in Mao Zedong sixiang yanjiu (The Study of Mao Zedong Thought), No.2, 1985, pp.22-28.

(70) See supra, note 63.

reason why Mao brought out the problem of division of labor between the Party and the government but failed to solve this problem.

In response to the over-concentration of power, the new leadership sponsored the delegation of more power to the state organs. Deng Xiaoping was the principal sponsor of this reform. He pointed out: "Over-concentration of power means inappropriate and indiscriminate concentration of all power in Party committees in the name of strengthening the integrated leadership". Deng also stated: "Moreover, the integrated leadership often turns into leadership by individuals under the over-concentration situation in the past." (71) The English translation for the "integrated leadership" in Deng's book is "centralized leadership". This author considers that this translation may have failed to distinguish the difference between these two terms defined currently by Chinese literature. The "integrated leadership" yiyuanhua ling dao now is often defined as the equivalent of over-concentration of power which should be abolished; while the "centralized leadership" jizhong lingdao often refers to the appropriate Party leadership which should be adhered to. Deng observed that the over-concentration of power had impeded the

(71) See *supra*, note 16, pp.288;310.

progress of socialist construction; the over-concentration of power was liable to give rise to arbitrary rule by individuals and it was also an important cause of "bureaucratism". Deng explained these problems with reference to the over-emphasis on centralism in the framework of democratic centralism. He pointed out:(72)

We ourselves have repeatedly placed too much emphasis on ensuring centralism and unification by the Party, too little emphasis on ensuring the necessary degree of decentralization.

In order to solve the problem of over-concentration of power in the Party organizations Deng advanced the proposal of reforming the "leadership structure of the Party and state". However, the reform proposal offered by Deng is still consistent with the principle of democratic centralism.

On the one hand, Deng argues that democratic centralism and collective leadership "...should be genuinely practised in inner-Party life as well as in the country's political life."(73) As a response to the over-emphasis on centralization in the past, Deng points out: "We must lay particular stress on democracy, because

(72) Ibid, pp.312.

(73) Ibid, pp.341.

for a long time...centralism was divorced from democracy and there was too little democracy."(74)

On the other hand, Deng points out: "We need centralism". He further argues: "The unity of the people, social stability, the promotion of democracy... all depend on Party leadership."(75) Moreover, Deng explains: "The point is that the Party must provide good leadership. Only through consistent improvement can its leadership be strengthened."(76) One of the main tasks of improving the Party leadership is "to define the scope of functions and powers of the Party organizations as distinct from those of the government and economic and mass organizations."(77) It seems that Deng is not satisfied with the old formula that acknowledged the division of labor between the Party and state organs in the sense that the Party monopolized the decision-making power and that the state organs only assumed the responsibility to implement the Party decision. He thinks that the state organs should have their own

(74) Ibid, pp.155.

(75) Ibid, pp.167;324.

(76) Ibid, pp.324.

(77) Ibid, pp.312.

spheres to exercise decision-making power too. He says:(78)

From now on all matters within the competence of the government will be discussed and decided upon...by the state council and the local governments concerned. The Central Committee and the local committee of the Party will no longer issue directives or take decisions on such matters.

In an effort to change the situation of the over-concentration of power, Deng also tries to define leadership in new terms. He remarks: "What is leadership? Leadership is 'service'.... [The leading organs should] shift all of their work to serve production, the grass-roots units and enterprises".(79)

In order to guarantee a desirable relationship between democracy and centralism, i.e., on the one hand to overcome the over-concentration of power in the Party, on the other hand to prevent anarchism or ultra-democracy without appropriate leadership, democratic centralism must be institutionalized and systematized. Deng points out that the faults in the past were due to the fact that democratic centralism had not been incorporated into a strict and

(78) Ibid. pp.323.

(79) Quoted in Song Baoquan et al., "Qu renmin zhengfu ruhe xingshi guanli gujie qiye zhineng", ("How the District Government Exercises Its Functions in Managing the "District-Street" Enterprises.) in Harbin yanjiu (Harbin Study), No.4, 1985, pp.22-24.

perfected system.(80) This indicates that Deng is not content with defining the division of labor between the Party and the state organs only in a general way. The abstract definition of the past allowed the over-concentration of power at the expense of the division of labor. The legal system, in Deng's mind, is to incorporate democratic centralism into a "strict and perfected system".

When Deng discusses the relations between the individual interests and collective interests, between the immediate interests and long-term interests, he relates democratic centralism and the legal system to the expression of diverse social interests. He remarks:(81)

In the final analysis, the relations between democracy and centralism and between rights and obligations are the political and legal expressions of the relations between these diverse interests.

This remark seems to imply that the legal rights are the legal equivalents of political democracy and the legal obligations are related to the political centralism. These relations are more clearly explained in Deng's following remarks:(82)

(80) See supra, note 16, pp.312.

(81) Ibid, pp.183.

(82) Ibid, pp.157.

To ensure democracy we must strengthen our legal system. Democracy has to be institutionalized and written into law, so as to make sure that institutions and laws do not change whenever the leadership changes, whenever the leaders change their views or shift the focus of their attention.

In Deng's view, democracy in the form of legal rights, protected by the legal procedure, is a safe guarantee against arbitrary intervention. As for the relation between the Party and state organs, if the powers of the latter are clearly written into the law and if the Party assumes the responsibility to observe the law, the state organs would enjoy greater immunity from the Party committee and the Party leader's arbitrary interference and would, therefore, work more efficiently according to their own "legal rights".

However, law, in Deng's view, is not only a legal dimension of democracy, it is also a mechanism in excecising centralization. When Deng dealt with the problem of ultra-democracy and anarchism in 1979, he considered that the legal system could assist the centralized leadership. Socialist democracy, he argued, could not survive without centralism, legality and leadership.(83) The legal system, as understood by Deng,

(83) Ibid, pp.183-184.

is to be used as an instrument to discipline deviations from the leadership's guidance.

Since the legal system falls within the framework of democratic centralism, it is not necessarily seen as inimical to the centralized Party leadership. The legal obligations are formally recognized as the legitimate mechanisms that can be used by the leadership to call on discipline in the name of order, stability and collective interests. On the other hand, the legal rights and the legal procedure may serve as the mechanisms that can be used by the state organs such as the legislature and the courts to check the arbitrary rule of Party organizations and individual leaders.

"Socialist legality" is also intended to reinforce the contractual relations between government and enterprise. This reform is part of the new leadership's emphasis on democracy in the economic sphere. The increasing importance of the legal system in the economic sphere is also related to the new leadership's understanding of the relationship between democracy and centralism and the responsibility of the legal system in practising democratic centralism.

A dominant conception in the past was that under socialism the government should have highly centralized leadership over the operation of enterprises. Under this

concept the government took direct administrative control over virtually all of the operation powers of the enterprises in relation to production, supply, market, wages, employment of workers, and appointment of management personnel. Government control over enterprise was so minute that state-owned enterprise could not even purchase electrical fans in order to test new products without the approval of the concerned government organ. It was not infrequent that the government bureaucracy refused such applications.(84) In the second half of the 1950s, there was a movement devoted to the decentralization of power. However the decentralization was largely confined to delegating power to the local governments. The enterprises hardly became independent of government's excessive control. For a long time the Chinese enterprises have acted as the appendages of the various types of government organs.

The excessive and rigid control of the government over enterprise has been criticized by a recent CPCCC's decision concerning economic reform as the major cause of long-term

(84) For a Chinese analysis of the excessive governmental control over the enterprises, see Yang Chuntang et al., "Lun guojia qiyede jingji falu guanxi" (On the Economic and Legal Relationship between State and Enterprise), in Faxue yanjiu, (Legal Research), No.1, 1985, pp.7-11.

inefficiency of Chinese economy.(85) Deng Xiaoping has also discussed this problem with reference to democratic centralism. Deng criticizes the over-concentration of power in the government organs in this second dual relationship. He says:(86)

Our leading organs at various levels have taken charge of many matters which they should not and can not handle or can not handle efficiently. These matters could have been easily handled by the enterprises, institutions and communities at the grass-roots level provided...they acted according to the principle of democratic centralism.

In order to combat the over-concentration of power in the government organs the new leadership currently strives to expand the decision-making power of enterprise. This indicates that the powers concerning the operation of enterprise will be kept by the enterprises, themselves, rather than by the government organs. The new leadership has focused on the dependent position of enterprise in its relationship with government. The former have been accorded the legal status of "independent economic entity" and can now enjoy "autonomous power" (zizhu quan). The new leadership is planning to delegate six autonomous powers to

(85) See "Decision of the CCCPC on Reform of the Economic Structure", in Beijing Review, No.44. October 29, 1984.

(86) See *supra*, note 16, pp.310.

the enterprises. According to the above-cited CCCPC resolution on the reform of the economic structure, they include the powers to adopt flexible and diversified forms of operation, to plan production, supply and marketing, to keep and budget funds it is entitled to retain, to appoint, remove, employ or elect its own personnel according to relevant regulations, to decide on how to recruit and use its work force, and to establish wages and rewards, and to set the prices of its product within the limits prescribed by the state.

The new Chinese leadership expects these autonomous powers will enable the enterprises to bring their vitality into a full play and raise their efficiency of production, so as to meet the requirement of the modernization drive. In order to ensure the autonomous power of the enterprises, the power of the direct government control over the enterprises has been legally limited. In this regard, law is taken as one of the appropriate mechanisms to protect the independence of the enterprises. In an article to elaborate the new leadership's policy on strengthening the legal system, a deputy minister of Justice, Cai Cheng, argues that under the circumstances of indirect state control over the enterprises and the expansion of the autonomous powers of the enterprises, the strengthening of the legal system is an urgent need in order to ensure and

promote the development of the reform of the economic structure.(87) A deputy chairman of the Economy Committee of the State Council, Yuan Baohua, also emphasizes: "To ensure the rights of the enterprises by law is extremely necessary".(88)

On the other hand, the expansion of the autonomous power of the enterprises may give rise to some problems of economic disorder. In order to get more profit, some enterprises may not complete the production tasks required by the state plan and produce whatever may enable them to get more profit, or the enterprises may conduct some other illegal activities to meet their private interests. "In this connection," Deng remarks, "detailed law and decrees should be drafted to prevent misintepretation or abuse of decision-making power."(89) It is very clear that the new leadership will not abandon the power to excercise centralized control over the enterprises. The point is that the previous direct administrative control over

(87) Cai Cheng, "Lingdao ganbu yingdang chengwei xuefa, shoufa he yongfade mofan" (The Leading Cadres Should Become the Models of Studying Law, Observing Law and Implementing Law), in Lilun yuekan (Monthly Theory), No.5, 1986, pp.9-14.

(88) Supra, note 56, November 16, 1986.

(89) See supra, note 16, pp.343.

enterprises is to be reduced in favour of indirect legal control.(90)

Independence of enterprises and indirect state control over enterprise is to be reinforced in a re-activated and expanded system of "legal person". According to the recently-enacted civil code, enterprises are legal persons which have legal rights and obligations. The legal rights of the enterprises are the legal expressions of democracy, i.e., the autonomous powers enjoyed by the enterprises. In many of their relations with enterprises the concerned government organs also assume the position of legal persons. In this regard, both the government organs and the enterprises are equal before the law. If the government organs violate their legal rights the enterprises can resort to legal procedure to protect their rights. The case of Yinchuan city illustrates this point.

The legal obligations of the enterprises are the mechanisms that allow the government to exercise centralized leadership over the enterprises in the sense that the government can employ the law in disciplining enterprises. However the indirect legal control is

(90) Legal control is now considered as one of the main ways of indirect state control over the enterprises. Indirect control, according to the new leadership, should prevail over the direct administrative control. For reference, see *supra*, note 85.

supposed to be able to give the enterprises more immunity from arbitrary intervention.

The above analysis summarizes the relationship between the new leadership's understanding of democratic centralism and the recent enhancement of judicial independence, the high authority of law, and the rapid development of economic law which represent the rationalization of the Chinese political and economic system. The new leadership's emphases on democracy and decentralization are related to over-concentration of power in the past. This emphasis has helped sustain comprehensive political and economic reform. However the final purpose of these reforms is not to abandon centralized leadership; it is to practise "genuine democratic centralism" so as to facilitate a balance between democracy and centralism. The reforms require a complex pattern of balance. These reforms are intended to ensure the relative autonomy of the state organs vis-a-vis the Party committees and the Party secretaries in the first dual relationship, and the enterprises vis-a-vis the government organs in the second dual relationship. However, they must also guarantee the necessary centralized control of the Party in the first dual relationship and the government in the second dual relationship. The legal system is now required to assume extended, and in some cases new, responsibilities in the

institutionalization and systematization of democratic centralism.

CHAPTER THREE

THE MASS LINE AND RECENT INSTITUTIONALIZATION

The large-scale mass movement as a dominant feature of the Chinese political scene is receding into the past and, since 1978, the CPC leadership has focused on the building up of formal institutions within the framework of the legal system. As a part of the rationalization of Chinese politics, the Party has made comprehensive efforts to restore the established institutions that were disrupted and impeded in the previous years. The process has, in some cases, included the reform of these established institutions.(91)

This chapter will discuss the relationship between the new leadership's understanding of the mass line and its efforts towards institutionalization. It is assumed here that the CPC new leadership's recent efforts towards institution building and reform are not divorced from the mass line. They represent the continuation of the mass

(91) For some other detailed discussions in this regard, see Harry Harding, "Political Development in Post-Mao China" in Doak Barnett, et al. Modernizing China, Westview Press, Boulder, 1986, pp.13-38; Lubman, in *supra*, note 6; Brantly Womack, "Modernization and Democratic Reform in China", Journal of Asian Studies, Vol. XLIII, No.3, May 1984, pp.417-439.

line under the new situation with forms of institutionalized participation which, the Party leadership believes, were historically effective.

Recent progress in the consolidation and reform of the formal institutions is discussed below under headings relating to the People's Congress, the electoral system, the courts and procuratorates.

A. The People's Congress has been strengthened by the Chinese new constitution. The People's Congress, to a certain degree, might be taken as the counterpart of the legislature in the West. However, this comparison is very misleading, because Chinese ideology rejects the concept of the "separation of powers" among the legislature, the executive and judiciary. According to the Chinese constitution, the People's Congress is an omnipotent institution in managing the state affairs. The National People's Congress with the people's congresses at the different local levels is the system "through which the people exercise the state power". The state administration, i.e., the State Council at the national level and the people's governments at the different local levels, the judicial organs and the procuratorates are all

responsible and report to the people's congresses at the corresponding level.(92)

The new leadership has conceded that the system of People's Congress has not worked all that well in the past. Hence, one of the goals of the current political reform sponsored by the new leadership is to "make the people's congresses at all levels and their permanent organs the authoritative organs of the people's power." (93) Several constitutional reforms have been adopted in order to achieve this goal.

Firstly, the opportunities for the plenary sessions of the people's congresses to deliberate state policy have been increased. As a result of the constitutional reforms to expand the opportunities for the deputies to make motions and suggestions and express their opinions on state affairs, (94) the recent sessions of National People's Congress (NPC) and the sessions of the local people's congresses have produced a large quantity of "deputies' motions" daibiao yian and suggestions relating to government work. The motions and suggestions have covered a wide range of issues such as the training of nurses, the

(92) See *supra*, note 10, pp.11,69,79,87,89.

(93) See *supra*, note 14, pp.79.

(94) For the constitutional prescriptions in this regard see *supra*, note 10, pp.57-58.

controlling of population growth, the granting of decision-making powers to enterprises, improving radio and television programs and so on.(95)

The point is that the deputies' motions and suggestions in recent years have had an impact on the government. For example, a National Teacher's Festival has been established according to a motion advanced by deputies; the Ministry of Control has been added to the State Council as a result of a motion of deputies.(96) As the result of the suggestions of the deputies some new requirements concerning strategy for socio-economic development were added to the Premier's report on the Seventh Five-Year Plan. Both the central government and the local governments, for example, had to increase their prospective investments in agriculture. During the Seventh Five-Year Plan, the state is required to increasingly allocate more financial, material and technological aid than originally planned for in minority areas, the poor areas and the border areas, in proportion to increases in state wealth. The state is also requested to gradually set

(95) For reference see Donald Gasper, "The Chinese National People's Congress", in Deniel Nalson et al. Communist Legislatures in Comparative Perspectives, The Macmillan Press Ltd, London, 1982, pp.160-190.

(96) Zhongguo fazhi bao, (China Law Daily), December 31, 1986.

up and improve a continuing education system for technical staff.(97)

At the local level, a motion advanced by deputies was able to delay an irrigation project proposed by the city administration until such time as the difficulties encountered by the peasants were properly resolved.(98)

According to the Chinese constitution, the local people's congresses now have the power to elect the provincial governors and vice governors, city mayors and deputy mayors, county heads and deputy heads, presidents of the courts and the chief procurators.(99) A new tendency in this regard is the increasing importance of the plenary sessions of the local people's congresses in deliberating Party committee recommendations for the candidates of these public posts. Cases have shown that these deliberations may result in the refusal to accept Party committee recommendations. The People's Congress of Jilin Province cancelled the regular elections for the President of the High Court, the Chief Procurator and the Vice Governor from its agenda at the session of 1986, because of disagreements with the provincial Party committee over these candidates.

(97) See *supra*, note 56, April 13, 1986.

(98) See *supra*, note 3, February 4, 1987.

(99) *Supra*, note 10, pp.74.

The provincial Party committee thereupon withdrew the previous nominations.(100)

Secondly, the recent years have seen a regularization of the system of the People's Congress. The annual sessions of the people's congresses are usually quite short and hence these congresses have worked with far too little frequency.(101) Two reforms have been introduced to regularize the system of People's Congress. The constitution of 1982 augmented the powers and competence of the Standing Committee of the NPC. Secondly, the standing committees for the local people's congresses at and above the county level were established under a new organic law promulgated in 1979.(102)

The standing committees are now in a better position to more effectively represent the people's congresses in day-to-day governmental activity when the latter are not in session. For example, through its investigation the

(100) Supra, note 96.

(101) The plenary session of NPC usually lasts for about two weeks; the plenary sessions of the local people's congresses are even shorter.

(102) For powers of the Standing Committee of NPC see supra, note 10, pp.52-55; for powers of the standing committees of the local people's congresses see the "Organic Law of the Local People's Congresses and the Local People's Governments"--the revised version of this law is available in supra, note 56, December 5, 1986.

Standing Committee of the People's Congress in Tianjin City found that the facilities of some of the primary schools in that area were far below the minimum requirement. It also discovered the unauthorized transfer of education funding to other departments at the county level. The Standing Committee informed the city administration of the results of the investigation and asked for an improvement of the situation. As a response to the suggestion of the Standing Committee the city administration did raise a considerable amount of money for the improvement of education.(103)

The regularization of the people's congresses has also included the reform of the system of "deputy inspection" daibiao shicha zhidu. The deputy inspection system was established in the 1950s. During that time the deputies were organized twice a year to inspect the work of selected local government units, enterprises or communes chosen by the Standing Committee of NPC or local government. This system has been changed recently for the purpose of efficiency. The new system allows the deputy to conduct inspections at the personally selected units other than those designated for organized collective inspection.(104)

(103) Minzhu yu fazhi, (Democracy and Legal System), No.12, 1984, pp.10-11.

(104) *supra*, note 96.

Another tendency relating to the regularization of the system of People's Congress is the recent emphasis on the "improvement of the deputy's quality". In the past a large portion of the deputy posts were filled by the "model figures".(105) Although the current Chinese literature has not denied the necessity of the presentation of the model figures in the people's congresses, some of the irrational aspects of the model figure representation such as the lack of professional competence in performing deputy responsibilities have been discussed. The new emphasis is on the "deputy's quality" which implies that, in addition to "political consciousness", the deputy's "ability to conduct social activities" shehui huodong nenqli and "discuss politics" yizheng nenqli should also be considered. Though the deputies are not yet considered as professional legislators, professional competence has received more attention in the selection of deputies. Recently the educated and young have accounted for an increasingly large proportion of the deputies.(106)

The ascendancy and regularization of the system of People's Congress are the new leadership's direct responses

(105) "Model figures" are the persons who have outstanding performance on their jobs or have "high level of communist consciousness". The Party calls the public to learn from the model figures.

(106) *supra*, note 96.

to the irrationalities of past mass movements which were characterized by arbitrary direct mass action. In contrast to the irrationalities of the mass movements, institutionalized participation currently seeks efficiency, stability and institutional continuity.

B. The reform of the electoral system is another important indication of the new leadership's commitment to the institutionalization of mass participation. The formal electoral system in the PRC was established by the first electoral law in 1953. According to this law, there was a system of one candidate for each post deng'e xuanju, and the direct election of the deputies to the people's congresses was confined to the lowest administrative level--the township. In 1979 another law was promulgated with the aim of reforming the old electoral system. December of 1986 saw a re-publication of the electoral law with some modifications. The new electoral law has introduced several reforms in the Chinese electoral system. For example, the old system of one candidate for one post has been replaced by the system of more candidates for one post chae xuanju, and the direct election of the deputies has been made applicable to the people's congresses at the county level which is the next higher administration of the township. Also the candidate nominating process has become more open. The CPC, "democratic parties", organizations

and any group of ten voters--can each nominate the candidates independently, or they may make nominations jointly.

These electoral reforms are designed to provide more opportunities for the masses to express their views in choosing personnel for state affairs. In the latest election for the deputies at the county level in Beijing, over 86 percent of the candidates were nominated by voters. Some of the voter-nominated candidates defeated the candidates nominated by the parties and organizations.(107)

Another case reports that, in the election for the county head xianzhang at the plenary session of the people's congress in a county in Zhejiang province, the candidate nominated by the deputies defeated the candidate nominated by the Party.(108)

The reformed electoral system, according to Womack's observation, is "an experiment in democratic modernization" in China.(109) He points out:(110)

If such reforms should be put into practice in China, it might be expected that in the

(107) Supra, note 3, May 7, 1987; September 16, 1987.

(108) Supra, note 3, August 21, 1987.

(109) Brant Womack, "The 1980 County-Level Election in China", in Asian Survey, Vol.XXII, No.3, March 1982, pp.261-277.

(110) Ibid.

long run public opinion would become a more formal part of the political process through the formation of electoral constituencies and that the elected officials would begin to share the mantle of political leadership.

C. The new leadership's efforts for the institutionalization has also included an emphasis on the courts and procuratorates as instruments to protect citizens' rights and combat the illegal conduct of governmental officials and agencies.

For a long time the Chinese courts and procuratorates had been mainly considered as tools to exercise the dictatorship over the enemies of socialism. The new leadership's emphasis on the responsibility of the judicial organs in protecting citizens' rights is directly a response to the arbitrary detention and accusation of a large number of Chinese citizens, including many of the CPC's own senior cadres, in the period of the Cultural Revolution. Remarkable efforts have been made in this regard. The courts and procuratorates, for the first time in the PRC history, have a criminal code, civil code, code of procedure for criminal litigation and code of procedure for civil litigation to follow.

China observers have pointed out the significance of the clearer legal definition of laws in protecting the

citizens' rights.(111) The following cases may agree with this observation. A peasant can now, for example, defend his profit in agricultural production by launching a lawsuit against the cadres in his production team when they fail to honour their contractual obligations.(112) An actor can sue for compensation when he is libeled as a homosexual.(113) A child's mother can claim compensation for her child's "spiritual loss" because a company used her child's portrait for decoration on the packaging of toys.(114) If a writer's novel suddenly appears in an unauthorized drama, the writer can ask the court for compensation.(115) Consumers can sue producers due to the losses suffered because of the bad quality of products.(116)

Another tendency which has been observed by Lubman in the recent institutionalization is that the new leadership

(111) Shao-chuan Leng, "The Chinese Judicial System: A New Direction", in Sidney Grenblatt et al. Organizational Behavior in Chinese Society, Praeger Publishers, New York, 1981, pp.112-133; Lubman, in supra note 6.

(112) Supra, note 96, December 13, 1985.

(113) Supra, note 103, No.5, 1984, pp.9-12.

(114) Supra, note 96, February 25, 1987.

(115) Supra, note 103, No.5, 1984, pp.45-47.

(116) Supra, note 96, December 17, 1986.

begins "to expand the role of law and law courts in sanctioning officials and Party members for conduct which violates the criminal law..."(117) A salient case in this regard is that of a provincial governor who was convicted and sentenced to two year imprisonment because he had misappropriated the state foreign currency in order to protect smugglers and bribers.(118)

New developments suggest that the responsibility of law and law courts in sanctioning officials is not confined to violations of the criminal law. Some law courts have established an "administrative division" xingzheng fating to deal with the lawsuits between citizens and government agencies. If citizens consider that they have been unjustly treated by police officials tax-collectors or other official agents and agencies in the name of "administrative regulations" xingzheng faqui, these citizens may launch a lawsuit in order to defend their rights. A recent report revealed the case that a father and his son who were detained by the police appealed to the court and were able to get a verdict of wrongful police detention.(119)

(117) Lubman, in *supra*, note 6.

(118) *Supra*, note 3, June 2, 1987.

(119) *Supra*, note 3, March 18, 1987.

The new development also shows the responsibility of the procuratorates in sanctioning officials' violations of criminal law. It has been reported that the procuratorates in the whole country have investigated and handled 2,035 "cases of encroaching rights" qinquan anjian(120) in the first half of 1987. Most of the cases concerned official misconduct such as inquisition by torture, illegal detention and false accusation.(121)

"Bureaucratism" and illegal activities among the Party and government officials have been a major concern of the Chinese leadership since the CPC came to power. Such phenomena are considered as factors that may alienate the Party from the masses. In the past, mass movement acted as the major form for combating these phenomena. However the arbitrariness of the mass movements often created excesses, because of contempt for the law and legal procedure. The rationale behind the recent expansion of the responsibility of law courts and procuratorates in combating "bureaucratism" and illegal activities of Party and government officials lies in the new leadership's concern to overcome the irrational aspects of the mass movements by introducing institutional checks on the undesirable

(120) This is a brief for the phrase of the cases of encroaching the citizen rights.

(121) Supra, note 3, September 6, 1987.

phenomena within the Party and government. This may also be seen as a response to the necessities of specialized division of labor in the modernization process.

The unprecedented institutionalization has invited different explanations as to the significance of the recent institutional development. Two of these explanations are of interest. (A) The recent political development has seen an "erosion of the Chinese ideology".(122) This explanation recalls the thesis of the "end of ideology" in the process of institutional routinization.(123) (B) The reemerging of formal institutions within the framework of the legal system presents the defeat of the revolution. It indicates that the "revisionists" have betrayed the principle of mass line.(124) However, the following discussion may show that the new leadership's efforts towards institutionalization are conceptualized from within the framework of the mass line which is still an important part of the Chinese ideology.

The mass line is a theoretical conception by which the CPC conceptualizes its leadership style and method. It

(122) Harding, in *supra*, note 91.

(123) Harding does not draw a conclusion that there has been an end of ideology in China.

(124) James Brady, Justice and Politics in People's China, Academic Press, London, 1982, pp.222-226.

postulates a close relationship between the Party and the masses. The essential point of the mass line appeared as early as the 1930s. Mao Zedong, summarizing the experience in the CPC base areas, presented the basic idea in 1934. The central task, according to Mao, was to mobilize the masses to participate in the revolutionary war, thereby overthrowing imperialism and the Guomindang (the National Party). But mobilizing the masses alone is not sufficient. The Party must also attend to the living conditions of the masses to make them realize that "we present their interests", and that "our life and theirs are intimately interwoven".(125) In the 1940s Mao further developed his idea of the mass line. He focused on effective ways to maintain the close relationship between the leadership and the masses. The Party was to integrate the ideas of the leading organs with those of the masses in the process of policy making and implementation. This was expressed in the formula "from the masses to the masses".(126)

(125) Mao Tse-tung, Selected Works of Mao Tse-tung, Foreign Languages Press, Peking, 1965, Vol.I, pp. 147-152. For discussions on mass line see James Townsend, Political Participation in Communist China, University of California Press, 1969, pp.72-74; John Lewis, Leadership in Communist China, Cornell University Press, Ithaca, New York, 1963, pp.70-100.

(126) See Mao, in *ibid*, Vol.III, pp.119.

The mass line's influence on policy since the CPC came to power has depended to a large extent on the leadership's shift of focus on social issues. Since the 1950s, the "left" ideology, which identified the class struggle as the main issue in Chinese society, motivated the irrational policies emphasizing vehement direct mass action as basic to the carrying out of the mass line. The new leadership's commitment to the economic construction has alternatively stressed institutionalized mass participation as the major form of carrying out the mass line.

After the CPC came to power, the mass line was manifest in two major forms: mass mobilization in the form of the mass movements and mass participation through the institutionalized channels. In the first years of the PRC, the mass movements became the major form for the leadership to mobilize the masses in completing its revolutionary tasks. The mass movements in this period included land reform, in the late 1940s and the early 1950s, and socialist transformation in the mid-1950s. With the consolidation of the new regime, the Party also paid attention to institution building. In the period from 1953 to 1957, an electoral system was adopted and the first constitution of the PRC was promulgated together with several other organic laws concerning the people's congresses, the government organs, the courts and the

procuratorates. The basic structure of the formal institutions established in this period remained largely unchanged for the later period.

As far as institution building was concerned, the Chinese leadership enjoyed a consensus. The institution building, started in 1953, certainly had Mao's strong endorsement. He observed that China needed a constitution, so that people all over the country would feel sure that they had a clear, definite and correct path to follow.(127)

Mao also viewed the institution building as consistent with the mass line. When he discussed the legislative process of the first constitution of the PRC, Mao remarked:(128)

Why has the draft constitution won popular support? I think one reason is that in drafting it we adopted the method of integrating the ideas of the leading body with those of the masses.

This remark was based on the fact that 8,000 "activists" were invited by the leadership to deliberate on the draft constitution.

Mao's point of view was supported by other leaders of the CPC. Liu Shaoqi considered the newly-found people's

(127) Mao Tse-tung, Selected Works of Mao Tse-tung, Foreign Languages Press, Peking, 1977, Vol. V, pp.145.

(128) Ibid, pp.142.

congresses as the institutions that could keep a close tie with the masses and allow the masses and their deputies to combat government "bureaucratism". He said in 1956:(129)

We must reinforce supervision by the National People's Congress and its standing committee over the departments of the central government and supervision by all the local people's congresses over all the local government organs. To achieve this end, the practice of inspection by the people's deputies must be strengthened, so that they can collect the opinions of the masses of the people in an extensive way; the people's congresses at all levels must do their utmost to examine, criticize and discuss the work done by the governments.

Dong Biwu, then a member of the politburo, also pointed out:(130)

Our people's democratic legal system has strength, because the legal system summarized the experience of the people's struggle by seeking the truth from the facts and carried out the mass line....In the process of making the laws, [we] carried out the principle "from the masses to the masses".

According to the leadership, institutionalization did not entail a termination of the mass line, nor did it require a change of the substance of the mass line. But

(129) Liu Shao-chi (Liu Shaoqi), The Political Report on the Eighth National Congress of the Chinese Communist Party, Foreign Languages Press, Peking, 1956, pp.66-67.

(130) See supra, note 46, pp.410-411.

institutionalization encompassed the continuation of the mass line in a systematic and orderly way.

It seems that the Chinese leadership also achieved a consensus on the mass movement as the major form of carrying out the mass line in this period. This was based on a consideration of the necessity of completing the revolutionary tasks and consolidating the new regime. However, the irrational aspects of the mass movements did not go unnoticed. The disruptive effect of mass movement was observed by Dong Biwu as early as 1954. He pointed out that the previous large-scale mass movements had succeeded in completing the Party's tasks. However, these movements had inevitably had some side-effects in the institution building.(131)

At the Eighth National Party Congress convened in 1956, Dong's observation on the mass movement was supported in the Central Committee's Political Report, delivered by Liu Shaoqi. Liu declared that the period of revolutionary storm and stress was past, and that the current aim of the CPC's struggle was to safeguard the successful development of the social productive forces. Liu argued that in the past the principal method of struggle had been to lead the masses in direct action, because of the need to liberate

(131) Ibid, pp.340.

people from reactionary rule and liberate the social productive forces from the bondage of old relations of production. However, a corresponding change in the method of struggle would consequently follow upon the change of the Party's aim. The method of "direct mass action" was no longer appropriate to the Party's new tasks, and Liu emphasized the institutionalized mass participation within the framework of the legal system.(132)

However the "left" ideology which emerged after the Party Congress, challenged these understandings arguing that the mass movement was still a good way for mobilizing the masses after the establishment of the socialist system.

In the second half of the 1950s, Mao was concerned about the problem of "bureaucratism"(133) which had developed in the newly-emerged institutions and the Party. Mao considered that the "bureaucratism" and privilege-seeking among the Party and government officials would damage the good relations between the regime and the

(132) Supra, note 129, pp.72.

(133) The CPC's concept of "bureaucratism" is different from the "bureaucratization" in the process of institutionalization. "Bureaucratism" refers to many of the undesirable behaviors of the Party cadres and government officials or the phenomena within the Party and state organs which go against the interests of the masses defined by the Party and constitutional principles. For a description of CPC's concept of "bureaucratism", see Lubman, in supra, note 6.

masses which had been established in the early years of the PRC. Mao was searching for a good method to resolve this problem.

Mao did not necessarily preclude the orderly mass participation within the framework of the legal system, but his focus was not on it. In November 1956 and January 1957 Mao discussed the "great democracy of the proletariat" as a possible way to combat the "bureaucratism" and privilege-seeking.(134) In October 1957, he pointed out that the "sida" (speaking freely, airing views fully, holding great debates and writing big-character posters) "will make it easier for us to overcome subjectivism, bureaucratism and commandism".(135) These emphases suggest that Mao was looking for ways to emphasize the importance of momentum in mass mobilization rather than for ways to organize orderly mass participation.

After the "Anti-Rightist Movement" Mao gradually enhanced the class struggle in Chinese society. In 1958 Mao had the following words to say:(136)

At present, there is, on the one hand, the
grave struggle between the socialist world

(134) Supra, note 127, pp.332-383.

(135) Ibid, pp.485.

(136) Quoted in Stuart Schram, "Mao Tse-tung and the Theory of Permanent Revolution", China Quarterly, No.46, 1971, pp.221-244.

and the imperialist world. On the other hand, as regards conditions within our country, classes have not yet been fully wiped out and there is still class struggle. These two points must be taken fully into account.

Mao re-emphasized the class struggle in 1962 and gradually developed the idea of the "bureaucratic class" quanliao jieji in the following years.(137) The existence of such a "bureaucratic class" was tied to an immediate danger of "capitalist restoration" in China. At the center, according to Mao, there was a bourgeois headquarters. At the local level, there were "persons in power taking the capitalist road" in many of the enterprises. Among the cultural and academic circles, there were leading "bourgeois" figures. These elements constitute a "new bourgeoisie" within the CPC and in society. If they were not rectified in time China would change her "political color". Conventional institutionalized mass participation failed to resolve these problems for the "capitalist restoration" was taking hold with the institutions themselves. A large-scale mass movement was needed in order to mobilize the masses to participate in the struggle between the proletariat and bourgeoisie, thus Mao sponsored the Cultural Revolution

(137) Tang Tsou, The Cultural Revolution and the Post-Mao Reforms, The University of Chicago Press, Chicago, 1986, pp.121;134-135;286.

during which almost all of the established institutions were disrupted.

Although Mao was dissatisfied with some of the excesses of the Cultural Revolution, he was pleased with the discovery of this form of political movement. He remarked:(138)

The Cultural Revolution is a movement on a vast scale. It has indeed mobilized the masses. Never before in any mass movement have the masses been mobilized so broadly and deeply as this one.

Mao perceived the excesses of the mass movement as an inevitability of a complete mass mobilization and as the problems to be rectified in the final stages of mass mobilization. Mao was strongly motivated by his view of the class struggle in Chinese society and his desire to combat "bureaucratism" by vehement mass action in the context of the class struggle. Obviously, Mao's view on the class struggle deviated from the view of the Eighth Party Congress.

Mao's ambiguous attitude toward the legal system and formal institutions and his preference for the large-scale mass movement as the more important form by which to

(138) See Stuart Schram, The Political Thought of Mao Tse-tung, Frederick A Praeger, Publishers, New York, 1969, pp.369.

mobilize the masses negatively influenced the process of institution building.

In the late 1950s, a wave of mass movements had followed the institution building of the previous years. The disruptive effects on the formal institutions could be discerned in the "Anti-Rightist Movement" in the second half of 1957 and the "Great Leap Forward" in the following years. In this period, the staff of the court system and the procuratorial system were reduced and their work became erratic.(139) The annual session of the National People's Congress in 1961 was not even convened due to the disastrous effects of the "Great Leap Forward".(140)

The period from 1962 to the middle of 1966 saw the relative stability of the formal institutions established in the middle of the 1950s. However, this period of relative stability was completely destroyed in the Cultural Revolution.

The Cultural Revolution was an unprecedented mass movement in terms of its scale and its damage to formal institutions. From the second half of 1966 to 1969, all of

(139) Leng, in *supra*, note 111; Brady, in *supra*, note 124, pp.145-179; James Cohen, The Criminal Process in the People's Republic of China 1949-1963, Harvard University Press, Cambridge, Massachusetts, 1968, pp.14-18.

(140) *Supra*, note 95.

the formal institutions such as the people's congresses, the courts and the procuratorates were dissolved by the rebels in the name of "defending Chairman Mao's revolutionary line and smashing Liu Shaoqi's reactionary line". The total destruction of the formal institutions led to great chaos in Chinese society.(141) Normalcy in the legal field was only gradually restored in 1973.(142) The National People's Congress, which had ceased to work for almost ten years, was re-convened in 1975. However, the constitution passed by this Congress doomed the procuratorates, whose responsibilities were transferred to the public security agencies.(143) The restoration of direct election for deputies had to wait until the promulgation of the new election law in 1979.

The new leadership is very critical of the large-scale mass movements that were sponsored and directed by Mao since 1957. The new leadership has, however, endorsed the pre-1957 mass movements as necessary to the consolidation of the new regime and socialism. The general attitude of

(141) Samuel Huntington's thesis on stability as influenced by the relationship between participation and institutionalization was supported by this case.

(142) Shao-chuan Leng et al., Criminal Justice in Post-Mao China, State University of New York Press, Albany, 1985, pp.18.

(143) Ibid.

the new leadership towards mass movements has been summarized by Deng Xiaoping as follows:(144)

After our success in socialist transformation, we launched one political movement after another, each time delaying our progress in many things and dealing unjustly with many people.

On the basis of this assessment the new leadership has decided to terminate the mass movement as a form to carry out the mass line. This decision is an important factor which accounts for the new leadership's drive towards the institutionalized mass participation within the framework of the legal system being so strong.

The new leadership's unprecedented efforts towards institution building could be viewed as a continuation of the legacy of the mid-1950s. An examination of Deng's works shows that the new leadership has had a strong commitment to the mass line. This commitment, in the new leadership's eyes, is demanded by the strong drive to modernization and institutionalization. Deng argues:(145)

We have before us the extremely arduous and complex tasks of socialist modernization. While many old problems still remain to be solved and many new ones are emerging. Only by consistently relying on the masses, maintaining close ties with them, listening to what they have to say, understanding their

(144) See supra, note 16, pp.236.

(145) Ibid, pp.324.

feelings and always presenting their interests can the Party become a powerful force capable of smoothly accomplishing its tasks.

In order to complete the tasks of modernization, the Party must present the interests of the masses and rely on their support. This formulation of Deng is very similar to that of Mao in the 1930s. However, the essential difference between Mao and the new leadership on the problem of how to carry out the mass line should not go unnoticed. The new leadership's strong commitment to the orderly and institutionalized mass participation constitutes a sharp contrast to Mao's focus on the mass movement.

Deng's criticism on the mass movement should not be taken as an expression that the CPC will abandon the mass line method by which the Party intensively activates and coordinates the masses in a certain period to complete its short term political tasks. This method is sometimes perceived as "campaign" or "movement" by some China observers. As has been observed by Lubman, the Party and the state council have sponsored a "campaign" to crack down on serious economic crimes. A "campaign" to popularize the knowledge of law among the public is presently underway.⁽¹⁴⁶⁾ However, the new leadership does not regard

(146) Lubman, in *supra*, note 6.

either of these as mass movements or mass campaigns gunzhong yundong. They are different from the "large-scale movement" or "political movement" or "mass movement" criticized by Deng in that their development is seen as taking place within the process of institution building. The mass movement that the new leadership wants to abandon appears to have had two characteristics: One is that the target dealt with in this kind of movement is an "enemy class" such as the "rightists" or "capitalist roaders" (the "bureaucratic class" attacked in the Cultural Revolution). The other is the arbitrary change of the state economic plan as a consequence of the development of the mass movement such as happened in the "Great Leap Forward". It seems that the mass movement defined by the CPC new leadership has a narrower connotation than that defined by the Western literature.(147)

The termination of the large-scale mass movements is based on the new assessment of the class struggle in Chinese society. The new leadership insists that the large-scale class struggle should have been terminated after the completion of the socialist transformation in

(147) For the later definition see Gordon Bennet, Yundong: Mass campaigns in Chinese Communist Leadership, Center for Chinese Studies, University of California, Berkeley, 1976, pp.47-74. Charles Cell, Revolution at Work Mobilization Campaigns in China, Academic Press, New York, 1977, pp.7-9.

1956, although the class struggle may exist within certain limits or in a remnant form. Under such a situation the Party should have adhered to the policies formulated at the Eighth Party Congress and focused on the construction of a modern economy. The new leadership also believes that, in the process of modernizing China, the mass movement as a main method to mobilize the masses in the past period has to be changed, because the incessant movements, according to Deng, make it practically impossible to concentrate on national construction. Moreover, such movements inevitably ended up hurting a great many people. Thus Mao's focus on class struggle and mass movements after the completion of the socialist transformation did not legitimately carry out the mass line, because "...the masses are fed up with large scale movements."(148)

The problem of "bureaucratism" which so deeply concerned Mao also concerns the new leadership. Deng Xiaoping observes:(149)

There are now a few people who abuse this power and encroach upon the interests of the masses, pursue a privileged life-style for themselves and even act tyrannically and outrageously.

(148) Supra, note 16, pp.330.

(149) Ibid, pp.211.

He further criticizes:(150)

A handful, violating law and Party discipline, have gone so far as to retaliate against people who come with grievances.

These are the factors, according to Deng, which alienate the Party from the masses.(151)

Differences arising between Mao and Deng on the problem of "bureaucratism" lie in the fact that Deng does not acknowledge the existence of the bureaucratic class, and that he plans to combat it by institutionalized mass participation rather than mass movements. Deng points out:(152)

There must be a system of mass supervision, so that masses at large and the Party rank and file can supervise the cadres, especially the leading cadres. The people have the right to expose, accuse, impeach, replace and recall according to law.

Deng's emphasis on law is closely related to the idea of mass supervision which is a part of the substance of the mass line.(153)

(150) Ibid.

(151) Ibid, pp.210.

(152) Ibid, pp.315.

(153) In addition to mass supervision, Deng also offers another method to combat "bureaucratism"--structural reform. This has been discussed in the second chapter of this thesis.

In practice, the new leadership's institutional reforms such as the recent electoral reform, the strengthening of the people's congresses, the courts and the procuratorates discussed in the previous part of this chapter are aimed at creating more opportunities for institutionalized and orderly mass participation. Theoretically, the new leadership conceptualizes these institutional reforms within the framework of mass line.

The new leadership often discusses the institutional reforms in the context of "developing socialist democracy and strengthening socialist legality". Among other meanings, "socialist democracy", according to the new leadership, means "to develop all our undertakings in accordance with the will, interests and needs of the people, to enhance the people's sense of responsibility as masters and give full play to their initiative and enthusiasm".(154) This formulation has indicated that the purpose of the new leadership's effort towards the institutionalized mass participation is not different from the CPC's historical viewpoint on the mass line as the means by which to arouse the mass enthusiasm for the completing of the tasks defined by the Party. The shift of the emphasis from the mass movement to the institutions

(154) See The Twelfth National Congress of CPC. Foreign Language Press, Beijing, 1982, pp.46.

within the framework of the legal system is related to the new leadership's consideration of the social stability and unity needed by modernization. In this regard institutionalization is more appropriate to the practice of "socialist democracy". Institutions, within the framework of the legal system, Deng argues, will promote the smooth progress of modernization.(155)

In recent years, the mass line is also manifested in the close tie between the masses and the courts and procuratorates through the channels of "letters from the masses" gunzhong laixin and "visitings by the masses" gunzhong laifang to the courts and procuratorates. According to Chinese sources, the courts received more than 3 million letters from the masses and more than 3.6 million visits from the masses each year.(156) The procuratorates received 480 thousand letters from the masses in the first half of 1987.(157) The content of these letters varies from the providing of information on crime to appeals for the defence of citizen rights.

The basic termination of the class struggle has allowed the formal institutions, especially the courts, to

(155) Supra, note 16, pp.319.

(156) Supra, note 56, November 11, 1986.

(157) Supra, note 3, September 9, 1987.

reverse a large number of "unjust and wrong cases" which had originated in the large-scale class struggles in the past.(158) These verdicts together with the recent "de-capping" of a large number of former "landlords and rich peasants" and "rightists" enable the formal institutions to establish ties with wider segments of society including not only those who have been rehabilitated but also the members of their families.

The current popularization of the knowledge of law among the public is certainly the legacy of the mass line. The mass line takes law as a tool for political socialization and emphasizes the responsibility of the legal system to educate the masses in the use and observation of law.(159) In the current popularization of the knowledge of law, around 300 million Chinese citizens were reported to have participated in the "study of the common knowledge of law" in 1986.(160) This is one part of the new leadership's effort to cultivate the "citizens'

(158) From 1977 to mid-1980, a total of more than 251,000 of such cases with which more than 267,000 persons were involved were reversed by the courts. Gongren ribao, (Workers' Daily) August 31, 1982.

(159) See Shao-chuan Leng, "Role of Law in the People's Republic of China as Reflecting Mao Tse-tung's Influence", in Journal Of Criminal Law and Criminology, No.3, November 1977, pp.356-373.

(160) Supra, note 3, March 11, 1987.

consciousness on socialist law" gongminde shehuizhuyi falu yishi.

The literature on the Chinese law has often discussed the responsibilities of "people's mediation committees" and "people's public security defense committees" as the manifestations of the mass line in the Chinese legal system.(161) "People's mediation committees" are the organizations that consist of mass "activists", retired workers and cadres. These organizations are engaged in resolving the disputes in a family, a neighbourhood, an enterprise, or an agricultural production team, by persuasion or mediation. The effect of the mediation is based on the agreement of both sides involved in dispute. "People's public security defense committees" may draw their members from the same social strata as is in the case of the mediation committees. These organizations continue to assume community responsibility in aiding the formal legal institutions or police in detecting crime and keeping public security at the basic level.

(161) Stanley Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China", in California Law Review, No.55, November 1967; Cohen, in *supra*, note 139, pp.110-153; Lung-Sheng Tao, "Politics and Law Enforcement in China (1949-1970)", in The American Journal of Comparative Law, Vol.22, Fall 1974, pp.713-756.

With the recent progress of the formal legal institutions, China watchers in the West have produced an erroneous impression that the direct mass involvement with the enforcement of justice has been decreased because of the expansion of formal institutions. As a matter of fact, with the recent progress of the formal institutions the mediation committees and the defence committees have also developed.(162) The new leadership praised the mediation committees as an important force for constructing "socialist spiritual civilization", (163) and as a "powerful aid of the Party and government in handling the contradictions among the people".(164) Another Chinese report claims that the defense committees, for more than 30 years, "...have been important in maintaining the public

(162) The Chinese press has reported that there were more than 939,000 mediation committees, increased 12 percent compared to the numbers of 1981, and more than 4,570,000 mediators in China at the end of 1985. Faxue, (The Study of Law), No.2 1986, pp.41.

(163) See the superscription for the Second National Work Conference of the People's Mediation Committee by Chen Peixian, a vice chairman of the Standing Committee of NPC, in *supra*, note 96, December 27, 1985.

(164) Quotation from the speech of a vice minister of Justice, Cai Cheng, at the conference cited in the previous note; for reference see *supra*, note 96, December 27, 1985.

security and promoted the masses' capacity of self-defense and self-government".(165)

Institution building is still in its first stage. Problems relating to the strict observance of legal procedure in elections, the strengthening of the authority of People's Congress and the expansion of the responsibility of judicial organs, have yet to be solved. However, the above analysis has detailed the CPC new leadership's unprecedented institution building as it is related to the modernization drive. Modernization needs a stable social environment and institutionalization is a necessary aspect of stability in a society with a high level of mass participation. However, the recent tendency towards the "institutional routinization" in China does not imply the death of ideology, nor the termination of the mass line by the new leadership. The consensus on repudiating the mass movement and building high level of institutionalization among the new leadership has been achieved through reconsidering the mass line experience in the CPC history in the context of reassessing the class struggle in Chinese society. Institutionalized mass

(165) The same report has revealed that there were more than 1,755,000 public security defense committees in China at the end of 1986 with a membership of more than 12,768,000. See Supra, note 96, December 13, 1986.

participation was an established form to carry out the mass line in the history of the CPC.(166) The new situation is characterized by the basic termination of the class struggle and the demand for the modernization of the country in the fields of industry, agriculture, science and technology and national defense. In this situation, the purpose of institutional reform is no more than to realize the substance of the mass line, i.e., to arouse the enthusiasm of the masses in completing the tasks of "four modernizations", which are considered by the Party as supremely consistent with the interests of the Chinese people.

(166) Tang Tsou has also observed the consistency of mass line with the institutions of the united front and with the moderate policies of the CPC in its history. For reference see *supra*, note 137, XLIV.

CHAPTER FOUR

THE ROLE OF "RED AND EXPERT" IN THE ENHANCEMENT OF LEGAL EXPERTISE

In the late 1970s, the Chinese legal system, with a history of almost 30 years, was marked not only by underdevelopment but also a low level of expertise. Few judges and procurators had been systematically trained in law. There were virtually no lawyers in practice.(167) Deng Xiaoping described the low level of expertise in the Chinese legal system as a manifestation of the "irrational composition" of the state's personnel structures and asked for changes in training and recruitment.(168) The effort towards raising judicial staff's expertise since the late 1970s has become a central element in the rationalization of the Chinese legal system. "Left" ideological understanding of "both red and expert" undermined expertise within the legal system, and the new leadership's redefinition of this ideological issue has facilitated the recent ascendancy of legal expertise.

The specialized training of judicial personnel started soon after the CPC came to power. 1957 was a

(167) Victor Li, Law Without Lawyers, Westview Press, Boulder, 1978.

(168) See *supra*, note 16, pp.248.

record-breaking year for the development of the formal legal education. At that time there were 10 institutes of political science and law and university law departments in China. The total number of law students in 1957 was 6,152. There were 1320 law teachers in the whole country.(169)

Subsequently, China's legal education suffered from the impact of the "Anti-Rightist Movement" and the following political movements of the 1960s. In the period 1957 to 1966, some of the teaching institutes and university law departments were closed down or merged. Many law teachers were transferred to other posts. The total number of law students dropped to around 4,000 in 1965.(170) The law curriculum in that period shifted its emphasis from technicalities of law and administration to politics and Party policy. Foreign law and ancient law were excluded. Formal instruction in the law was partially replaced by participation in productive labor.(171)

Legal education encountered serious trouble in the period of the Cultural Revolution. From 1966 to 1974, all

(169) See *supra*, note 96, September 14, 1984.

(170) Han Depei and Stephen Kanter, "legal Education in China", American Journal of Comparative Law, Vol.32, 1984, pp.543-582.

(171) *Ibid*; and also Beverly Baker, "Chinese Law in the Eighties: the Lawyer and the Criminal Process", Albany Law Review, Vol.46, 1982, pp.751-775.

teaching institutes and law departments were closed down. The Law Department of Beijing University was reopened in 1974. It had a faculty of 80 and a student body of 180 in 1976. Half of the time in class was spent on political study.(172)

The resurgence and development of the legal education gained momentum in the 1980s as a part of the general effort to rationalize the legal system. The number of law institutes and law departments has now quadrupled since 1957. The total number of the law students is more than the quadruple the number of 1957. The number of law teachers in 1983 doubled the number of 1957.(173)

However, the recent development of higher legal education is unable to meet the needs of the fast growing legal system in recent years.(174) To facilitate the training of judicial staff who have had no legal education, the political and legal cadres' training schools at both the central and provincial levels have been restored and

(172) Andrew Gayle, "Law and Lawyers in China", American Bar Association Journal, Vol.64, 1978, pp.348-353.

(173) See supra, note 3, September 28, 1987; supra, note 96, September 14, 1984.

(174) By 1982, the judicial workers increased from 90,000 to 300,000. Gongren ribao, (Worker's Daily,) August 31, 1982. The graduates from the law institutes and departments can only meet less than 10 percent of the practical needs, see supra, note 96, April 27, 1984.

augmented. Professional education in law has also been offered on a correspondence, TV or part-time basis by law institutes and university law departments as well as by the Ministry of Justice and the State Committee of Education.(175)

The recent years have also seen the enlargement of the ranks of legal profession and the corresponding enhancement of the role of lawyers. The lawyer system was only set up in China on an experimental basis in 1955. The following two years saw the establishment of over 800 legal adviser offices staffed by around 3,000 full-time and part-time lawyers.(176) However, the lawyer system came to an abrupt end because of the disruptive impact of the "Anti-Rightist Movement".(177)

The lawyer system was only restored in 1979. In the following year 2,500 lawyers went back to work in 300 law adviser offices. The number of lawyers has since increased

(175) Richard Herman, "The Education of China's Lawyers", Albany Law Review, Vol.46, 1982, pp.789-804; and also supra, note 3, September 28, 1987; September 16, 1986.

(176) Baker, in supra, note 171.

(177) Shao-chuan Leng has reported that after the "Anti-Rightist Movement" there were only four practicing lawyers who handled the cases involving with foreigners. Shao-chuan Leng et al. Criminal Justice in Post-Mao China, State University of New York Press, Albany, 1985, note 75 on pp.82.

to 33,000 including over 10,000 part-time lawyers. This number is more than 11 times that of 1957.(178)

The Chinese lawyers have now resumed their role as defense counsel for criminal defendants and legal attorneys in civil litigation.(179) They have also assumed new roles in recent years. In the first place, more and more lawyers have served as the legal advisers to enterprises.(180) Secondly, they serve as legal advisers to government agencies and leaders. Government agencies from the State Council down to the the municipal and county levels have begun to retain their own lawyers.(181) Chinese government officials have reported that legal advice has helped provide the formal basis for the "scientification and democratization", meaning the rationalization of the decision-making of the government agencies and the enterprise managements.(182) Thirdly, the Chinese lawyers

(178) See *supra*, note 3, August 30, 1987.

(179) For a detailed introduction of the Chinese lawyer's role in this regard, see Shiu-fan Chan, "Role of Lawyer in the Chinese Legal System", Hongkong Law Journal, Vol.13, 1983, pp.157-173.

(180) The Chinese lawyers have served in more than 30,000 enterprises as legal advisers. *Supra*, note 3, August 30, 1987.

(181) See *Supra*, note 3, August 20, 1987 and June 22, 1987; *supra*, note 96, January 13, 1984.

(182) *Supra*, note 3, August 20, 1987.

have played an increasing role in "economic legal affairs involving the foreign parties" shewai jingji falu shiwu. There are over 200 legal adviser offices which specialize in this service. The cases undertaken by the Chinese lawyers in this regard increased from less than 100 in 1981 to 14,700 in 1985.(183) Cases describing the success of Chinese lawyers in defending the interests of both Chinese and foreign parties by serving as their legal attorneys in litigation or mediation concerning foreign trade and foreign investment have been featured in the Chinese press. The Chinese leadership intends to create an image of reliable legal procedure for the benefit of foreign traders and investors.

As a result of the new leadership's open-door policy, there has also been an expansion of legal exchanges with foreign countries. In 1986, China received more than 70 legal affairs delegations from more than 20 countries in the world, and China sent more than 20 delegations to nearly 20 countries and areas.(184) China started to foster this type of exchange in the 1950s in the context of "learning good points from foreign countries", but then there was a major orientation towards the Soviet Union and

(183) See *supra*, note 56, July 3, 1986.

(184) *Supra*, note 3, June 25, 1987.

the East European countries. This exchange ended in the early 1960s. The door was reopened in the 1980s with a new priority placed on exchange with Western countries in areas relating to economic legislation, international trade and investment; for example, China sought advice from West German lawyers in drafting her patent law. The country will also seek advice from Queen's University professors in her economic legislation on securities, corporation and partnerships and product liability.(185)

The Chinese government has also sent some students and lawyers to North America, West Germany and other Western countries to study laws and legal practise in those countries. In order to meet the need for legal services in international trade and investment, as well as the need for new domestic legislation in the current economic reform, the Chinese leadership is prepared to borrow from foreign experience to improve the expertise of the Chinese legal system.

The immediate factor that motivates the recent enhancement of the legal expertise in China is the new leadership's commitment to the strengthening of "socialist legality". Merely enacting new laws does not ensure that

(185) Queens Alumni Review, July-August 1987, pp.9. This author acknowledges Dr. Bohdan Harasymiw for drawing my attention to this material.

the legal structures established by those laws will actually operate effectively. It is necessary to build up a contingent of personnel who possess the specialized knowledge and skills in handling legal affairs. However, the recent development of legal expertise is also closely related to the "red-expert" issue. Continuity and discontinuity in the areas of legal expertise have been greatly influenced by the Chinese leadership's understanding of this issue.

Historically, CPC leadership has imposed the ideological requirements of "red and expert" on the cadres and intellectuals.(186) "Red-expert" issue was formally advanced by the CPC leadership in the 1950s. However one may trace the idea back as far as the 1930s.(187) Mao, in the 1950s, discussed the antagonism between "redness" and "whiteness". He defined it in terms of three categories. (A) "Political orientation" referring to political attitudes towards socialism and the leadership of the CPC.

(186) Cadres and intellectuals are two overlapping categories in Chinese politics. Most of the Chinese intellectuals may be classified as cadres ganbu. However, the majority of the Chinese cadres in the 1950s consisted of personnel who came from peasant, worker or military background. With the development of education there is a constant induction of new intellectuals into the rank of the cadres.

(187) Richard Baum, "Red and Expert: Politico-Ideological Foundations of China's Great Leap Forward", Asian Survey, Vol.IV, No.9, 1964, pp.1048-1057.

(B) "Political stand" referring to the "class stand" or one's self--conscious political alignment with either the proletariat or the bourgeoisie in the class struggle. (C) "World outlook" referring to the self conscious distinctions between Marxism-Leninism and the "bourgeois" thought.(188) Those intellectuals who accepted socialism and Party leadership, the proletarian "class stand" and "world outlook" were considered "red".

"Expertness" in Mao's works was a loosely defined category. It included virtually any expertise or professional competence necessary to the conduct of formal work responsibilities yewu.(189) However, from time to time, Mao singled out expertise in advanced natural science and technology as most urgently needed in industrialization.

Mao perceived the relationship between "redness" and "expertness" as a "unity of opposites".(190) "Redness", itself, could not replace "expertness". He criticized: "At present many cadres are only red but not expert and lack professional or technical knowledge.... Being red

(188) For reference on this discussion see supra, note 127, pp.407;444;468-470.

(189) Ibid, pp.377.

(190) Ibid, pp.489.

alone won't do".(191) On the other hand, "expertness" does not guarantee political "redness". Without the guidance of the "redness", "expertness" could degenerate into "whiteness". Since "whiteness" was harmful to socialism, "redness" was primary in the dialectical relationship.(192) The Chinese cadres and intellectuals were required to be "both red and expert".

The CPC leadership's view on the relationship between "redness" and "expertness" has remained basically unchanged since it was formulated by Mao. However, the selected emphases on the two sides in the relationship have varied in different periods since then. Generally speaking, in the period from the "Anti-Rightist Movement" in 1957 to the end of the Cultural Revolution in 1976, the "redness" was overwhelmingly dominant except for a short period in the early 1960s.(193) A rapid ascendancy of "expertness" has become evident in the current period which began in 1977.

Another issue closely relating to the "red-expert" issue is the class nature of the Chinese intellectuals. The following discussion will show that the different assessments of "redness" within intellectual circles

(191) Ibid.

(192) Ibid.

(193) For the discussion of the enhancement of the "expertness" in that period, see *supra*, note 187.

correlated with variant perceptions on the class nature of the Chinese intellectuals.

The varying definitions of the relative importance of "redness" and "expertness" and the different assessments of the state of "redness" and the class nature of the intellectuals have had a great impact on the position of expertise in the Chinese legal system. The over-emphasis on the "redness" inhibited the development of legal expertise. Whereas the emphasis on "expertness" facilitated the focus on legal expertise. When Chinese intellectuals were perceived as "bourgeois" intellectuals, the emphasis on legal expertise declined. Whereas their inclusion in the working class sustained a greater emphasis on legal expertise. Actually, this pattern was not confined to the sphere of legal affairs. However, the CPC's general view on law and the legal system is different from that on some other subjects such as natural science and technology in that the former has a strong class nature, while the latter has not. This difference made the legal sphere more vulnerable to the disruptive impact of the "left" ideological positions which over-emphasized "redness" and the "bourgeois" character of the intellectuals.

The CPC leadership considers law and the legal system as part of the overall synthesis of politics and expertise.

Dong Biwu pointed out in the 1950s: "Law is an instrument for the ruling class of a country to sustain its own interests." (194) He also observed: (195)

Our people's democratic legal system expresses the will of the people under the leadership of the working class. It is the important instrument to realize the people's democratic dictatorship in our country.

Although law is a "political means", Dong argued: "Law still has its own category....The view that completely confuses law with politics is incorrect." (196) Dong further argued: "Legal work is work of a professional nature.... Thus after the promulgation of law, there must be personnel who have the basic knowledge in legal science to implement the law." (197) Dong also remarked: "In order to improve the quality of the judicial work, [we] should attach importance to the summing-up of judicial experiences and the study of professional work". (198)

This synthesis required the judicial cadres to be both "red and expert"; nonetheless, it actually allowed considerable room for the development of the expertise in

(194) See *supra*, note 46, pp.271.

(195) *Ibid*, pp.406.

(196) *Ibid*, pp.338.

(197) *Ibid*, pp.365.

(198) *Ibid*, pp.457.

legal affairs. In the early 1950s, this synthesis enabled the CPC leadership to retain the services of many of the judicial workers, lawyers and law professors who had served under the Guomindang regime; they were, however, required to remould their "old thought" and "old working style", and shift their stand to "serve the people" in the "judicial reform" sifa gaige sponsored by the CPC leadership.(199)

The politico-ideological atmosphere in 1956 and the first half of 1957 was quite favorable to the intellectuals. Zhou Enlai declared in the beginning of 1956 that the majority of the intellectuals had become part of the working class through several years of Party-sponsored and self-sponsored transformation.(200) This implied that the intellectuals had achieved the "redness" of the working class although Zhou considered that intellectuals needed further transformation of their "world outlook".

(199) After the CPC came to power, the new regime abolished the laws promulgated by the Guomindang regime, because those laws were considered instruments of the reactionary ruling class in the past. However, the new regime did not take the same method towards the old judicial personnel. They were organized to "transform themselves" politically for the purpose of using their expertise to serve the new legal system. Reference in *ibid*, pp.268-277; 355-361.

(200) Zhou Enlai, Zhou Enlai xuanji (Selected Works of Zhou Enlai), People's Press, Beijing, 1984, pp.162.

This definition of the intellectuals' "class position" was an important factor that created a politico-ideological environment conducive to development of the formal legal education and the lawyer system in 1956 and 1957, because the judicial workers, law professors and lawyers, as intellectuals, had become more politically reliable.

However, an abrupt change occurred with the "Anti-Rightist Movement". In 1957, many intellectuals issued their opinions and criticisms on the undesirable aspects of the Party's work as a response to the Party's call for rectification. The intellectuals among the legal circles vigorously advocated the full practice of the constitutional principles such as the "judicial independence" and "all citizens are equal before the law". The slogan, "layman can not lead the expert", was also advanced. These opinions and criticisms were misintepreted as aimed at overthrowing socialism and the Party leadership. Then many of the intellectuals were "capped" as "bourgeois rightists" and dismissed from their posts in the legal system.

The ideological definition of the class position of the Chinese intellectuals also had an abrupt change in the "Anti-Rightist Movement" as a result of the misintepretation of the intellectuals' opinions and criticisms. Mao had not made the same kind of explicit

acknowledgement of the intellectuals' class position as had Zhou, but he did comment on the political progress of the intellectuals. However in the middle of 1957, Mao developed a thesis that still considered the majority of the intellectuals as "bourgeois" intellectuals. He remarked that, for the majority of the intellectuals, there was still a long way to go to change from the stand of the bourgeoisie to that of the working class.(201) Mao also said:(202)

The bourgeoisie and the bourgeois intellectuals ought to recognize the necessity of remoulding themselves.... Why is ideological remoulding necessary? Because we want the bourgeois intellectuals to acquire the proletarian world outlook, and transform themselves into proletarian intellectuals.

Mao was worried that the majority of the intellectuals still entertained the bourgeois "world outlook".

With the change of the assessment on the intellectuals' class position there was an over-emphasis on the "redness". Under the prevailing circumstances of "politics in command", the transformation of "world outlook" became the first important task faced by the intellectuals. Since their "political stand" had not

(201) Supra, note 127, pp.481.

(202) Ibid, pp.506.

achieved the "redness" of the working class, their political reliability became a serious problem.

The immediate impact of the re-assessment of the class position of the intellectuals and the over-emphasis on the "redness" was an attack on the lawyer as "bourgeois". The lawyer in his defence of criminal suspects was vulnerable to accusations of serving the enemies of socialism.

The enduring impact was the tendency to staff the legal system with politically reliable non-intellectuals or personnel who had no specialized training in law. There was an acute shortage of law graduates, and more than one half of those who did graduate were not able to work in the legal system.(203)

The re-emphasis on "class" also had a negative impact on the development of legal education. For the purpose of transforming their "world outlook", law students spent much of their time participating in productive labour. The political content of this exercise dominated the law curriculum.

Although the "expertness" was not entirely abandoned, the predominance of "redness" emphasizing the remoulding of one's "world outlook" and engaging in class struggle did interfere with professional work. Because of the class

(203) See supra, note 103, No.3, 1983, pp.15.

nature of the legal system, itself, this intervention had a serious effect on the development of legal expertise.

Although this ideological formula was dominant for almost 20 years(204) it was not pushed to its extreme until the period of the Cultural Revolution. New content was then added to the "red-expert" issue. The "red-expert" issue was viewed in the inner-Party context of the "two-line" struggle. The past efforts to keep a certain degree of expertise in the professional fields including the legal system were considered as a dirty trick played by the "capitalist roaders" who had taken power in the Party for the purpose of restoring capitalism in China. Many of the outstanding intellectuals including law professors were denounced as the "white experts" who cooperated with the "capitalist roaders" in Party to change the "political color" of the country.

(204) As for the impact of the short period of enhancement of the expertness in the early 1960s on the legal expertise, the current scholarship has different comments. Han and Kanter argued that the regularity of the legal education was restored to some extent during that period. Chen observed that the down-hill tendency of the legal expertise including the legal education was without any restoration before the formulation of the new leadership's policy. See supra, note 170; also Chen Shouyi, "Xin Zhongguo faxue sanshi nian yi huiqu", (A Review of New China's Legal Science in the Past Thirty Years), Faxue yanjiu (Legal Research), No.1, 1980, pp.1-10.

The solution to the danger of the capitalist restoration, according to the ultra-leftist ideological position of the "Gang of Four" in 1974 to 1975, was to exercise the "all-round dictatorship" quanmian zhuanzheng in every field of the superstructure.(205) Since many fields of the superstructure were staffed by the intellectuals, the "all-round dictatorship" targetted the intellectuals as the enemies of socialism.(206) Another formula in the Cultural Revolution, which was related to the "all-round dictatorship", was the "mass dictatorship" qunzhong zhuanzheng. This formula supposed that not only those judicial workers who had had special law training, but even those judicial workers who had had no formal legal education but who had considerable practical experience were politically unreliable, because most of them had served under the "capitalist roaders" in the past. Many were replaced by the Cultural Revolution "activists".

The above factors account for the complete destruction of the legal system and the legal education during the

(205) "Superstructure" is a Marxist term. Education and the legal system in a society are classified as part of the superstructure.

(206) The formal term of the "all-round dictatorship" did not appear until 1974. However, the practical implications of such dictatorship were explicit right from the beginning of the Cultural Revolution in 1966.

Cultural Revolution and the subsequent slow rate of recovery of legal institutions in that period. As a matter of fact, the recent enhancement of the legal expertise started in 1979 and achieved momentum in the 1980s. However, the ideological preparations for this enhancement can be traced back to 1977. Among the ideological preparations, the most significant was Deng's redefinition of the Chinese intellectuals as part of the working class. He argued that Mao's definition of intellectuals as part of the "bourgeoisie" should be abandoned under the new situation.(207) He further pointed out:(208)

Chinese intellectuals, including the overwhelming majority of the old intellectuals from pre-liberation society, have become part of the working class and now serve the cause of socialism consciously and actively.

In the 1950s, Mao considered that the majority of the Chinese intellectuals were inclined to serve socialism. However this inclination did not imply a significant change of their bourgeois "world outlook", and the intellectuals could not escape their status as part of the "bourgeoisie".

(207) See *supra*, note 16, pp.56.

(208) *Ibid*, pp.192.

Deng disagreed with Mao's interpretation of their "world outlook":(209)

How should we assess the transformation of the intellectuals' world outlook? A person's decision as to which cause he wants to serve is a significant reflection of his world outlook. The overwhelming majority of our intellectuals serve socialism of their own volition.

The willingness to serve socialism, Deng pointed out, was an indication that an intellectual had begun to acquire a proletarian "world outlook". In terms of political standards, he can not be considered as "white" but should be called "red".(210)

Mao conceded that being "both red and expert" was not easy in practice. He realized that the achievement of "expertness" was not a simple task for those cadres who were of peasant, worker or military origin. However, intellectuals faced a difficult and protracted transformation from the "bourgeois" to the proletarian "world outlook". Deng also acknowledged the difficulty in being "both red and expert". First, he agreed with the protracted nature of the transformation of one's world outlook. "People must constantly remould their

(209) Ibid, pp.62.

(210) Ibid, pp.107-108.

thinking".(211) But he did not think this applied exclusively to the intellectuals. He observed: "If the intellectuals must continue to remould their thinking, so must the workers, peasants and Party members."(212) This viewpoint places the intellectuals in the same political position as that of the workers and peasants and hence, they are less vulnerable to accusations of "white expertise".

Secondly, Deng enhanced the position of expertise in the "red-expert" relationship. He observed: "[We must] respect knowledge and respect trained personnel". He argued: "The four modernizations cannot be achieved merely by keeping to the socialist road."(213) He further pointed out:(214)

Times have changed. For a long time we copied the experience of the army in the war years.... At that time the two qualities "red" and "expert" were inseparable, and it was not too hard to be both. Now things are different. Economic construction involves a large number of trades and fields of expertise. Each one requiring specialized knowledge and the constant accumulation of new knowledge.

(211) Ibid, pp.62.

(212) Ibid.

(213) Ibid, pp.54;247.

(214) Ibid, pp.249.

Deng seems to have realized that the development of modernization has created a more complex society, in which functional differentiation requires a division of labour and specialization in skills. Expertise under this situation is different from the skills of conducting war in the revolutionary period. It entails more energy and concentration.

Deng still sees politics as primary in the "red-expert" relationship. He has emphasized the "four cardinal principles" as the "basic prerequisite" for achieving the Chinese modernization. In order to train personnel to be both "red and expert", "the schools", Deng argued, "should always attach first importance to a firm and correct political orientation." (215) Nonetheless, as a response to the "left" understanding in the past, Deng vigorously argued that politics should not interfere with expertise, and that the class struggle should be played down. Deng called for the establishment of reasonable standards of "redness" and the application of the proper methods in guiding ideological and theoretical work. (216)

The recent enhancement of the expertise in legal affairs relates to the new leadership's changing

(215) Ibid, pp.120.

(216) Ibid, pp.107;189.

perspectives on "red-expert" relationship and the re-assessment of the class nature of the intellectuals. In accordance with this, Deng diagnosed the lack of expertise as the main problem in the Chinese legal system. He pointed out:(217)

We now need at least one million additional cadres for the administration of justice, including judges, lawyers, procurators and specialized police. There are very few cadres who have studied law or are familiar with the law...and who are qualified in all ways to be lawyers and judges.

"Generally speaking", said Deng, "capitalist countries are quite strict about the [professional] requirements for law-court and police personnel. We should be even stricter."(218) However, the intended strictness is likely to be qualified by the lack of funding for the development of legal education, by the urgent need for the rapid expansion of the legal system and the mere time-span required for the training of specialized personnel. The figures presented earlier in this chapter give some indication of what has been accomplished thus far.

The recent perspectives on the nature of law and the legal system may shed further light on the recent enhancement of legal expertise. In the past, the Chinese

(217) Ibid, pp.248.

(218) Ibid, pp.271.

leadership considered law and legal system as a synthesis of politics and expertise. In the heyday of the "left" definition on the "red-expert" issue the over-emphasis on "redness" confined responsibilities of law and legal system to class struggle and the exercise of dictatorship over the enemies of socialism. A Chinese scholar described this viewpoint by a formula: "Law=class struggle=the dictatorship over the enemies".(219) This formula is now seen as a distortion of the comprehensive understanding of the responsibilities of the law and legal system. Aside from suppressing the class enemies' resistance, sabotage and trouble-making activities, the law is mainly concerned with regulating contradictions among the people and readjusting the relationship between various aspects of national economic construction. It is also argued that if the law in a socialist country is nothing but an instrument of class struggle (or class oppression), how can one explain the laws on traffic and communication, on forestry, on environmental protection? Can it be that they are also instruments for oppressing class enemies?(220)

In these particular areas the responsibility of law has been conceptualized in terms of the "social nature" of

(219) Chen, in *Supra*, note 204.

(220) *Supra*, note 170.

law fade shehuixing. The Chinese law is to incorporate both class nature and social nature, as indicated in the Chinese, Fashi jiejixing he shehuixingde tongyi. Although the social nature of law cannot be divorced from the class nature of law, the responsibilities of law are no longer limited to class struggle and dictatorship.(221)

This formulation of the responsibilities of law allows room for the "inheritability" of law fade jichengxing, which implies that some of the useful aspects of the ancient Chinese law and Western capitalist law can be "critically inherited" pipande jicheng.(222) This has served as the ideological justification of the current exchange with foreign countries in legal affairs and the augmentation of the law curriculum to include the legal history of both China and foreign countries. As a matter of fact, the slogans, "making the past serve the present" gu wei jin yong and "making the foreign things serve China" yang wei zhong yong, were advocated by Mao Zedong a long time ago. However, the over-emphasis on the "redness" and the nature of the class struggle (or class oppression over

(221) See supra, note 7, pp.208-212. There is also a minority viewpoint that considers the "social nature" of law as independent of class nature of law. See supra, note 170.

(222) Supra, note 170.

the enemies of socialism) inhibited the application of these principles in the field of law.

The recent enhancement of expertise in legal affairs is also related to the perspectives that view the law as reflection of the objective laws in the natural world and the human society. According to this viewpoint, class struggle is still viewed as having an objective existence in the contemporary society. The retention of the class nature of the Chinese law is perceived as a reflection of this objective existence. However, the class struggle is now considered to exist only in a remnant form in Chinese society. Moreover, objective law is not confined to class struggle. The "law of value" jiazhi guilu, as well as the objective laws in trade and economic management, have all been recognized as "objective law" in socialist commercial production shehuizhuyide shangpin shengchan.

The new leadership has recognized the inviolability of the objective economic laws and has criticized arbitrary political violation of these laws in the past.(223) As reflection of the objective economic laws, Chinese law must enjoy relative independence and serve as the mechanism to

(223) See *supra*, note 137, pp.154.

prevent arbitrary political violation of objective economic laws.(224)

Recent perspective on the relationship between enacted law and objective law has removed any ideological reservation against current legal exchanges with Western countries. Generally speaking, Western laws are still considered as undesirable because of their "bourgeois" nature. However, some aspects of the Western laws are viewed as the reflections of the objective laws in commercial production, trade and economic management. Hence, China's economic legislation and law involving international trade and investment may borrow from Western experience in these areas.

The recent enhancement of legal expertise is an effort to rationalize the "composition" and the responsibilities of the Chinese legal system in the context of the modernization drive. The irrationality of the Chinese legal system in the past--low level of expertise and over-emphasis on the oppression of class enemies--was closely related to the impact of the "left" ideology on the "red-expert" issue, which over-emphasized "redness" and

(224) See "Jingji tizhi gaige yu jingji lifa", (The Reform of the Economic Structure and the Economic Legislation), Jingji Ribao, (Economy Daily) November 12, 1985; see also the discussion in the Second Chapter of this thesis.

enforced the transformation of the intellectuals' "world outlook". The new leadership's policies on the development of the legal expertise have been formulated within a revised framework of the "red-expert" issue. The new leadership has enhanced the position of "expertness". It has also re-evaluated the standards by which the class credentials of the intellectuals are established. Within this larger context, the understanding of responsibilities of the law and legal system has been redefined. The redefinition of the "red-expert" issue has ideologically sanctioned the recent efforts to rationalize the Chinese legal system.

CHAPTER FIVE

CONCLUSION

China's new leadership has focused on the reform of China's political system since the late 1970s. The strengthening of "socialist legality" is one part of this reform program.

In the period from 1953 to the first half of 1957, the leadership pursued the policy of emphasizing "socialist legality". The framework of the legal system was established during that period; however, the legal system was not fully developed in the following years. The new leadership's renewed policy commitment has facilitated the recent momentum in the strengthening of "socialist legality". This process has been characterized by the enhancement of the authority of law and the judicial organs in the Chinese political structure, the expansion and reform of the formal institutions within the framework of the legal system and the professionalization of the legal system.

The legal system now has responsibility for checking arbitrary political rule, sustaining political stability, channeling mass participation, protecting citizen's rights and adjusting the government-enterprise relationship and

the relationship between enterprises. The legal system is also becoming increasingly involved in international trade and investment. These newly-emerging responsibilities are not considered as antagonistic to those aspects of the legal system relating to the exercise of proletarian dictatorship over enemies of socialism and the safeguarding of socialism and Party leadership. Nonetheless these new responsibilities presuppose new conceptions concerning proletarian dictatorship, socialism and Party leadership. Concepts such as "integrated leadership", class struggle, mass movement and "red-expert" have been either rejected or re-defined.

The policy on strengthening "socialist legality" is the new leadership's response to the CPC's historical experience. This policy is part of the overall strategy in tackling the problems in the Chinese political structure.

The elevation of the authority of law and the expansion of responsibility of the judicial organs are intended to provide a mechanism to secure the relative independence of the enterprise from the arbitrary control of the government agencies and the Party organizations on the one hand, and allow the government and the Party to exercise responsible leadership over enterprises on the other. This mechanism is also designed to establish relative judicial independence and the independence of

government agencies in the context of dividing labour between Party and state on the one hand, and acknowledge the Party's leadership over the judicial organs and government agencies on the other.

The current institutionalization purports to organize mass participation through institutional channels.

"Bureaucratism" is a grave problem in completing the Party's modernization tasks. The old ways of combating "bureaucratism" by mass movements led to violence and disorder. Hence, there is now a greater emphasis on the use of institutionalized channels to solve the problem. Institutions within the framework of the legal system are now expected to regularize mass participation and to sustain social stability.

The enhancement of expertise in legal affairs is a response to the increasing emphasis on the authority of law and the legal system. The lack of training in law and skills in practising law are no longer tolerated given the newly-emerging responsibilities of the legal system. The policy emphasis has shifted to the improvement of skills and specialized training of judicial cadres. This policy is not only a result of the expansion of the legal system, but it is also a facilitating factor which should consolidate this expansion.

"Socialist legality", in all its manifestations, can be explained with reference to larger policy emphases on modernization and political stability.

Efficiency required by the modernization would seem to imply a certain degree of decentralization. This is the reason why the current reform allows the enterprises, judicial organs and government agencies to enjoy more autonomous powers than before. However, decentralization may create disorder, hence Party leadership is viewed as necessary to the prevention of disorder in the modernization process. These factors require the Chinese legal system to facilitate a certain degree of decentralization and to sustain centralized leadership. Generally speaking, modernization presupposes both mass participation and social stability. Hence, legally-sanctioned institutions now have been substituted for the large-scale mass movement as the channel for mass participation. Modernization creates specialized division of labor. The enhancement of expertise in legal affairs may be considered as the immediate result of the modernization process.

All of the manifestations of the recent strengthening of "socialist legality" can be taken as part of the trend towards greater "rationalization" in Chinese politics. One may point out that the modernization drive of the CPC is

not new. It can be traced back to the 1950s. However, the past tendencies towards over-concentration of power in the Party, the mass movement in political mobilization and economic construction, and "politics in command" in the professional fields, are now perceived as "unscientific" or irrational. The recent strengthening of "socialist legality" is designed to overcome these irrational tendencies and to assist in the "scientification and democratization" or rationalization of the policy-making as envisaged by leaders such as Wan Li.

The rationalization of Chinese politics in the current reforms is sometimes explained by the erosion of the Chinese ideology. If ideology is taken as a vision that motivates only radical action and radical policies, there is indeed an erosion of ideology in the current Chinese reforms.

However, ideology is not necessarily limited to the motivation of radical action and policies. In Western history, the Protestant ethic may have facilitated the general process of rationalization. According to Swidler, bureaucratic rationality does not necessarily exclude the ideological element. Chinese ideology is not religion and the recent effort towards the "rationalization" of Chinese politics is different from Western rationalization; however, Chinese ideology has supported the enhancement of

the authority of the legal system, and the development of expertise and institutionalization.

The problem arising here is how to understand Chinese ideology. The "irrational policies", which produced the incessant mass movements, the inadequacy of the development of the legal system and institutionalization in the period from the late 1950s to the Cultural Revolution, may be attributed to many factors, for example, the influences of China's past "feudal society", the failure to reassess the revolutionary experience, the underdevelopment of commercial production, the low level of education. This thesis considers that the ideological influence in that period is among these factors.

However, the new leadership has designated the ideology which motivated such "irrational policies" as "left" ideology. In the late 1970s, Deng Xiaoping advanced a formula of "correctly and comprehensively understanding the system of Mao Zedong Thought". "Left" ideology became a deviation from the "scientific system of Mao Zedong Thought." This formula allowed the new leadership to refine the Chinese ideology without changing its framework. This refinement was marked by a renunciation or erosion of the "left" ideology but the framework of the Chinese ideology remained intact. As a matter of fact, the current

reform was designed within the scope of this refined ideology.

One may also find precedents for this kind of ideological refinement in CPC history. In the period after 1934, especially in the late 1930s and early 1940s, Mao Zedong refined the Party's ideology as a response to the disastrous effects of the previous "left" ideology. The refined ideology facilitated and justified the CPC leadership's moderate policies in that period.

The CPC has taken its ideology as an instrument to conceptualize social reality. The conceptualization is to guide the formulation of policies for the solution of practical social problems. This emphasis on praxis in Chinese ideology enabled the CPC, from time to time, to rectify the radical features of "left" ideology. One may notice that even in the period with the strong "left" ideological tendency, the moderate ideological tendency was often effective in the formulation of the practical policies such as in the first half of the 1960s and sometimes even in the Cultural Revolution.

The new leadership has adjusted the three dual relationships between democracy and centralization, between mass mobilization and institutionalization and between "redness" and "expertness".

The changing perspectives on the first duality are related to the policies which govern Party-state and government-enterprise relationships. The over-emphasis on centralization in the past supported the notion of "integrated Party leadership" which fostered arbitrary Party intervention in state affairs and supported minute government control over enterprises. This over-concentration of power undermined legal development. The shift of emphasis from centralization to democracy enhanced the authority of state organs and the autonomy of enterprises. Law and legal system as legal forms of democratic centralism assumed much more responsibility for the protection of governmental organs from arbitrary Party control and enterprises from arbitrary governmental control.

The changing perspectives on the second duality are related to policies governing the mass movement and institution building. The traditional mass line was manifest in both forms of large-scale mass movement and institutionalized mass participation. The new leadership's reassessment of the mass line experience led to the rejection of large scale mass movement as a legitimate way to carry out the mass line and to the consolidation and expansion of institution building.

The changing perspectives on the third duality are related to policies concerning intellectuals' class credentials and the technicalities of law. The past over-emphasis on "redness" discredited intellectuals and legal expertise. However, the current enhancement of "expertness" assisted the professionalization of the legal system.

The above ideological readjustments challenge the "leftist" ideological reservations concerning "socialist legality", and may justify and facilitate a new consensus and commitment to the policy concerning the strengthening of "socialist legality" among the majority of the Chinese cadres. Chinese ideological emphasis on praxis argues against the exclusive conception of ideology as "radical" in nature and inconsistent with modern rationalization.

Western comparative politics literature may have underestimated the degree to which Chinese ideology has positively reinforced the development of "socialist legality" as part of the general effort to rationalize Chinese politics.

In the process of strengthening "socialist legality", the Party has retreated to a certain extent in its direct control over the state organs, as has the government in its control over social organizations. However, this retreat does not indicate the emergence of political pluralism in

China, as it is understood in the West. The leadership's commitment to ideological principles such as Party leadership and democratic centralism is still quite explicit in Chinese politics. Nonetheless Party leadership and democratic centralism may evolve away from past organizational forms. State organs will enjoy more autonomy as will other social organizations.

Ideology as a way to legitimate the policies of the government has existed for centuries in Chinese society. Confucianism, which dominated in Chinese society for thousands years, failed to respond to the needs of modern society. This failure is one of the factors which account for the political chaos in the first half of this century. Since the CPC came to power, Marxism-Leninism and Mao Zedong Thought have, despite "leftist" setbacks in the Great Leap Forward and the Cultural Revolution, been effective in sustaining consensus among the Chinese cadres. It would appear that this consensus has in part contributed to the stability and development in the recent several decades. Ideology as a facilitating factor in the strengthening of "socialist legality" may well be consistent with this general historical trend.

However, "left" ideology died hard. The recent political development has shown that the possibility that the current reform could be jeopardized or inhibited by the

"left" ideology still exists. The further development of the legal system may itself pose new problems in the current development of ideology. The future of the Chinese legal development depends to a large extent on whether the current reform policies can achieve enduring economic success, and if they are efficient in dealing with the problems in the Chinese political structure. It also relates to how the CPC's new leadership combats "left" ideology and adapts its ideological definitions to the changing reality. "Seeking the truth from the facts" is an appropriate theoretical vehicle in this regard. The 13th Party Congress convened in late October of this year has re-affirmed this formula. The influence of "left" ideology is considered by this Congress as a major obstacle which must be further removed in the reform process. The policy of the strengthening of "socialist legality" has achieved strong support from the newly-elected leaders at this Congress. All of this seems to be conducive to the further development of "socialist legality".

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