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**[RULE OF THE PARTY: OLD  
LEGACY OF THE NEW CHINA]**

### Rule of the Party: Old Legacy of the New China

Recently, more and more scholars have been elaborating more on what the nature of rule of law may look like in the near future in China. Some have defined it in gradual steps, whilst others believe that China is ready for full implementation. Like globalization and the nature of the economy, the law of China is changing gradually towards those reforms, but some wonder if such changes will happen at all. Linda Yueh of the BBC reported last year for the aspects of business that adequate protections to match the growing quality of living were needed . She wrote, "...Sustaining growth will require better legal institutions that protect investment and people's property. Among the reasons for protests across China, corruption and property rights figure among the causes..."<sup>1</sup> I for one wish to put emphasis that each legal system in the world has a grounded historical basis. China, as a relatively new power, is undergoing an identity crisis. The New China, as we know it, has yet to define itself, and this is evident in the current struggle regarding the rule of law. Even China's scholars of the early 19<sup>th</sup> century saw the potential challenges. Dr. Sun-Yat-Sen for example, hypothesized that in order to make China constitutional, the country would first have to be unified by a strong authority with military

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<sup>1</sup> Yueh, Linda. "Rule of the People v. Rule of the Party," BBC World News. (October 24, 2014)

control. Provided that this control was relinquished, people would be educated on political exercises for the basic government, after which constitutionalism would be deemed achievable.<sup>2</sup> The government of China remains different than in this period, but many scholars advocating for the rule of law are still hopeful that today represents that traditional second phase. I would conclude that by the below findings, the formation of the Chinese legal system towards the rule of constitutionalism is indelibly inevitable in the globalized context, but the factors which will inevitably decide it rest on changes which will have to take place within the party state. The following paper seeks to understand the nature of party ideology within the government which has the ability to both facilitate and prevent reforms within China.

In the past, the management of order suggests that the central foundations of today's Chinese nation remain relatively new and untested, which in this case, is defined by the Chinese Communist Party. While formed in 1908, the party did not take control until 1949, largely building off of the failures of the Qing Dynasty and the Chinese Nationalist Government. Due to the instability of the regimes, no firm constitution has managed to organize its laws in the same way as the Chinese Imperial system of the past. After the Revolution of 1911 for example, the Nationalist vision under Sun-Yat Sen was rendered baseless with the following unsuccessful monarchy of Yuan Shikai. The vision of promoting a republic within China caused people turned to warlords for security in the early 1920s, resulting in further divisions in China. What people were more set upon with these failures was the unification needed to achieve a stable set of laws. The result was that without the most definitive legal system per say, the Communist

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<sup>2</sup> Backer, Larry Cata. "The Rule Of Law, The Chinese Communist Party, and Ideological Campaigns: 三个代表 (The "Three Represents" ), Socialist Rule Of Law, and Modern Chinese Constitutionalism," University of Iowa College of Law (February 10, 2006): 111-133.

government managed to justify its constitution around the issues many Chinese saw as an issue in the Early 20<sup>th</sup> century. This is evident as Peerenboom describes below:

The preamble to the 1982 constitution, for instance, traces the long and glorious history of China; laments the national humiliation at the hands of foreign powers from the mid-19th century until Mao Zedong and the Chinese Communist Party (CCP) were able to defeat the collective historical forces of imperialism, feudalism and bureaucratic capitalism to unify the nation and establish New China; and sets out some of the major achievements under the CCP in defending the nation against foreign aggression, developing the social and economic order, and improving the lives of citizens, before turning to major challenges.<sup>3</sup>

In this way we are able to see why the current Chinese Constitution of 1982 has yet to be The dynamics of the constitution are greater than its actual print; as history changes, so does the point of the document in Chinese society.

Ideology in China is the most powerful concept in the party's social order precisely because it is rooted in the new government's beginnings while at the same time being intangible. It is abstractly implemented into its people's laws, interpretation of such laws, and the methods of enforcement required to enact them. This in itself can be seen in the phrasing of the constitution. In recent years, taking hold since New Year, strong rhetoric such as this is implemented into soft points of the media and daily life of Chinese people, such as the concept of the China Dream. The central issue becomes however that in the Constitution itself, the rule of the party is not acutely mentioned in. Because the party's leadership methods are not mentioned in the constitution, there are constitutionalists, who advocate for changing the current standards of the One-Party System towards the rule of law (Change the one-party system) and Conservatism, or leftists, who believe in constitutionalism and change, but by gradualism and by very clearly setting the role in the party.

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<sup>3</sup> Peerenboom, Randall, *The Social Foundations of China's Living Constitution*. Oxford University Press (January 26, 2010): 1-42

Who exactly is responsible for these actions? The immediate answer is the Political bureau of the CCP. Located within China's executive branch, it dictates within the standing committee many of the policies to be put into practice. As all of the members are of the party and are often set aside if they have reservations, the idealistic control they wield in their vertical relationship with the legislative and law-making bodies carrying the greatest influence in circulating party policy. Very rarely are non-party members elected in the interest of diversifying opinion. Whilst in the drafting process, the CCCP Politbureau ensures that non-party members and some minorities of qualified backgrounds will have a say to address the conventional demands of the people, however in some ways this is done more as a symbolic role to gain public support. The official nickname of many of these minorities having a say in the drafting of laws are referred to as "*Wu zhi shao nu*" or "Innocent young girls" While many in the current climate purport this is to give a good-humored name to young scholars, like many aspects of Chinese society, the lines are clearly drawn as to the limited privileges of these individuals. The true center of party ideology still lies within China's executive branch.

Traditionally, Western understandings of the exact role of the party translate to a balance between the party, the state, and the law. This has largely been achieved through an already elongated history of tyranny, the avocation against one central authority beginning with the drafting of the Magna Carta in .... James Madison managed to voice one of the key problems of one party ruling a country, stating that.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse or passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.<sup>4</sup>

Such a party could not and never would manage to represent the overall need of the people, limiting their form of government on one favorable group's set of interests. As such, it has been

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<sup>4</sup> Madison, James. *The Federalist*. 10. (Roy P. Fairfield ed., 1981)

necessary as a result for the party to be subordinate to the state. This in turn can cause many scholars of an Occidentalized background to see no clear link between the party defining the state.<sup>5</sup> In China, the government was created from scratch as being manifest by the party. All of the central ideals of the People's Republic are responsible for having formed the nation, so for the sake of stability it is natural that such a party ideology would be justified in being reserved. The constitution, while making no mention of the party, still manages to incorporate its ideals in elaborating on the current agenda of 1982:

Under the leadership of the Communist Party of China and the guidance of Marxism- Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with a high level of culture and democracy.<sup>6</sup>

This has in turn created a sensation that the party is synonymous with the government; challenge the party, and the government is directly challenged.

Another way in which the party has managed to manifest itself into the Chinese community is through the cult of leadership. Traditionally, in ancient China, emperors had been regarded as divinely chosen rulers who bore the responsibility of their people. In the same way, China has sense found it impossible to define its various political movements without a face to guide it.<sup>7</sup> Mao Zedong managed to accomplish this twice, more so in his second rise to power.

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<sup>5</sup> Backer, Larry Cata. "The Rule Of Law," 103

<sup>6</sup> Hiniker, Paul J. "The Cultural Revolution Revisited: Dissonance Reduction or Power Maximization" *The China Quarterly*, 94. Cambridge University Press. (June, 1983) 282-303

<sup>7</sup> Tiffert, Glenn. "Epistrophy: Chinese Constitutionalism and the 1950s" *Building Constitutionalism in China*. Palgrave Macmillan. (October 31, 2007): 59-56

His presence was central to the cultural revolution, and no form of conservative backlash since that of the 100 days of reform would have been revisited on China had it not been for the magnanimous power of the Mao, versus the interests of Liu Shaoqi and the polibureau which had prior to the cultural revolution marginalized Mao as a figure. Mao wielded a great amount of cultural influence, particularly among the young, which in itself still defined the old leader as holding onto a reformist nature. On the other hand, like many leaders who regained their power through violent means, Mao Zedong quickly came to define his role as the party's spokesperson, persecuting others who didn't agree with him as "capitalist roaders."<sup>8</sup> The reform since the cultural revolution has since sought to steer China further away from cult personalities, although how successful has this truly become? Shortly after Mao, Deng Xiaoping arose to power, and the nature of his ideas away from Maoist thought defined him so that by the Constitution of 1982, Deng's ideas of economic reform and globalization were listed with Maoist, Marxist, and Leninist thought which had founded the country.<sup>9</sup> Presidents such as Hu Jintao, Jiang Zenmin, and Xi Jinping seem to be aware of these risks of becoming too prominent, preferring to define their terms towards national policies while achieving low profiles in the eyes of the people. Xi Jinping's anti-corruption campaign is a good example of this, seeking to balance the scales in favor of a middle ground. More speculation on this middle ground will be visited upon shortly.

The greatest risk of holding one party in power of the government and the definition of the country is how the party's situation may or may land in accordance with the demands of the country. The leftist efforts of the late 1950s would fail to be achieved until the 1970s and 80s on part due to a conservative backlash which also defined itself as reformist. In addition to the fact that China was once again placed under the rule of the few, the cultural revolution mediated little

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<sup>8</sup> Hiniker, Paul J. "The Cultural Revolution Revisited: Dissonance Reduction or Power Maximization," 294.

<sup>9</sup> Peerenboom, Randall, *The Social Foundations of China's Living Constitution*. 12

room for visions of progress, and in fact persecuted many of the century's greatest thinkers .<sup>10</sup> Old artifacts, representing cultural heritage of China and the various influences of the ancient days that made China, were also encouraged to be destroyed. The nature of the conservative backlash achieved much less than what it set out to, destroying Chinese culture and foundations in the process. The Cultural Revolution, for all its flaws like the Purge of the Soviet Union, showed that when the central party remains revolutionary nature and is grounded the core value of the party, it steers more towards self-preservation rather than the adequate measures of national organization which motivated it before.

Several United States politicians, in the same way, are both welcoming of further progress in the upcoming 2016 elections, but are alarmed by figures such as Jeb Bush, who echoes his brother in approval of the Iraq foreign policy disaster and symbolizes a step back rather than forward in party agenda. What makes this idea still so popular is the fact that in the past in the case of China is such definitive policies had adequately mobilized a country from oppression and disunity. Revolutionary idealism at the same time however was responsible for a loss in an adequate political elite for centralizing constitutionalism, relying instead on party conviction and adherence to regulations and organizations to govern.<sup>11</sup> This will be unable to be continuous however as China joins more international trade organizations and gives more and more power towards individual needs. Therefore, the party at the center remains too idealistic, maintaining its rhetoric of the past into the 20<sup>th</sup> century, a last bastion of old world language of an old century of political unrest.

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<sup>10</sup> Lecture notes, SISU, *History and Legal Basis of Chinese Law*, Spring 2015.

<sup>11</sup> Peerenboom, Randall, *The Social Foundations of China's Living Constitution*, 12



These cautionary measures of repeating the past while staying wary of the future are what have caused a continuous party rhetoric to merely be repeated by Mr. Xi Jinping's hardline policy to reject Western influence in China's reforms. The New York Times summarizes:

"...The first was "Western constitutional democracy"; others included promoting "universal values" of human rights, Western-inspired notions of media independence and civic participation, ardently pro-market "neo-liberalism," and "nihilist" criticisms of the party's traumatic past..."<sup>12</sup>

This shows that regrettably, no matter how progressive the leftists may claim to be, the current line remains the same as suspicious of the world around it as it had in the 1960s. The ultimate irony remains that China has been shifting to changes affected in the early century from its thinkers that borrowed selectively from Japanese and German legal systems. Traditionally, it is easy to understand this, as China historically, has always remained isolated. Borrowing from other cultures was minimal to reduce the chances of toppling a power. Only recently has foreign emulation been routinely pressed upon the Chinese vision. The ultimate challenge is therefore, how to extend the negative connotations of the past towards giving the Chinese party the idea that concepts such as Constitutionalism have taken on a Chinese nature.

Ultimately, the predominance of the party over the state creates the basis of a skewed view towards the values of one social group. We saw it in the imperialist agendas of Europe and Japan where the paltry few came to power and refused to relinquish it, resulting in tyranny and death. We have also seen it several times in the case of China in the early 20<sup>th</sup> century, which the government has changed its policies in the hopes of avoiding repetition. However the current pattern of party-guiding constitutionalism has less to do with the security and unity of the

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<sup>12</sup> Buckley, Chris. "China Takes Aim at Western Ideas," *New York Times*. (August 19, 2013): 1-4.

country and more to do with the shifts away from the current brand of leadership, changing only so slightly to remain true to national expectations. Any major room for change that could potentially disrupt the central leadership is considered to disrupt society, which in turn becomes a party threat and is simplified to a national threat. In the understandings of this party's flexibility, all are naturally looking forward towards more inclusion and a legal system which will need to be adopted. In adopting so however, perhaps the most crucial first step in this "tutelage phase" is to press the issue to a level which will centralize around the community at first. Political implications will be the greatest obstacle, but the rule of law will perhaps immediately affect Chinese livelihood by pushing into the grounds of legal reforms.

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