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“When the state feels threatened, the rule of law can be suspended. Anywhere.”

“Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies.” —Groucho Marx

I. INTRODUCTION

The Communist Party of China (CPC or the Party) is the absolute power center in Chinese politics. Deng Xiaoping made the Four Cardinal Principles paramount in Chinese politics: upholding the socialist path; the people’s democratic dictatorship; the leadership of the CPC; and the Marxism-Leninism-Mao Zedong Thought. Thus the Party stands aloof, assumes general oversight and coordinates all sides of the executive agencies, the National People’s Congress (NPC), the Chinese People’s Political Consultative Conference (CPPCC), and other mass organizations. If the latter is the flesh, and the armed forces the bones, of the Chinese political body, the Party is undoubtedly its brain, main nerves and tendons. The Party leads and controls all other political (and not only political) organizations and institutions in the People’s Republic of China (PRC), allowing observers to use the once perhaps more fashionable term, “Party-State,” to capture China’s political reality.

The Party has relinquished ideology as the sole or main source of legitimacy, and for almost three decades has been enjoying support through the “performance oriented” means of what appears to be a “benevolent one party rule.” The Chinese political system could thus also be seen as one of “good governance with Chinese characteristics.” The regime delivers steady economic performance and is consistent in terms of “consumer-satisfaction”; the people, in return, refrain from getting too angry about its peculiarities.

This article does not directly address the rule of law in China or the eternal debate on its development and developmental patterns, but rather it addresses some peculiar aspects of it. The first part shall provide a brief account of how the Chinese Constitution and main statutory norms of public law formally “treat” the CPC. The second part outlines how the Party practically exerts its influence and authority over the Chinese political system, i.e., the actual functioning of the Party-State machine in the PRC.

1. D. Comp. L. (Palermo), Assistant Professor, Taiwan National University, Taipei.
3. The purpose of the quotes is to show that perhaps the Communist Party of China (CPC) is not that peculiar, and not that keen on politics after all.
4. The author’s ideas, opinions, and conclusions are based on sheer data, i.e. documents, regulations, databases, etc., retrieved from official Chinese websites, including Xinhua, and Renmin Ribao. Ideas indirectly borrowed from other sources will be noted as such and properly cited.
5. This occurred after the watershed of the third Plenum of the Eighth CPC Congress in 1978.
6. Much has been written about this topic. See generally Thomas Heberer & Gunter Schubert, Political Reform and Regime Legitimacy in Contemporary China, 99 ASIEN S9, S9-28 (Apr. 2006).
7. See generally ASSESSING THE QUALITY OF DEMOCRACY x-xi (Larry Diamond & Leonardo Morlino eds., John Hopkins Univ. Press 2005) (providing a systematic conceptual scheme for identifying the essential properties of democracy). Surveys and research on governance show that popular support for government is not always present in a political system with strong democratic institutions, or vice versa. China might score poorly in some of the variables that help to define democracy (e.g., a law abiding government, controlling corruption, competition, electoral participation, political interest, political efficacy, vertical accountability, horizontal accountability, freedom, equality, and responsiveness), but score better in others.
II. THE PARTY AND THE LAWS

This section will attempt to address two questions that I asked myself when writing this article. First, to what extent is the CPC present in the Constitution and ordinary statutory laws in China? Second, what, according to these norms, is the legal nature of the CPC?

A. The Legal Status of the CPC Vis à Vis the Constitution and Main Statutory Laws

1. The Role of the CPC and the Socialist System in Constitutional Documents

In 1949, the Common Program of the Chinese People’s Political Consultative Conference (CPPCC) mentioned the CPC in its Preamble （中國人民政治協商會議共同綱領 Zhongguo renmin zhengzhi xieshang huiyi gongtong gangling）. Additionally, the Organic Law of the CPPCC discussed the revolutionary impetus and the dictatorship of the proletariat, among other things （中國人民政治協商會議組織法 Zhongguo renmin zhengzhi xieshang huiyi zuzhifa）. The Organic Law of the Central People’s Government of the PRC also discussed the CPC （中華人民共和國中央人民政府組織法 Zhonghua renmin gongheguo xianfa）. The CPC twice in the Preamble and granted a high profile to the National President in Articles 40, 42, and 43, resembling the 1936 Soviet Constitution.16

In 1954, the PRC’s first proper Constitution （中華人民共和國憲法 Zhonghua renmin gongheguo xianfa） mentioned the CPC twice in the Preamble and granted a high profile to the National President in Articles 40, 42, and 43, resembling the 1936 Soviet Constitution.

In 1975, the Cultural Revolution Constitution, which was a short, thirty article, “more sincere” document, epitomized the then quasi-collapse of the political-legal system, extensively mentioning the expression “under the leadership of the Communist Party of China” （在中國共產黨領導下 zai Zhongguo gongchandang lingdao xia） in the Preamble, General Principles, and in Articles 2, 15, 16, 17 and 26. Article 2 mentions the CPC when discussing leadership （中國共產黨是全中國人民的領導核心。工人階級經過自己的先鋒隊中國共產黨實現對

9. The first part of this paper could be improved by employing a vast spectrum of norms to analyze the formal (legal) relations between the ruling party and the institutional framework in other socialist countries and similar systems. For example, the Communist Party of the Soviet Union (CPSU) and USSR; communist parties in other former and current Socialist countries in and outside Europe, such as Yugoslavia, Cuba, Vietnam, and North Korea; Kuomintang (KMT) and the Republic of China (ROC) (both pre and post 1949); and One Party Rule systems in other former and current authoritarian or semi-authoritarian countries. See generally Paolo Biscaretti Di Ruffia & Gabriele Crespi Reghizzi, La Costituzione Sovietica del 1977 [The 1977 Constitution of the USSR] (1979); Gabriele Crespi Reghizzi, La Disciplina Giuridica della Lega dei Comunisti in Jugoslavia [The Legal Framework of the League of Communists in Yugoslavia], in L’Enigma Jugoslavo: Le Ragioni della Crisi [The Yugoslav Enigma: The Reasons of the Crisis] (Stefano Bianchini ed., 1989).

10. See Xianfa art. 40 (1954) (P.R.C.). Article 40 states: “The Chairman of the People’s Republic of China, in pursuance of decisions of the National People’s Congress or its Standing Committee, promulgates laws and decrees; appoints and removes the Premier, Vice-Premiers, Ministers, Chairmen of Commissions or the Secretary-General of the State Council; appoints and removes the Vice-Chairmen and members of the Council of National Defense; confers state orders and titles of honor; proclaims amnesties and grants pardons; proclaims martial law; proclaims a state of war; and orders mobilization.”
國家的領導。馬克思主義、列寧主義、毛澤東思想是我國指導思想的理論基礎。Zhongguo gongchandang shi quan Zhongguo renmin de lingdao hexin. Gongren jieji jingguo ziji de xianfengdui Zhongguo gongchandang shixian dui guojia de lingdao. Makesizhuyi, lieningzhuyi, Mao Zedong sixiang shi woguo zhidao sixiang de lilun jichu)。Article 15 mentions the CPC when discussing the Armed Forces (中國共產黨領導的工農子弟兵，是各族人民的武裝力量。Zhongguo gongchandang lingdao de gongnong zidi bing, shi gezu renm in de wuzhuang liliang. Zhongguo gongchandang zhongyang weiyuanhui zhuxi tongshouhu quanguo wuzhuang liliang)。Article 16 mentions the CPC when discussing the NPC (全國人民代表大會是在中國共產黨領導下的最高國家權力機關。Quanguo renmin daibiao dahui shi zai Zhongguo gongchandang lingdao xia de zuigao guojia quanli jiguan). Article 17 mentions the CPC when discussing the State Council (全國人民代表大會的職權是: 修改憲法,制定法律,根據中國共產黨中央委員會的提議任免國務院總理和國務院的組成人員,批准國民經濟計劃、國家的預算和決算,以及全國人民代表大會認為應當由它行使的其他職權。Quanguo renmin daibiao dahui de zhiquan shi: xiugai xianfa, zhiding falv, genju Zhongguo gongchandang zhongyang weiyuanhui de tiyi renmian guowuyuan zongli he guowuyuan de zucheng renyuanyun, pizhu guomin jieji jihua, guojia de yusuan he jiesuan, yiji quanguo renmin daibiao dahui renwei yingdang you ta xingshi de qita zhiquan)。And finally, Article 26 mentions the CPC when discussing people’s duties (公民的基本權利和義務是, 應當擁護中國共產黨的領導, 應當擁護社會主義制度, 服從中華人民共和國憲法和法律。Gongmin de jiben quanli he yiwu shi, yonghu Zhongguo gongchandang de lingdao, yonghu shehuizhuyi zhudu, fucong Zhonghua renmin daibiao xianfa de falv). In 1978, a Transitional Constitution was enacted. This short-lived document (amended in 1979 and 1980) maintained previous provisions about the Party’s leading role, with some adjustments in phrasing and style. Article 19 discusses the military (中國人民共和國武裝力量由中國共產黨中央委員會主席統。Zhonghua renmin gongheguo wuzhuang liliang you Zhongguo gongchandang zhongyang weiyuanhui zhuxi tongshuai)。Article 21 discusses the State Council in two different sections: (根據中國共產黨中央委員會的提議, 決定國務院總理的人選; genju Zhongguo gongchandang zhongyang weiyuanhui de tiyi, jueding guowuyuan zongli de renxuan) and (根據國務院總理的提議, 決定國務院其他組成人員的人選; genju guowuyuan zongli de tiyi, jueding guowuyuan qita zucheng renyuanyun）。This Constitution made a weak, but real, attempt at a formal strengthening of the role of the Premier of the State Council vis-à-vis the obtrusive leadership of the CPC Central Committee.

In the 1982 Constitution and following amendments (in 1988, 1993, 1999, and 2004), the CPC is mentioned five times, but only in the Preamble, while the rest of the text offers only sporadic references to the “Socialism (社會主義 shehuizhuyi) [Socialist System (社會主義體制 shehuizhuyi tizhi) with Chinese characteristics].” Efforts to strengthen the role of the law and to restrain, at least formally, the Party’s omnipotence, are reflected in the eighth paragraph of the Preamble and, more clearly after the 1999 amendments, in Article 5. The Preamble, paragraph eight, discusses the Constitution and law (本憲法以法律的形式確認了中國各族人民奮鬥的成果, 规定了國家的根本制度和根本任務, 是國家的根本法, 具有最高的法律效力。Qianban xianfa yi falv de xingshi queren le Zhongguo gezu renmin fendou de chengguo, guiding le guomao de jihua shi keben renwu, shi guojia de genbenrenwu, juyou zuigao de falv xiaoli. Quanguo xianfa renmin, yiqie guojia jihua he wuzhuang liliang, ge zhengdang ge ge shenhui tuanti, ge qiye shiyue zuzhi, dou bixu yi xianfa wei genben de huodong zhunze, bingqie juyou weihu xianfa zunyan, baozheng xianfa shishi de zhize)。Article 5 also discusses the Constitution and law (本憲法以法律的形式確認了中國各族人民奮鬥的成果, 规定了國家的根本制度和根本任務, 是國家的根本法, 具有最高的法律效力。Qianban xianfa yi falv de xingshi queren le Zhongguo gezu renmin fendou de chengguo, guiding le guomao de jihua shi keben renwu, shi guojia de genbenrenwu, juyou zuigao de falv xiaoli. Quanguo xianfa renmin, yiqie guojia jihua he wuzhuang liliang, ge zhengdang ge ge shenhui tuanti, ge qiye shiyue zuzhi, dou bixu yi xianfa wei genben de huodong zhunze, bingqie juyou weihu xianfa zunyan, baozheng xianfa shishi de zhize)।

11. The fact that the CPC is mentioned only in the Preamble suggests how important and preceptive (and not only declaratory) the Preamble can be, as this one happens to be, the only part of the document that reflects the Material Constitution of the country.
(中華人民共和國實行依法治國，建設社會主義法治國
家。國家維護社會主義法制的統一和尊嚴。一切法律、行政法規和地方性法規都不得同憲法相抵
觸。一切國家機關和武裝力量、各政黨和各社會團體、各企業事業組織都必須遵守憲法和法律。
一切違反憲法和法律的行為，必須予以追究。任何組織或者個人都不得有超越憲法和法律的特權

Both the Hong Kong Special Administrative Region (SAR) and the Macao Special Administrative Region (SAR) Basic Laws (基本法 Jibenfa), approved in 1990 and 1993 and enacted in 1997 and 1999 respectively, are peculiar examples of “sub-constitutions.” Their main role, apart from establishing a basic legal framework for these two new entities, is “suspending” the Socialist System provisions that are in force in the rest of mainland China. Provisions “suspending” part of the Chinese Constitution can mainly be found in the second paragraph of the Preamble12 (為了維護國家的統一和領土完整，保持香

2. The Role of the CPC and the Socialist System in Other Specific Basic Statutes

In the organic laws of central organs, the CPC is not mentioned, but Democratic Centralism (民主集中制 minzhu jizhong zhi), a peculiarity of the Socialist System, or an obligation to protect and uphold Socialism and its institutions, is mentioned instead.14 An exception is the Law on Regional Ethnic Areas Autonomy,15 where the CPC is mentioned in the Preamble, and Democratic Centralism and the Socialist System are mentioned in Articles 3 and 6.

Articles 1, 3, 4, and 5 of the General Principles chapter of the Legislation Law (approved and enacted in 2000) provide a bold confirmation of the core features of the legal system of the PRC and state as follows:

Article 1. This Law is enacted in accordance with the Constitution in order to standardize lawmaking activities, to perfect state legislative institution, to establish and perfect the socialist legal system with Chinese characteristics, to safeguard and develop socialist democracy, to promote the governance of the country through legal mechanism, and to build a socialist country under the rule of law.

特色社會主義法律體系，保障和發展社會主義民主，推進依法治國，建設社會主義法治國家，根據

12. An extract of the Hong Kong SAR Basic Law is provided here, as the Macao SAR’s provision is almost identical.

13. Here I have used an instrumental translation to mark the difference between the two Chinese terms.


憲法，制定本法。

Article 2. The enactment, amendment and repeal of any national law, administrative regulation, local decree, autonomous decree and special decree shall be governed by this Law. The enactment, amendment and repeal of administrative rules promulgated by agencies under the State Council and local rules promulgated by local governments shall be carried out in accordance with the relevant provisions of this Law. (法律、行政法规、地方性法规、自治

Article 3. Lawmaking shall adhere to the basic principles of the Constitution, and shall be centered around economic development, and shall uphold the socialist road, uphold the democratic dictatorship by the people, uphold the leadership by the Chinese Communist Party, and uphold Marxism-Leninism and Mao Zedong Thought and Deng Xiaoping Theory, and uphold the reform and opening. (立法應當遵循憲法的基本原則，以經

Article 4. Lawmaking shall comply with legally prescribed scope of authority and procedure, and shall serve the national interests and safeguard the uniformity and dignity of the socialist legal system. (立法應當依照法定的

Article 5. Lawmaking shall reflect the will of the people, promote socialist democracy, and ensure that people are able to participate in the lawmaking process through various channels. (立法應當體現人民的意志， 發揚社會主義民主，保障人民通過多種途徑參與立法活動。

Article 4. Lawmaking shall be based on actual circumstances, and shall, in a scientific and reasonable manner, prescribe the rights and obligations of citizens, legal persons and other organizations, and the powers and duties of state organs. (立法應當從實際出發，科學合理地規定公民、法人和其他組織

Another sensible reminder of the central role of the Party can easily be found in the 2005 Civil Servants Law, where Article 4 reaffirms the tight control of the Party over the personnel machinery of the State, which is one of the pillars, along with the grasp over the military, that guarantees the CPC’s steady centrality in the PRC. Article 4 states:

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As hinted to above, the other main pillar of the CPC’s rule is its grasp over the military establishment. Despite using the word “State” (國家 Guojia) more than forty times in relation to the military, the 1997 National Defense Law mentions the usual Socialist System in the General Principles, and in Article 19, it clearly states that “the Armed Forces of the PRC are led by the Communist Party of China,” and that “Party organizations within the Armed Forces perform their activities in accordance with the Party Constitution”.18

Two other examples of the presence of direct links to the Party Constitution and organizations can be found in the 1998 Village Committees Organic Law, Article 3, and in the 1993 Company Law, Article 19.19 It is interesting that in these two pieces of legislation we are reminded of the obvious notion that Party organizations have to act and function according to Party regulations. The assertion of Party rule here seems to be an attempt to protect Party fabric in entities (democratically elected village committees and income-pursuing enterprises) that might tend to forget the ultimate source of authority in the country.20

B. The Legal Nature of the Party and of the Parties in Civil Law

Despite their resemblance to legal persons (法人 faren) similar to social organizations (社會組織 shehui zuzhi), the political parties in China are not mentioned in either Article 50 of the 1986 General Principles of Civil Law (民法通則 Minfa tongze), or in the Regulations on the Registration of Social Organizations Management (社會團體登記管理條例 Shehui tuanti dengji guanli tiaoli) issued in 1998 by the State Council.21 This legal vacuum seems to imply that the political parties in China are only the CPC itself and the small eight “Democratic Parties” that the Party tolerates, and that any evolution of the political scenario can originate and be successful, if it has the explicit approval of the ruling Party. This reality was partially confirmed in a Notice issued by the Ministry of Civil Affairs that suddenly appeared in February of 2007 on an official Chinese media outlet.22 That Notice explained how organizations within the CPPCC and those approved, ratified, or cleared (批准 pizhun) by the State Council are not required to register, according to the 1998 regulations. One can infer that the battalion of “flower-pot” parties23 and the CPC itself, in their capacity as key members of the CPPCC, live a sort of “separate life” that isolates them from other actors in society. Moreover, this group has not yet been, and perhaps


20. A field that I will not investigate here (for lack of space and knowledge), but that deserves further research, is that of case law. A question to think about is whether instructions and goals contained in CPC policy papers (issued by the Party itself or jointly by the Party and State organs, like the State Council and its General Office) or Party internal norms themselves, can be regarded as “guiding principles” (指導方針 zhidao fangzhen) by the courts? 20


23. As they are mercilessly defined by Chinese people themselves.
cannot be, enlarged or integrated by means of bottom-up legal actions. These notions lead to the hypothesis that the Party is a sort of mighty being that lives and operates almost exclusively within the high realm of constitutional law and in the very earthly realm of the prosaic day-to-day practices of the Material Constitution and actual management of power.  

III. THE ACTUAL FUNCTIONING OF THE PARTY-STATE SYSTEM  

Although the PRC’s Party-State can hardly be considered a modern constitutional system, according to Dippel’s “essential features of modern constitutionalism,” it nevertheless shows rare talent in devising and maintaining arrangements that enhance its ability to run the country with pretty good results and relatively few grumbles from the population.  

A. Party, Policy-Making, Oversight and State Organs  

As clearly stated by the Constitution Preamble, and even more clearly observed in day-to-day practice, the Party is the leading force in the Chinese political arena. The leadership exerted by the Party is ideological, political and organizational. It covers all of the branches of government (in the American usage of this word) and it is carried out through various channels: policy-making; law-making; policy-implementation; law-implementation; policy-enforcement; and law-enforcement. The power structure of the PRC consists of three vertical systems: the Party apparatus (系統 xitong); the State/Government; and the military establishment. The apex of these pillars is the Political Bureau, or Politburo, of the Central Committee of the CPC, and its Standing Committee (PBSC) (中國共產黨中央政治局常務委員會 Zhongguo gongchandang zhongyang zhengzhiju changwu weiyuanhui). The pillars operate on approximately five levels: centre (中央 zhongyang ji); province (省級 sheng ji); area (地區級 diqu ji); county (縣級 xian ji); and township (鄉級 xiang ji). 

This structure is further organized into six major functional sectors (口 kou), and each sector is supervised by one or two members of the PBSC, the de facto top power organ in the PRC. The sectors are: military and foreign affairs; political and legal affairs (responsible for legislative, judicial and law enforcement affairs); administrative affairs (responsible for industrial and agricultural production, finance and commerce, health, education, science, sports, etc.); propaganda (responsible for education, media and cultural affairs); United Front (responsible for other political parties, religion, minorities, Taiwan, Hong Kong and Macao affairs, mass organizations or unions, youth and women’s organizations, 

24. Other aspects of the CPC relating to its capacity in the Private Law sphere are still quite opaque and undoubtedly worthy of further research. For example, an interesting question is whether the Party possesses its own assets, property, and real estate, or if it lives as a parasite of the State? 


26. See Horst Dippel, Modern Constitutionalism: An Introduction to a History in Need of Writing, 73 Tijdschrift voor Rechtsgeschiedenis [THE LEGAL HISTORY REVIEW] 153, 155-56 (2005) (listing the essential features of modern constitutionalism as: 1) the sovereignty of the people; 2) constitution founded on universal principles; 3) a declaration of rights; 4) limited government; 5) representative government; 6) responsible and accountable government; 7) the separation of executive, legislative and judicial powers; 8) judicial independence; 9) a written constitution as the paramount law; and 10) the people’s right and ability to amend the constitution). 


28. Law-making, law-implemention, and law-enforcement have been left mainly to State/governmental agencies, and the more the matter or field is perceived as technical, the more the Party is disengaged. See He Jiadong 何家棟, 黨政分開再探 Dang zheng fenkai zai tan, available at http://www.chinaelections.com/ News?snfo.asp?NewsID=59096 (last visited Feb. 29, 2010) (providing a brief historical outline of Party’s disengagement from executive affairs). Mr. He cleverly suggests that whoever sees the disengagement of the Party as a sign of its will to give up leadership fails to appreciate how the Party is able to supervise, oversee, and coordinate more efficiently, without having to meddle with day-to-day petty management; an opinion I completely agree with. 

and other associations), and Party affairs (responsible for Party day-to-day affairs and Party discipline).

| TABLE 1. THE NINE STANDING COMMITTEE MEMBERS’ AREAS OF RESPONSIBILITY. |
|------------------|-------|-------|-------|-------|-------|
| M&F | P&S | Ad. | UF | PROP. | PA |
| Hu, Xi | Wen | Jia | Li Cc | Hu, Xi |
| Wen | Zhou | Li Kq | - | - | He |

Members of the PBSC conduct direct sectoral supervision through an institutionalized body such as a committee (委員會 weiyanhui) (e.g., the Central Military Commission (CMC), the Central Commission for Discipline Inspection (CCDI), or the Political & Legal Affairs Committee) or a non-standing organ such as a Central Leading Small Group (CLSG) (中央領導小組 zhongyang lingdiao xiaozu) (e.g., the Financial & Economic Affairs CLSG, the Foreign Affairs CLSG, or the CLSG for Constitutional Amendment). Each of these bodies is made up of ordinary Politburo, Central Committee, and CCDI members, who almost invariably are also high officials in the State organs and agencies. For example, vice-premiers, state councilors, ministers, top members of the NPC, Presidents of the Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP), the top brass of the People’s Liberation Army (PLA), and provincial and mass organization leaders are all concurrently members of the Central Committee (some even of the Politburo), thus framing a pervasive institutionalized system of “dual-hatted” officials, or cadres (幹部 ganbu), also called, after former USSR & CPSU, nomenklatura.

This system of sectoral division for purposes of management (歸口管理制度 guikou guanli zhidu), which perpetuates the “Party manages, State executes” principle (黨管國辦 Dang guan Guo ban), is an internal mechanism that does not appear on formal organizational charts of the Party, government, or military, which instead feature the more general frameworks envisaged by Party and State Constitutions.

But how does the Party ensure that policies and decisions are followed by 76 million Party members and over 1.3 billion PRC citizens? General policies and strategies are developed in a plethora of Party meetings, gatherings, and study sessions, endorsed as Party theses (黨的主張 Dang de zhuzhang) by the Central Committee and occasionally by the Party Congress. These policies and strategies are then sent to the legislative and executive agencies through the respective organ’s Party group (黨組 dangzu) for approval. These policies and strategies are eventually turned into new constitutions, constitutional

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30. See Figure 2 and Table 2, supra, for details on permanent bodies.
31. For example, Hu Jintao is the General Secretary of the CPC, President of the PRC, and Chairman of the CMC; Wu Bangguo is ranked second in the PBSC and is Chairman of the NPC; Wen Jiabao is ranked third in the PBSC and is Premier of the State Council; Jia Qinglin is ranked fourth in the PBSC and is Chairman of the CPPCC (China’s only consultative and almost powerless liberal “upper house,” composed of a majority of non-CPC members, democratic parties, mass organizations, and intellectuals); Xi Jinping is ranked sixth in the PBSC and is Vice-President of the PRC in charge of the Secretariat and Taiwan affairs; He Guoqiang is ranked eighth in the PBSC, is the CCDI Secretary, and top anti-corruption official; and Zhou Yongkang is ranked ninth in the PBSC and is in charge of security and justice issues. The most remarkable current exception is Li Changchun, “The Propaganda Czar,” who holds no position in State or Party standing organs.
32. See Figure 2.
33. See Figure 3.
35. See 新中國成立60年來中國共產黨黨員增加16倍 總數近7600萬名 Xin Zhongguo chengli 60 nian lai Zhongguo gongchandang dangguan zengjia 16 bei zongshu jin 7600 wan ming [In 60 years after the Establishment of the New China the Number of CPC Party Member has increased 16 times: the amount is close to 76 million], available at http://news.xinhuanet.com/politics/2009-06/30/content_11626985.htm (last visited Feb. 29, 2010).
37. See Figure 1, infra (exemplifying the relationship between Party committees and Party groups in State organs at the same level).
38. Approval is not always given without mild unrest and adjustments by the People’s Congresses. In recent years, the NPC and provincial PC seem to have become less subservient to higher dictates, as exemplified by their uneasiness towards the Three Gorges Dam, low approval rates of SPP and SPC reports, and poor support for some elected officials, among other things. See generally CAI DINGJIAN, 第五卷 Zhongguo renmin daibiao dahui zhidu Zhongyang wu renmin daibiao dahui zhidu [THE INSTITUTION OF THE PEOPLE’S CONFERENCE IN CHINA] (Beijing, 2003)
amendments, legislation, and regulations (i.e., the Will of the State (國家的意志 Guojia de yizhi)) at various levels of the government. The same means are employed for mass organizations.

The various agencies comply with the legislation and regulations for several reasons. First, CPC members comprise a comfortable majority in all elected bodies and among cadres (the “Party leads/manages cadres” principle 党管幹部 Dang guan ganbu). Second, a complex network of interconnected Party organizations supervise government agencies and directly or indirectly report to the highest echelons. Such organizations include Party committees at all levels, discipline inspection committees, and Party groups and organic committees. Finally, the extensive propaganda work and two major organizational principles, Democratic Centralism (民主集中制 minzhu jizhong zhi) and “double-dependence” (or dual leadership) (雙重領導 shuangchong lingdao), play a key role in securing the cohesion of the entire system.

Judiciary and law enforcement agencies fall directly within the responsibility of the Political & Legal Affairs Committee and the Comprehensive Management of Social Security Committee (CMSSC), both headed by Zhou Yongkang and composed of the Presidents of the Supreme People’s Court & Procuratorate, the Ministers of Public Security, Justice and State Security, and officials from the anti-Falungong “office 610,” among others.

The only sector where the Party’s actual rule is not even half-hidden is the crucial military sector. Within the military, the will of the Party reigns supreme, not only by virtue of the identical Party and State Central Military Commission (CMC) (中央軍事委員會 Zhongyang junshi weiyuanhui) and usual

![Figure 1. PARTY COMMITTEES & PARTY GROUPS © Delmestro 2007](image-url)

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40. Because the Party controls electoral procedures at every level, with the possible exception of Townships, this is not an extremely difficult task. See generally Hsu Szu-Chien, 徐斯儉, 中國大陸城市基層民主與城市治理的民主化意涵 Zhongguo dalu chengshi jiceng minzhu yu chengshi zhili de minzhuhua yihan [Democratic Implications of Mainland China’s Urban Grassroots Democracy and City Governance], in CHU HSIN-MIN, 中國大陸城市基層民主研究, Zhongguo dalu chengshi jiceng minzhu yanjiu [STUDIES OF URBAN GRASSROOTS DEMOCRACY IN MAINLAND CHINA] (Taipei, 2004).

41. The “Office of Personnel” for the entire Party-State is the CPC Central Organizational Department. See generally Table 2, infra.

42. The Democratic Centralism organizational principle enables internal debate within the Party, provided strict obedience to the will of higher levels is maintained. The “double-dependence” organizational principle (of which Figure 1 is an attempted exemplification) guarantees the internal cohesion of the Chinese organizational fabric.

43. See http://www.chinapeace.org.cn/2006-07/26/content_1377.htm (last visited Feb. 29, 2010) (describing the Political & Legal Affairs Committee); see also The Official Website of the Supreme People’s Court, available at http://www.court.gov.cn/mien/1/200803190002.htm (last visited Feb. 21, 2010) (confirming that the “Chief Justice” of the PRC, Wang Shengjun, has to report to this committee, as its Secretary General and deputy-director of the CMSSC).

44. The most prominent example of the “One Organ—Two Signboards” (一套機構兩塊牌子 yi tao jiguan liang kuai paizi) arrangements in
Party committee and political office systems, but also by the institution of the Party at every level and in every unit of the People’s Liberation Army (PLA) (中國人民解放軍 Zhongguo renmin jiefangjun), People’s Armed Police (PAP) (中國人民武装警察部队 Zhongguo renmin wuzhuang jingcha budui), and of Political Commissars (政治委員 zhengzhi weiyuan or 政委 zhengwei). Political Commissars report to the General Political Department (GPD) (總政治部 Zong zhengzhi bu) of the PLA, buttress civilian ultimate leadership by curbing military independence tendencies and reducing the risk of coups d’état, for example, and ensure that loyalty to the Party and adherence to its will is absolute.

B. Internal Party Regulations

The Party employs a vast and complex set of regulations to run its gigantic machinery, and actually anticipated the State’s lawmaking in 1990 when it enacted the Interim Regulations on Procedures for Establishing Internal Party Regulations (IRPEIPR) (中國共產黨黨內法規制定程序暫行條例 Zhongguo gongchandang dangnei fagui zhiding chengxu zanxing tiaoli), a concise version of “Legislation Law.” This document sets a strict hierarchy of sources of (Party) Law, with the Party Constitution at its apex, and a series of enacting procedures to be followed. The IRPEIPR confirms the People’s Liberation Army’s special position, even in Party “legal” matters (Article 31), but does not shed much light on the (legally speaking) enigmatic Joint Documents by the Central Committee and the State Council (中共中央國務院聯合發佈文件 Zhonggong zhongyang guowuyuan lianhe fabu wenjian). Nonetheless, the creation of the IRPEIPR can be considered a milestone in the open process of institutionalizing the Party itself and the building of an internal Party “Rule of Law” system somehow ahead of the greater one of the People’s Republic of China.

Given the undeniable centrality of the Party in the PRC in comparison to the relatively little room allotted to it in State laws, statutes, and regulations, and given the pervasiveness of the Party’s internal regulations system, it can be guessed that the latter represents an autonomous and parallel normative system, certainly not justiciable by the State courts of Law; a parallel system that certainly interacts with the State normative system (perhaps as its “backup” system?) in interesting ways.

IV. CONCLUSION

Thanks to its legal enshrinement in the Constitution and basic, systemic laws and statutes, and to the numerous cross-references to the Socialist System and to the Party political documents (mainly the Party Constitution) and resolutions, the CPC is able to exert its ideological, political and organizational leadership over the entire political, social, and, to a lesser extent (albeit willingly), economic spheres within the PRC.

The non-extensive, but still existing, reference to the Party Constitution in important pieces of legislation suggests that the role of so-called “soft law” in the PRC deserves much consideration. Doubts can arise on how “soft” Party provisions and regulations, provided their great influence and strength, can possibly be an extreme persuasiveness bordering on a proper binding force. Party internal regulations appear to be a corpus of provisions that legal doctrines are not entirely able to conceptualize with suitable categories. It might be necessary to devise a new ad hoc category to specifically delimitate Party norms in a peculiar system like the Chinese one.

When considering this, I would suggest the neologisms nomopoiesis (noun) & nomopoietic
The use of these words would allow us to define soft law and hard law also in terms of different degrees of *vis nomopoietica* (*nomopoietic potency*). The CPC could thus be regarded as the single “corporate” political entity with the soundest *nomopoietic* (rule-creating) abilities and functions within the PRC; abilities and functions only partially formalized in State hard laws and regulations.

What still needs to be understood is whether and, if yes, how, a diminished formal “presence” of the Party in the normative documents of the State entails a parallel lowering of the level of the actual influence it commands over the political system as a whole. Observation suggests that even if this happens, it happens much more slowly than the updating process of the formal normative framework.

One famous dictum by Albert Venn Dicey says: “[t]he rule of law is in effect when the State becomes just another actor.” This statement is probably correct and agreeable, unless the film director (and/or the producer) is the Party.

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51. I have been thinking about a single term that could describe the degree or ability of a certain entity to create norms (and that could substitute for the expression “norm-creative”), and I believe that this compound of the Greek roots *nomo-* (meaning law or rule) and *poiesis-* (meaning creation or production) could accomplish the task. It refers to the production/creation of norms and to the ability of producing/creating norms. An example of an already existing word of this kind is *biopoiesis*, which refers to the origin of life from inorganic matter.

52. Jurists would notice and point out the existence of the terms *binding* and *binding force* (in English) and *vincolante* and *vincolatività* (in Italian, and similar terms in other neo-Latin languages). The difference between these terms and *nomopoietic force* is that the former terms describe the formal, or “official,” “strength” of a provision (say, a regulation of the State Council), while the latter term captures the actual vigor of it, and its ability to be obeyed. An administrative regulation will be in force until formally substituted, repealed by a higher source of law, or struck down by law courts, but its *vis nomopoietica* would vanish long before, precisely when the gap between the content of said regulation and that of the new or higher one (law, political document signaling a new deal, or different approach) becomes apparent to agencies and people. The provision is thus struck down by the courts or simply not obeyed as soon as the disappearance of the *vis nomopoietica* is detected by those expected and trained to do so.
Figure 2. ORGANIZATIONAL CHART OF THE CPC © Delmestro 2008

CPC NATIONAL CONGRESS
(2219 delegates)

(CPC) CMC (11 m.)
Chm.: Hu Jintao,
V.Chr. (2)

CENTRAL COMMITTEE
(204 m., 167 a.m.)
General Secretary: Hu Jintao

CENTRAL POLITICAL BUREAU
(25 m. incl. PSC, no a.m.)

STANDING COMMITTEE (9 m.)
Hu Jintao, Wu Bangguo, Wen Jiabao, Jia Qinglin, Li Changchun,
Xi Jinping, Li Keqiang, He Guoqiang, Zhou Yongkang

CENTRAL SECRETARIAT
Xi Jinping, Liu Yunshan, Li Yuanchao,
He Yong, Ling Jihua, Wang Huning

PROV. LEV. PARTY CMTs
(Munic., Prov., Reg.)

AREA LEV. PARTY CMTs
(Cities, Districts)

COUNTY LEV. PARTY CMTs
(Counties, Townships)

PRIMARY ORGs (Ent., Schools, etc)
Branch Org. (min. 3 m.)Gen. Branch Cmt. (50 m.)Primary Cmt. (100 m.)

CCDI (127 m.)
Sec: He Guoqiang,
D.Sec. (8), SC (19)

ORGANS UNDER THE CC
- Departments, Committees, Offices and Consultative Organs under the CC (14)
- Central Dispatched Organs (2)
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- Central Leading Small Groups and Provisional Organs (various)

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Abbreviations:
a.m. Alternate Member
Admin. Administration
App. Appoints
Asc. Association
Aut. Autonomous
Br. Branch
CC. Central Committee
CCDI. Central Commission for Discipline Inspection
Chm. Chairman
Chw. Chairwoman
CMC. Central Military Commission
Cnt. Committee
CPPCC. Chinese People’s Political Consultative Conference
D. Deputy
Dir. Director
Dist. District
Dr. Directs (lingdao, stronger than zhidao)
Ed.Ch. Editor-in-Chief
El. Elects
Ent. Enterprise
Est. Establishes
HPC. High People’s Court
HPP. High People’s Procuratorate
Incl. included
IPP. Intermediate People’s Procuratorate
I.e. Leads (zhidao, weaker than lingdao)
Lev. Level
m. Member
Med. Mediation
Mil. Military
Org. Organization
PC. People’s Court
PG. People’s Government
Pr. Proposes
Pref. Prefecture
Pres. President
P.’s People’s
Rm. Removes
SC. State Council, Standing Committee
Sec. Secretary
SPC. Supreme People’s Court
SPP. Supreme People’s Procuratorate
Sup. Supervise
Twns. Township
V. Vice