



---

Spring 3-1-2006

## LAW OF ASSEMBLY IN THE PEOPLE'S REPUBLIC OF CHINA

Kam C. Wong

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/crsj>



Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

Kam C. Wong, *LAW OF ASSEMBLY IN THE PEOPLE'S REPUBLIC OF CHINA*, 12 Wash. & Lee J. Civ. Rts. & Soc. Just. 155 (2006).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol12/iss2/5>

This Article is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact [christensena@wlu.edu](mailto:christensena@wlu.edu).

# LAW OF ASSEMBLY IN THE PEOPLE'S REPUBLIC OF CHINA

Dr. Kam C. Wong\*

## *Table of Contents*

I. Introduction.....	155
II. Research Focus .....	156
III. Freedom of Speech in Imperial China .....	158
A. Bounded Freedom of Speech .....	159
B. Confucius and (Free) Speech .....	159
IV. Constitutional Rights to Assembly .....	162
A. The P.R.C. Assembly Rights .....	162
B. The P.R.C. Constitutional Limitation to Assembly Rights .....	164
V. Applying of Assembly Laws .....	168
A. Interpreting P.R.C. Assembly Law .....	168
VI. Conclusion .....	176

## *I. Introduction*

On October 31, 1989, the National People's Congress (NPC) of the People's Republic of China (PRC) passed the "Law of People's Republic of China on Assembly, Procession and Demonstration," an assembly law.<sup>1</sup>

---

\* Associate Professor, Department of Public Affairs, University of Wisconsin, Oshkosh; B.A., J.D. Indiana University; Diploma Northwestern; M.A., Ph.D. SUNY, Albany; Vice-Chair, Hong Kong Society of Criminology; Associate Fellow, Center of Criminology, University of Hong Kong; President Asian Association of Police Studies (2003–2004); Managing Editor, POLICE PRACTICE & RES. INT'L J. (2002–2003).

<sup>1</sup> Zhonghua Renmin Gongheguo Jihui Youxing Shiwei Fa [PRC Assembly Law, Procession and Demonstration Law] (promulgated by Order No. 20 of the President of the People's Republic of China on October 31, 1989 by the Seventh National People's Congress Standing Committee (SC) at the Tenth Meeting), <http://www.humanrights-china.org/zt/03102410/2003120031127111557.htm> (last visited Jan. 12, 2006) [hereinafter PRC Assembly Law Treatise]; GU LINFANG, ZHONGGUO JINGCHA FALU FAGUI GUIZHANG SHIYI DAQUAN [COMPENDIUM OF INTERPRETATION OF CHINA POLICE LAW, RULES AND REGULATIONS] 84–104 (1993) [hereinafter POLICE LAW]. For the need to establish such a law, see ZHONGGUO FALU NIANJIAN [LAW YEARBOOK OF CHINA] 750 (1990). For a discussion of the legislative history and intent, see *Clarifications*, presented on July 3, 1989 to the Seventh NPC, SC, Eighth Meeting in XING RUN & LU CHEN, ZHONGHUA RENMIN GONGHEGUO FALU SIFA JIESHI ANLI DAQUAN [COMPENDIUM OF PRC LAWS, REGULATIONS, JUDICIAL EXPLANATION] 1487–91 (1991) [hereinafter COMPENDIUM OF PRC LAWS].

This document was meant to address the problems that led to the June 4, 1989 Tianamen Square protests and to foreclose future reoccurrences of such events.<sup>2</sup> Specifically, the assembly law was adopted to enhance government accountability and to afford the public a channel to air grievances.<sup>3</sup> For the first time in the nation's history,<sup>4</sup> the police were given specific administrative regulations to guide their discretion in managing public demonstrations.<sup>5</sup> Likewise, citizens were provided with concrete legal provisions to protect their assembly rights.

The promulgation of the PRC Assembly Law was a landmark legal and political event for the PRC. Legally, it moved China to a more predictable rule of law regime and away from whimsical party dictatorship and unaccountable police discretion.<sup>6</sup> Politically, the laws helped transform the relationship between the state and the people by placing restriction on the state and empowering the citizenry.<sup>7</sup>

---

<sup>2</sup> Judy Polumbaum, *In the Name of Stability: Restrictions on the Right of Assembly in the People's Republic of China*, 89 A.J. CHINESE AFF. 43, 44, 47 (1991).

<sup>3</sup> PRC Assembly Law Treatise, *supra* note 1, at 28–29; see Polumbaum, *supra* note 2, at 54 (noting that such public pronouncement of utilities of rights afforded citizens to air grievance and law for government to supervise officials might obscure the true intended purposes and real unintended effects of such laws). Politically, the PRC Assembly Law might have intended to restrict freedom expression and sociologically the PRC Assembly Law dampens spontaneous public gathering. *Id.*

<sup>4</sup> Julia Kwong, *The 1986 Student Demonstrations in China: A Democratic Movement?*, 28 ASIAN SURVEY 970 (1988). On December 5, 1986 students at University of Science and Technology in Hefei protested against the lack of power to elect university candidates to the People's Congress. *Id.* at 970. Overnight, the demonstrations spread to Wuhan, Beijing, and Shanghai. *Id.* To forestall plans to hold larger and more organized demonstrations first against the Shanghai municipal government on December 26, then in Beijing, and finally in Nanjing on December 28, the government passed new regulations requiring demonstrators to apply for the right to assemble prior to their actual gathering. *Id.* at 971–72. The new regulations required prior notice 60 to 72 hours before the event, detailed information about the organizers. *Id.* at 72. They also made certain areas to off limits. *Id.* The provinces, autonomous regions, and municipalities directly under Central Government, and nine provincial cities promulgated various local assembly, procession, and demonstration laws and regulations. *Id.*; *Clarifications*, *supra* note 1, at 1487; PRC Assembly Law Treatise, *supra* note 1, at 2–3; LAW YEARBOOK OF CHINA, *supra* note 1, at 420. For representative local assembly laws, see *Beijingshi Guanyu Youxing Shiwai de Rugan Zhanxing Guiding* [Beijing Municipality Temporary Regulations Regarding Procession and Demonstration] promulgated by the Beijingshi Eighth People's Congress SC, 33d meeting on December 26, 1986; *Taiyuanshi Qunzhong Youxing Shiwai Zhangxing Guiding* [Taiyuan Municipality Temporary Regulations on Mass Procession and Demonstration] promulgated by the Taiyuanshi, Eighth People's Congress, SC at the Eleventh Meeting on August 24, 1988 and approved by the Shanxi Province, Eighth People's Congress at the Sixth Meeting on November 30, 1988.

<sup>5</sup> LAWS & REGULATIONS CONCERNING PUBLIC SECURITY 1951–1992, at 423–26 (PRC Ministry of Public Security ed., 1993). For PRC police implementing regulations, see *Rules for the Implementation of the Law of Assembly, Procession and Demonstration* promulgated on June 16, 1992 by the Ministry of Public Security [hereinafter *PRC Implementing Regulations*]. For police instructions on how to implement the PRC Assembly Law, see LI JIANHE, JINGCHA SHIYONG ZHISHI QUANSHU [COMPREHENSIVE POLICE PRACTICAL KNOWLEDGE HANDBOOK] 169–76 (1995).

<sup>6</sup> Pitman B. Potter, *The Chinese Legal System: Continuing Commitment to the Primacy of State Power*, 159 CHINA Q. 673 (1999).

<sup>7</sup> Steven M. Goldstein, *China in Transition: The Political Foundations of Incremental Reform*, 144 CHINA Q. 1105 (1995). In spite of incremental steps taken towards political liberation and

A cursory review of law and Asian studies literature in English shows that there were very few reported investigations into the subject of China demonstration and assembly law.<sup>8</sup> This Article is a first attempt to fill this gap.

## II. Research Focus

This research investigates the law of assembly's history, as well as various constitutional mandates and legal limitations on the rights of assembly. This study also seeks to understand the PRC Law of Assembly in historical and political context.<sup>9</sup> The research concludes with an investigation into how the PRC, a close society and Leninist state, confronted social protests and dealt with political challenges in the 1980s.<sup>10</sup> This Article addresses more broadly how to balance the forces of reform and need for control.<sup>11</sup>

---

democratization, under the tutelage of Deng the China reform initiative remains to be more economic than political. *Id.*

<sup>8</sup> A key word search with Lexis-Nexis of "China demonstration," "Chinese law," "Chinese constitution," and "law of assembly" uncovered no law journal articles on the subject matter of PRC assembly law. Likewise, a key word search of JSTOR Political Science Journals of "China demonstration," "protest," "law," "assembly" uncovered one article on PRC Assembly Law. There is more Chinese literature on the subject. Their content however, is not very rich, diverse, or new. They mostly assert official statements, follow common analysis, make similar observations, and arrive at identical conclusion. See generally Fe Ge, *Jihui youxing, shiwei lifa, zhizai bixing* [It is Imperative to Adopt the Law of Assemblies, Processions and Demonstration]; 1 FAZHI KEXUE [LEGAL SCIENCE] 32 (1989); POLICE LAW, *supra* note 1; ZHONGGUO RENMIN GONGHEGUO JIHUI YOUXING SHIWEI JIANJIE [INTRODUCTION TO PRC ASSEMBLY, PROCESSION AND DEMONSTRATION LAW] (Liu Chunhe ed., 1990); JIHUI YOUXING SHIWEI FA JIANGHUA [SIMPLIFIED ASSEMBLY, PROCESSION AND DEMONSTRATION LAW] (1990).

<sup>9</sup> Linda Hantrais, *Comparative Research Methods*, 13 SOCIAL RESEARCH UPDATE (1995), available at <http://www.soc.surrey.ac.uk/sru/SRU13.html>. This comparative study addresses the contextualization of social phenomenon to promote deeper understanding of society, their structure, process and institutions. *Id.* It moves away from universal description and "culture free" approaches in social science research to seek to "to identify the specificity of social forms and institutional structures in different societies and to look for explanations." *Id.*

<sup>10</sup> Murray Scot Tanner, *China Rethinks Unrest*, 27 WASH. Q. 137 (2004). MPS data showed that there is a dramatic increase in public demonstrations ranging from peaceful small-group petitions and sit-ins to marches and rallies, labor strikes, merchant strikes, student demonstrations, ethnic unrest, and even armed fighting and riots . . . the rate of demonstrations increased from 8,700 in 1993 to 32,000 in 1999. *Id.* at 138. From January to September 2000, China witnessed 30,000 mass incidents. *Id.* at 138-39. Chinese seems to think making a great disturbance produces a great solution. *Id.* at 146. Small disturbances produce small solutions. *Id.* Without a disturbance, there will be no solution. *Id.*; Murray Scot Tanner, "Chinese Government Responses to Rising Social Unrest," Testimony presented to the US-China Economic and Security Review Commission on April 14, 2005, [http://www.rand.org/pubs/testimonies/2005/RAND\\_CT240.pdf](http://www.rand.org/pubs/testimonies/2005/RAND_CT240.pdf).

<sup>11</sup> Cyrus H. Peake, *Recent Studies on Chinese Law*, 52 POL. SCI. Q. 117, 117-38 (1937). The debate over balancing control and reform implicates issues about continuity and change and tradition and modernity; issues which have perplexed and engaged China jurists since China's first opening to the West in 19th century, e.g. such issues have fueled the May Fourth movement. *Id.*

This study of the law is well suited to clarify concepts and frame issues in matters under investigation, i.e. the balance of state authority and citizens' rights during public protest. The law puts in sharp focus the inherent tension and irreconcilable differences between police powers, citizens' rights, social order and communal well being. As a result, the reader will see police and public relationship in a new context, post June 4, 1989. The promulgation of a law of assembly in China marks a radical departure from past Confucian thinking and recent communist ideology, and serves to re-define traditional police—public and state—and citizens' relationships anew.

### III. Freedom of Speech in Imperial China?

Since antiquity, China has been a well ordered and highly structured society, defined by rites (*li*) and aspiring towards benevolence (*ren*).<sup>12</sup> As an ordered society, the idea and ideal of freedom of speech, as known in Western libertarian democracies,<sup>13</sup> did not exist. As a duty (*zeren*) bound community,<sup>14</sup> the right (*quanli*) to free speech was not recognized.<sup>15</sup> This is not to suggest that speech did not find expression in China, especially with the elites. Nor does it mean that there is no duty to tell the truth; intellectuals and officials risked their lives to fulfill a higher moral calling to speak the truth.<sup>16</sup>

---

<sup>12</sup> CH'U TUNG-TSU, *LAW AND SOCIETY IN TRADITIONAL CHINA* (1961).

<sup>13</sup> David A. J. Richards, *Tolerance and Free Speech*, 17 PHIL. & PUB. AFF. 323 (1988); Stanford Encyclopedia of Philosophy, *Freedom of Speech*, <http://plato.stanford.edu/entries/freedom-speech/> (last visited Jan. 2, 2006). "The topic of free speech is one of the most contentious issues in a liberal society." *Id.*

<sup>14</sup> D. S. Shawayder, *The Sense of Duty*, 7 PHIL. Q. 116 (1957); R. B. Brandt, *The Concepts of Obligation and Duty*, 73 MIND 291, 374 (1964). To say someone has a sense of duty is to say that he/she is doing what is right for the sake of it, irrespective of how he/she/others feels about it. *Id.* at 378–79. To say that some one has a "duty" to do things is not the same as saying someone has an obligation to do that thing; duty is to self, while an obligation is to others. *Id.* This is an important point to make because the idea that duty and rights are complimentary concepts, i.e. duty gives rise to rights, is misconceived. *Id.*; PINYING CHINESE-ENGLISH DICTIONARY 830R, 868R (1981) [hereinafter DICTIONARY]. In Chinese "duty" is translated as *zeren* or "sense of responsibility" is *yingai*. *Id.* Morally, the Chinese do not distinguish between *zeren* and *yingai* as in the saying: "Don't mention it. We've only done our duty." *Id.*

<sup>15</sup> See DICTIONARY, *supra* note 14, at 563R (noting that the contemporary Chinese translation of "right" is *quanli li* or authority, *quan*, to benefits, *li*). *But see* Wang Gungwu, *Power, Rights and Duties in Chinese History*, 3 A. J. CHINESE AFF. 1, 1–26 (1980) (clarifying that in early Chinese history, the term "right" did not exist).

<sup>16</sup> LAURENCE A. SCHNEIDER, *A MADMAN OF CH'U: THE CHINESE MYTH OF LOYALTY AND DISSENT* (1980). Chu Yuan (338–278 BC), a banished minister of Chu, exemplified the loyal dissent tradition in imperial China at great sacrifice to self. *Id.*

### A. Bounded Freedom of speech<sup>17</sup>

In the West, freedom of speech, as with all other freedoms, must be exercised within the boundary of law, as ameliorated by local custom and personal relationships. In imperial China, speech as personal conduct and social activity was to be exercised within the strict confine of Confucianism.<sup>18</sup>

### B. Confucius and (Free) Speech

Confucius and his followers did not explicitly discuss free speech or rights of assembly. The concepts of freedom and liberty were never discussed. Confucius's intellectual challenge was to design a perfect system of moral control, leaving nothing to chance.<sup>19</sup> However, a careful reading of the four classical Confucian texts<sup>20</sup> will illuminate the proper exercise—entitlement and control—of speech in imperial Chinese society.

First, speech was an integral part of people's personal conduct and social activities. It was governed by the moral universe Confucius was trying to create and promote. Thus observed, the proper exercise of speech-

<sup>17</sup> See <http://wordnet.princeton.edu/perl/webwn> (defining freedom as: the condition of being free; the power to act or speak or think without externally imposed restraints); <http://www.sfb504.uni-mannheim.de/glossary/bounded.htm> (indicating that the idea of freedom being bounded appears to be contradictory in terms) (last visited Mar. 23, 2006). According to rational choice theory in behavior economics, bounded rationality is used to designate rational choice that take into account the cognitive limitations of both knowledge and cognitive capacity." *Id.*; Robert Boyd & Peter J Richerson, *Norms and Bounded Rationality*, in *BOUNDED RATIONALITY: THE ADAPTIVE TOOLBOX* 281-96 (Gerd Gigerenzer & Reinhard Selten eds., 2001). According to anthropologists, rationality is bounded by culture and informed by custom. *Id.*; Karl Marx & Frederick Engels, *Manifesto of the Communist Party* (1848), <http://www.anu.edu.au/polsci/marx/classics/manifesto.html> (last visited Feb. 2, 2006). Marx argued that material conditions of society define and determine the availability of freedom in any society: "But don't wrangle with us so long as you apply, to our intended abolition of bourgeois property, the standard of your bourgeois notions of freedom, culture, law, etc. Your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence is but the will of your class made into a law for all, a will, whose essential character and direction are determined by the economical conditions of existence of your class." *Id.*

<sup>18</sup> Chester Holcombe, *The Moral Training of the Young in China*, 14 INT'L. J. ETHICS 445 (1904). The whole purpose of a Confucius education was to create a perfect, virtuous person in every respect. *Id.* at 457. This educational philosophy denied Chinese youth and students any individuality or independent thought. *Id.* at 467. They were taught to fit in the society by practicing the five relations (emperor/subjects, parents/children, husband/wife, brothers/sisters, friends/associates) and cultivate a virtuous self. *Id.* at 460.

<sup>19</sup> George McLean, *Kant and Confucius: Aesthetic Awareness and Harmony*, in *PHILOSOPHY AND MODERNIZATION IN CHINA: CHINESE PHILOSOPHICAL STUDIES* (Liu Fangtong et al. eds., 1997), available at [http://www.crvp.org/book/Series03/III-13/chapter\\_xvi.htm](http://www.crvp.org/book/Series03/III-13/chapter_xvi.htm). Confucius instructed upon how to achieve freedom through harmony with self, others and the universe. *Id.*

<sup>20</sup> SSU SHU, *THE FOUR BOOKS: CONFUCIAN ANALECTS, THE GREAT LEARNING, THE DOCTRINE OF THE MEAN, THE WORKS OF MENCIOUS* (James Legge ed., 1966) [hereinafter *THE FOUR BOOKS*].

conduct as a species of human activity was informed by Confucius's basic philosophical postulates, moral percepts and ethical principles.

Confucius's moral order was built upon the twin principles of rites (*li*) and benevolence (*ren*). People were admonished to seek virtue—follow *li* and pursue *ren*—as an unending quest of their life course. The journey started with self-cultivation and ended with acting in accordance with propriety.<sup>21</sup>

Self-cultivation required people to be internally driven and self-disciplined, not policed from without. The cultured person who was expected to be self-controlled had to labor under a total control system which was unlimited in scope, policed internally, enforced punctiliously, sanctioned psychologically, seeking for the truth, probing of the mind, and never subject to a mistake. Self-control was thus a much more demanding and exacting form of social control than legal control.<sup>22</sup> More significantly, there is no special right to act as one sees fit in particular instances but a general duty to conform to moral expectations under all circumstances, including making or not making speech. For example, Yen Yuan asked about perfect virtue. The Master said: "To subdue one's self and return to propriety, is perfect virtue

.....<sup>23</sup>

Acting proprietarily means that people are to follow existing and exacting rules of conduct. This also means that people do not have the freedom to act spontaneously and speak at will: "Look not at what is contrary to propriety; listen not to what is contrary to propriety; speak not what is contrary to propriety; make no movement which is contrary to propriety

.....<sup>24</sup>

In terms of duty to act, the highest duty in imperial China was that of filial piety (*xiao*) to one's family and loyalty (*zhong*) to the emperor. Together, Confucianism required unquestionable obedience to superiors.<sup>25</sup> In day-to-day application, people were asked to look to superiors for guidance and approval. Confucius said:

<sup>21</sup> Hung-Yok Ip, *Liang, Shuming and the Idea of Democracy in Modern China*, 17 MOD. CHINA 469 (1991). The essence of Chinese cultural thoughts and the key to Confucius' teachings is that of "harmony"—individual obeying natural cosmic rules and following positive social norms, without question, still less dissent. *Id.* at 478–79. Individuality is ruthlessly suppressed and personality actively transformed to make people conform to group expectations on way to be an integrated part of the collective whole, where the individual resided anonymously without a name and functioned silently without a voice. *Id.* at 494–95.

<sup>22</sup> Kam C. Wong, *Confucianization of the Law: A Study of Speech Crime Prosecution in China*, 11 MURDOCH U. ELEC. J.L. 74 (2004).

<sup>23</sup> THE FOUR BOOKS, *supra* note 20, at 155.

<sup>24</sup> *Id.* at 156–57.

<sup>25</sup> See Donald Holzman *The Place of Filial Piety in Ancient China*, 118 J. AM. ORIENTAL SOC'Y 189 (1990) (noting that Confucius' conservative philosophy toward filial piety required something close to absolute obedience).

There are three errors to which they who stand in the presence of a man of virtue and station are liable. They may speak when it does not come to them to speak; this is called rashness. They may not speak when it comes to them to speak; this is called concealment. They may speak without looking at the countenance of their superiors; this is called blindness . . . .<sup>26</sup>

This meant that people should avoid disrupting the relationship between senior and junior, authority and charges. This also meant that people should not be dissenters and protesters.<sup>27</sup>

In making speech, people were admonished to be cautious. For example, Sze-man Niu asked about perfect virtue. The Master said, "The man of perfect virtue is cautious and slow in his speech."<sup>28</sup> People were cautioned to avoid outlandish, slanderous, or startling statements. Tsze-chang asked what constituted intelligence. The Master said, "Yea, he with whom neither soaking slander, nor startling statements, are successful, may be called farseeing."<sup>29</sup> Following such Confucian wisdom, speech rules would likely preclude people from open demonstration and public protest.

This understanding of speech exercise under Confucius, while true, is but one side to the story. While the public might not have a right or freedom of speech, the emperor has an affirmative duty, as part of heavenly mandate,<sup>30</sup> to listen to the people's problems and concerns. In order to make sure the emperor was informed of public opinion, emperors through the ages set up imperial censors to give them feedback. Failing to listen and accept criticism might bring ruin to the state:

The duke then said: "Is there a single sentence which can ruin a country?" Confucius replied, "Such an effect as that cannot be expected from one sentence. There is, however, the saying which people have—'I have no pleasure in being a prince, but only in that no one can offer any opposition to what I say!'"<sup>31</sup>

If a ruler's word be good, is it also good that no one oppose them? But if they are no good, and no one opposes them, may there not be expected from one sentence the ruin of his country?<sup>32</sup>

<sup>26</sup> THE FOUR BOOKS, *supra* note 20, at 245–46.

<sup>27</sup> Michael Nylan, *Confucian Piety and Individualism in Han China*, 111 J. AM. ORIENTAL SOC'Y 1, 4 (1996). The idea of filial piety (*xiao*) to family and loyalty (*chung*) to state was deemed one of the most important qualities of a subordinate. *Id.* at 2–8.

<sup>28</sup> THE FOUR BOOKS, *supra* note 20, at 158.

<sup>29</sup> *Id.* at 161.

<sup>30</sup> *Id.* at 183. "Heaven hears as my people hear, heaven sees as my people see." *Id.*

<sup>31</sup> *Id.* at 183.

<sup>32</sup> *Id.*



Additionally, intellectuals assumed a special role and unique relationship with the emperor, government, and state. They were required to keep the government, state, or employer advised and informed of observed problems and issues with the government. The intellectuals, as educated gentlemen (*junzhi*) and scholars (*shi*), were duty bound to tell the emperor what was going on as establishment intellectuals.<sup>33</sup> In doing so, the *junzhi*, consistent with Confucius's teachings, was asked to conduct himself as conscience of the people and monitor of the state.<sup>34</sup>

Thus observed, the right to free speech, association, and assembly is new to China. These concepts are imported foreign ideas borrowed from the West.<sup>35</sup> In imperial China, free speech and public protests were not welcomed.<sup>36</sup> People were only allowed to speak their mind when invited to and even then at their peril.<sup>37</sup>

#### IV. Constitutional Rights to Assembly

##### A. The PRC Assembly Rights

Mao, the founding father of Communist China, made clear that the people, as master of their own destiny, should enjoy unprecedented political freedom. He stated that "[d]emocracy is practised within the ranks of the people, who enjoy the rights of freedom of speech, assembly, association and so on."<sup>38</sup> Article 35 of the 1982 PRC Constitution guarantees citizens the

<sup>33</sup> See Timothy Cheek & Carol Lee Hamrin, *Collaboration and Conflict in the Search for a New Order, in CHINA'S ESTABLISHMENT INTELLECTUALS* 3, 4 (Timothy Cheek & Carol Lee Hamrin eds., 1986) (noting that scholar-officials gained tremendous power from their roles as advisors to the sovereign).

<sup>34</sup> See Teresa Wright, *State Repression and Student Protest in Contemporary China*, 157 CHINA Q. 142, 163 (1999) (noting that through the ages, intellectuals serve the nation and the emperor by using their moral and intellectual judgment and not acting subversively).

<sup>35</sup> Sun Fo & Raymond Gram Swing, *Democracy in China*, 13 FAR EASTERN SURVEY 76 (1944). Dr. Sun Fu, son of Sun Yat-sen, made a speech before the Central Institute of Chingking wherein he observed that there was no democracy in China, freedom of speech was suppressed and opposition to the party is eliminated. *Id.* at 76. While this was understandable given China's war-time condition, this was not acceptable to China's international friends, the likes of the United States. *Id.* at 77.

<sup>36</sup> ZHU CHUNYU, *TREATISE ON EARLY QIN, TANG, SUNG, MING, QING MEDIA ENTERPRISE* 14 (1989).

<sup>37</sup> Wong, *supra* note 22; JONATHAN D. SPENCE, *TREASON BY THE BOOK* (2002); see generally Ku Chieh-Kang & L. Carrington Goodrich, *A Study of Literary Persecution During The Ming*, 3 HARV. J. ASIATIC STUD. 254 (1938).

<sup>38</sup> Mao Tse-Tung, *In Commemoration of the Twenty-eighth Anniversary of the Communist Party of China (June 30, 1949)*, in 4 SELECTED WORKS OF MAO TSE-TUNG 411-23 (1975). The Chinese Communist Party, as labor organizers and a political underdog, have long advocated the right to free speech, assembly, association, and demonstration and as early as July 1922. *Id.*; Zhonggong Zhongyang Dangxiao [Communist China Party School], ZHONGHUA RENMIN GONGHEGUO XIANFA TONGSHI

freedom of assembly (*jihui*), procession (*youxing*), and protest (*shiwei*). These rights may also be found in Article 5 of the Common Program of 1949;<sup>39</sup> in Article 87 of the 1954 PRC Constitution, Article 28 of the 1975 constitution and Article 45 of the 1978 Constitution.<sup>40</sup> The earliest affirmation of such rights was found in Article 10 of the Chinese Soviet Republic Constitution of 1931:

The Chinese Soviet political authority in order to protect the proletarian and peasants' freedom of speech, publication, assembly, and association, is opposed to democracy of the property and capitalistic class and advance the democracy of the proletarian and peasants.<sup>41</sup>

The freedom of assembly means that the citizens are free to gather to discuss matters (*taolun*), express opinions (*fabiao yijian*), and voice desires (*biaoda yiyuan*).<sup>42</sup> The freedom of procession means the right of the citizens to gather and move along in public thoroughfare and places to express their attitude (*taidu*), opinion (*yijian*), and requests (*yaoqiu*).<sup>43</sup> The freedom of protest means that the citizens are free to gather in public place to march in procession (*youxing*), sit in demonstration (*jinzuo*) to express a request, protest, or in support of a common cause (*gongdong yiyua*).<sup>44</sup> According to the Communist perspective, these constitutional rights are fundamental in nature, but also serve instrumental needs.<sup>45</sup> The freedom of assembly is said to be a natural extension of the freedom of speech as it enhances and enriches free speech rights.<sup>46</sup> The freedoms of procession and protest are seen as an extension and amplification of the freedom of assembly.<sup>47</sup>

---

[COMPREHENSIVE INTERPRETATION OF THE PRC CONSTITUTION] 86 (1993) [hereinafter COMPREHENSIVE INTERPRETATION].

<sup>39</sup> *Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Ganlin* [The Chinese People's Political Consultative Conference, 1949] promulgated on September 29, 1949, <http://www.fordham.edu/halsall/mod/1949-ccp-program.html> (last visited Jan. 12, 2006).

<sup>40</sup> For the complete text, see ZHONGHUA XIANFA 11, 21, 86, 59 (Zhongguo Daxue Faluxi ed., 1981).

<sup>41</sup> 1 ZHONGGUO XIN MINZHU ZHUYI GEMING SHIQI GENJUDI FAZHI WENXIAN XUANBIAN [SELECTED LEGAL DOCUMENTS OF CHINA'S NEW DEMOCRATIC BASE] 10 (Han Yanlung & Chang Zhao eds., 1981).

<sup>42</sup> COMPREHENSIVE INTERPRETATION, *supra* note 38, at 106.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> For a discussion of the functional utility of public assembly in PRC political and administrative structure, see PRC Assembly Law Treatise, *supra* note 1, at 28–29.

<sup>46</sup> COMPREHENSIVE INTERPRETATION, *supra* note 38, at 106. Article 35 of the 1982 PRC Constitution guarantees citizens' freedom of speech. *Id.*

<sup>47</sup> *Id.*

### B. *The PRC Constitutional Limitations to Assembly Rights*

The Constitution, as a social contract and political compact,<sup>48</sup> delineates the relationship and defines the rights between the state and the citizens.<sup>49</sup> Generally, fundamental rights are deemed important for the realization of personhood (natural rights) or to facilitate the smooth functioning of the political system (instrumental rights). Freedom of expression allows for the realization of one's identity and keeps the government in check. However, constitutional rights are not inviolable, nor unlimited.<sup>50</sup> Justice Holmes said:

The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not protect a man from an injunction against uttering words that may have all the effect of force . . . . The question in every case is whether the words used are used in circumstances and are of such a nature as to create a clear and present danger . . . .<sup>51</sup>

The PRC Constitution sets forth well defined limits for the exercise of assembly, procession, and demonstration rights. These constitutional limitations and legal restrictions, while resembling those in western constitutional jurisprudence, are in fact based on distinctive Chinese cultural traditions. These traditions include Confucius's teaching of duty before right (informed by dissimilar political ideology), Mao's ideal of collective welfare over individual rights, as shaped by different social conditions, and communal sharing versus adversarial competition.

---

<sup>48</sup> For a discussion of the foundation and ideas of social contract from Socrates to Thomas Hobbes, John Locke and Jean-Jacques Rousseau, see Celeste Friend, *The Internet Encyclopedia of Philosophy: Social Contract Theory*, <http://www.utm.edu/research/iep/s/soc-cont.htm> (last visited Jan. 12, 2006).

<sup>49</sup> Electronic Text Center, University of Virginia Library, "Constitutionalism," *Dictionary of History of Ideas*, <http://etext.lib.virginia.edu/cgi-local/DHI/dhi.cgi?id=dv1-61> (last visited Jan. 12, 2006).

<sup>50</sup> For a general discussion of constitutional rights, see Erwin Griswold, *Absolute is in the Dark – A Discussion of the Approach of the Supreme Court to Constitutional Questions*, 8 UTAH L. REV. 167 (1963); Wallace Mendelson, *On Meaning of the First Amendment: Absolutes in the Balance*, 50 CAL. L. REV. 729 (1963); Laurent Frantz, *The First Amendment in the Balance*, 71 YALE L.J. 1424 (1962).

<sup>51</sup> *Schenck v. United States*, 249 U.S. 47, 52 (1919).

The PRC constitutional rights are not absolute.<sup>52</sup> The PRC continuously denies the universality of human rights. Nevertheless, the PRC is a signatory to the United Nations Charter, signed on June 1, 1945, which declared in Article 1(3) that countries should promote basic human rights and freedom.<sup>53</sup> However, within the PRC, constitutional rights are relative and contingent.<sup>54</sup> First, expectation of right is a social psychology (*shehui xinli*).<sup>55</sup> Second, entitlement of rights is contingent on the performance of duty to others.<sup>56</sup> Theoretically speaking, the difference between constitutional rights as absolute and belonging to the individual,<sup>57</sup> versus constitutional rights as contingent and given by the state, is a critical one.<sup>58</sup> The PRC's concept of constitutional rights is contingent on two factors: 1) rights are contingent to the extent they are economically structured, socially derived, and legally affirmed, i.e., the expectation and realization of rights are posited within a given set of economic foundations and social relations; and 2) a person can only exercise his right of assembly to the extent that he does not harm the interests of others. Both are discussed in turn below.

These contingencies notwithstanding, the PRC draws a clear distinction between fundamental rights (*jiben quanli*) and other legal rights. Fundamental rights are rights that: 1) cannot be deprived as a constitution of

---

<sup>52</sup> PRC Assembly Law Treatise, *supra* note 1, at 59. (stating that "There is no freedom or right in this world that is absolute and without limitations."); see Li Buyun, *On Basic Theory and Practice of Human Rights in Socialists Countries* 4 FAXUE YANJIU [STUDIES IN LAW] 1-9 (1992) (describing PRC's position on constitutional rights and limitations); see also Zhang Hengshan, *What is the Core of Law? Comment on the Right Standard Theory* 1 ZHENGZHI YU FALU [POLITICAL SCIENCE & LAW] 13-18 (1989) (arguing that the PRC's view towards human rights is influenced by two factors: one historical and the other ideological, and that traditional China was regulated by custom and has no concept of right but duty); Xu Xianming, *Common Issues in the Research into Human Right Theory*, FUYIN BAKAN ZHILIAO - LILUN FAXUE HE FASHIXUE (1996) (describing the theory of "quanli benwei" which states that the appearance of law affirms the utility and necessity of legal rights as a regulatory device).

<sup>53</sup> U.N. Charter, art. 1, para. 3.

<sup>54</sup> HUMAN RIGHTS & CHINESE VALUES: LEGAL, PHILOSOPHICAL AND POLITICAL PERSPECTIVES 125-51 (Michael Davis eds., Oxford University Press, Chinese Edition 1997) (noting a marked shift in the PRC's position on human rights such that PRC recognizes for the first time that human rights are common aspirations for all mankind, while continuing to insist that human rights is a domestic issue to be resolved according to a country's political and economic developmental needs); Lin Ji, *The Debate between Rights and Duties*, 1 LAW SCIENCE MONTHLY 16-20 (1991); *Social Developments of China and Rights Protection*, 3 FAXUE YANJIU [STUDIES IN LAW] 3-4 (1994).

<sup>55</sup> Lin Ji, *supra* note 54.

<sup>56</sup> *Id.*

<sup>57</sup> See Xu Xianming, *supra* note 52 (discussing the relative versus absolute nature of human rights). The other debate concerns the entitlement of human rights, i.e. whether human rights belong to the individual or given by the state with the right bearing party as a passive beneficiary. Zheng Chengliang, *On Standard of Right*, 4 ZHENGZHI YU FALU [POLITICAL SCIENCE & LAW] 1-6 (1989). Rights in the subjective (*quanli benwei*), makes the individual the bearer of right. *Id.* at 5. According to Zheng, the concepts of *quanli benwei*: 1) affirms equality (*pingdeng*); 2) implies and facilitates the realization of freedom (*zhiyou*); 3) gives expression to the diversity of social interests; 4) actualizes happiness (*xiangfu*); 5) replaces duty; 6) does not create rights; and 7) is not selfishness. *Id.*

<sup>58</sup> Du Gangjian, *Absolute and Relative Theory of Human Rights in the U.S.A.*, 2 FAXUE YANJIU [STUDIES IN LAW] 81, 88 (1992).

legal personality (*buke quefa*), because like human dignity, without them, one could not function; 2) cannot be replaced (*buke quda*) because, like voting rights, they are the foundational building blocks upon which the political state is constructed; 3) cannot be transferred (*buke zhuanyan*), because they are the basis upon which a person is recognized as a functional social member; 4) are very stable (*wending xin*) and do not change with the transition of state authority or amendment of the Constitution; 5) are commonly shared within civilized society (*wenming goujia juyou*); and 6) relate to other rights (*wuti xin*), by giving rise to lesser rights.<sup>59</sup> There is however very little discussion by political leaders or legal scholars about the legal consequences of calling a constitutional right "fundamental." Particularly absent is a conversation addressing how the fundamental nature of a right might impact its enjoyment by citizens or enforcement by officials. However, one thing is certain, the PRC leadership prefers to achieve "fundamental rights" for all its citizens rather than protect fundamental rights for a few.

In the present context, the alienation of an absolute and individualized assembly right must be justified by the state. The burden of proof is heavy and the state must show that free exercise of the right would harm other people or disrupt order. Fundamental rights are not taken easily even in the face of demonstrated mass utility.<sup>60</sup>

In a liberal state, the balancing of individual rights and public interests is always in the individual's favor. In the PRC, a person cannot claim a contingent right unless he can demonstrate to the political authority that the necessary contingency (as conditions precedent or subsequent) are being fulfilled. In other words, a person must show that they are entitled to exercise such a right as a law abiding citizen and the exercise of the right is compatible with the state, thus everyone's, interests. Most significantly, the individual cannot enjoy more rights than the collective is willing to concede and able to afford. This is different from other socialist systems. Deng Xiaoping noted that under the socialist system, the interests of the individual give way to the collective, the interests of the separate parts make room for the benefits of the comprehensive whole, and the interests in the short term give way to the long term.<sup>61</sup>

---

<sup>59</sup> COMPREHENSIVE INTERPRETATION, *supra* note 38, at 83.

<sup>60</sup> Jeremy Bentham, *Principles of Morals and Legislation*, in THE UTILITARIANS 5, 17 (1789) (noting that, "[b]y principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question.").

<sup>61</sup> 1 DENG XIAOPING WENXUAN [COLLECTION OF DENG XIAOPING WRITINGS] 127 (1993). For a more theoretical discussion, see Yang Haikun, *On the interest Group in the Primary State of Socialism* 2 ZHENGZHI YU FALU [POLITICAL SCIENCE & LAW] 1-4 (1989).

The contingency of constitutional rights is written into the PRC Constitution. Article 33 provides that citizens enjoy rights guaranteed by the Constitution and law, but they must also fulfill their constitutional and legal responsibility.<sup>62</sup> The Chinese Communist Party (CCP) has interpreted this to mean that the concepts of right (*quanli*) and duty (*yiwu*) are unitary in nature (*tongyixin*): "People can enjoy a right but also have to fulfill their duty, just enjoying rights and not fulfilling duties is not allowed; nor should the assumption of duties without the enjoyment of rights be tolerated."<sup>63</sup> This is to say that right and duty are supplementary to and complementary of each other (*xiangfu-xiangcheng*).<sup>64</sup> More significantly, the CCP observed that: "the pre-requisite to the enjoyment of right is duty (*yi yiwu wei qianti*), and only through the maximum effort of everyone in pursuing one's duty will there be a sufficient material base for the rights to be built upon, then and only then can we improve upon the enjoyment of rights."<sup>65</sup>

More specifically, a person can only exercise his rights of assembly to the extent that he does not harm the interests of others. Article 51 provides: "When PRC citizens exercise their freedom, they should not harm the interests of the country, society, or collective, or other citizens legitimate freedom and rights."<sup>66</sup> The "harm to others test" is not narrowly construed. It has been interpreted: "each citizen's individual interests can only be protected when all the other people's fundamental interests are being protected or developed."<sup>67</sup> This means that an individual's freedom will not be allowed when other people's basic needs are not being met.<sup>68</sup>

The PRC's position on constitutional rights gives rise to two legal consequences: 1) it shifts the burden of showing entitlement to the right of assembly to the claimant of the right; and 2) it allows the PRC law-makers, and by delegation, the police, to deny rights of assembly based on collective and utilitarian considerations.<sup>69</sup>

<sup>62</sup> XIAN FA [CONSTITUTION] art. 33, (PRC).

<sup>63</sup> COMPREHENSIVE INTERPRETATION, *supra* note 38, at 89.

<sup>64</sup> *Id.*

<sup>65</sup> See Qu Ye *On the Utility of Right and Duty in Law* 3 FAXUE YANJIU [STUDIES IN LAW] 16–19 (1990) (stating that duty and right are different concepts). They cannot be separated and one is not above the other. *Id.*

<sup>66</sup> XIAN FA, *supra* note 62, at art. 51.

<sup>67</sup> Qu Ye, *supra* note 61, at 20.

<sup>68</sup> *Id.* at 90. In practical terms and in context, this means that there must be a stable political and social environment for the economic reconstruction and the four modernization of China to take hold—this is considered the "fundamental interest of all the people" (*genben renmin liyi*). Any person who contributes to political instability or social disorder will not be allowed. PRC Assembly Law Treatise, *supra* note 1 at 61.

<sup>69</sup> PRC Assembly Law Treatise, *supra* note 1, at 59–64. Under PRC Assembly Law Article 12(4), the police must justify its disapproval. *Id.* Under Article 12(1)(1), all the police need to do is to establish that the assembly's "purpose, billboard, slogan" is against constitutional principle or harmful to national unity, sovereignty, or territorial integrity—no actual or direct harm needs to be shown. *Id.*

The above-discussed constitutional limitations were more specifically provided for in the PRC Assembly Law. In this regard, Article 12 of the PRC assembly law clearly states that under the following circumstances, the application for assembly, procession, and demonstration will not be approved: 1) against fundamental constitutional principles, e.g. "the four basic principles;" 2) harming national unity, sovereignty, and territorial integrity; 3) inciting ethnic division; and 4) sufficient facts to indicate that the assembly, procession, and demonstration will cause direct harm to public safety or serious damage to social order.

It is unclear exactly what constitutes a violation of the factors detailed above. This is a major problem with implementing the law. This makes the evaluation of harm to national security and danger to public order a subjective and conjectural exercise. This is particularly the case with Article 12(1) and (2) when the legality of an assembly ultimately depends on the "intent" and "purpose" of the organizers and participants.<sup>70</sup> In such cases, the police are invited to interpret the purpose or impact of an assembly in accordance with their own conception of what constitutes a sufficient threat to security or order to warrant disapproval. This results in arbitrary determinations. Thus, an application may be approved one day and not the other, with one official and not another, and in one place and not another.<sup>71</sup>

## V. Applying Assembly Laws

### A. Interpreting PRC Assembly Law

In applying the assembly law, the PRC police are most concerned with security, order, and stability. Thus in order to determine whether an assembly is allowed under Article 12 of the PRC Assembly Law, the police look at four places for answers. The legal question focuses on whether the public gathering would pose a real and substantial danger to the party, state, and/or the public.

First, a fair reading of the legislative history indicates that the law was promulgated, not as an effort to promote people's assembly right, but to protect the state against future violent confrontations between the state and

---

<sup>70</sup> PRC Assembly Law Treatise, *supra* note 1.

<sup>71</sup> Han Nanshan, *Discussion in Criminal Ambiguities*, 5 FAXUE YANJIU [STUDIES IN LAW] 51-59 (1993). Ambiguities in law led to over and under enforcement. *Id.* The ambiguities in Chinese law causes implementation problems, making the realization of the "rule of law" and "rule by law" all but impossible. *Id.* Indeterminacy in applying the law also creeps in another way. Chinese legislature and police officers do not think in legal terms. Hoa Tiechuan, *Influence of Traditional Way of Thinking on China's Legislative Techniques at Present Age*, 4 ZHONGGUO FAXUE [CHINESE LEGAL SCIENCE] 32-41 (1993). The Chinese legal language is loaded with culturally imprecise meanings and laden with moral imperative. *Id.*

the students and radicals,<sup>72</sup> and only later used against displaced workers, disgruntled peasants and cults, such as the Falun Gong. In this regard, the law functions as much as a knife to punish welcomed dissenters,<sup>73</sup> and as a shield to protect legitimate petitioners, such oppressed peasants.<sup>74</sup>

Wang Fang, the Minister of Public Security explained to the NPC Standing Committee the reasons for drafting the law in solemn and foreboding terms:

Recently, a social upheaval (*dongluan*) happened in Beijing which led to a counter-revolutionary revolt (*baoluan*), and affected a number of big cities all over the nation. This has led to tremendous loss for the nation and the people . . . a problem we should be concerned with is that of a few bad people using the student movement to plan, organize, and conspire to incite the crowd and create social upheaval . . . . In order to prevent the re-enactment of the "great cultural revolution" and revolt associated with this upheaval the law was made.<sup>75</sup>

The message was clear. Dissenters—radicals and troublemakers alike—must not be allowed to exercise their constitutional rights of free speech and assembly unrestrained.<sup>76</sup> Their protest activities must be neutralized by the assembly law application process. Thus, the guiding principle (*zhidao shixiang*) of the PRC Assembly law makes clear that police officers should be concerned with state security and social stability over and above the citizens' right of assembly.<sup>77</sup> Fang reasoned that:

---

<sup>72</sup> COMPENDIUM OF PRC LAWS, *supra* note 1, at 1487–91.

<sup>73</sup> Kam C. Wong, *The Criminalization of Falun Gong in China: A Battle for the Hearts and Minds of the People* (2005) (on file with author).

<sup>74</sup> Edward Cody, *China's Rising Tide of Protest Sweeping Up Party Officials Village Chiefs Share Anger Over Pollution*, WASH. POST, Sept. 12, 2005, at A01.

<sup>75</sup> COMPENDIUM OF PRC LAWS, *supra* note 1, at 1486.

<sup>76</sup> PRC Assembly Law Treatise, *supra* note 1, at 29. Any public assembly that is not used to achieve the above approved purposes are considered as inappropriate and if continued is a "reckless" abuse of the freedom of assembly. *Id.*

<sup>77</sup> See Zhou Wangsheng, LIFA XUE [SCIENCE OF LEGISLATION] 221–38 (1988) for a discussion of how the "official" guiding principle (*zhidao shixiang*) presented by the public security chief to the NPC was toned down somewhat in the educational/lecture materials made available to the general public; PRC Assembly Law Treatise, *supra* note 1, at 28–29. The PRC Assembly Law Treatise affirmed the utility and functionality of the assembly right at length and before it discussed the problems of its "reckless use" (*lanyong*). *Id.*; However, another interpretation is possible. Whereas the remarks of the Minister of Public Security were uttered for internal consumption, the PRC Assembly Law was promulgated for external reference. Zhou, *supra* at 350–68. This interpretation conforms to PRC constitutional prescribed legislative process—the Ministry of Public Security proposes and the NPC disposes. *Id.* We can draw two conclusions from this brief investigation into the legislative process of the PRC Assembly Law. Symbolically, the rights people enjoy signals a marked elevation in legal status. In practice, the enjoyment of rights is still very much subject to the Minister of Public Security exacting scrutiny under the PRC Assembly Law.



China has 1.1 billion people. There are bound to be basic differences in individual interests. If today a person is not happy and demonstrates in the street, tomorrow another person is not happy and takes to the street to demonstrate, the country will be in chaos, the people will be distracted, where will there be energy left for construction? If there is no stable political environment or social order, we will not be able to conduct economic construction, much less achieve political reform.<sup>78</sup>

It is interesting that Fang did not mention the functional utility of the freedom of assembly to the PRC political structure, which is to hold the government accountable to the people.<sup>79</sup>

The Minister's antagonistic view towards the freedom of assembly was not shared by other NPC Standing Committee members. The NPC Standing Committee saw the need to revise and redraft the original language of the law from: "*In order to maintain public order and social security, facilitate the smooth progress of socialist modernization, protect the people's right of assembly legally. . .this law is promulgated,*" to one that is more solicitous of people's rights: "*In order to protect people's right of assembly, procession, demonstration legally, and maintain social security and public order, this law is promulgated.*"<sup>80</sup>

Although there was a clear difference between the NPC which defined legislative philosophy and the Ministry of Public Security which set enforcement policy, it is apparent that both readily conceded that collective interests should prevail over individual rights in a socialist state. The controversy surrounding the new draft raised important questions for Chinese legal researchers: 1) Did the *perceived* difference over the language of Article 1 reflect a *real* internal debate over the priority and utility of the PRC Assembly Law?; 2) Was such an internal debate driven by issue or did it register a deeper and more structural conflict between the two policy setting bodies?; and 3) How might such differences find manifestation in the daily application of the law?

PRC lawmakers, police officers, and scholars agreed that the freedom of assembly, as with other socialist rights and entitlements, was not to be recklessly used.<sup>81</sup> "Reckless" or abusive use of assembly freedom is not a constitutional or legislative provision, but it is nevertheless adopted as a

<sup>78</sup> COMPENDIUM OF PRC LAWS, *supra* note 1, at 1489.

<sup>79</sup> *Id.* at 1488.

<sup>80</sup> *Id.*

<sup>81</sup> For a discussion on the meaning of "reckless exercise" of rights, see Wang Yuanzhi, *A Discussion on the Principle of Reckless Exercise of Rights*, 3 FAXUE YANJIU [STUDIES IN LAW] 15 (1995). Reckless exercise of rights mean: 1) the exercise of a right not for the purpose it was intended; 2) the exercise of a right beyond the limits provided; and 3) a mixture of the two. *Id.* at 17.

measure of an assembly's legality. "Reckless" use of assembly rights means the unnecessary use of such constitutional freedom, such as making excessive, unreasonable and/or inappropriate demands and using it not for the purpose intended, such as assembly to attack Communist ideology.

For the purpose of judging recklessness, the PRC lawmakers have affirmed that the purpose of assembly, procession, and demonstration, as contemplated by the Constitution, is to provide a vehicle for the people to communicate their "reasonable" desires or air their "legitimate" grievances. Public assembly is effective in dislodging entrenched bureaucracy or exposing official corruption, correcting policy mistakes, and uncovering implementation errors, because it allows citizens to air grievances and thereby alleviate discontent.<sup>82</sup> Any public assembly that is not used to achieve the above approved purposes is considered an inappropriate and, if continued, a reckless abuse of the freedom of assembly. More pointedly, the exercise of assembly freedom must not only meet the requirements set forth by the letter of the law, but also come within the spirit of the law.<sup>83</sup>

Article 12(4) of the law makes clear that the denial of approval on public safety and social order grounds must be based on two conditions. There must be ample basis (*chongfen genju*) that the assembly will likely

---

<sup>82</sup> PRC Assembly Law Treatise, *supra* note 1, at 29.

<sup>83</sup> This amounted to an interjection of an extra-legal requirement of "reasonableness" in the approval process. "Recklessness" or "reasonableness" is a Trojan horse of law. It allows social morality and, in the case of the PRC, political ideology to come into play in determining whether an act is legal. The adoption of societal moral values and incorporation of ethical principles by the law was neither unique to China nor uncommon with the law enterprise. In western jurisprudence, the issue is most often raised under the rubric of a law vs. morality debate. MARTIN P. GOLDING, *PHILOSOPHY OF LAW* (1975); The more pressing issue in the current context is whether, jurisprudentially, it is right and proper to adopt social-moral principles to interpret legal rules? In American tort law, the "standard of reasonable conduct" is a community standard and an ethico-legal judgment. WILLIAM POSNER, *LAW OF TORTS* 167 (1971); The American jury system has originated with the firm belief that community justice shall prevail over the black letter law. JEFFREY ABRAMSON, *WE, THE JURY* 22-23 (1994); This has led inevitably to the nullification of the law based on "conscience of the community" in modern time. Michael Granberry, *Abortion Protest Juries Told to Ignore Nullification Ad*, L.A. TIMES (San Diego County), Jan. 27, 1990, at B1; Jon M. Van Dyke, *Merciful Juries: The Resilience of Jury Nullification*, 48 WASH. & LEE L. REV. 165 (1991); For example, in the case of Camden 28, the judge allowed the draft card burning defendants to argue for nullification based on the fact that the FBI informants supplied the antiwar protesters with the tools to carry out their draft raids. Donald Jackson, *Judge Instructs 'Camden 28' Jury* N.Y. TIMES, May 18, 1973, at 13. The defense lawyer in the case argued to the jury that the term "nullification" meant: "power of a jury to acquit if they believe that a particular law is oppressive, or if they believe that a law is fair, but to apply it in certain circumstances would be oppressive . . . ." *Id.*; ABRAMSON, *supra* at 59. The jury "nullification" doctrine clearly allows the jury to rise above the confine of the law in search of higher justice. *Id.* In so doing, they imbue the legal process with moral and ethical considerations. *Id.*; LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATION* (1965). Turning to more a philosophical explanation, Wittgenstein has long observed that "language games" cannot be reduced to words and phrases and must be appreciated in use. When in use, language can take on embedded meaning, and only those people who are familiar with such language are able to articulate and incorporate it. *Id.* Thus "reasonable doubt" has different meanings in one place than another. *Id.*

cause *direct harm* or damage. "Ample basis" has been interpreted as *factual* judgment that a *direct* harm will result.<sup>84</sup>

The "ample basis" language however only applies to Article 12(4) and not with respect to the other provisions in Article 12. Canons of legal construction suggest that the explicit enumeration of legal requirements to one sub-section of a legal provision, in the face of the absence of such legal requirements to other sub-sections of the same legal provision, points to a clear legislative intent to draw a legal distinction.<sup>85</sup> It is arguable then that in the case of Article 12(1) to (3) there is no need to provide evidence to establish "ample basis" of harm as a pre-condition of denial of permission to assembly. In fact, one authoritative police source interprets the language of Article 12 as *any* assembly having the mere *tendency* of being against the basic constitutional principles, endangering national unity, and inciting ethnic division.<sup>86</sup> Indeed, this interpretation is most likely, given the fact that it is relatively difficult, if not impossible, to demonstrate with clarity, certainty, and specificity, what harm if any may result from an adverse idea.<sup>87</sup>

Lastly, the broad and unequivocal restrictions on free speech and assembly *invite* the police to consider any assembly and speech having any tendency to challenge state authority and Party ideology as "counter-revolutionaries."<sup>88</sup> This is evident from past police practices in dealing with "subversive" assembly.<sup>89</sup>

<sup>84</sup> PRC Assembly Law Treatise, *supra* note 1, at 91.

<sup>85</sup> Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed* 3 VAND. L. REV. 395, 401 (1950). According to Prof. Llewellyn's *Canon of Construction*, "[e]very word and clause must be given effect." *Id.* at 404. Also, "[e]xpression of one thing excludes another." *Id.* at 405.

<sup>86</sup> COMPENDIUM OF INTERPRETATION, *supra* note 1, at 91.

<sup>87</sup> It is interesting to observe that the United States protects free speech and assembly for the very reasons the PRC prohibits it. See *Brandenburg v. Ohio*, 395 U.S. 444 (1969). In *Brandenburg*, Petitioner was a leader of the Ku Klux Klan convicted by the Ohio courts after a television news report was aired broadcasting speeches made by petitioner. *Id.* at 444-45. He was charged with violating Ohio's criminal syndicalism statute, which made it unlawful, *inter alia*, to advocate crime or methods of terrorism or to voluntarily assemble with any group to teach or advocate doctrines of syndicalism. *Id.* at 445. Though the decisions was upheld on other legal grounds, the Court noted that freedom of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. *Id.* at 447. This decision overruled *Whitney v. California*, 274 U.S. 357 (1927); The Chinese, from Confucians to the Communists, have pursued after the "purity of the mind" as a legitimate mean of social control, considering it as the root of all good and evil. SOURCES OF CHINESE TRADITION: FROM EARLIEST TIMES TO 1600, at 115 (Wm. Theodore De Bary, et al. eds., 1963). Confucius said: "Wishing to govern well in their states, they would first regulate their families. Wishing to regulate their families, they would first cultivate their persons. Wishing to cultivate their persons, they would first rectify their minds. Wishing to rectify their minds, they would first seek sincerity in their knowledge. Wishing for sincerity in their thoughts, they would first extend their knowledge." *Id.*

<sup>88</sup> Some PRC Chinese scholars have openly questioned the lack of control over the police exercise of discretion in an unstructured way. Wang Xingye, *The Control of Police Discretion*, 7 FAXUE [LAW SCIENCE MONTHLY] 3-5 (1991); The police are asked to make critical decisions in complicated

Article 90 of the PRC Criminal Law provides that "Conduct which is harmful to the People's Republic of China and done with the purpose of over-throwing the proletarian dictatorship and socialist system are all counter-revolutionary crimes."<sup>90</sup> Counter-revolutionary crimes include crimes that incite people to resist and harm the implementation of state law and order, and uses counter-revolutionary slogans, pamphlets and other means to incite others to overthrow the proletarian dictatorship and socialist system.<sup>91</sup>

According to the PRC political-legal authority, what makes for a counter-revolutionary crime turns ultimately on the *purpose, intent, and motive* of speech maker and assembly organizer.<sup>92</sup> Purpose, intent, and motive being internal to the offender cannot be definitively ascertained and must be construed from the speech act and attending circumstances, and even from the background of the people involved.<sup>93</sup>

cases with very little guideline or structure. STUART A. SCHEINGOLD, *THE POLITICS OF LAW & ORDER* (1984). It has been demonstrated in the United States that police can be politicized, i.e., police policy and practices are very much determined by local politics and political culture. *Id.*

<sup>89</sup> Zuigao Renmin Jianchayuan, XINGSHIFANZUI ANLI CONSHU - FANGEMINZUI [CRIMINAL CASE BOOK - COUNTER-REVOLUTIONARY CRIMES] (1990).

<sup>90</sup> PRC Criminal Law art. 90 (1979).

<sup>91</sup> PRC Criminal Law art. 102 (1979). An exhaustive review of prior and existing counter-revolutionary laws, regulations, and directives is not informative of what constitutes counter-revolutionary conduct beyond the fact that it refers to speech or conduct which is intended to or in effect is harmful to the state's political order or challenge the established government. *Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Ganlin* [The Chinese People's Political Consultative Conference Common Program] (promulgated on September 29, 1949); XIAN FA, *supra* note 62, at art. 19; Zhengwuyuan, Zuigao Renmin Fayuan, *Guanyu Zhenya Fangeming Huodong de Zhishi* [Government Administrative Council and Supreme People's Court, *Directive on the Suppression of Counter-revolutionaries*] (promulgated on July 23, 1950); Renmin Gonggan Pianweihui, *Guanyu Zhongyang Xiren Xiaozu, Guanyu Fangeming-fenzi he Qita Huafenzi de Jieshi ji Chuli de Zhengce Jiexian de Zanxing Guiding de Buchong Jieshi Zhong Yixie Wenti de Jieda* [PRC Organizing Committee, *Answers to Certain Questions on Supplementary Explanation Regarding Temporary Regulations Regarding Policy and Limits on Explaining and Handling of Counter-revolutionary Elements and Other Bad Elements*] (promulgated in 1957). Contemporary counter-revolutionary elements mean people who spread reactionary pamphlets with counter-revolutionary intent. Zhongyang Xiren Xiaozu, *Guanyu Putong Fangemin Fenzi ji Qita Fandong Fenzi de Jieshi* [Committee of Ten from Communist Party Central, *Explanation Regarding Common Counter-revolutionary Elements and Other Reactionary Elements*]. Counter-revolutionary elements are people who insist upon their reactionary class viewpoint; Zhongyang Zhengfa Xiaozu, *Guanyu Xinde Fangeming Fanzui Xingwei de Jiexian* [Party Central Political-legal Committee, *Regarding the classification of Counter-revolutionary Elements*]. People who are merely critical of the party or government policy or implementation are not counter-revolutionary; CRIMINAL CASE BOOK - COUNTER-REVOLUTIONARY CRIMES, *supra* note 89, at 269-311.

<sup>92</sup> CRIMINAL CASE BOOK - COUNTER-REVOLUTIONARY CRIMES, *supra* note 89, at 30-34. Counter-revolutionary purpose can be analyzed with respect to the following: 1) from psychological characteristics (*xinli tezhen*); 2) from conduct characteristics (*xingwei tezhen*); and 3) from motive (*dongji*). *Id.*

<sup>93</sup> Gao Fa, Gao Jian *Guanyu Chuli Fan Geming Baoluan he Zhengzhidongluan zhong Fanzui Anjian Juti Yingyong Falu Rugan Wenti de Yijian* [Opinion regarding how to deal with certain legal issues in particular counter-revolutionary, riot, and political disturbance crimes] adopted on August 1, 1989 [hereinafter *Counter-revolutionary Opinion*]. The opinion was issued right after the June 4, 1989 incident. CRIMINAL CASE BOOK - COUNTER-REVOLUTIONARY CRIMES, *supra* note 89, at 10-14. The

One way to see how the counter-revolutionary criminal label has been applied is by looking at prior cases. For example, defendant Fu X-qi was arrested and prosecuted for counter-revolutionary propaganda as a result of publishing in his *Voice of Democracy* [Minzhu zhi sheng] an "Open Letter to the Chinese Government" calling for the people to resist the Fifth NPC's resolution.<sup>94</sup> Likewise, defendant Zhang X-sheng was arrested and prosecuted for counter-revolutionary crimes as a result of publishing the *Wanderer* (Liulang zhe) and *Republican News* (Gonghebao), and openly defaming and attacking the people's democratic dictatorship, including openly defending the counter-revolutionaries Wei XX and Liu XX in April of 1979.<sup>95</sup> Defendant Pan X was arrested and prosecuted for counter-revolutionary crimes as a result of publishing two books, SAVE THE COUNTRY WITH DEMOCRACY (MINZHU JIUGUO) and PIONEERS OF TIDE (LANCHA XIANFEND), which were critical of the CCP, defaming the socialist system, and calling it a "reactionary dictator regime" at a university.<sup>96</sup> Lastly, defendant Zhong X-hua was arrested and prosecuted for counter-revolutionary crimes for writing news, poetry, advertisements, and making drawings and cartoons and sending them to various communist newspapers.<sup>97</sup> It is clear from a close examination of these cases that the defendants were guilty of nothing more than the publishing of materials that were critical of the PRC regime. There was however, no counter-revolutionary action taken beyond speech making. Yet, they were all prosecuted and convicted of being counter-revolutionaries.

If pure speech critical of the administration, state, or party were taken so seriously as being against national security, then assembly, demonstration, and procession will not be taken lightly since they will be considered an active mobilization of the people for political actions.<sup>98</sup> They will certainly be prosecuted and sanctioned much more severely under the

---

"Counter-revolutionary opinion" makes clear that in separating counter-revolutionary crime vs. non-crime it is important to focus on "purpose" (*mudi*). *Id.* Since an internal state (purpose, intent, motive) cannot be determined by the testimony of the defendant alone, much of the proof depends on circumstantial evidence. *Id.* More significantly, criminal prosecution can be sustained notwithstanding the lack of defendant testimony. *Id.* at 11.

<sup>94</sup> *Id.* at 240.

<sup>95</sup> *Id.* at 242.

<sup>96</sup> *Id.* at 243.

<sup>97</sup> *Id.*

<sup>98</sup> The PRC concept of "pure" speech differs from the west in material ways. In the west pure speech refers to speech which only express ideas but stop short of advocating for action. Depending on how likely the speech will be creating danger to social order, the speech maker may be restrained. For a discussion of this issue, see LAURENCE H. TRIBE, CONSTITUTIONAL CHOICES 198–203 (1985); However in the PRC, a person will be judged solely by the purpose of his speech, irrespective of the likely consequence of his speech. Xiang Ming & Guo Zhi, *A Reflection on the Law of Free Speech*, 8 FAXUE [LAW SCIENCE MONTHLY] 4–10 (1991). A speech which is not "well intended" (*bushi shangyi*) by the speaker is *ipso facto* deemed to be a malicious (*eryi*) speech conduct and considered as a reckless (*lan yong*) exercise of speech right. *Id.*

counter-revolutionary law.<sup>99</sup> The other practical problem in using intent and motive as a screening tool to determine the offensiveness and legality of assembly is that intent and motive are never pure and people may have good motivations to do illegal things, as the following example will show.

Ji X-liang was arrested, prosecuted, and convicted of counter-revolutionary crimes as a result of his vocal political speech. Between March 1983 and November 1983, Ji sent three letters to the press: *Guan Ming Ribao*, *Shenxi Ribao*, and *Renmin Ribao*. The letters declared that "Rehabilitation (*pingfan*) blows like the wind, it destroys all political movements."<sup>100</sup> "The basic nature (*benzhi*) of the society is changing [and] beginning to practice capitalism."<sup>101</sup> Between July 1984 to June 1985, Ji sent eight letters to the People's Liberation Army HQ, Staff Command HQ, Naval Command HQ, State Council, Ministry of Labor, Ministry of Finance, Economics Commission, and Central Bank stating that "the party in power which Deng XX heads is perpetrating conspiracy."<sup>102</sup> "[Let us] converge in Tiananmen Square to have question and answer sessions with the people from every province, municipality, and autonomous region government, to reason with words."<sup>103</sup> "If our representatives are arrested, we have to repay an eye for an eye, a tooth for a tooth."<sup>104</sup> In September of 1985, Ji distributed 35 copies of pamphlets in Beijing public thoroughfares. The pamphlet read: "We have to be organized, we must overthrow the revisionist capitalist and cannot stop halfway."<sup>105</sup>

An investigation into Ji's background revealed that he was an old Communist party member who participated in the revolution in 1947.<sup>106</sup> His conduct has always been exemplary in the past.<sup>107</sup> The police were quick to seize on his outward manifestation of discontent and anti-Deng message to prosecute him.<sup>108</sup> Some PRC legal scholars argued that Ji did not engage in counter-revolutionary activities, but that he was only dissatisfied with the changing capitalistic nature of the Chinese society.<sup>109</sup> His activities were not counter-revolutionary in nature because he did not intend to change the socialist system. Quite to the contrary, Ji wanted to embrace and perfect the

---

<sup>99</sup> PRC Assembly Law Treatise, *supra* note 1, at 91. The PRC Assembly Law, in placing such broad and burdensome restrictions on speech content, is contrary to the CCP's "liberal view" on free speech. *Id.*

<sup>100</sup> CRIMINAL CASE BOOK – COUNTER-REVOLUTIONARY CRIMES, *supra* note 89, at 30–34.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

socialist system along the class-struggle line suggested by Mao.<sup>110</sup> The PRC legal scholars' views in this case clearly articulated Party policy and police practice of only punishing people with the wrong motive, intent, or purpose:

However in dealing with the people . . . when [they are] only unhappy with certain policy and practices, unhappy with their work style and bad quality of the cadre, even though they have mis-spoke, and have taken some drastic action, we do not treat them as counter-revolutionaries and make them new targets of new counter-revolutionaries . . . they should be dealt with as a contradiction amongst the people.<sup>111</sup>

Another case making the same point was that of Ni X-cai. In that case, Ni was charged with counter-revolutionary crimes for sending anonymous letters to a number of public, political, and educational institutions, including the *People's Daily*. In these letters, he expressed his view that the country was engaging in "typical, one hundred percent (*buzhebukou*) revisionism (*xiuzheng-zhuyi*) and capitalism." He observed that since the "Sanzhong Quanhui" (Third Plenary Session) the country had been pursuing a policy of catering to foreigners, and in the process was destroying the basic principles of socialism. He further observed that this was a critical time in PRC history where truth and falsehood was at a loggerhead and must be resolved. Some scholars considered Ni's letters to be just expressing his displeasure over the direction the country is heading. In so doing, he was trying to improve the state and not seeking to overthrow it. His attack on the leadership was personal in nature and not directed at the legitimacy of the party leadership.

## VI. Conclusion

Historically and ideally, the emperor ruled under a mandate from heaven, according to a pre-ordained cosmic order of things.<sup>112</sup> Rulers had absolute authority to govern and had to do so in virtuous ways. Citizens had an unmitigated duty to be obedient to the ruler and have to show proper deference and respect. Order was to be promoted without fail. Disorder was

<sup>110</sup> *Id.* at 261–62, 310–11; see Zhongyang Zhengfa Xiaozu "Guanyu Xinde Fangeming Fanzui Xingwei de Jiexian" [Party Central Political-legal Committee "Regarding the Classification of Counter-Revolutionary Elements"] (1962) [hereinafter Counter-Revolutionary Elements] (noting that people who are merely critical of the party or government policy or implementation are not counter-revolutionaries).

<sup>111</sup> Counter-Revolutionary Elements, *supra* note 110.

<sup>112</sup> ROBERT P. WELLER, *ALTERNATIVE CIVILITIES: DEMOCRACY AND CULTURE IN CHINA AND TAIWAN* (1999). Democratization in China and Taiwan cannot be adequately explained by a western civil society model or market economic process. *Id.* at 30. The best way to explain and understand is still through traditional Chinese culture of Confucianism and Buddhism. *Id.*

to be avoided at all costs. There was no right to dissent, and less right to engage in organized opposition or an open challenge to government policy and practices. The virtuous ruler has a duty to listen to the people and be responsive to their needs and concerns.

This philosophy of governance—ingrained as national ethos and expressed as cultural imperatives—was alive and well in China when the assembly law was enacted.<sup>113</sup> The PRC was run by the CCP, which sought political legitimacy through virtuous governance. Government officials treated citizens as sons and daughters: paternalistically though autocratically, benevolently if dictatorially, absolutely if compassionately.

The CCP considered its rule legitimate because it represented the absolute best in political ideology and governing philosophy. It treated challenges to the government as illegitimate and treacherous, and thus rejected organized opposition and open dissent as inimical to good order and detrimental to public welfare.

The assembly law, in content and as applied, reflected and reinforced these governing ideals, which dated back to the Xia (2100–1600 BC), Shang (1600–1100 BC), and Zhou (1100–771 BC) dynasties. Viewed in this light, the assembly laws were not just another set of prescriptions imported from the liberal west, celebrating the inalienability of protest rights and promoting the sanctity of speech freedom. Rather, it was a sincere effort by cotemporary political leadership to apply venerable Chinese governing philosophies, principles, and practices to a new set of emerging and evolving social-political circumstances. And yet, as this re-invention of China's historical image took place, there was an effort to retain Chinese cultural heritage. Thus observed, the PRC leadership's approach to drafting and applying the assembly law reflects decades of effort by Chinese elite to find China's identity and explore her destiny in the wake of challenges—political, economic, social and cultural—forced upon her by modernity:

When, in the late 19th century, the Western nations and Japan tried to project their power on to weaker nations and empires such as China, the elites in those threatened areas realized that they could achieve a superior, moral society, shaped by their culture and ideas of the past, if they utilized the concepts and techniques of their enemies' military and economic power.<sup>114</sup>

---

<sup>113</sup> Hill Gates & Robert P. Weller, *Hegemony and Chinese Folk Ideologies: An Introduction*, 13 MOD. CHINA 3 (1987).

<sup>114</sup> Ramon H. Myers, *New Chinese Civilization: The Evolution of the Republic of China on Taiwan*, 148 CHINA Q. 1072, 1074 (1996).



The challenge has always been how to incorporate foreign ideas without sacrificing Chinese history, culture, and tradition—a never-ending process.<sup>115</sup>

Before the promulgation of the assembly law, the PRC citizens' right to assembly was protected by entrenched, if illusory, constitutional provisions. For example, article 35 of the 1982 constitution provides: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."<sup>116</sup>

Before 1989, the PRC had no need for an assembly law because political dissents were frowned upon and mass public protests were disallowed. They were deemed as challenges to Party rule and inimical to public welfare. Public dissents and organized challenges to the CCP or government, depending on ascribed motive and intent, might be considered counter-revolutionary offenses.<sup>117</sup> People protested at their own risks. Alternatively, citizens' grievances and officials' abuses could be taken care of through Party disciplinary process and government administrative channels.<sup>118</sup>

The political culture and process of China has undergone a drastic change since 1979. In 1979, the PRC, under the stewardship of Deng Xiaoping, sought economic reform. The forces of reform dislodged the administration from the past, forcing it to confront the future with thousands of interests competing for resources and millions of voices struggling to be heard.

June 4, 1989 was a moment of reckoning for the PRC political leadership; the leadership saw their political legitimacy sinking and the nation's social stability problems wavering. The PRC authority took a number of remedial measures to consolidate control and shore up support, including institutionalization of orderly succession processes, introduction of a meritocratic promotion system, establishment of bureaucratic differentiation, and a channeling of mass participation. There were a number of changes aimed at increasing the power in the hands of the citizenry. The

<sup>115</sup> Zhang Longxi, *Western Theory and Chinese Reality*, 19 CRITICAL INQUIRY 130 (1992); Arthur N. Holcombe, *Chinese Political Thought and the Proposed New Constitution*, 8 J. POLITICS 1, 21 (1946). Dr. Sun's challenges were in regards to how to make western concepts and institutions, which he admired, work in China. *Id.* at 4–5. The result was the draft Constitution of 1935. *Id.* at 7.

<sup>116</sup> XIAN FA, *supra* note 62.

<sup>117</sup> See PRC Criminal Law, *supra* note 91 ("All acts endangering the People's Republic of China committed with the purpose of overthrowing the political power of the dictatorship of the proletariat and the socialist system are crimes of counter-revolution."); see also H.L. Fu, *Sedition and Political Dissidence: Towards Legitimate Dissent in China?*, 26 HONG KONG L.J. 210, 215 (1996) (noting that, in China, sedition is a "counter-revolutionary" crime).

<sup>118</sup> See Zhen Yuegang & Guan Shuguan, CONGAN NEIQIN GONGZUO SHOUCHE [HANDBOOK OF PUBLIC SECURITY INTERNAL ADMINISTRATION WORK] 449–70 (2001). "Xinfang" is the mass or organization way to communicate with the political leadership to share ideas and express wishes, including reports, complaints, petition, criticism and suggestions. *Id.*

Administrative Litigation Act of 1989 allowed citizens to sue government agencies for alleged violations of government policy.<sup>119</sup> The letters-and-visits departments (*xinfangju*) at Party and government agencies were strengthened while the People's Congresses became more responsive to the people by listening to their complaints and addressing their concerns.<sup>120</sup>

The assembly law allowed the citizens to talk back to the establishment—directly, openly, and forcefully—as co-equals, and not as members of a subordinate party or as subservient charges. The eventual success of the law has yet to be assessed, but the impact and implications of the law are increasingly being felt. The road from dictatorship to democracy started in the 1980s and is still on going.<sup>121</sup> The assembly law is part of the PRC's political reform landscape and is a stride in the right direction when examined within the historical and political context of China's rich past.

---

<sup>119</sup> Andrew J. Nathan, *China's Changing of the Guard: Authoritarian Resilience*, 14 J. DEMOCRACY 6, 15 (2003).

<sup>120</sup> *Id.*

<sup>121</sup> See John P. Burns, *The People's Republic of China at 50: National Political Reform*, 159 CHINA Q. 580 (1999) (stating that Chinese political reform started in the early 1980s); see also Yongnian Zheng, *Development and Democracy: Are They Compatible in China?*, 109 POL. SCI. Q. 235 (1994) (describing reforms, development and changes in state society relations, including an egalitarianism line at the beginning of the 1980s).

