The Political and Practical Obstacles to the Reform of the Judiciary and the Establishment of a Rule of Law in China

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Is China's "socialist rule by law" (社会主义法制) qualified to be called "rule of law" (法治) or a "thin rule of law" proposed by Randall Peeremboon, without abolishing the political supremacy of the Chinese Communist Party and the establishment of an independent judiciary? Since the mid-1990s, the Chinese legal system and its judiciary have gone through reforms and on the whole modernized. However, the Chinese judiciary still faces many problems, and among them the lack of professional jurists, corruption and local protectionism appear as crucial ones. The current political and institutional arrangements and lack of freedom of the press and freedom of association clearly intensify these problems. "Rule of law" (法治) or "rule by law" (法制) in China is still more often interpreted in the light of the respective political, bureaucratic and economic powers of the parties involved than according to principles of law or equity. The modernization of the legal system will continue, but the political translation of the legal demands of society and the international community will take time to materialize. In the meantime, risks, setbacks and difficulties will continue to prevent China from establishing a truly independent judiciary and what is universally called a rule of law.

Key words: *Rule of law, Rule by law, Chinese legal system. Judicial independence, Chinese Communist Party*

Under the terms of its classical and liberal definition, the rule of law is not something that you cannot slice up piecemeal like salami: either you have it all or you have none of it, similar to some extent to sovereignty. Of course, the rule of law is always perfectible. But at the same time, as long as the basic conditions for allowing the rule of law to emerge are not met – among these conditions the establishment of a political democracy, *thus* a set of laws *legitimately* approved by a

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truly elected and pluralistic parliament and *an independent judiciary* are usually regarded as three key and *related* prerequisites — the chances of witnessing such a rule taking shape remain slim.[1]

Yet, for some decades, this approach to the rule of law has been questioned by some Western and non-Western jurists.[2] More importantly for our subject, the Chinese authorities have since 1979 embarked on a profound legal reform which is clearly aimed at establishing a "rule by law state" or a "state ruled in accordance with law" (*yifa zhiguo*) without jeopardizing the political foundations of the communist political system, e.g. one-party rule. This ambition became a major priority following the suppression of the democratic movement in 1989 and more specifically after Deng Xiaoping re-launched the economic reforms in early 1992. In the early 1990s, the People's Republic of China (PRC) entered the second phase of its legal reform, a much more comprehensive plan to draft laws and regulations more in line with Western norms than the old and dying Soviet model, not only in the realm of economic and foreign trade law but also in other, more sensitive areas such as criminal and administrative law. This second phase constitutes the background and the basis of Jiang Zemin's new policy (*tifa*) adopted in 1996 of "ruling the country in accordance with law and establishing a socialist country ruled by law" (*yifa zhiguo, jianshe shehuizhuyi fazhiguojia*).[3] The acceleration of this reform has of course been closely linked to China's intention to join the World Trade Organization (WTO). But it has also pursued more global and ambitious goals: since Tiananmen, legal reform has become a substitute for political reform, aiming both to accompany and to organize the new economic freedoms that society has gradually been granted and to provide the necessary mechanisms and recourses to stabilize, or maintain the stability of, the state-society relationship. In this respect, the reform and modernization of the judiciary have been regarded both as the "weak link of the legal chain" and a top priority.

This new policy has not been without its successes. Many new laws and regulations consistent with international norms have been promulgated, the courts are settling a rapidly growing number of cases, and the Chinese authorities have trained a large quantity of judges and lawyers, leading to a gradual improvement in the quality of judgments and legal advice. And legal reformers in China are now willing to take advantage of their country's accession to the WTO – and the stronger outside pressure brought by that – to speed up the Chinese legal system's adaptation to international – and Western – rules and practices.

Does this not mean, then, that, thanks in particular of the reform of its judiciary, the PRC is on the verge of establishing a "rule of law", as Beijing's official propaganda in English claims? That this country is about to prove the compatibility of a rule of law and an independent, fair and professional judiciary with an authoritarian political system? That China is showing, by the sheer legal reality and modernization that it is nurturing, the inanity of the liberal approach to the rule of law?

It is hard to deny that the PRC's political and legal institutions have remained highly authoritarian and repressive. At the same time, it is difficult to ignore the *legal modernization* that has been taking place in China – as in other non-democratic political entities – favoring greater respect for legal norms as well as a larger independence and professionalization of the judiciary in non or less politically sensitive areas, such as economic, labor and civil law[4]. Nevertheless, this paper will argue that: 1) the emergence of a rule of law which would be restricted to economic or non sensitive relations – what the Chinese government's discourse (both in Chinese and in English) has called a "socialist rule of law" (actually a rule by law under the leadership of the Communist Party) and what I would qualify as a Bismarckian "*Rechtsstaat*" or a "rule by law state" – still faces many obstacles; 2) whether cultural, economic or political, these obstacles have much to do with the difficulties of establishing a truly independent and professional judiciary; and 3) although the PRC authorities will continue to fight to improve the legal system without questioning the Chinese Communist Party (CCP) rule, only dramatic political and institutional reforms can favor the emergence in China not only of a genuine rule of law but also a *Rechsstaat*, or a rule by law understood as an autonomization of the law within an authoritarian political environment.

AN AUTHORITARIAN AND REPRESSSIVE POLITICAL-LEGAL SYSTEM

Despite the legal modernization alluded to above, we can but recognize that the politico-legal environment in which this modernization is taking place has remained highly authoritarian and repressive. Ironically, the politicians and jurists who have turned themselves into the architects of legal reform have maintained or continue to live with politico-legal institutions which, overall, are still designed on the Soviet model. Some of them have even argued that retaining an authoritarian political system is the only guarantee of success for legal reform.[5] However, and notwithstanding the important changes in the legal system observed in the last two decades, this institution model based on the leading role of the Communist Party has continued to thwart major and dramatic legal reforms.

Firstly, in spite of the successive revisions of the constitution approved since 1982, constitutional law remains the least developed area of Chinese law. This is actually an understatement: most of the formal rules enshrined in the constitution are not implemented and are frequently rendered meaningless as they are circumvented by more powerful political and Party norms.[6] And for political reasons, it has not yet been possible to set up an independent body responsible for reviewing the constitutionality of the law. The Standing Committee of the National People's Congress (SCNPC) has problems fulfilling this task for the reason that it is also the main enactor of national laws (bills submitted to the annual plenary session of the NPC are always *de facto* approved beforehand by the Standing Committee). True, some Chinese jurists have argued that the control of the constitutionality of laws precedes their adoption by the NPC or the SCNPC. However, not only has this

supervision been superficial in most cases, because exerted by unelected and non-independent legislators, but such an institutional arrangement also restricts to a large extent the possibility of legal recourse against laws perceived as unconstitutional by a group of citizens or their official representatives, the delegates to the NPC, before an independent and specialized jurisdiction.

Secondly, the leading and coordinating role played by the CCP's political and legal commissions (*zhengfa weiyuanhui*) over every security and judicial organization (public security, state security, justice, procuratorate and court) at every level is another obstacle to the emergence of independent courts and administration of justice. This does not mean that the secretaries (or heads, who are usually deputy secretaries of the local CCP committee) of these commissions interfere in every case judged by the courts. The rapid increase in judgments actually prevents them from doing this. But they are empowered to intervene, by themselves or under the pressure of other members of the commission, in the major and most sensitive cases. And, for obvious reasons (primarily because most, if not all of them are CCP members and often sit on these commissions), court presidents and, perhaps more importantly, adjudication committee leaders are still tempted to consult with them before making difficult decisions. Though they more often "work independently", as the constitution prescribes, Chinese courts are therefore far from being independent.

Thirdly, one-party rule continues dramatically to restrict the implementation of and respect for public freedoms and civil rights enshrined in the constitution – since March 2004 human rights (*renquan*) are specifically protected by the constitution – and in the United Nations covenants or agreements that China has acceded to. For instance, although the PRC authorities have signed (in 1997) and ratified (in 2001) the UN Covenant on Economic, Social and Cultural Rights, it has made official reservations on article 8 which nullify the basic right to set up independent trade unions. Neither is the right to strike guaranteed, though strikes do take place and are more often tolerated. And in spite of Peking's decision in 1998 to sign the more sensitive UN Covenant on Civil and Political Rights, it has so far refrained from ratifying it, mainly because of the difficulties of reforming the reeducation through labor system (*laojiao*), an institution that allows the administration and in particular the Public Security to imprison anyone up to four years without judgment. And if the NPC were to approve this covenant tomorrow, which is likely, the Chinese regime would not feel any more besieged than, say, the Soviet regime in the 1970s, into embarking on the profound but dangerous political changes that will permit Chinese citizens to enjoy the fundamental political rights listed in this international convention (right of association and in particular to form political parties, press freedom, religious freedom, minority rights). Any Chinese trying to enjoy these rights are still condemned to heavy jail sentences, no longer for having committed "counter-revolutionary crimes" – this notion was scrapped in 1997 – but still too often as "criminals endangering the security of the state".[7] Finally, criminal justice nationwide remains highly repressive, given not only the large

number of death sentences handed out (still kept secret though estimated between 10,000 and 20,000 a year), in spite of a fresh willingness to gradually decrease the number of executions, but also the great difficulties in implementing the new penal code and code of penal procedure, in particular when it comes to defense rights, lawyers' access to their clients and their clients' files as well as legal restrictions imposed by these new codes upon the Public Security bureaus.[8]

The situation prevailing in the most politically sensitive areas of China's law and briefly mentioned above seems light years away from the perception that many Chinese and foreign jurists have of the gigantic steps made by this country's legal system in particular in the realms of economic and foreign trade. Is this just a question of (wrong) perception and discourse (or propaganda)? Or are we witnessing a growing gap and a gradual disconnection between the most repressive and political aspects of Chinese law, in other words the Soviet (and imperial) legacy, on the one hand and the more modern, outward looking and Western inspired areas of this legal system on the other?

TOWARD AUTHORITARIAN LEGAL MODERNITY AND JUDICIAL FAIRNESS?

There is not merely one single type of politico-legal modernity. Indeed, political entities such as Bismarck's Germany, Singapore and Hong Kong have managed to reconcile an authoritarian or non-democratic political setting with a legal system, and in particular a judiciary, that is modern, efficient and on the whole reliable and fair, if not totally independent from political power.[9] And one can speculate that Peking's plan to "Singaporeanize" Hong Kong goes beyond its desire to enjoy better control over this former British colony. Some PRC reformers are interested in testing, through the Hong Kong case, the possibility of establishing in the mainland a rule of law which, while stabilizing the society, stimulating the economic development and favoring China's integration in the world economy, would not jeopardize the leading role of the Communist Party.[10] Why should they not succeed in establishing if not a rule of law at least a *Rechsstaat*? Numerous changes that have occurred in the Chinese political and legal spheres in the last twenty years tend to provide evidence to the contrary.

Firstly, the Communist Party is far from being an omnipotent monolith. Closely integrated in the state apparatus, it has always been divided among the same lines of interests and opinion as the government – the center-province opposition is the best illustration of this. Moreover, the rehabilitation of the law as well as the restoration of legal and judicial institutions have favored a professionalization of the personnel of these institutions and created new bureaucratic rivalries. Judges and lawyers may be CCP members or heed the pressures exerted by their supervisors, the politico-legal commissions and the departments of justice respectively, but their interest lies in working for the strengthening and the aggrandizement of their own institutions, the courts or their law offices respectively. And the growing number of

cases as well as the greater autonomy of lawyers, better guaranteed by the new 1997 law governing this profession, and law firms – more and more of them are co-operative or private organizations – have also contributed to turning these two professions into new "power centers".[11] Of course, as we have seen earlier, these "power centers" are recent phenomena and generally still weaker than the CCP organizations or the Public Security bureaus. But at the same time, their sheer existence and the steady development of their activities have gradually forced the "traditional" communist institutions to enter into new types of bureaucratic disputes and adjust, show occasional restraint, bargain, or even reform. And since 2004, the diminishing official role of the CCP politico-legal commissions in judicial affairs as well as the better recognized autonomy of the lawyers associations vis-à-vis the justice departments have deepened these trends.

Secondly, the interest of the current CCP leadership lies in making the legal reform, and in particular the modernization of the judiciary a success or at least giving it some credibility. Since, as we have indicated above, they do not want (or not yet, for some of them) to democratize the political system, the Chinese authorities are keen to push forward the establishment of a "rule by law" and a professional and autonomous court system, albeit of "socialist" texture, aimed both at enhancing the regime's political legitimacy and at stabilizing society and relations between state and society by opening new avenues for the presumably more reliable settlement of disputes. This task is very important, if not critical, in the current circumstances, where inequalities and feelings of injustice are growing and where socio-economic interests have become so diversified and sometimes contentious that they can only be solved or at least alleviated by impartial institutions located outside of the government. In other words, though it has been spurred by China's plan to join the WTO (cf. below), the legal modernization of the country is part of a more ambitious reform pursuing dramatic domestic objectives. Among these, the perpetuation of the CCP rule, some may argue, is a crucial one. However, in initiating these legal changes, the Chinese authorities have unleashed new forces and new demands in society, the final impact of which is hard, if not impossible, to assess – and keep in check.

Thirdly, the legal reforms have, in any event, contributed to a change in Chinese society's so-called "traditional" and negative approach to law and justice. The new possibilities of legal recourse as well as the powerful legal propaganda developed by the government have revived the no less "traditional" need for justice (*zhengyi*) and equity (*gongping*) of the Chinese, two notions that very much existed in imperial China.[12]

It is true that in imperial China these ideas of justice and equity did not take shape, as in Europe, *with* the emergence of a judicial power – the courts in England, the *parlements* in France – independent from, and sometimes in rebellion against, royal power. In the hands of government officials who enjoyed both administrative

and judicial prerogatives and mainly dealing with criminal cases, imperial justice was avoided as far as possible by Chinese society.

Nevertheless, these traditions must be placed in a historical perspective. Since the middle of the 19th century, Chinese law has been influenced by and gradually reformed along the lines of Western law, in particular the German continental legal tradition partly transmitted through Japan. Though this process of legal acculturation was stopped by the communist regime and in particular Mao Zedong for thirty years, it was resumed more than two decades ago, allowing various foreign legal models to compete for influence. In this competition, though the American and common law system has made headway in a number of areas such as trade arbitration, Chinese law has remained closer to the continental model (*dalu faxi*) heavily influenced by German, European and Taiwanese (an Asian application of the German model) legal experiences.

This is to say that the place occupied by law and justice in Chinese society has changed fundamentally in the last 150 years. And the rapid and profound legal reforms that China has been embarked on in the last twenty five years have both deepened this metamorphosis and narrowed the gap between traditional Chinese and Western legal values and norms. True, the consideration given to personal relations or the occasional clientelism still influence the settlement of many disputes: their resolution often remains based as much on the principle of reason (*heli*) or even human feelings or sympathy (*renqing*) as on that of justice (*zhengyi*, *gongzheng*) or fairness (*gongping*).[13] But for all the reasons indicated above, the demand within Chinese society for impartial justice has been increasing. And many examples tend to show that the Chinese society is more aware of its rights and demands the government and the courts to better guarantee them.

One of the best indicators of this profound evolution is the steady increase in litigation. In 2001, nearly 6 million cases were handled by the Chinese courts, as opposed to 4.5 million in 1995 and less than 2 million in 1987. In 2003, the total number of cases handled by Chinese courts went down to 5,68 million from 5,93 two years earlier, probably underscoring a willingness to concentrate on improving the quality of judicial awards. Of course, most judgments are related to civil and indeed family matters (1.35 million in 2001) or debts (1.3 million cases in 2001). But within this category, a gradual diversification of cases has taken shape. For instance, the number of "economic disputes" first rapidly increased up to 1999 (over 1.5 million cases) before decreasing sharply (600,000 in 2003). And administrative cases, in other words legal procedures against the government, have gradually become less exceptional.[14] (Table 1)

Finally, the foreign or transnational dimension of the legal reform should not be underestimated. The growing number of foreign interests in China (enterprises, banks, insurance companies, representative offices and individuals) has exerted a constant – and positive – pressure on the legal reformers and the judicial system. Actually, many laws and regulations were first drafted at the request of or for foreign

Number of Cases Handled by the Chinese Courts in First Instance (a)

	1987	1995	2003
Civil	1,579,675	3,997,339	4,834,350
- (Marriage and family)	***	***	(1,266,593)
- (Economic)	(366,110)	(1,275,959)	(632,719)
- (Labor)	***	***	(137,656)
Criminal	289,614	495,741	735,535
Administrative	5,940	52,596	114,896
Total	1,875,229	4,545,676	5,687,905

SOURCE: Various People's Supreme Court Work Reports, www.court.gov.cn/work/
NOTE: Economic disputes have recently been included in the civil category following the gradual merger of the two legal frameworks. Maritime law cases are included in the category of economic disputes.

investors and later extended to every Chinese legal person (*faren*) or individual. That has been the case, for example, with the company law of 1994 and the contract law of 1999. The drafting of the latter is a very interesting and revealing example of the gradual merging of domestic laws, applied to Chinese entities and individuals (the totally outdated 1981 law on economic contracts), and foreign-related laws only applied to foreign enterprises or individuals (the no less *passé* 1985 law on economic contracts involving foreign interests).[15] Bringing together Chinese and foreign arbitrators in its work, the CIETAC (China International Economic and Trade Arbitration Court) is also a good example of co-operation and cross-fertilization between Chinese and foreign commercial legal practice.[16]

China's application and accession to the WTO in December 2001 has naturally speeded up this process of the unification and standardization of Chinese laws. The process has forced the PRC authorities to translate the many multilateral commitments made to the WTO into their own legal texts. Though this task is far from completed, it has already contributed noticeably to narrowing the gap between Chinese and Western legal norms and, more generally, modernizing Chinese law.[17] For instance, the principles of "national treatment" as well as of "transparency" (in other words, the publication of every applicable legislation or regulation) or "independence of justice" will, without any doubt, increase the pressure on the Chinese legal system as a whole and the courts in particular.

But clearly, this outside input has been much more visible and efficient in economic and civil law than criminal and administrative law, not to mention constitutional law, confirming both the discrepancy between these two large areas of the Chinese legal system and the instrumentalist approach to law favored by the CCP leadership[18]. Of course, we can assume that these new principles and norms, largely inspired by the West, will unevenly but gradually irrigate the Chinese legal system, allowing first

business organizations and people and then less influential or more controlled segments of society (workers, peasants, minorities, journalists) to enjoy legal rights and guarantees in particular before the court. This is the evolution that many Western nations followed in the 19th century after the first modern legal codes were drafted. And this is to some (a large?) extent the process that is taking place in China today.

As a matter of fact, in other sectors of social activities, we can perceive a parallel evolution: whether in non-governmental or media organizations, autonomy is more easily tolerated or accepted by the CCP authorities, and even sometimes protected by the central leadership in non-sensitive (or not too sensitive) areas or areas where society is asked to complement the inadequate action of the state. Hence, business associations, NGOs involved in education, women's rights or even environmental protection and economic magazines such as *Caijing* (Economics and Finances) and *Ershiyi shiji guangcha baodao* (21st Century Economic Report) are enjoying greater freedom than organizations active in other sectors.[19]

Nonetheless, this dichotomy may very well remain stable and persist for quite a long time in the legal domain as well as in the other fields[20] with the risk of being less easily accepted by 21st century Chinese than by 19th century's Europeans. Moreover, and despite the indisputable progress described above, numerous obstacles are still slowing down the institution of an independent judiciary and a "rule by law" restricted to non political and non sensitive matters.

THE MAIN OBSTACLES TO THE ESTABLISHMENT OF AN INDEPENDENT JUDICIARY AND "A SOCIALIST RULE BY LAW"

Obstacles to the establishment of an independent judiciary and a "socialist rule by law" are of two kinds. Some result from (mostly local) bureaucratic or personal resistance to the new legal rules approved and judicial institutions established by the center, because these rules and institutions directly undermine the interests of those concerned. Others ensue from the rules, procedures and restrictions imposed by the political system in China. The latter seem trickier to overcome, but it is actually difficult to draw a clear line between these two types of impediments for the very reason that, in China as in other countries, legal practice and justice are strongly dependent upon the political, economic, social and cultural environment in which they develop.

Among these obstacles, three appear prominent because no easy and rapid solution can be found to them: the lack of financial and human resources; corruption; and local protectionism.

The Lack of Financial and Human Resources

Still a developing country, China can only allocate limited financial and human resources to the modernization of its legal system and in particular its judiciary. This is not to deny that much has been done in the last two decades to rehabilitate the law and the legal professions: many new and modern court and

procuratorate offices have been built in every province; law firms have mushroomed in every city; the number of legal personnel, be they judges, procurators or lawyers, has rapidly increased, in particular since the early 1990s; and more and more Chinese jurists have been trained abroad, mainly in the USA or Europe. In 2004, there were 220,000 judges (against 70,000 in 1988), including 30,000 senior judges, working in some 3,500 courts as well as some 130,000 lawyers (against 41,000 in 1990).

However, these numbers remain very low: one judge for more than 6,000 inhabitants and one lawyer for about 10,000 inhabitants are ratios well below those not only of developed countries such as France and the US of course, but also of developing countries such as India (which has more than 500,000 lawyers, the second largest lawyer population after the US). The current number of lawyers remains low and a far cry from the original objectives (150,000 lawyers in 2000 and 300,000 in 2010).[21] They are also very unevenly distributed, the majority working the coastal areas and the city where most of the business is located. The other worrying marker is the ratio between lawyers and judges, indicating the weakness in defense rights: in most countries there are many more lawyers than judges. In 2001, Chinese lawyers appeared in only 27% of all cases (compared to 18% in 1996); and if they take part in 54% of the criminal cases (compared to 39% in 1996) and 43% of the administrative cases (against 33% in 1997), they remain absent from four civil cases out of five (19% set against 12% in 1996) and two thirds of economic cases (35% set against 24% in 1996).[22] Moreover, the number of litigation remains in China much lower (around 5.7 million in 2003) than in countries such as India (22 million).

And beyond the figures there remains a serious problem of expertise. The large majority of judges and procurators have not yet received any formal legal education: many of them are still retired PLA or police officers hastily trained in law (very often on a three or six-month crash course). A 2002 report indicated that only 10% of judges had a graduate degree[23]. Though this statistic does not mean much and may be a bit exaggerated, it is generally thought that still around 10% of judges have a 4-year undergraduate degree in law. The same is true for just half of the lawyers. Moreover, the best jurists prefer to become lawyers in a foreign law firm (in such a case they have to give up their Chinese lawyer qualification) or in a law firm specializing in business law. Many Chinese lawyers work on criminal cases only when forced and threatened by a system of fines imposed by the justice departments, the local branches of the Ministry of Justice.[24]

Though Beijing and other big metropolises do have a fair number of qualified judges and lawyers, this is far from the case in all 3,500 jurisdictions and 10,225 law offices (in 2002) in the country. This is the avowed reason why most of the judicial awards made by the courts are not published: many of them do not even end up in written form, while the written judgments are often far from comprehensive or up to the legal standards required by the Supreme Court. Thus, despite the WTO commitments, this lack of expertise will contribute for a long time to keeping court decisions at least partly secret when they only concern Chinese nationals.

In the last few years, several decisions have been made to change this situation. In July 2001, the Ministry of Justice established a joint examination for both lawyers and judges or procurators based on its experience in selecting lawyers through examination. Thanks to this reform, the government is hoping that every new judge or procurator will have been forced to receive formal legal training and acquire the same professional standards as the lawyers. In imposing a joint recruitment examination, it is also hoping to improve both the image and the carrier of judges and procurators and, in so doing, attract a larger number of law students into the courts and the procuratorates. However, unless their salary is not dramatically readjusted, which is unlikely because of budgetary constraint, young judges and procurators will remain on average much more badly remunerated than young lawyers.[25] 360,000 applicants sat for the first examination of this kind in March 2002 and around 20,000 passed although the respective number of persons who got the qualification to exert these three different professions was not published.

In January 2002, the law on judges was amended to introduce some incentives to make this career more attractive.[26] On the other hand, in early 2002, the People's Supreme Court announced the creation of a new and special court under its direct supervision, to which cases related to the implementation of WTO regulations can be directly submitted. And since 1 March 2002, the Supreme Court has restricted to a small number of intermediary courts — located in big cities or provincial capitals — and a handful of basic courts (such as Shenzhen) the competence to hold foreign (and Hong Kong) related commercial cases, restoring a procedure that had been in place between 1979 and 1991.[27]

Prudent and conservatory, this last decision shows how much China wants to become a good WTO pupil. But at the same time, it underlines the lack of talent and will probably not be sufficient to protect foreign enterprises from non-professional judgments or legal advice. And, perhaps more importantly, as long as the planned inflow of specialized jurists into the courts is not completed, it may more than ever deprive Chinese entities and individuals of the qualified judges of which they are in increasing need. In 2001, 200 middle-aged and young judges were selected for training stints abroad or in Hong Kong. The same year, 8,500 judges were qualified to handle WTO-related cases after receiving training at the Peking University Law School. But the numbers involved remain terribly low in the light of the country's needs.[28] Xiao Yang, president of the Supreme Court, echoed this problem at the March 2002 annual session of the NPC, very candidly admitting that, since 80% of the cases were handled by grass-roots courts, more than five years will be necessary to upgrade the judiciary.[29]

Finally, the lack of resources will continue to limit the judicial assistance provided by the courts. Although important efforts have been made in the last few years to assist needy defendants, for instance, in 2001 only 300,000 cases were granted such assistance.[30] Moreover, we must keep in mind that in 2001 there were still nearly five million (4.86 million) civil disputes (compared to 9 million in 1987)

settled not by the courts but by the nearly one million mediation committees, bodies in which local government officials play a crucial role.[31]

For a long time to come, therefore, the Chinese courts and, to a lesser extent, law firms will suffer from a lack of talent. The situation is gradually improving but blatant inequalities will persist among jurisdictions and among judges in their understanding of the large quantity of new laws and in particular of the economic legal norms that the NPC and the State Council have enacted in the last few years.

Corruption

In China as in many nations in transition, the rolling back of the state has more often favored the emergence of new spheres of uncontrolled power and social inequalities without a safety net rather than new areas of self-restrained freedoms and well-accepted responsibilities. The might of the strong or the rich, the growing corruption of Party and government cadres and the venality of administrative positions are some of the most serious problems that the PRC regime faces today. Corruption is indeed considered by a growing number of Chinese, among them Hu Angang, director of the Centre for China Studies at the Chinese Academy of Sciences, as "the number one political challenge".[32] These flaws can only hold back or slow down the legal system's and in particular the judiciary's current modernization process and the ambition of the Chinese leadership to establish a "socialist rule by law". The areas or matters that the CCP no longer interferes in or controls are too often taken over by the power of money or sometimes the underworld. In the last few years, in some places (such as Shenyang, Xiamen or Yunnan), local CCP bureaucrats have worked hand in hand with or offered protection (*baohusan*) to the mafia, in Shenyang even helping their bosses to join the local people's congresses, hoping that they will there enjoy legal immunity.[33] These cases underline the danger of the criminalization of the state in some areas of China.[34] In 2001, Chinese courts heard 350 cases of mafia-style organized crime, six times the figure in 2000, while procurators investigated 279 such cases involving 345 Party or government officials.[35] Of course, this not only directly thwarts the uniform application of the law but also seriously damages the functioning and the legitimacy of the state.

Badly paid, judges and procurators are ideal targets for, and sometimes victims of, these new social forces when these forces perceive that their interests may be jeopardized by the courts. According to the Chinese authorities, attempts to bribe or embezzle judges and procurators have been increasing in the last few years. 1,200 judicial employees were "punished" for corruption in 2000, a further 996 in 2001.[36] Of course, one may argue that such a trend underlines the growing importance and influence of the Chinese courts. Nevertheless, this evolution also tends to highlight the reallocation of privileges from traditional Party authorities to the new economic centers of powers — but still often related to the CCP — and the emergence of

increasingly complex clientelist and corporatist relationships, multiplying the occasions of interference in the work of the courts.[37]

Another side-effect of the judges' low pay is the need to moonlight. Most often tolerated for obvious reasons (in particular not to see the courts deserted by its judges), such a practice tends however to multiply the risks of conflict of interest and partiality since, after hours, many judges become legal advisers (and actually lawyers).

The low level of education among judges and the lack of transparency of their promotion and mobility rules are also perceived as major factors in corruption. For instance, in 2001 in Shanxi province, 89 judges in rural areas were "unlawfully appointed". And according to some China media reports, more extreme appointments took place the same year: a dance-hall proprietor Wang Airu was made a judge in Fuping county, Shaanxi province, despite having barely finished primary school, by a female county official who was one of his dance patrons.[38]

Moreover, even if they do manage to conduct a fair trial, the courts possess little constraining power to force the litigants to execute the awards that they have imposed: local political or economic pressures and the insolvency of the condemned party are among the most often quoted causes of the non-implementation of judgments[39]. In other words, while corruption can spoil the work of the court and the handling of a number of legal cases, something that will long remain impossible to assess,[40] other factors can also disrupt the due process of law. Of them, local protectionism is probably the most powerful.

Local Protectionism

Although local protectionism has a deep-rooted historical background in China, in today's PRC it is the result of two main factors: an institutional pattern deprived of checks and balances and thus of independent control apparatus; and an economic strategy based on the unequal development of the various regions of the country. The size of China has often been put forward as a cause of local protectionism, i.e. the tendency of many provinces and in particular the less competitive regions to implement only the national legal and administrative rules that do not jeopardize their own interests and to decree their own "domestic regulations", and in so doing becoming what the Chinese often call "independent kingdoms" (*duli wangguo*). But, although the geography of a country often determines its institutional arrangements — large states tend to opt for the federal system – it rarely implies the parceling of the domestic market into multiple and rival "bureaucratic and economic fiefdoms". Yet this is still a problem in today's China.

A unitary state, the PRC has, since the beginning of the reforms, been practicing an unstated federalism, the tendency of which to "decentralism" (*fensanzhuyi*) has been stigmatized many times by the Chinese central leaders themselves. Ironically, these centrifugal forces result directly from the overconcentration of politico-bureaucratic power in the hands of the CCP at each

level. The respective attributions of central and local governments are ill defined and not guaranteed by any institutional mechanism.[41] Illegal regulations promulgated by the provinces, the municipalities or the counties – thus in contradiction with national rules – are rarely abolished by the NPC, an institution still tightly controlled by the CCP and not well equipped to screen all these local norms, in spite of the promulgation in 2000 of a new law on legislation (*lifafa*) aimed at establishing a clearer hierarchy of legal norms in the country.[42] Moreover, because of the rapid political and economic changes that China has undergone in the last two decades, many intricate and almost unsolvable legal situations and disputes have arisen, where contradictory legal principles or administrative rules compete with each other, a situation which helps the local authorities to protect themselves with specific regulations that the centre has not been able to scrap or may not even be aware of[43].
More importantly perhaps, the one-party system has so far forbidden the establishment of an independent apparatus to control the bureaucracy. The most powerful of these structures, the CCP discipline inspection commissions, have constantly remained under the leadership of the CCP committees of the same level. Though, these inspections commissions have been empowered in 2003 by Hu Jintao to control the CCP committee at the same level, it remains hard to tell whether this new type of supervision is and can be effective. Thus the only way to bring to heel a recalcitrant locality is to change its Party boss.

The same organizational model applies to the judiciary. In spite of a relative professionalization of the judges and procurators, courts remain highly dependent upon the CCP and the government of their jurisdiction. When local interests are at stake, the CCP secretary, the governor (always the second-in-command of the party committee) or the deputy secretary in charge of the political and legal commission influence the court's decision. This trend has become very visible in the economic realm where local courts have been often accused of protecting companies' interests not only against foreign but also other localities' enterprises. Local authorities also attempt to influence the appeal verdict of the higher court judges. These instances of interference are also eased by the court's lingering financial dependency on local government as well as the CCP's cadre system. On the one hand, only a small percentage (10%?) of their funding is contributed by the Supreme People's Court, the rest is financed by the local authorities (equally by the provincial and city or county levels). And sometimes central funding is even held by the latter.[44] On the other hand, judges and procurators are just another category of cadres (*ganbu*): their professional, social and personal connections with the local party committee and government are immensely closer than in any democratic country; belonging to the same social environment, they much more frequently swap positions, meet and socialize, thus multiplying the occasions of outside interference in court's affairs and negotiated or biased judgments.

Since China's entry into the WTO, this situation is becoming less and less tolerable. But how much and how fast can it change? The leading role of the CCP in

every segment of bureaucratic action is hard to question. Though the Chinese constitution recognizes the independence of the courts in their judicial activities, this latter rule is subordinate to the former principle enshrined in the preamble to the constitution.[45] Having said that, breaking provincial and sub-provincial protectionism as well as preventing the local authorities from interfering both in the courts' decisions and in the implementation of these decisions have clearly become priorities.

A number of recipes have been put forward. For instance, in order to contain such interference, some jurists have proposed the establishment of a new tier of three "regional final appeal courts", in northern, central and southern China, empowered to oversee the appeal cases in their respective jurisdictions.[46] Similar to the reform carried out in the banking sector in 1998 when the People's Bank of China set up nine regional headquarters nationwide to prevent provincial officials from forcing local bankers to approve loans, this proposal has, however, little chance of being adopted since it would add an fifth level of courts. Nevertheless, it may feed the discussion on the redesigning of the respective geographical jurisdictions of the various levels of courts, a reform which would probably facilitate the separation of the judicial organs from the governments. But this will not be easy in view of the large number of weapons that the local CCP and state authorities still have at their disposal to influence the courts' decisions, including the formal election of the judges and procurators by the local people's congresses, assemblies in principle elected but actually manned and controlled by retired or active CCP cadres.

What the Chinese judicial system would need is a complete overhaul of its organizational pattern and a dramatic vertical integration of the court system, a reform which does not necessarily jeopardize one-party rule but which remains today perceived by the majority of CCP leaders, especially at the local level, as too profound and destabilizing to be contemplated.

There are of course other hurdles, more of a cultural or historical nature, to the establishment of a "socialist rule by law" in China. However, in the eyes of most Chinese jurists, the three problems briefly discussed above constitute the main obstacles to the establishment of a *Rechsstaat* in a politically authoritarian environment.

CONCLUSION

We therefore come back to our starting point: Is China's "socialist rule of law" qualified to be called "rule of law" or a "thin rule of law" proposed by Randall Peeremboon, without abolishing the political supremacy of the Chinese Communist Party and the establishment of an independent judiciary? To be sure, the three problems indicated above are not going to disappear overnight when and if the Chinese polity democratizes. Bearing in mind the economic (and cultural) constraints under which the Chinese legal system is developing, training competent jurists,

ferreting out corruption and fighting localism will remain high on the agenda of any democratically elected and hence politically legitimate Chinese government.

However, the current institutional arrangements and lack of public liberties, such as freedom of the press or freedom of association, clearly intensify these problems. And though there are some similarities between China, Singapore and Hong Kong, these two former British territories have inherited legal and judicial institutions which are still today, in spite of their large differences, heavily influenced by the practice and the legal culture of common law systems.[47] In contrast, the rule by law in China is still more often interpreted and guaranteed in the light of the respective political, bureaucratic and economic powers of the parties involved than according to principles of law or equity. While Chinese courts are now more often – and sometimes very symbolically – able to protect the interests of giant transnational companies such as Microsoft or Walt Disney, to mention just a couple of well-known judicial cases, they have not yet shown their capacity to guarantee evenly and independently the legal rights of the average foreign or local company. And in spite of the guarantees recently given to the USA and other countries and a genuine mobilization, the Chinese government will face formidable difficulties in eliminating, with the assistance of the police and the judiciary, the widespread production of counterfeited products on its territory.

That said, the Chinese legal system is evolving in a social and economic environment very different from, say, Brezhnev's Soviet Union or even Gierek's Poland and Kadar's Hungary. Two sets of pressures, which we have alluded to above, are at play in China, and these pressures are likely, sooner or later, to compel the country's leadership to speed up institutional and judicial reforms, even if they do not directly question the leading *political* role of the Communist Party.

The first set of pressures comes from the outside: China's entry into the WTO will force the Chinese legal system gradually to become more transparent, more reliable and fairer not only to powerful transnational companies but also to the average foreign and local enterprises involved in judicial disputes. These pressures will not have any rapid impact. Even today, many foreign businesses are wary about the commitment of the Chinese authorities to implement the WTO regulations and are asking for greater transparency in both the legislative process and regulatory control of business.[48] Rather than a full implementation of WTO rules, most Western governments and companies, as Pitman Potter has suggested, are hoping for "appropriate compliance" or more exactly "acceptable non-compliance" with the country's WTO commitments.[49]

But the important point regarding these outside pressures is that they may incrementally spill over into Chinese society and convince more local companies to jump on the bandwagon of legal actions, even if this is to protect conflicting interests[50].

The second set of pressures, therefore, is a domestic one. And these pressures are often underestimated. It is not only Chinese business people who have increased

their demands on the legal and judicial systems, but also wider segments of the whole society. And these demands are reflected in the ideas or the proposals put forward by the most reformist or liberal Chinese jurists.[51] The Sun Zhigang affair which took place in Spring 2003 is a good example of the usefulness of such pressures: the death in detention in Canton of Sun, a young migrant beaten to death by other prisoners, triggered a strong reaction from the public and in particular some local law professors, who sent a petition to the NPC and eventually convinced Premier Wen Jiabao to relax the regulations restricting the rural migrants' residence rights in cities.[52] The attempt in 2004 to impose restrictions on the CCP politico-legal commissions, the development of more protective labor laws and the growing autonomy of the lawyers associations are other examples of the Party's necessary adaptation, an adaptation which, one again, does not directly challenge the *political* leading role of the CCP but on the contrary may contribute to stabilizing the state-society relationship while at the same time favoring a gradual autonomization of the law, and hence the courts. In other words, these international and domestic pressures can favor the emergence of, if not a rule of law, at least a new type of *Rechsstaat* in China, a *Rechsstaat à la chinoise*.

At the same time that it is coming under these pressures, however, the Chinese legal system is facing two different risks. The first is a growing gap between the coastal areas, where legal and judicial practice is rapidly becoming more professional, and the *Hinterland*, where poor localities controlled by corrupt bureaucracies will continue successfully to protect themselves through clientelism and corporatism against both WTO commitments, what they perceive as unfair outside – and not only foreign – competition, and legal modernization.

The second risk is political instability and even upheaval if the legal system and in particular the judicial system do not show that they can alleviate more efficiently the social and legal problems that society is facing. The emphasis given since 2002 to improving the judicial and administrative mechanisms for settling labor disputes is no coincidence and offers some interesting similarities with the social compromise elaborated by Bismarck in late nineteenth century's Germany[53]. If no acceptable answers are proposed in this area, the risk of social unrest and pressures for the creation of free trade unions will probably increase. And a more credible fight against corruption is more and more often associated with the need to revive "political structure reform" (*zhengzhi tizhi gaige*).[54] Before he became general secretary and president, Hu Jintao asked the Central Party School, a think tank that he then directly supervised through his close aide Zheng Bijian, to conceive fresh plans for political reform, as he saw how much institutional obstacles prevented the legal modernization of the country from moving forward. But after he succeeded to Jiang Zemin, under the pressure of his peers and the local leaders, Hu has remained very cautious and, in spite of some true initiatives, refrained for pushing for a large-scale political reform, hoping that the gradual establishment of a "socialist country ruled

by law" and a better "governance" will not require, at least in the foreseeable future, any weakening of the CCP rule[55]. He may be right.

The modernization of the legal system will continue under the twin pressures indicated above, allowing China to narrow the distance that it must still cover to reach what, for the purpose of this analysis, I have called a "rule by law" or a *Rechsstaat*. Nevertheless, the political translation of the legal demands of society and the international community will take more time to materialize. And in the meantime, risks, setbacks and difficulties will continue to be present and prevent China from establishing a truly independent judiciary and what is universally called a rule of law or an *Etat de droit*.

Notes

[1] That is the approach that I developed in particular in the article "Chine: Un Etat de lois sans Etat de droit," *Revue Tiers Monde*, Vol. XXXVII, No. 147, July-September 1996, pp. 649-668. On the relation between the rule of law, legitimacy and an autonomous judiciary, cf. for example Max Rheinstein ed., *Max Weber on Law in Economy and Society*, Cambridge, Mass., Harvard University Press, 1954.

[2] Cf. for example Randall Peerenboom"s discussion of the thick and thin conceptions of the rule of law, "Let One Hundred Flowers Bloom, On Hundred School Contend: Debating Rule of Law in China," unpublished manuscript presented at the Law and Society Conference in Budapest, 2001, and his book, *China's Long March Toward Rule of Law*, Cambridge, Mass., Cambridge University Press, 2002. In his view, the "thin conception" of the rule of law includes in particular the following features: procedural rules of law-making; transparency; law applicability, clarity, non-retroactivity, stability, and consistency; laws must be enforced, and enforced fairly; and laws must be reasonably acceptable to a majority of the society or people affected by the law. However, curiously, the independence of the courts is absent from this list; cf. Peerenboom, "Let One Hundred Flowers Bloom…," op. cit., pp. 6-7.

[3] *Renmin Ribao* (People's Daily), 9 February 1996 (Internet edition). The Chinese characters used (依法治 國建設社會 主義法治國) in this new wording as well as the official translation of its latter part — a "socialist rule of law state" — raise a major issue. They both give the illusion that China is building a rule of law while is only trying to establish a rule by law. On this point, cf. Yuanyuan Shen, "Conception and Receptions of Legality. Understanding the Complexity of Law Reform in Modern China," in Karen G. Turner, James V. Feinerman & R. Kent Guy eds., *The Limits of the Rule of Law in China*, Seattle & London, University of Washington Press, 2000, pp. 24-27 and Jianfu Chen, *Chinese Law, Towards an Understanding of Chinese Law, Its Nature and Development*, The Hague, Kluwer Law International, 1999, pp. 361-363.

[4] I use on purpose the concept of "legal modernization" to qualify the process going on in China because it is both neutral and rather vague; the idea is that legal modernization doesn't necessarily bring not only a rule of law but also a Bismarckian rule by law.

[5] Cf. for example the various contributions to Ministry of Justice ed., *Zhonggong zhongyang fazhi jiangzuo huibian* (Discussing the Legal System), No. 127, 1998; Pan Wei, "Democracy or Rule of Law? — China's Political Future," unpublished manuscript presented at the University of Hong Kong Conference on "The Responses of Intellectuals to the Challenges of the 21st Century in China and Eastern Europe — A Comparative Approach" organized by the French Centre for Research on

Contemporary China, Hong Kong, 15-16 December 2000. Pan Wei thinks that only an authoritarian political system can favor the emergence of a "consultative rule of law" in China.

[6] On the achievements and the limits of constitutional revisions, cf. Chen Jianfu, "The Revision of the Constitution in the PRC, Conceptual Evolution of 'Socialism with Chinese Characteristics'," *China Perspectives*, No. 24, July-August 1999, pp. 66-79; "The Revision of the Constitution in the PRC. A Great Leap Forward or a Symbolic Gesture?," *China Perspectives*, No. 53, May-June 2004, pp. 15-32.

[7] Cf. for example the US State Department Report, 25 February 2004, www.state.gov/g/drl/rls/hrrpt/2003/27768.htm. Though China's ratification of the latter covenant will lead to a "judiciarisation" of the *laojiao* system, it will probably not alter very much an institution based on the idea that the state is empowered to "re-educate" citizens it regards as "bad elements".

[8] The Report of the People's Supreme Court presented to the NPC in March 2002 indicated that 150,913 persons were sentenced to life imprisonment or death in 2001, www.law-lib/com/; Chen Jianfu, "Legalism with Chinese Characteristics, The Revision of the Criminal Law in the PRC," *China Perspectives*, No. 21, January-February 1999, pp. 5-14. Cf. also, "Human Rights Watch World Report 1998: China" (8 December 1998), www.hrw.org/hrw/campaigns/china-98/chn-wr98.htm; Jonathan Hecht, *Opening to Reform: An Analysis of China's Revised Criminal Procedure Law*, New York, Lawyers' Committee for Human Rights, 1996, 87 pp. In March 2004, a NPC delegated admitted that the number of execution was around 10,000 a year. At the same time a government source quoted by *Reuters* (9 March 2004) indicated that 5,000 criminals had been executed in 2003. It is hard to tell which figure is the most accurate since the number of executions remains a state secret in China today. In March 2004 also, both Luo Gan, secretary of the CCP Central Political and Legal Commission, and Xiao Yang, president of the People's Supreme Court, have indicated their willingness to diminish step by step the number of executions. *Reuters*, 10 March 2004.

[9] Katharina Pistor & Philip A. Wellons, *The Role of Law and Legal Institutions in Asian Economic Development 1960-1995*, New York, Oxford University Press, 1999. Cf. also Randall Peerenboom, "Social Networks and Their Relation to Civil Society, Democracy, Rule of Law and Economic Growth in China," unpublished paper presented at a City University of Hong Kong Conference on "Social Networks and Civil Society: A Comparative Approach," April 1-4, 2002.

[10] For instance Pan Wei, "Democracy or Rule of Law?…," op. cit.

[11] Li Yuwen, "Lawyers in China, A 'Flourishing' Profession in a Rapidly Changing Society?," *China Perspectives*, No. 27, January-February 2000, pp. 20-34.

[12] On this question cf. Isabelle Thireau & Wang Hansheng eds., *Disputes au village chinois, formes du juste et recompositions locales des espaces normatifs*, Editions de la Maison des sciences de l'homme, Paris, 2001, pp. 23-26; Isabelle Thireau & Linshan Hua, "Le sens du juste en Chine. En quête d'un nouveau droit du travail," *Annales, Histoire, Sciences Sociales*, No. 6, November-December 2001, pp. 1283-1312.

[13] Thireau, *Disputes au village chinois*, op. cit. pp. 27-28. Cf. also Fu Hualing, "A Bird in a Cage: Police and Political Leadership in Post-Mao China," *Policing and Society*, No. 4, 1994, quoted in Randall Peerenboom, "Social Networks…," op. cit.

[14] *Zhongguo tongji nianjian 2002* (China Statistical Yearbook 2002), Peking, Zhongguo tongji chubanshe, 2002, pp. 802-803; 2003 Report of the People's Supreme Court (March 2004), www.court.gov.cn/work/; the decrease in economic cases since 2000 can be explained by two factors: the enactment of a new contract law effective since 1 October 1999, which has substantially improved the legal protection of contractual relations, and the concomitant merging of civil and economic law. On administrative cases, cf. Pei Minxin, "Citizens vs. Mandarins: Administrative Litigation in China," *The China Quarterly*, No. 152, December 1997, pp. 832-862.

[15] For a bilingual edition of the company law, cf. *Zhonghua renmin gongheguo falü huibian/Laws of the People's Republic of China*, Peking, Falü chubanshe, 1996, pp. 542-641. For a bilingual edition of the contract law, cf. *The Contract Law of the People's Republic of China/Zhonghua renmin gongheguo hetongfa*, Peking, Foreign Language Press, 1999, 224 pp. Cf. also Jianfu Chen, *Chinese Law*, op. cit., pp. 300ff. Pitman B. Potter, "Law-Making in the People's Republic of China: the Case of Contracts," in Jan Michiel Otto, Maurice V. Polak, Jianfu Chen & Yuwen Li eds., *Law-Making in the People's Republic of China*, The Hague, Kluwer Law International, 2000, pp. 189-203. *The Chinese Legal System, Globalization and Local Legal Culture*, Routledge, London & New York, 2001.

[16] Stanley B. Lubman & Gregory C. Wajnowski, "International Commercial Dispute Resolution in China: A Practical Assessment," *The American Review of International Arbitration*, 1993, Vol. 4, No. 2, pp. 107-178. China Law and Practice ed., *Dispute Resolution in the PRC: A Practical Guide to Litigation and Arbitration in China*, Hong Kong, China Law & Practice, 1995.

[17] In 2001, 177 laws and regulations were rescinded to bring them in line with WTO requirements, *Hong Kong iMail*, 11 March 2002, p. 7. It was indicated in 2000 that over 1,300 laws as well as central and local regulations were not in conformity with the WTO rules. Cf. Leïla Choukroune, "Implementing a Rule of Law Through Internationalization: The Objective of the Reforms?," *China Perspectives*, No. 40, March-April 2002, pp. 7-20.

[18] R.C. Keith, *China's Struggle for the Rule of Law*, New York, Saint Martin's Press, 1994, pp. 218-221; Pitman B. Potter, *The Chinese Legal System, Globalization and Local Legal Culture*, Routledge, London & New York, 2001, pp. 10-11.

[19] On NGOs, cf. Tony Saich, "Negotiating the State: The Development of Social Organizations in China," *The China Quarterly*, No. 161, pp. 124-141.

[20] That is actually one of the main arguments of Randy Peerenboom's paper, "Let One Hundred Flowers Bloom…," op. cit.

[21] *China Daily*, 13 January 1996, p. 1.

[22] *Zhongguo tongji nianjian 2002* (China Statistical Yearbook 2002), Peking, Zhongguo tongji chubanshe, 2002, pp. 791, 802; these percentages are calculated by dividing the number of lawsuits (*susong*) in which lawyers acted as agent (*daili*) by the number of cases.

[23] *Wenhuibao* (Shanghai), quoted in the *South China Morning Post*, 2 January 2002, p. 4.

[24] Li Yuwen, "Lawyers in China…," op. cit.; cf. also *Lawyers in China: Obstacles to the Independence and the Defense of Rights*, New York, Lawyers Committee for Human Rights, March 1998.

[25] A judge at a grass-roots court in a less developed province normally receives about RMB600 a month (US$72), a high court judge in Peking can get about RMB2,000 (US$242) and a judge in coastal areas may receive RMB7,000 (US$845), *South China Morning Post*, 13 March 2002, p. 8. In large cities and coastal areas, lawyers usually earn between RMB6,000 and 20,000 a month (US$725 to 2,400).

[26] Apart from the rank of senior judge mentioned above, 41 supreme and provincial court judges were given the title of "grand justice" (*dafaguan*); this title is identical to the one used in Taiwan for the members of the Judicial Yuan (*sifayuan*); *Xinbao*, 23 March 2002, p. 15, *China Daily*, 22 and 23 March 2002, p. 1.

[27] *South China Morning Post*, 8 February 2002, p. 6; *Hong Kong iMail*, 27 February 2002, p. 11; *China Daily*, 19 March 2002, p. 11.

[28] *Hong Kong iMail*, 11 March 2002, p. 7.

[29] *South China Morning Post*, 13 March 2002, p. 8. *Wenhuibao* (Hong Kong), 13 March 2002, p. A4.

[30] This represented a total cost of RMB839 million (US$101 million) in litigation costs exempted, reduced or postponed. *China Daily*, 12 March 2002, p. 1.

[31] *Zhongguo tongji nianjian*, op. cit., 2002, pp.791, 793 & 1995, pp. 681,683.

[32] Hu Angang has estimated that in the years from 1995 to 1999 corruption cost the Chinese economy the equivalent of 17% of GDP or US$153 billion, *South China Morning Post*, 17 March 2001, p. 9. Cf. also Hu Angang, *Zhongguo: tiaozhan fubai* (China: Fighting Against Corruption), Hangzhou, Zhejiang renmin chubanshe, 2001, 380 pp. The scope of these phenomena is by nature very hard to assess. Some officially published figure have recently indicated that 50% of the four million contracts signed in China are fraudulent in some respect, tax evasion accounts for 50% of taxes due in the private economy, two-third of the biggest state firms produce false accounts and 15% to 20% of the spending on an average infrastructure or building project is lost to bribery, fraud and poor quality work, *The Far Eastern Economic Review*, 21 June 2001, pp. 59-60. Moreover, in 2001, the number of cases handled by the Central Discipline Inspection Commission of the CCP increased by 30%. *Wenhuibao* (Hong Kong), 9 March 2002, p. A6. On corruption, cf. also Lü Xiaobo, *Cadres and Corruption. The Organizational Involution of the Chinese Communist Party*, Stanford University Press, Stanford, Ca., 2000.

[33] On Shenyang, cf. *International Herald Tribune*, 8 March 2002, p. 2. On Xiamen, cf. Zhang Xianhua et al., *Fengbao, Chachu Xiamen teda zousi'an jishi* (Windstorm, Record of the Investigation on Xiamen's Big Smuggling Case), Xiamen, Zuojia chubanshe, 2001, 418 pp.

[34] Guilhem Fabre, "Etat, corruption et criminalisation en Chine," *Revue internationale des sciences sociales*, No. 169, September 2001, pp. 501-508.

[35] Ibid. Report of the People's Supreme Procuratorate presented to the NPC on 11 March 2002, www.law-lib/com/; *South China Morning Post*, 12 March 2002, p. 8.

[36] www.law-lib/com/; *South China Morning Post*, 13 March 2002, p. 8.

[37] Jonathan Unger & Anita Chan, "China, Corporatism and the East Asian Model," *Australian Journal of Chinese Affairs*, No. 33, January 1995, pp. 29-53; Jean Oi, *Rural China Takes Off: The Institutional Foundations of Economic Reform*, Berkeley, University of California Press, 1999, 259 pp.; David Wank, *Commodifying Communism: Business, Trust and Politics in a Chinese City*, Cambridge, Cambridge University Press, 1999, 264 pp.

[38] *South China Morning Post*, 2 January 2002, p. 4. The latter story was questioned by the *Beijing Qingnian Bao*, 30 Oct. 2001 but later confirmed; see http://news.tom.com/Archive/2002/3/5-3361.html.

[39] Stanley B. Lubman, *The Bird in a Cage, Legal Reform in China After Mao*, Stanford, Stanford University Press, 1999, pp. 258ff.

[40] Hu Angang estimated that only 10% of the corruption cases in China were made public and about 1%of those investigated were sentenced, *South China Morning Post*, 16 May 2001, p. 8.

[41] Cf. Jean-Pierre Cabestan, *L'administration chinoise après Mao. Les réformes de Deng Xiaoping et leurs limites*, Paris, Ed. du CNRS, 1992.

[42] Li Yahong, "The Legislative Autonomy of the Localities in China," *China Perspectives*, No. 32, November-December 2000, pp. 13-21; Jean-Pierre Cabestan, "The Relationship Between the National People's Congress and the State Council in the People's Republic of China: a Few Checks but no Balances," *American Asian Review*, Vol. XIX, No. 3, Autumn 2001, pp. 35 73. A slightly different version can be consulted on the website of the French Centre for Research on Contemporary China (CEFC) at www.cefc.com.hk; Zou Keyuan, "Harmonizing Local Laws with the Central Legislation. One critical step in China's long march towards rule of law," *China Perspectives*, No. 52, March-April 2004, pp. 44-55.

[43] For instance on property rights, Jean Oi & Andrew Walder, *Property Rights and Economic Reform in China*, Stanford, Ca., Stanford University Press, 1999, 354 pp.

[44] As was in 2002 the case in Gaozhou city in Guangdong province, *South China Morning Post*, 13 March 2002, p. 8.

[45] Article 126 of the PRC Constitution states: "The people's courts exercise judicial power independently (*duli xingshi shenpanquan*), in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual".
[46] This proposal was made by Wang Liming, deputy director of the Law School at the Peking-based People's University and member of the NPC's finance committee, *South China Morning Pos*t, 14 March 2002, p. 8.
[47] Executive interference in the judiciary is much more prevalent in Singapore than in Hong Kong, despite the NPC's 1999 interpretation of the Hong Kong Basic Law restricting the right of abode of mainland Chinese; cf. Peerenboom, "Let One Hundred Flowers Bloom…," op. cit., pp. 56-57. Pei Minxin, "Legal Reform and Secure Commercial Transaction: Evidence From China," in Peter Murrell ed., *Assessing the Value of Law in Transition Economies*, Ann Arbor, University of Michigan Press, 2001.
[48] For instance, in a White Paper published in April 2002, the American Chamber of Commerce (Amcham) in China indicated that greater transparency should include "allowing interested parties to comment on draft laws and publicizing all laws and regulations in detail and making public the reasoning behind the interpretation and manner of their enforcement". According to a survey organized by Amcham, 35% of its members were "very concerned" that the WTO agreement would be ignored, that new regulations would be enacted to counter WTO rules and commitments or that protectionism might increase as a result of WTO accession," *South China Morning Post*, 25 April 2002, p. B4.

[49] Potter, *The Chinese Legal System*, op. cit., p. 141.
[50] Cf. Pitman B. Potter, "Are Human Rights on China's WTO Agenda," *China Rights Forum*, No. 1, 2002, pp. 8-10.
[51] Li Buyun, *Zouxiang fazhi* (Toward a Rule of Law), Changsha, Hunan renmin chubanshe, 1998, 2nd edition 2001, 770 pp. Liu Junning, *Gonghe, minzhu, xianzhen, ziyouzhuyi sixiang yanjiu* (Republic, Democracy and Constitutional Government, Study of Liberalist Ideology), Shanghai, Shanghai sanlian shudian, 1998, 422 pp.
[52] Kristen Looney, "Death of Sun Zhigang challenges rule of law in China," 20 May 2003, www.chinaelections.org/eng <http://www.chinaelections.org/eng>
[53] Cf. "Labor and Social Security in China," White Paper of the Information Office of the State Council, *China Daily*, 30 April 2002, p. 10. Cf. also Isabelle Thireau & Hua Linshan, « The Moral Universe of Aggrieved Chinese Workers: Workers' Appeals to Arbitration Committees and Letters and Visits Offices », *The China Journal*, No. 50, July 2003, pp. 83-103. Aiqing Zheng, *Les libertés et droits fondamentaux des travailleurs en Chine: critique et perspectives au regard du droit français et des normes internationales* (Fundamental liberties and rights of the workers in China: a critical comparison with French law and international norms), doctoral dissertation, Paris, University of Paris 1, 2004.
[54] *Xinbao*, 5 March 2002, p. 10.
[55] *Dongxiang*, March 2004, pp. 33-34; *South China Morning Post*, 30 April 2004.