

## **PART III**

### **INSTITUTIONAL LEGAL REFORM: CONTRIBUTION TO DEMOCRATIZATION**



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**THE “DEMOCRATIZATION” OF  
CHINA’S LAWS AND POLICIES  
TWO STEPS FORWARD ONE STEP BACK  
FROM REFORM AND TIANANMEN  
TO FALUN GONG**

ONLY A FEW YEARS AGO, the idea of putting “China” and “democracy” together in the same sentence would have been inconceivable to many. Nowadays “Democratization” is a term made more applicable to China, due to the uncoupling of democracy from solely the idea of direct political participation and elections. To even begin speaking about democratic practice in China, it must be acknowledged that: 1) the protection of fundamental freedoms is a step in the direction of democratic practice, and 2) democracy in an authoritarian, one-party state must begin with limiting state power and establishing the rule of law.<sup>1</sup>

The aim of this paper is to discuss the “democratization” of China primarily as a function of the aforementioned endogenous changes, as well as, less crucially, exogenous pressures, that began as ideas to pre-

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1 Guillermo O’Donnell for one has proposed that a mature democracy is not just about elections and the goal for political development is not simply to institutionalize competitive elections. Rather, just as important are elements of the protection of individual rights, and the limitations of state power. See Guillermo O’Donnell, “Horizontal accountability in new democracies” in Andreas Scheduler, Larry Diamond and Marc F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Boulder, CO: Lynne Reiner Publishers, 1999), pp 29-51.

vent another Cultural Revolution disaster. Changes in ideas of “democratization” in China can be traced through an examination of emergent ideas of state power versus people’s interests in China, as has been debated in intellectual circles. It will also be suggested that the real test of the progress of democratic practice in China was the Communist Party of China’s (CCP) response to the recent Falun Gong issue. The thesis presented in this paper proposes that using the above definition, China has made a great leap forward in democratic practice, especially after the Tienanmen incident in June 1989. However, this progress has taken a major step back with the handling of the Falun Gong crisis.

### **SIGNIFICANT IDEAS THAT BEGAN CHINESE DEMOCRATIZATION AFTER THE CULTURAL REVOLUTION**

While exogenous forces have played their part in pressuring China towards democratization -- not the least of which was the 12 million US dollars of state funding in 2005-6 dedicated to the task, and the requirements of conforming to the norms of international institutions such as the World Trade Organization (WTO) -- the beginnings of China’s democratization were endogenous in nature. The milestones that chart the progression of ideas of democracy include what Minxin Pei termed in 1995 as “three mini-waves of spontaneous pro-democracy activity”. These include the Democracy Wall movement of 1978-79, the student demonstrations of 1986-87, and the Tienanmen Square movement of 4 June 1989.<sup>2</sup> More recently, the internationalization of the Falun Gong issue in China has been another test of China’s fledgling pro-democratic processes.

Events in the late 1970s, combined with a driving need to learn from the Cultural Revolution disaster, led Chinese intellectuals in the 1980s to become preoccupied with the issue of political reform. Yijiang Ding sums up the main intellectual contentions of that time in this way:

“In the early 1980s, the nature of the socialist society and the basic functions of the socialist state began to be raised as issues in the scholarly discussions. The disappearance of the enemy classes triggered a series of theoretical developments. ‘The people’ changed from a social class to a nearly all-inclusive group, which was identical to ‘society’. Class struggle was replaced by ‘contradictions among the people’ as the main dynamic for social change”.<sup>3</sup>

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<sup>2</sup> See Minxin Pei, “‘Creeping Democratization’ in China”, *Journal of Democracy*, Vol. 6, 4(1995):65-79, p 67.

<sup>3</sup> Yijiang Ding, *Chinese Democracy after Tienanmen* (Vancouver, Toronto: UBC Press, 2001), p 9.

This radical change -- from seeing the population as a homogeneous social class to a heterogeneous social group with differentiated interests -- consequently changed the primary function of the state from "dictatorship over the enemies to managing public affairs for the whole society".<sup>4</sup>

Several key ideas sparked during this period of intellectual debate are worth highlighting. Firstly, intellectual debate in the late 1980s focused on the issue of the changing function of the government, leading to a call to give power back to society, and to the important concept of "small government and big society" (*xiao zhengfu, da shehui*). A prominent example of how this intellectual discussion was paralleled in policy was the government's decision to make Hainan Province, then known as Hainan Dao, into a Special Economic Zone, where certain limitations of governance and special freedoms were put in place.<sup>5</sup>

Secondly, the prominent ideas in the 1980s were not only that the state and the people should be differentiated, but that the interests of the people may not be as unified as once thought. As a result of increasing pressure from intellectual circles, the Communist Party's Central Committee was forced to acknowledge that within the various social groups that existed among the peoples and regions, there existed "a certain lack of complete unity of interests". This was, in fact, an admission that Stalin's assumption that a highly unified state without conflicts of social interest could be realized, once the "enemy classes" had been eliminated, was an erroneous one.

The birth of the concept of the limitation of state power, and the idea that the people themselves may have different and conflicting interests, created a vacuum into which the development of civil society and the rule of law fit perfectly.

### **RECENT PROGRESS IN DEMOCRATIC PRACTICE: FREEDOM OF ASSOCIATION AND CIVIL SOCIETY IN CHINA**

The coming into power of the Chinese Communist Party (CCP) in 1949 brought into being socialist public ownership, a planned economy and a highly structured and centralized administrative system. This effectively snuffed out most of the civil organizations which had been established prior to 1949, such as clansmen's associations, ancestral halls and civil corps. The only ones that remained were those that were of use to the CCP and, of course, the mass organizations

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4 Ibid.

5 For more detail, see Gao Changyun and Shi Yuan "The Hainan Model of 'Small Government and Big Society'", *Hainan Kaifa Bao*, 23 Sept 1998.

which the CCP itself set up, like the trade unions, and those set up for the youth.<sup>6</sup>

The recent resurgence of civil society in China has been attributed to the deliberate “reorganization of society” necessitated by economic reform and development. This has led to “the erosion of the work unit systems as a form of social organization within the state’s vertical control structure” as more and more workers left the state sector for the non-state sector.<sup>7</sup> Instead, this vertical structure has been replaced by horizontal groupings in associational activities, which have been created to fill the need for new group identities and interests, such as those resulting from the migration of peoples from different regions in China.

The exponential growth of civil society in China may be likened to the onset of plant growth in a forest after a drought is broken by the first rains. From a dismal 44 national associations in the 1950s, the number of national associations in existence in China rose sharply to 1,600, along with 2,000 local associations. And while the Tiennamen incident of 1989 took its toll on the growth of civil society, in 2004, there were 288,936 associations registered, and in 2006, 317,000. Some estimate that there could be as many as 3 million unregistered associations in China today.<sup>8</sup> The recognition of the need for a more robust civil society may have emerged from an endogenous appraisal of the Tiennamen crisis itself, given that afterwards a more “positive interaction” between state and society was recommended, and the two-step development of civil society was the path suggested by certain intellectuals in China. In this model, civil society would develop at first in the private sphere and then expand into the public sphere, potentially enabling a tentative step towards “democratic politics”.<sup>9</sup> It is important to note that while the most obvious driver for the establishment of civil society in China is economic reform, the existence of a climate of political tolerance that supports such change cannot be underestimated.

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6 See Keping Yu, “Changes in Civil Organizations and Governance in China’s Rural Areas: A Case Study of Dongsheng Village, Changqiao Town, Zhangpu County, Fujian Province”, 2000. China Centre for Comparative Politics & Economics. Available at <http://www.ids.ac.uk/ids/civsoc/final/china/chn1.doc>

7 Ding, *Chinese Democracy after Tiennamen*, pp 49-50.

8 Ying Ma, “China’s Stubborn Anti-Democracy”, American Enterprise Institute for Public Policy Research, 22 Feb 2007. Available at [http://www.aei.org/publications/filter.all,pubID.25663/pub\\_detail.asp](http://www.aei.org/publications/filter.all,pubID.25663/pub_detail.asp)

9 Deng Zhenglai and Jing Yuejing, “Building Civil Society in China”, cited in Ding, *Chinese Democracy after Tiennamen*, p 37.

## **CIVIL SOCIETY ENTRENCHED IN CHINESE LAWS AND POLICIES**

A significant indicator of progress toward a truly legitimate civil society in China has been the legal reforms that have taken place with respect to Chinese people's freedom of association. While this is a right theoretically guaranteed to every Chinese citizen under the Constitution, in practice approval for exercising his right has been difficult to come by. Since the revival of discussions on civil society, salient changes have taken place in a positive direction.

The new understanding of people's differentiated interests that began in the 1980s has in fact led to concrete changes in the law. Many of the prohibitions that accompanied the CCP's coming into power have been lifted. Previously, in 1950 and 1951, two sets of rules and regulations were put in place by the Government Administration Council and the Ministry of Internal Affairs. These were the "Interim Regulations on Registration of Social Associations" and the "Detailed Rules for Implementation of the Regulations" respectively. These rules and regulations were explicitly designed to examine existing civil associations, banning those that were not favorable to the Communist administration, and putting those that were useful under the management of government departments. However, the basic underlying policy was to suppress the development of civil and social associations.<sup>10</sup>

In contrast, in June 1998, the "Bureau for the Management of Civil Organizations" was set up, officially recognizing the existence of civil society in China. Similarly, the "Regulations on the Administration and Registration of Social Associations" that were put in place in 1998 by the State Council -- a revised version of the regulations promulgated in 1989 -- were established alongside "Regulations on Management of Civilian-run Non-enterprise Units". While the regulations remained stringent, this acceptance of non-government controlled associations was one more landmark event for civil society in China, as it formally transformed the strict government-controlled system of the administration of civil organizations to allow for more autonomous associations.

There now exists in China roughly three kinds of civil organizations in two distinct categories. The first category includes the "official" organizations, which are government-run, and the "semi-official" organizations.<sup>11</sup> The semantic differences between these two types of or-

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10 Liu Junning, "Civil Society and Limited Government – Take Chinese Chambers of Commerce for Example", 2000, Research Report. Available at <http://www.ids.ac.uk/ids/civsoc/final/china/chn2.doc>

11 The delineation of "official", "semi-official" and "popular" associations has been discussed in, for example, Wang Ying, "The Intermediary Level of Chinese Society:

ganizations are often negligible because the government department appointed to supervise these “official” and “semi-official” organizations or associations often has the power to unilaterally appoint (or dismiss) the leaders of these organizations, and often exerts control over the organization’s activities. A large percentage of these controlled associations have a political and /or economic function, such as the Communist Youth League, the Private Entrepreneurs’ Association and the Trade Union.

Of more interest to this analysis of democratic practice are the “popular associations” which, in practice, enjoy a high degree of autonomy. Moreover, the erosion of government control at the township level makes it possible for even the organizations designated as “semi-official” to, at this level, enjoy a greater degree of freedom along with the “popular” associations. While many of the “popular” organizations are viewed as less of a “risk” to political stability because their primary function is cultural or intellectual, even economic-cum-political associations in some smaller states and counties now have the freedom to voice the interests of their members.<sup>12</sup> These new freedoms given to civil society in China have also meant an unprecedented increase in citizen protests -- a phenomenon that would have been severely punished prior to this transformation. From the mid-1990s onwards, the rise of protests in China has been well-documented. The Chinese Ministry of Public Security reported 10,000 protests throughout the country in 1994, 58,000 protests in 2003, 74,000 in 2004, and 87,000 in 2005. Ordinary citizens now have more wherewithal to demand that the central government to address their grievances on everything from corruption to poor health care. In 2004, 10 million petitions were filed requesting intervention from Beijing; in 2005, this number rose to 30 million.<sup>13</sup>

Furthermore, in many cases, civil organizations now have the autonomy not only to encourage their members’ active participation in the internal issues of the organization or association, but there is also a growing awareness of the relevance of political issues and the motivation for members to participate in such issues. This has led to increased participation in elections at grassroots levels and in rural

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Development of Associations and the Rebuilding of the Organizational System”, *Zhongguo Shehui Kexue Jikan* (Chinese Social Science Quarterly), no. 6 (1994), p 25.

12 Christopher E. Nevitt, “Private Business Associations in China: Evidence of Civil Society or Local State Power?”, *The China Journal*, no. 36 (July 1996):25-43.

13 Statistics from Ying Ma, “China’s Stubborn Anti-Democracy”, American Enterprise Institute for Public Policy Research, 22 Feb 2007. It is no wonder that the Chinese government now fears “participation crises”. In time this may prove a real barrier to further political liberation.



areas. The extent to which members of organizations are encouraged to participate in elections includes compensations and subsidies provided by the organization for such political participation. The success of these methods is evident in the fact that in rural areas, 95% participation in elections is often achieved.<sup>14</sup> The idea of grassroots elections will be further examined later on in this paper.

### **FURTHER PROGRESS IN DEMOCRATIC PRACTICE: SIGNIFICANT STEPS TOWARDS RULE OF LAW AND HUMAN RIGHTS IN CHINA**

Other encouraging evidence of positive change in the democratic practice in China has been the establishment and strengthening of rule of law. Franz Michael has this to say about the concept of the rule of law:

In the Western legal tradition, law is applied equally to all; it is binding on the lawgiver and is meant to prevent arbitrary action by the ruler. Law guarantees a realm of freedom for the members of a political community that is essential to the protection of life and human dignity against tyrannical oppression...<sup>15</sup>

The idea of the rule of law is very much a Western concept whose main purpose is to regulate the behaviours of individuals in general, and government officials in particular, by prohibiting the abuse of power. The rule of law implicitly assumes the existence of human rights, increasing the power of the individual over that of the state. However, this is a clear juxtaposition to traditional Chinese legal thought, where an instrumental approach to law predominated -- the law was a *tool* through which the government ruled the governed. Moreover, in traditional Chinese thought, the Emperor (or party leader) was himself above the law, and indeed his every decree or wish was the law itself. Inherent in the Chinese Socialist concept of law and *zheng-fa xitong*, there is the idea of *linghouxing* or flexibility, which allows the state, or more specifically, the state leader to interpret the law (most often according to his own or his party's interests).

The recent push for the establishment of the rule of law in China that leans more towards the Western concept is driven both exogenously and endogenously by the economic imperative. To begin with,

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14 See Yu Keping, "The Emergence of Chinese Civil Society and Its Significance to Governance", 2000. Available at [www.ids.ac.uk/ids/civsoc/final/china/chn8.doc](http://www.ids.ac.uk/ids/civsoc/final/china/chn8.doc)

15 Franz Michael, "Law: A Tool of Power" in Yuan-Li Wu et al. *Human Rights in the People's Republic of China* (Boulder, CO: Westview Press, 1988), 33-55, p 33.

favoring a market economy over the previous planned system meant that laws became increasingly vital in regulating China's economic activities. Furthermore, the central government was forced to devolve financial and fiscal power, property rights and the material allocation of power to local governments and individuals.<sup>16</sup> At the same time, with the new open-door policy came the need to attract foreign investment and the confidence of foreign investors had to be won by establishing an impartial and consistent legal system. The opening up of the economy to the international community is indeed a two-way street, and the established market economies of the West, to which China dearly wished to have economic ties, also exerted external pressure on China to adhere to international norms. An example of this is the stipulation of a judicial review system<sup>17</sup> and the changes in commercial laws and practices to which China was subjected with its ascension into the World Trade Organization.

### **FROM IDEAS OF DEMOCRATIZATION TO ITS IMPLEMENTATION: LEGAL REFORM IN CHINA**

However, given China's legal history, the recent progress made in the rule of law since the 1982 Chinese Constitution is nothing short of astounding. This is particularly so with regards to laws that specifically curb the abuse of state power over the individual. In 1991, a white paper was published by the State Council entitled "The Situation of Human Rights in China". This, for the first time, was a formal acknowledgment of the concept of Human Rights by the Chinese government. Very surprisingly, out of an astounding 429 laws passed in China between 1991 and 1997,<sup>18</sup> the Chinese government has paid specific attention to the legal rights of citizens. For example, October 1990 saw the enactment of the Administrative Litigation Act which gave citizens legal recourse in the onset of a State abuse of power. In May 1994, China enacted the State Indemnity Law, which stipulates that "where a government agency or its personnel invades the legitimate rights and interests of a citizen, legal person or other organization, resulting in injury while performing

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16 See Zheng Yongnian, *Will China Become Democratic? Elite, Class and Regime Transition* (Singapore: Marshall Cavendish International, 2004), p 56.

17 For a discussion of this, see Martin G. Hu, "WTO's Impact on the Rule of Law in China", *Mansfield Dialogues in Asia*, 2001. Available at [www.mansfieldfdn.org/programs/program\\_pdfs/08hu.pdf](http://www.mansfieldfdn.org/programs/program_pdfs/08hu.pdf)

18 From the *Complete Collection of Laws, Regulations and Rules in China* (Beijing: Beijing University Press for The Center of Legal Information and the Beijing Zhongtian Software Company, 1997).

its functions, the sufferer shall be entitled to obtain state indemnity".<sup>19</sup> Furthermore, in March 1996, China put in place the Law on Administrative Punishments that provides mechanisms for investigating and punishing criminal offenses that take place not only in state administrative, economic and judicial agencies, but those that take place within the leadership organs of the CCP itself.<sup>20</sup> Criticisms of the Chinese legal system stating that only half of China's laws were enforced have some basis in truth, but nonetheless, the enactment of the 1990 Administrative Litigation Act produced a sharp increase of lawsuits against the Chinese government (about 27,000 a year in the early 1990s), of which the government's decisions were dismissed in an unprecedented 19% of the cases and overturned in 1.8% of the cases.<sup>21</sup>

While still very much under fire from Human Rights watchdogs over the Tienanmen incident, even these agencies have had to admit that the Chinese government has in fact, in several instances, upheld the law and human rights. In some cases, the CCP has shown an improved treatment of political prisoners. Significantly, there has been no death sentence for a political prisoner since the reform, which may be construed as an important break from past practices. At the same time, 1997 revisions to legislature abolished the "counter-revolutionary" offense from Chinese criminal law, replacing it instead with a new crime that concerned state security. Both external pressures and domestic changes to the legal system have led to leniency with regards to political prisoners from 1989. For example, in July 1997, Tang Yuanjuan and Li Wei, both of whom had been convicted of political crimes for their activities at the Tienanmen protests, were released from prison. The Jilin provincial High Court set an important precedent by nullifying their conviction (one of two) for "counter-revolutionary" offenses and extending this decision to two other prisoners. At the time, Tang and Li had already each served an 8-year sentence, so the overturning of the "counter-revolutionary" conviction allowed them to be released without serving out the rest of their 20 and 13-year sentences respectively.<sup>22</sup>

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19 Zhenmin Wang, "The Developing Rule of Law in China", *Harvard Asia Quarterly*, Vol. 4. Available at <http://www.asiaquarterly.com/content/view/88/40>

20 Ibid.

21 *Democracy and Law* (Shanghai) no. 1 (1995), p 6.

22 "People's Republic of China: Nine Years After Tiananmen – Still a 'Counter-Revolutionary Riot?'" An Amnesty International Report, 17 Nov 1998. Available at [http://web.amnesty.org/library/pdf/ASA170111998ENGLISH/\\$File/ASA1701198.pdf](http://web.amnesty.org/library/pdf/ASA170111998ENGLISH/$File/ASA1701198.pdf)

### **THE FALUN GONG ISSUE: A DIFFICULT TESTING GROUND FOR DEMOCRATIC PRACTICE IN CHINA**

Falun Gong, also known as Falun Dafa, is a Chinese spiritual movement founded in 1992 by Li Hongzhi (1951–). Avoiding a religious mantle, Li and his followers understand Falun Gong as a “cultivation system,” based on principles of *qigong* that are widely accepted in China. Falun Gong rapidly became very popular in China, attracting millions of followers in the years immediately after its founding. Primarily out of fear of mass social rebellion and disorder, the CCP tried to suppress the Falun Gong movement. The issue came to a head in the form of a massive protest in Beijing by Falun Gong practitioners on the 25<sup>th</sup> of April, 1999, which led the Chinese government to take even stronger measures against the movement, unfortunately using the law as a tool to this end.

### **THE FALUN GONG ISSUE: A RETRACTION OF FREEDOM OF ASSOCIATION**

Under the leadership of Li Hongzhi, the Falun Gong were careful not to fall under the existing state law on religion, given that only 5 major religions were sanctioned, and within these religions, only certain practicing organizations were considered state-approved and properly registered.<sup>23</sup> Instead, the Falun Gong as a *qigong*-related association, was in a sense affiliated with the State Sports Administration. At the protest on April 25<sup>th</sup>, 1999, the Falun Gong insisted on being recognized as a state-sanctioned association, and as early as 1993, The Qigong Research Association of China (QRAC) issued the Beijing Falun Gong Research Association with a “QRAC Accredited Qigong School Registration Certificate” that given official recognition to the Falun Gong Research Association as an “academic organization.” The range of operations were “theoretical studies and research”, “promoting practice”, and “consultative services” throughout all of China.<sup>24</sup>

Despite the new laws in place that gave freer rein to associations, as discussed earlier, the CCP chose to violate association regulations as part of a two-pronged strategy<sup>25</sup> to suppress the Falun Gong. On July 22<sup>nd</sup>, 1999, the Ministry of Civil Affairs declared the Falun Gong to be an illegal organization, stipulating that it had failed to regis-

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23 Bryan Edelman and James T. Richardson, “Falun Gong and the Law: Development of Legal Social Control in China”, *Nova Religio*, Vol. 6, 2(2003):312-331, p 321.

24 “The Truth Behind the 25 April Incident (abridged)”, 21 Apr 2001. Available at <http://www.faluninfo.net/SpecialTopics/april25abridged.html>

25 The other being the violation of “moral virtue” which will be discussed later in this paper.

ter under Article 7 of the November 1989 Regulations Governing the Registration and Administration of Public Organizations. The Falun Gong was also accused of violating article 19(3) of these regulations, which forbade the creation of regional subsidiaries.<sup>26</sup> This was further endorsed by Li Baoku, the Chinese Deputy Minister of Civil Affairs, who made an official statement on these violations, by the Falun Dafa Research Society, of regulations on registration within the various levels of civil affairs organization.

This was clearly a step backwards from the legal developments that had ensued post-Tiennamen. Special regulations on public organization, assembly and demonstration were passed by the Standing Committee of the National People's Congress on October 31<sup>st</sup>, 1989, four months after the Tiennamen incident. This was part of the implementation of a policy related to the 1982 State Constitution's provision on freedom of association, which anticipated and even served to encourage an increase in social, economic and cultural activities pursuant to Deng's program that required both the democratization and legalization of state structures.<sup>27</sup> Despite leaps in the liberalization of laws with regards to civil society, in the face of a real test, the Chinese government showed itself unable to resist exerting full societal control.

### **THE FALUN GONG ISSUE: A REVERSION TO STATE INSTRUMENTALISM IN LEGAL INTERPRETATION**

As noted earlier, the notion of law in the Chinese legal tradition is viewed as a tool by which the emperor or party leader, who, being himself above the law, dictates to his people, using the *linghuoxing* of the law to provide interpretations as he saw fit. The more recent socialist framework of legality also reflects this idea. The law, and the Chinese legal idea of *zheng-fa xitong*, rather than being an overarching concept that governs all, is instead an instrumentalist tool by which the state imposes guidelines of its own interpretation on the people, so as to protect society from "spiritual pollution" and "bourgeois liberalization", and which also ends up strengthening its dictatorship.<sup>28</sup>

In an interview with Jiang Zemin in September 1989, he was said to have admitted that one of the important changes as a consequence of the 1989 Tiennamen Massacre was that he had come to recogni-

26 "Falungong ban supported by law", *BR*, Vol. 42 37(1999), p 9.

27 "Commentary views public organization regulations", *Renmin ribao*, 9 Nov 1999. Cited in Roland C. Keith and Zhiqiu Lin, "The 'Falun Gong Problem': Politics and the Struggle for the Rule of Law in China", *The China Quarterly*, 175(2003):623-42, p 635.

28 Chih-yu Shih, *Collective Democracy in China* (Hong Kong: Chinese University Press, 1999), pp 40, 3-16.

ze the need for the rule of law in China, as opposed to traditional rule by the CCP -- rule of man.<sup>29</sup> This was more evident through the exponential increase in law reform in the subsequent years, especially after Deng Xiaoping's speeches demanding the "liberation of the mind" in 1992, which was essentially the turning point that broke the spell of caution after Tiennamen. However, the arrival of the Falun Gong situation, and the CCP's alarm at its own difficulties in curbing its spreading popularity, combined with international sympathy, led the Chinese government to utilize these same laws to put the brakes on recent political freedom. Jiang Zemin, on January 10<sup>th</sup>, 2001, once again linked the rule of law with the traditional Chinese "rule of man" way, by stipulating that "Ruling the country according to law and governing the country with high morals complement and promote each other. Neither (...) should be overemphasized to the neglect of the other."<sup>30</sup> This provided a morality grounds for interpreting the law.

Even as early as March 1999, the state constitution had been revised to give equal weight to the rule of law (*fazhi*) and the rule of virtue (*dezhi*).<sup>31</sup> This was a crime of which the Falun Gong could be conveniently accused. Xia Yong, from the CASS Institute of Law, stated that:

... the 'Falungong' organization and its activities have harmed the physical and psychological well-being, lives and security of property of 'Falungong' practitioners... they have used heresies such as... 'global explosion' to confuse practitioners, thus causing some practitioners to lose the ability to think, judge, and discriminate things normally.<sup>32</sup>

In deliberately casting the Falun Gong as a "heretical cult" that was a danger to society, the government was now able to persecute Falun Gong leaders and practitioners as having violated "state security" - - the new crime which replaced the "counter-revolutionary" crime in the 1997 revision of Chinese criminal law. While the new 1997 revision had a reference to "evil cults" in article 30, the severity of the crime was open to interpretation, and this interpretation, unfortunately, was provided by the Supreme People's Court and the Supreme

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29 See R.C. Keith, *China's Struggle for the Rule of Law* (London and New York: Macmillan & St. Martin's, 1994), p 16.

30 Jiang Zemin, 'On "Three Represents"' (Beijing: Foreign Languages Press, 2001), p 162.

31 Roland C. Keith and Zhiqiu Lin, "The 'Falun Gong Problem'", p 630.

32 "CASS Official Xia Yong on Falungong, rule of law", *Xinwenshe*, Beijing, 3 Aug 1999. Cited in Roland C. Keith and Zhiqiu Lin, "The 'Falun Gong Problem'".

People's Procuratorate on November 1<sup>st</sup>, 1999. This stipulated that the field of punishable behavior under article 300 was expanded to include "illegal groups that have been found using religion, *qigong*, or other things as camouflage... and deceiving people by molding and spreading superstitious ideas, and endangering society".<sup>33</sup> Furthermore, this interpretation refers to other cognate articles in criminal law, in order to invoke severe *criminal* punishment rather than *administrative* law punishment.<sup>34</sup>

This, taken jointly with the hastily passed "Decision on Banning Heretical Organizations and Preventing and Punishing Heretical Activities" on October 30<sup>th</sup>, 1999 by the Standing Committee of the National People's Congress, gave the CCP legal basis for its persecution of the Falun Gong. It also served to highlight China's reversion to state instrumentalism in the interpretation of the law, in which "Party leadership continues as a dominant theme".<sup>35</sup> This sudden halt on progress of the rule of law in China was made more evident in light of the differential treatment of cases from Tiennamen in 1989 and Falun Gong in 1999. While many cases from the Tiennamen situation made it to court (albeit belatedly), most cases relating to Falun Gong did not, ostensibly in a bid to deny the Falun Gong a platform for further publicity.<sup>36</sup>

### **CONCLUSION: HOPE FOR THE DEMOCRATIZATION OF CHINA AND GRASSROOTS ELECTIONS**

Recent liberation of political practice in China began with the idea of the need to set limitations on state power, and was driven by the imperative of economic reform and opening up of markets. Indeed, China has made undeniable progress both in its legal and policy-making mechanisms to grant its citizens more freedom of association and protection from the abuses of state power, under a vastly improved rule of law. However, when push comes to shove, the CCP was unable to see a way to implement these new democratic practices in the light of the "social threat" posed by the Falun Gong. The result of this is that China has taken two steps forward, and then taken a large step backwards in the realization of democratic practices.

Ironically, in spite of the larger internationalized issue of China's

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33 Edelman and Richardson, "Falun Gong and the Law", p 317.

34 Roland C. Keith and Zhiqiu Lin, "The 'Falun Gong Problem'", pp 638-39.

35 Pittman Potter, *The Chinese Legal System: Globalization and Local Legal Culture* (London and New York: Routledge, 2001), p 11.

36 Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge: Cambridge University Press, 2002), pp 99-101.

failure with regards to the Falun Gong, direct political participation has been quietly flourishing at the grassroots level. This has been made possible as result of the demise of CCP communes at the local level. A 1992 internal State Council report, which was “leaked” to the Hong Kong press, presented evidence that 30% of the CCP cells in rural China had “collapsed” or ceased to function, while another 60% of these were weak and barely functional.<sup>37</sup> This gap in rural governance has been filled by traditional lineage-based lines of authority and spontaneously formed village residents’ associations. As early as December 1982, the revised Constitution of China gave legal status to these village residents’ associations as grassroots civic organizations. This was followed by the formal support of the CCP for these associations, by passing the Organic Law in 1987, which saw two-thirds of Chinese provinces passing local legislation on village residents’ associations.

Moreover, since 1992, experiments in rural village-level self-governance have taken place in all 30 Chinese provinces. This sea of change in legislation, with the help of the pro-democratic activity of local associations, has been accompanied by a similar transformation in rural residents’ views on democratic practice – from initial suspicion to strong endorsement. A survey carried out in 1992 of 200 residents in 2 villages in the Fujian province reported that roughly 90% of the villagers believed that the head of the village council should be elected through a system of open voting and 15% of these residents wanted the right to vote on issues that affected their daily village living.<sup>38</sup>

The village-level elections scheme seems to be taking on a life of its own, matched -- albeit at a slower pace -- by government legislation. Recently, new laws have been passed regarding elections. Additional changes in 2004 saw the Standing Committee of the 10<sup>th</sup> National People’s Congress pass the amendment that all local people’s congresses at the township level should enjoy the same 5-year tenure afforded to congresses at higher levels. Furthermore, the new law states that candidates for elections may be elected, not only by political parties and organizations, but also by arbitrary groups of 10 or more voters. The law has also stipulated criminal-level punishment for bribery and hampering of the free exercise of electoral rights.<sup>39</sup>

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37 Reported in Hong Kong publication *Cheng Ming*, March 1992, p 44.

38 Zhang Xiaojin, “Changes in Peasants’ Values During Reform”, *Shehui* (Society), August 1993, p 32.

39 Meng Yan, “Revised electoral law enhances democracy”, *China Daily*, 27 Oct 2004. Available at [http://www.chinadaily.com.cn/english/doc/2004-10/27/content\\_386280.htm](http://www.chinadaily.com.cn/english/doc/2004-10/27/content_386280.htm)



Whether the idea of direct political participation will spread to higher levels of government remains to be seen. However, China's road towards better democratic practice, whether in the form of a growing civil society, the establishment of the rule of law, or grassroots elections, has clearly begun. In spite of major setbacks such as the handling of the Falun Gong issue, with the momentum that has been building since reform and the opening up of China, there can be no real turning back from the path to political liberalization.

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