

A CRITICAL APPRAISAL OF CHINA'S 'FOUR COMPREHENSIVES' GRAND NARRATIVE

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Abstract: In China today, President Xi Jinping's new grand narrative is framed by the widely publicised 'four comprehensives' (四个全面; 'sigequanmian'). This narrative aims to: 1. build a moderately prosperous society; 2. deepen reform; 3. govern the nation according to law, and 4. tighten Party discipline. It is essentially a political narrative that tells a moral tale that legitimizes and glorifies the virtues of the present. It also attempts to shrug off mistakes of the previous dynasty. Drawing on the legal disciplines of economic law, international comparative law and the a priori analytic method of legal narrative analysis, this paper provides a critical appraisal of the 'four comprehensives', paying special attention to how the four principal strands of the narrative shape the directions of China's socialist rule of law reforms and governance.

Key words: Chinese law reform; four comprehensives; 四个全面; sigequanmian; socialist rule of law; legal narrative analysis; economic-law nexus, South China Sea.

Introduction

Under General-Secretary Xi Jinping, the Communist Party of China's (CPC) governing ideology seems to continue market reforms and 'opening up' [开放], including encouragement for Chinese enterprises to 'go-out' [走出去], whilst retaining power within the one-Party system. This ideology creates an intriguing context for the development of its legal system. On the one hand, law reforms support market economics (and WTO requirements) and ensure incentives for production and distribution, satisfaction of growing consumer demands, and the appearance of fairness. On the other hand, political orthodoxy continues to essentially follow a Marxist-Leninist ideology with Chinese characteristics, echoing the earlier language of Mao Zedong and Deng Xiaoping. This orthodoxy, expressed as 'the four comprehensives' (四个全面; 'sigequanmian'), aims to build a moderately prosperous society, deepen reform, govern the nation according to law, and to tighten Party discipline (*People's Daily* 24 February 2015: front-page editorial).¹

As the People's Republic strives to find a balance between regulation and freedom, State planning continues to be held as an antidote to potential domestic unrest in a changing world order - with China rising to the top.² This paper critically examines the CPC's grand 'four comprehensives' narrative, which is now widely publicized within China. A particular emphasis is on various interpretations of deepening socialist rule of law reforms. Our methodology draws on the legal disciplines of economic law and international comparative law, and the *a priori* analytic method of legal narrative analysis in which

¹ Also see *BBC News China* (2015) 'China's Xi Jinping unveils new 'four comprehensives' slogans', 25 February, at: <http://www.bbc.com/news/world-asia-china-31622571>.

² The term 'command economy' has often been used to describe China's economic system. This term comes from the German *Befehlswirtschaft* and was originally applied to the Nazi economy but later used to describe the Soviet Union. The principle being that all economic decisions are centralised for the greater good, with rationalised central planning perceived as superior to the market (Dikotter 2011: 127).

conclusions are drawn through inductive argument. The structure of the paper is based on the official Chinese narrative ordering of the four comprehensives as follows: Section one addresses the official discourse of ‘building a moderately prosperous society’; section two, the ‘deepening reform’ narrative; section three, ‘governing the nation according to law’, and section four on ‘tightening party discipline’ (including Xi Jinping’s ‘tigers and flies’ anti-corruption campaign). Section five concludes. Our primary research questions are: 1. What are the underlying purposes of the four comprehensives narrative; 2. What are the effects of the grand narrative on reform directions for China’s socialist rule of law and governance, and 3. How is the narrative used by the CPC to write a new future for socialist China, justify present-day ambitions and legitimize its own on-going power.

Narrative One: Building a Moderately Prosperous Society

The China Dream, ‘new normal’ and property reform narratives

The ‘four comprehensives’ grand narrative attempts to tie together the need for economic and legal reforms, Party discipline and the ‘Chinese dream’ of national rejuvenation. This nexus of growth, law reform and Chinese political power does not easily fit into any one paradigm for development. China’s slowing growth rate since 2008-09 has triggered a new government phrase, ‘the new normal’, signifying the importance to China of rebalancing its economy for sustainability - away from investment-led growth to a more consumption-driven economy. This recalibration is proving to be very difficult. Corruption remains problematic, the Chinese stock market is highly volatile and crucial reforms in the state-owned sector remain challenging for the government despite its determination to promulgate the Four comprehensives and build the ‘Chinese dream’. The ‘new normal’ does, of course, have significant implications for the progress of law reform. For example, the 10 per cent increase in the number of cases accepted by the People’s Courts in 2014 over 2013, alone, has serious resource implications.³ Any prolonged economic slowdown will have direct and deep ramifications for legal development and the administration of justice generally.

The narrative of building a moderately prosperous society involves China transitioning from a command economy towards a socialist market economy. The multiple challenges of such a transition involves segueing from a position of strong economic growth at all costs, at the expense of environmental and social justice issues in particular, to one of sustainable development.⁴ Chinese macroeconomist Qiyuan Xu (2016: 106) argues structural reforms are required to address both demand and supply side issues. On the demand side he claims: ‘China needs to reduce its reliance on the two old engines of growth - investment and export - by stimulating domestic consumption.’ He points out (id.) key reforms include implementing export rebates as a neutral policy, constructing a mature social credit system and reducing transaction costs in the domestic market. Xu also links anti-corruption measures to the need to boost domestic consumption in that much still needs to be done to clean up local government fiscal responsibility and break down local protectionism. In boosting consumption, improvements to the social welfare system, household registration (Hukou) reforms, reductions in income disparity and industry structuring, such as further deregulation of the services sector, are proposed for the next five to ten years.

With regard to supply side, the Chinese government is urged to pursue sustainable development in a new reality of decelerating economic growth. The ‘new normal’ should see reforms in the following production factors: (a) labor: reduce reliance on the ‘population dividend’ and release the human capital bonus by shifting from manufacturing and export-driven growth to services sector-driven growth; (b) capital: implement staged financial deregulation to liberalize the ‘real’ economy; and (c) technical progress: implement laws and policies to transform China from an ‘imitative’ economy to an ‘innovative’ economy, such as amendments to improve the *Patent Law of the PRC* (2009). From Xu’s macro-economic perspective (id.), to achieve greater dividends of deepening economic reforms, much more will be required, including more equitable distribution of rural and urban services, better social welfare redistribution and marked improvements to public goods and services, less corruption, and a fair and just legal system more generally. Historically, China’s economic transition has been driven by a series of

³ See full set of figures at the *Supreme People’s Court Monitor* (15 March 2015): <http://supremepeoplescourtmonitor.com/>.

⁴ Even though the comprehensives narrative calls for improved environmental protection and reform efforts have been made, Stern (2011; 2014) reveals the extraordinary difficulties and high costs of suing heavy polluters in China.

experiments and trials or, as Deng famously put it, ‘crossing the river by feeling for stones’ (‘mozheshitougou he’). Given the challenges of managing China’s remarkable economic growth and transition to more sustainable development (the ‘new normal’), China nevertheless remains difficult to fit into any one paradigm given its history and context. And at the heart of this interpretive puzzle is a paradox: how a socialist market economy has developed within a state-controlled property system in which the government owns all of the land in perpetuity.

With regard to the property paradox, Hu (2016: 204) asserts China’s planning around urbanization has, historically, been ‘land-based’ rather than ‘population-based’ with urban expansion accompanied by rural migrants moving to cities, often without urban citizenship. At the same time, urbanization has been associated with depopulation and land-loss amongst rural peasants. Hu (id.) shows how China’s land use and urbanization have both been subject to government monopoly and control, with local government political and financial incentives substantially derived from selling land and promoting urban growth. Many problems including corruption, risky financing and peasant exploitation are attributed to the nexus of political power, monopoly practices and corrupt financial ‘incentivization’.

Garrick and Bennett (2016: 352) refer to various reforms in rural property rights, liberalizing the land market and loosening Hukou restrictions, with the dual urban-rural social structure at the heart of many reform challenges. The new land use and urbanization reforms that are part of the ‘comprehensives’ narrative are governed by the strategic objective of a unified urban-rural land market and integrated urban-rural development. The narrative underpinning these reforms is that ‘stability maintenance’ is imperative. Land disputes and related corruption are major sources of protest and instability and the new measures seek to address these underlying issues. The ambitious rhetoric is, however, confronted by a reality of deeply-rooted structural and political complexities including China’s social inequalities (Zang 2016), the ‘urban-rural divide’ (Hu 2012: 87), deeply vested interests at local levels (Sun and Guo 2012), and a central government that sets the rules but heavily relies on local governments to implement them (see *The Economist* 22 August 2015: 27). These all remain major challenges for the government, intensifying the outcomes required of the ‘deepening reform’ narrative.

Narrative Two: Deepening Reform

The Decision, internationalization of the Renminbi and the ‘decisive function of the market’

China’s grand plans for deepening reform have far reaching implications, not only domestically, but for global governance and international legal ordering. With growing economic and military power, China now seeks to influence international legal and financial systems. China’s reform narrative is associated with a set of macro-economic policies that promote structural reform in the economy and internationalization of the Renminbi. Xi’s (2013) explanation of the CPC Central Committee ‘Decision on Major Questions about Deepening Reform’ (*quanmianshenhuagaige*) (*the Decision*) makes clear ‘ideological unity continues to be forged around Deng Xiaoping’s ‘two-hands’ formula: a market-based economy and uncompromising political control.’⁵ Xi’s Explanation of *the Decision* (id.) emphasizes rule of law should be advanced under the CPC leadership, in line with socialism with Chinese characteristics and puts economic structural reform at the centre of deepening reform more generally: ‘The core issues are dealing with the relationship between the government and the market well, ensuring that the market has a decisive function in resource allocation, and giving better rein to the function of government.’ What, precisely, the ‘decisive function’ of the market will be remains to be seen. However, Pettis (2014) claims Beijing will unlock greater productivity potential in the Chinese economy ‘by improving the capital allocation process so that capital will be diverted from SOEs, real estate developers, local governments and other inefficient users of capital.’ Constraints that prevent productive use of resources will also need to be eliminated, including weak legal enforcement of legitimate legal claims and better protection of managerial and technological innovation. Implementation of such reforms is, however, uncertain and this is, to an extent, reflected in the mid-2015 Chinese stock market decline. Even assuming reforms are forcefully implemented, higher productivity will not necessarily lead to higher GDP growth.

Expansion of the RMB’s role in international trade and finance also face obstacles including China’s

⁵ See the English translation at: http://news.xinhuanet.com/english/china/2013-11/15/c_132891949.htm

domestic financial system in which interest rates are tightly controlled, state-owned banks dominate financial intermediation and the Chinese stock market faces deep central government intervention. Kennedy and Cheng (2012: 21) argue that this is because the PRC's financial system is 'meant to serve the government's industrial policy priorities'. At the international level it follows that Chinese leadership in reforming global financial architecture is unlikely 'until China's own development strategy changes more fundamentally' (id.). For example, China's highly controlled financial system helped artificially inflate its stock markets by pumping money into it to avoid a collapse. Banks pay interest rates well below international standards without regulatory caps and China has poorly developed alternatives for domestic consumers looking to invest their savings. When the stock market was rising most were cheering. But when the bubble burst, the Communist Party's distrust of market forces became clear with regulators capping short-selling, pension funds pledging to buy more stocks, the government suspending initial public offerings and brokers required to set up a fund to buy shares backed by the Central Bank (*The Economist* 11 July 2015: 61). As *The Economist* (id.) points out, China is not the first country to prop up a falling stock market. Governments and central banks in America, Europe and Japan have all bought shares after crashes and cut interest rates to calm investors. What makes China stand out is that 'it panicked when a correction of clearly overvalued shares had been expected' (id.). The 'deepening reform' narrative faces an immediate challenge. The journey from a command economy to allowing 'the decisive function of the market' has a long way to go, as long as the market is subordinated to and serves the party-state. The most dangerous steps are to come. Do the markets decide? Or does China slow its reform program or even turn back? It is clear enough that to be optimally effective, economic reform needs accompanying legal and governance reforms and deepening the 'socialist rule of law' is the pivotal third strand of the comprehensive narrative.

Narrative Three: Governing the Nation According to Law

Socialist rule of law reforms; constitution, judiciary, WTO dispute resolution, law of the sea

Under Xi Jinping's leadership the 'socialist rule of law with Chinese characteristics' is *the* foundation for *all* legal reforms. The 2014 Plenum laid out five general principles to guide this process: (1) the leadership of the Party; (2) the dominant position of the people; (3) equality before the law; (4) the combining of rule of law with rule of virtue; and (5) the need for China to chart its own path. Some argue these principles deliver little other than meaningless 'feel-good' language (Feng 2016; Clarke 2014). Others such as Peerenboom (2014: 8), however, argue that it is 'not surprising to see this type of pragmatic, measured, ameliorative language at this stage of development... [and] that as a middle-income country, China faces a long, hard slog in establishing rule of law'. He adds that progress is slow and incremental without miracle solutions, and that:

Reforms in one area give rise to new problems, often times in other areas. There is no choice but to grind it out, tackling issues as they arise. The Party is under no illusions that it will be easy: 'Comprehensively promoting ruling the country according to law is a systemic project; it is a broad and profound revolution in the area of state governance, and requires long-term, arduous efforts'. (id.)

Qianfan Zhang's (2016: 26) examination of China's judicial reforms from the end of the Cultural Revolution in 1976 to present, and directions for the next five years, draws our attention to two areas: (1) a limited de-regulation of the courtroom to reduce judicial bureaucracy with the intention to enable individual judges to assume more responsibility in deciding cases; and (2) the centralization of judicial administration to reduce local protectionism (*difangbaohuzhuyi*). He identifies some procedural problems, but primarily new judicial reforms are more substantively limited by politics and by a political regime in which the ruling party alone has final say on how far the reach of reforms can extend. Zhang (id.) points out that a high degree of skepticism exists as to whether judicial reform can truly take place. Indeed, civil rights activists and women's rights activists have been charged in 2015 with crimes such as 'picking quarrels and causing trouble'⁶, NGOs are being heavily circumscribed and there is little the judiciary can do to prevent or ameliorate such overt political suppression. *The Narrative* promotes rule of law on the one hand, but on the other, the expression 'leadership of the party' is repeated multiple times to

⁶ *The Economist* (21 March 2015b: 24).

reinforce the Party's leading function in judicial reform. It remains unclear how the Party leadership can be reconciled with 'rule of law' in the sense that rule of law should rest upon the principle that all individuals, as well as public institutions, ought to submit themselves to the impartial application of the law.

Keith Hand's (2016: 54) assessment of constitutional supervision brings China's socialist rule of law narrative into sharp relief. Over the past two decades, citizens have used constitutional argument and legal mechanisms to pressure the Party and promote constitutional interpretations that incorporate some meaningful constraints on Party power. Hand explains how the Fourth Plenum *Decision* can be viewed as a constitutional interpretation intended to stifle such citizen efforts, with 'Party leadership' being the core of the socialist rule of law state. While the legal system may be a useful tool to discipline lower levels of the bureaucracy, ensure the implementation of economic policy, and protect rights within limits, it is *the Party*, not the NPC or its subunits, that is final arbiter of the fundamental political questions implicit in many constitutional claims. Hand (p. 80) suggests the Party may fear that even the modest step of establishing a weak constitutional supervision committee 'could generate ideological confusion'. He notes (id.) that one of the principal arguments advanced by proponents of a constitutional supervision committee in the early 1980s 'was that China needed a specialized organ to prevent a repeat of the legal nihilism and constitutional violations of the late Mao era'. It is clear enough that this history resonates in the current political-legal environment with the Party emphasizing its supremacy in China's constitutional order and Xi Jinping asserting his dominance over the Party. Xi has emerged as China's most powerful leader since Deng Xiaoping and possibly Mao himself. Indeed, current ideological campaigns are raising uncomfortable memories of the Mao era.

Feng (2016: 81) focuses on the CPC's main reasons for deepening law reform by examining the language of *the Decision, Document No. 9* and Xi Jinping's speeches since becoming CPC General Secretary. Feng notes, for instance, that the overarching principle of *the Decision* is to enhance Party's authority and control over legal procedure and outcomes of 'politically sensitive' cases. In this, the CPC theory positions law reform as a necessary tool to help the economic growth agenda, which, in turn, is to instill more public faith in the legal system and facilitate better legal protections of economic interests. Feng further claims that moves to curb local protectionism, reduce grassroots corruption in the court system and upholding justice in ordinary legal proceedings (i.e. those without political significance) are essentially politically motivated to improve the Party's image. Of course, efforts to reduce corruption in China are popular and the primary domestic narrative portrays this as a public good to be lauded. Feng's claim, however, is simply that the CPC leadership is driven by political imperatives related to the pursuit of regime survival.

A principal concern of Feng's is the conflation of anti-corruption measures and the elimination of dissent and political opposition, both real and imagined. Even though new sources of wealth and power are being tapped, reform remains bound to Leninist historical frameworks dressed-up by more contemporary narratives. Feng argues this conflation draws on 'extra-legal' methods and can be interpreted as part of an *endgame* for the CPC to retain power. It also becomes difficult to criticise the government crackdown on rights activists and dissidents when this is conflated with popular anti-corruption measures. Without adequate checks on the authority of the Party, Feng claims political and legal development and civil society more generally is heavily circumscribed by the overarching authority of the Party-state.

Ji Li (2016: 279) provides a norm-based theory to analyze how China's domestic social norms governing dispute resolution can affect discourses over international trade dispute resolution. Against the backdrop of the WTO Dispute Settlement Mechanism (DSM), he argues that even where non-litigious states substantially strengthen their legal capacity, they may continue to refrain from suing each other because of shared norms against litigation. He argues that even with enhanced legal capacity to litigate under the WTO DSM, China may facilitate the settling of disputes between non-litigious states as a positive signaling function of 'litigation avoidance'. Although Li points out that most trade officials recognize the WTO regime as legitimate, such professionals are not the only actors in the process. Important decision-makers and stakeholders in international trade disputes are heavily invested in domestic norms and may be reluctant to adapt.

The WTO DSM enables non-litigious states to resolve trade disputes between each other when their diplomatic relations break down, foreclosing informal resolution channels. However, litigation is not the best solution for all trade disputes. Litigious states have exploited the formal system by 'over-lawyering',

rendering the system more complex, costly and time-consuming. Non-litigious states have made efforts to curb the use of the system by litigious states and China has officially proposed reforms to the WTO DSM - to limit the number of lawsuits developed countries can file each year against a developing country. As there has been a trend that China is making more aggressive use of the formal WTO disputes resolution procedures, however, there remains a question as to whether this is because China is 'non-litigious' or because China may be disadvantaged and/or the target of many claims. Scott and Wilkinson (2012: 27-8) also show how China's experiences within the WTO have led the PRC towards 'particular behavioral patterns' best understood from an historical perspective.⁷ When China acceded in 2001, the WTO, though only six years old, 'had more than 50 years of institutional history structuring how its diplomacy takes place. China's ability to influence these practices and procedures was, and is, highly circumscribed' (Scott and Wilkinson id.).

As one of the most frequently used international adjudicatory institutions, the WTO Dispute Settlement Mechanism is a good illustration of how internationally agreed rules may be implemented. Li (id.) views the WTO DSM via a framework of the interface between national and international rule of law, broadly defined, the avoidance of non-litigious states in using formal international adjudication constitutes de facto contestation to a legal order modeled on the norms and institutions of litigious states (such as the U.S.). Lack of positive responses to this contestation will inevitably damage long-term prospects of international rule of law. Looking ahead, China is expected to actively influence substantive and procedural rule design for international adjudicatory tribunals - to better reflect its domestic social norms governing dispute resolution.

Isaac Kardon's (2016: 301) review of the Law of the Sea and China's maritime interests outlines three central sets of issues. The first concerns the relationship between the international law of the sea, as expressed in the 1982 *UN Convention on the Law of the Sea* (UNCLOS), and China's incorporation of its obligations under UNCLOS in domestic law. Through state practice, China seeks to shape international interpretations of UNCLOS by encouraging states to acquiesce to Chinese authority over contested space and thereby contribute to the formation of new norms specific to China's littoral areas. In this way, international law of the sea becomes 'domesticated,' with Chinese rules becoming the norm for other regional users of maritime space. This domestication also entails specific limitations on traditional freedoms of the seas, favoring the creation of *de facto* rights for China through the exercise of power, rather than acceptance of rights bestowed by international treaties or judicial settlement of contested rights through international arbitration. A specific example is China's 'island building' activity on submerged reefs in the Spratly Island chain. This activity fueled the Philippines into launching a legal case with the UN's Permanent Court of Arbitration (the International Tribunal on the Law of the Sea) on its territorial dispute with China over the islands. Both nations have protested the other's actions, with China claiming it will not submit itself to international arbitration over the issue. The Philippine government (amongst others) has called for a halt to all construction in the disputed areas of the South China Sea, but this has been ignored. As with many international treaties, there is some ambiguity in UNCLOS, and Kardon (id.) reveals how this has been interpreted domestically so as to expand China's rights and interests, referring to the government's drive to build its 'blue economy'. The narrative construction foregrounds China enforcing its own interpretation of UNCLOS - giving it greater authority to regulate activity in those areas it claims falls within its domestically defined maritime zones.⁸

Kardon's second set of issues relates to the extension of China's EEZ through expanding regulations and rules at national, provincial and local levels. Together these seek to legitimize and enforce China's claims over the SCS and ECS. However, the resulting practices of authorized Chinese actors in disputed maritime space have not resolved China's maritime disputes with Japan over the Senkaku/Diaoyu islands,

⁷ Scott and Wilkinson (2012: 25) point out that many commentators have suggested that since 2008 China's commercial diplomacy moved from being relatively passive to more active, and for some, aggressive in orientation. They found (id.) that while there has been a step change in China's profile, this is more 'the result of growing confidence engendered by the experience of [WTO] membership and responses to various institutional realities.' They also note a continued willingness on China's part to be conciliatory where possible in negotiations, which largely accords with Li's (op. cit) norm-based analysis.

⁸ China makes the largest claim in the South China Sea based on the 'nine-dash line' map published by the Chinese Ministry of the Interior in 1947. The map served as the basis for the Declaration on China's Territorial Sea made by the Chinese Government in 1958 and laid territorial claim to a majority of the islands in the South China Sea. Additionally, in 2009 China submitted a diplomatic note to the United Nations Secretary-General asserting its sovereignty over islands in the South China Sea which was presented with a map of the 'nine-dash line'. The legality of the nine-dash line map, which China charges is based on historical evidence, is disputed by other South China Sea territorial claimants and under the UNCLOS Treaty. This situation continues in 2014 with China's new map (of mid-2014) showing a controversial 'ten-dash line' that encompasses the South China Sea and Taiwan.

or with Malaysia, Brunei, Indonesia, Taiwan, Vietnam and the Philippines over maritime claims in the South China Sea. As Kardon (id.) explains, there has been increasing friction, both on the surface of the water and in the diplomatic arena, as more Chinese military, paramilitary and civilian vessels saturate disputed space. This tactic does not require skillful diplomacy nor international arbitration under UNCLOS dispute resolution mechanisms. The numerous foreign and security policy actors within China clearly favor Beijing taking a forceful foreign policy stance in maritime matters.

This gives rise to a third set of issues related to the international implications of Beijing's forceful maritime stance. The *People's Daily* (see Zhong Sheng 2012) routinely warns that China cannot stand idly by and 'tolerate encroachment on China's rights by other countries'.⁹ A consequence has been that governments across the region have taken steps to align themselves more closely with Washington. However, they do not want to be placed in a situation in which they have to choose between China and the U.S. Kardon (id.) argues China will seek to influence the international regime to assert its own interests.

Although it is unlikely that a limited armed conflict with either the Philippines or Vietnam would occur over the maritime disputes, it cannot be ruled out categorically. China has previously escalated disputes over SCS islands in 1974 and 1988, seizing islands previously occupied by Vietnam in two fatal naval clashes. Despite the risks, the Xi administration is acting strategically in pushing through its ambitious 'blue economy' agenda. With respect to deepening domestic reforms to the law of the sea, Kardon (id.) makes the political analogy that Xi appears, at this stage, to be 'more Putin than Gorbachev'. Whilst this statement relies on public imagery to sustain it, the point is made in the context of China's expansion into maritime territory where other nations have legitimate claims. The imagery is also related to the thrust of the reform narrative and interconnected with the fourth key narrative: tightening internal CPC discipline.

Narrative Four: Tightening Party Discipline

Crackdown on corruption; rights activists

Jianfu Chen (2016: 156) makes several conclusions about the development of procedural justice in China. Procedural laws, as enacted in the early days of post-Mao China, were a very different conception compared to those today. They were initially conceived as 'working procedures' for implementing substantive laws, with notions of 'protection and safeguard' absent. Chen points out that the development of procedural justice has taken a gradual, incremental pathway toward the protection of parties involved in litigation. However, many reforms are technical rather than fundamental in nature. As with Qianfan Zhang's findings (op. cit.), significant questions remain around judicial independence with the Party continuing to rely on political-legal committees and its own extra-legal mechanism, '*Shuanggui*', in its fight against corruption. Nevertheless, the notion of procedural justice is a recent introduction to China and therefore needs time to be developed and adapted to local conditions.

Some contrasts exist, however, between efforts towards procedural justice and some anti-corruption measures with similarities and continuities in CPC anti-corruption measures from the Gang of Four Trial to Bo's downfall and Xi Jinping's 'tigers and flies' [老虎苍蝇一起打] campaign fairly obvious. In these anti-corruption measures, the CPC is *the* main actor and director, using publicized campaigns and trials, non-judicial anti-corruption measures to eliminate political enemies and a reliance on Maoist rhetoric for legitimization. Indeed, in official Chinese discourse Maoist rhetoric remains a live element in operative narrative norms. Under the direction of the CPC, anti-corruption campaigns appear to remove not only corrupt officials, but others perceived to be politically unreliable, perhaps even 'bad elements' bent on destroying the Party (Ho 2016). Ironically, this is similar to how Bo had used the organized crime crackdown in Chongqing to extort businessmen and remove individuals he perceived as threats to his authority (see Ho 2012: 202).

Under Xi's leadership, there has been a crackdown on dissidents under the cover of the broader anti-corruption campaign which has also extended to and stressed 'the party's absolute leadership over the People's Liberation Army (PLA)'.¹⁰ Military corruption, although seldom spoken of in public, is now

⁹ See Zhong Sheng in the *People's Daily*, at: http://news.xinhuanet.com/comments/2012-07/26/c_112535906.htm (in Chinese).

¹⁰ *The Economist* (14 February 2015a: 25).

being targeted by Xi's campaign.¹¹ Furthermore, there may yet be international implications of the domestic anti-corruption campaign, as China tenaciously pursues corrupt 'fugitives' who have fled overseas to escape charges at home.¹² As Fu Hualing (2014) argues, corruption closely correlates with legitimacy, and political leaders in China have found it expedient to use anti-corruption campaigns to remove their political foes and rein in the bureaucracy to enhance their legitimacy in the eyes of the general public. Fu's argument (id.) is that the Party's anti-corruption campaign is a tool for the concentration of political power. Against this backdrop, Ho's (2016: 181) view is that the short- to medium-term outlook for consistent procedural fairness and transparent use of the courts is not so encouraging. For the longer term there is the hope that the significant improvements to judicial capability, procedural fairness and the legal system across China more generally, can be built upon. For now, however, President Xi (2014) put this 'rights' narrative in a contemporary Party context:

We need to borrow beneficial fruits of political civilization of mankind, but we must not copy Western political institutions and models, and must not accept any condescending preaches of foreign countries... On important issues, such as human rights, [the] election system, and rule of law, we must be self-confident because we are in the right (*lizhiqizhuang*) and must not adopt Western political institutions and models as our standards.¹³

Indeed, the recent (2015) crackdown on so-called 'rights activists' has prompted the International Bar Association's Human Rights Institute (IBAHRI) to write to President Xi Jinping to express concern at the number of lawyers, human rights activists and support staff who have faced arrest, questioning and detention in China since 9 July 2015. The IBAHRI letter indicates that 132 human rights lawyers had been summoned, arrested, questioned and/or detained by Government authorities across 24 provinces of China with some detained incommunicado; without access to legal counsel; unable to notify family members; and/or detained under residential surveillance and not in an officially recognized place of detention.¹⁴

Conclusion: Narrating the Future

Party power; justifying present-day ambitions

This narrative analysis reveals that the 'four comprehensives' is essentially political, telling a moral tale that legitimizes and glorifies the virtues of the present. It also attempts to shrug off mistakes of the previous dynasty. Rather than setting a policy framework, it presents an aspirational vision of the People's Republic under the firm control of the Communist Party of China, guided by the leadership of Xi Jinping. The disparate strands of the narrative are interrelated, shaping directions for law reform and governance generally. The 'four comprehensives' constructs and is constructed by the nexus of power, economy and law. What happens behind closed doors in Beijing to promulgate the vision may never be fully known, but this appraisal offers a brief sketch of the above nexus of influences. Although China's grand narrative can and does have global implications, it is also important to understand and disaggregate domestic institutional contexts. Of the interrelated 'comprehensives', the socialist rule of law narrative is central to our appraisal.

Chinese law reforms now have ramifications for us all with some domestic reforms impacting on the international legal order. As Halliday and Shaffer (2015: 5) put it, 'we do not live in a post-national world'. Not everything can be adequately explained as there are many apparent contradictions including systematic efforts to improve procedural fairness in the People's Republic on the one hand, whilst on the other hand there is the use of non-judicial anti-corruption measures to eliminate political enemies,

¹¹ *The Economist* (id.) claims 'corruption is worst in departments dealing with logistics, weapons procurement and political matters (the latter is in charge of maintaining party loyalty and appointments). Paying bribes for promotion is widespread and 9 of the 16 senior officers (15 being generals) recently disgraced were from the PLA's political wing'.

¹² Wen and Garnaut (15 April 2015) claim that the high priority Xi Jinping has given to the international operations of the domestic anti-corruption campaign, 'Fox Hunt' and 'Sky Net', 'has raised incentives and pressures for police officials at all tiers of Chinese government to bring fugitives back home and uncover hidden assets'.

¹³ See the Propaganda Department of the CPC 'Reader' (2014); *lizhiqizhuang* [理直氣壯] meaning 'bold and confident, with justice on one's side'.

¹⁴ See the letter at: tinyurl.com/oehn3wg.

accompanied by Maoist-style rhetoric for legitimization. At the same time, much of the law and legal system deals with the administration of relatively noncontroversial business matters. On this point it is worth remembering that China is the world's second largest economy with the vast majority of its trade carried out through mutually-accepted legal structures.¹⁵ Indeed, Yueh (2016: 130) argues that solid macro-economic policies and the quality of the business environment are in fact more important to China's economic growth and to investors than judicial enforcement.¹⁶

Under the 'four comprehensives', governance by rule of law seems like a major step forward, implying the CPC is itself subject to an impartial and independent authority. Our critical appraisal of the comprehensives narrative, however, suggests that this is not necessarily what the leaders intend. The law is viewed more as *an instrument* to help advance China's interests and clean up the system, rather than as a way of checking excessive Party power. As Peerenboom (2014: 20) says:

Rule of law is a contested concept ... and has served a wide variety of political agendas... The CPC is entitled to put forth its own conception of rule of law, however, it cannot simply put an end to debates about the meaning of rule of law by championing its own particular conception, no matter how loudly it beats the drums or how high it raises the banner of socialist rule of law with Chinese characteristics.

It is highly unlikely that Chinese leaders would want to unleash self-destructive nationalist forces, but there are worrying signs in the domestication of some international laws such as the Law of the Sea. There appears to be a contradiction in Chinese foreign policy in that Xi Jinping prioritizes good relations with countries on the periphery on the one hand. However, on the other hand there is an insistence that China will not compromise *on any issue* relating to its territorial sovereignty. Here we are reminded of the ongoing importance of skilled international diplomacy as heightened tension characterizes the South China Sea maritime disputes which are best resolved through skillful negotiation and independent and impartial legal means, rather than the arbitrary imposition of any one country's domestic rules, or by force. For smaller countries such as Malaysia, Brunei, Indonesia, the Philippines, Taiwan and Vietnam, concerns about natural justice must be weighed against the imperatives of co-operating with an economic superpower under the leadership of a powerful and, as portrayed domestically in state-controlled media, popular corruption-fighter.

In the international trade context, Li's (2016) norm-based analysis highlights proposed reforms to the WTO DRM made by China. This provides another illustration of the international commercial backdrop against which China's 'four comprehensives' domestic narrative has been forged. With China's economic rise, it is hardly surprising that the CPC might pursue its goals more assertively at both domestic and international levels. China's rise is impacting on international legal and financial regimes. The 'new normal' narrative highlights Chinese expectations for declining (and more sustainable) levels of economic growth. This slowdown and economic recalibration will also have significant domestic and global implications. In this context, it would be paradoxical if socialist rule of law reforms lead to more clashes between China and the rest of the world, in that this would be counterproductive to China's own interests. The domestic law of the sea reform is, however, one specific example where this is possible.

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¹⁵ The Supreme Court President, Zhou Qiang, reporting to the NPC in 2015 shows the number of cases accepted by Chinese courts in 2014 (15,651,000) was up about 10 per cent from the previous year. Over 63 per cent of cases heard were civil (including commercial, family law and intellectual property cases). Criminal cases (including [parole related](#)) accounted for just over 10 per cent of cases (with many minor offences handled as administrative, rather than criminal). The dimensions of these figures reveal the sheer scale of the challenge to court and judicial reform.

¹⁶ Clarke (2003) reached a similar conclusion, but he had emphasized the crucial nature of property rights protection (i.e. protection from random expropriations).

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