<Article> Judicial Review and the Civil Society Question in the People's Republic of China

JUDICIAL REVIEW AND THE CIVIL SOCIETY QUESTION IN THE PEOPLE'S REPUBLIC OF CHINA

CHARLES COVELL AND SHAHZADI COVELL

In the present paper, we are concerned with the era of political and economic reform in the People's Republic of China, or the PRC, that began with the historic 3rd Plenum of the 11th Central Committee of the Communist Party of China, or the CPC, which was held in Beijing from 18 to 22 December 1978. The aspect of the reform era in the PRC on which we focus attention is the endeavour of the leadership elites within the CPC and the state government to establish an effective rule of law, as the framework for social, political and economic organization. The form of the rule of law at issue here is that which is referred to in the PRC as the socialist legal order. The development of the socialist legal order has since 1978 been pointed to by the Party-State leadership as being crucial to the realization of the presiding public policy programme of socialist modernization, and, indeed, the socialist legal order has come to stand with the socialist market economic order as one of the essential component parts of the project that the leadership has set for itself of bringing about an authentic socialism with Chinese characteristics. As a reflection of this, the period since 1978 has seen a significant enlargement in the province of law and legislation in the PRC, and with there having taken place a continuous elaboration of legal forms and legal categories, as under the heads of constitutional law, civil and commercial law, administrative law, economic law, social welfare law, criminal law and the law of litigation procedure. Of the

different parts of the law as thus specified, the body of administrative law has been prominent in the advancing of the agenda for political and economic reform in the PRC. It is the administrative law of the PRC, and more particularly the form of judicial review procedure that is foundational to it, that we discuss in the first two sections of this paper. After this discussion, we turn to consider in the third section of the paper the judicial review procedure in its relation to the question of the emergence in the PRC of what is recognizable as a condition of civil society, and, in this context, we point to certain of what we take to be the imperfections of the judicial review procedure.[1]

i. The Basic Elements of Administrative Law in the PRC

In its broadest sense, administrative law is the law that applies to the administrative authorities belonging to the institutional sphere of government within the state, and in this application it is the law which relates to the tasks and functions, and the structure, of the administrative authorities and which as such serves to regulate the exercise of their powers. As to the first principles of administrative law, the principle that is fundamental is that the acts of the administrative authorities, as involving the exercise of powers, are assumed to require some basis and justification in law. The corollary of this is that, from the standpoint of administrative law, the administrative authorities are to be thought of as being capable of acting, and of exercising their powers, contrary to law and hence in the absence of a lawful basis and justification. Thus it is that the administrative authorities are to be thought of as being subject to challenge in the name of law by ordinary citizens, and by such other parties, as may claim to be adversely affected, or aggrieved, by the allegedly unlawful acts of the particular administrative authorities in question. The possibility of legal challenges to the ad-

ministrative authorities, as to their acts involving the exercise of powers, presupposes the availability of some official procedure for the presentation of such challenges, and for the providing of remedies in the event that the challenges to the administrative authorities are upheld through this procedure. In general terms, the form of procedure here that has proved to be characteristic of administrative law systems, and that has come to embody the core element of administrative law as such, is a procedure of adjudication, and one where legal challenges to the acts of the administrative authorities are made and heard under the auspices of the organs pertaining to the judicial branch of government. This is the procedure known as the judicial review of administrative action, and with this being the procedure that provides for the acts of the administrative authorities to be reviewed, and where necessary negated, through the ordinary courts or through such other special courts as are designated as being responsible for proceedings in administrative law.

The principles of administrative law, and those of judicial review, are closely bound up with the principles pertaining to the ideal of the rule of law and with those pertaining to the ideal of constitutional government. As to the rule of law, it is to be observed that administrative law is directed towards the control through law of the acts of the administrative authorities, and that, in this, administrative law gives effect to the defining principle of the rule of law that the powers exercised by government are to stand as non-arbitrary powers and hence as powers which are to remain subject to legal constraints and limitations. As to the matter of constitutional government, it is to be observed that administrative law is based in the principle of the separation of the legislative, executive and judicial powers of government which is held to be central to constitutionalism. Thus the procedure of judicial review involves the administrative authorities, as bearing the executive powers of government, being rendered subject to the scrutiny of independent courts, and with the courts, as in their judicial office, applying in re-

gard to the administrative authorities the provisions of laws which, as to the institutional mode of their adoption and alteration, fall within the competence of the legislative power as a power separate from the judicial and executive powers. Beyond this, there is the consideration that administrative law, as through its relation to the rule of law and constitutional government, bears directly on the ideal of human rights. For the principles of administrative law presuppose that individuals possess rights which are enforceable as against the institutions of state government, and that the powers of state government are to be exercised only where this is consistent with a due respect for the rights which are recognized to belong to ordinary citizens.

In the years since 1978, there has come to be established in the PRC what offers itself for attention as an operational system of administrative law. The advent of this administrative law system is significant in that it points to a forward development in the PRC running in the direction of the acceptance of the principles of the rule of law and constitutional government, and even, as is now the case, the acceptance of the principles of individual human rights. This is so notwithstanding the continuing absence from the PRC of multi-party democratic politics, and the continuing domination of the social, political and economic order by the CPC as through the maintenance of its monopoly rulership powers. The general significance of the system of administrative law in the PRC is underlined by the pervasiveness of administrative law principles as throughout the whole body of substantive law. In the classification of the parts of law adopted in the PRC, the administrative law is presented and referred to as the law relating to the specific tasks and functions of public administration. Hence administrative law is taken to encompass the law relating to such matters as foreign affairs, public security, civil service personnel, education, public health, urban and rural planning, and protection of the environment. In the event, however, the administrative law system in the PRC is not to be under-

stood so restrictively, as in terms of the designated administrative tasks and functions. For administrative law is the law applying to the administrative authorities and in regard to the exercise of their powers, and in the PRC the administrative authorities are everywhere engaged, as to the exercise of their powers, in the regulation of all the diverse aspects of the social, political and economic order. Thus it is that there is widespread recognition to be found given to the active engagement of the administrative authorities in the various regulatory frameworks that are provided for in the legislation pertaining to the administrative tasks and functions which come within the spheres of civil and commercial law, economic law and social welfare law.

In order to identify the fundamentals of administrative law in the PRC, it is essential to turn away from the substantive law that is directed to the particular tasks and functions of public administration, and to fasten attention on the statutes that serve to describe the general powers of the administrative authorities, but without restriction as to tasks and functions, and that serve to describe the general procedures to which the administrative authorities are subject in the exercising of their powers. For it is with these statutes that the component parts of administrative law are to be found present in an inclusive form and as comprising a unified system of law. The statutes at issue possess the normative force specific to law, since these are in all cases statutes that have the standing of laws which have been enacted by the National People's Congress, as the sovereign legislative power in the PRC, or which have been adopted by the Standing Committee of the National People's Congress. Among the relevant statutes, the most important are the law from 1994 concerning the liability of the administrative authorities for the payment of compensation,[2] the law from 1996 concerning the application of sanctions and penalties by the administrative authorities,[3] the law from 1997 concerning the supervision by the state government of the administrative authorities and their

personnel,[4] the law from 1999 concerning the procedures for the reconsideration of the acts of the administrative authorities,[5] and the law from 2003 concerning the issuing of licences by the administrative authorities.[6] There is also the law that is central for the purposes of this paper. This is the law stating the principles that relate to what is referred to as the administrative procedure, and to what is, in effect, the procedure for the judicial review of administrative action: the Administrative Procedure Law of the PRC, which was adopted at the 2nd Session of the 7th National People's Congress on 4 April 1989.[7]

The foundation of the system of administrative law in the PRC lies in the procedure for the judicial review of administrative action, as this is described in the Administrative Procedure Law. The main features of this judicial review procedure are straightforward to understand, and they may be summarized as follows. Thus it is provided that the administrative procedure - that is, the procedure for judicial review - is directed towards the so-called administrative cases. The latter cases arise when parties, whether citizens, legal person entities or other such like organizations, are aggrieved as on account of the concrete administrative acts of one or other of the administrative authorities, and being so aggrieved then proceed to make application to the ordinary courts for the judicial review of the administrative acts in question. The jurisdiction in administrative cases belongs to the system of the people's courts, as subject to the legal supervisory powers that are vested in what are known as the procuratorial authorities, and with this jurisdiction being exercised, as in accordance with the nature of particular administrative cases, by the basic people's courts, the intermediate people's courts, the higher people's courts or by the Supreme People's Court. The Administrative Procedure Law includes detailed provisions that relate to what are the complex aspects of the judicial review procedure, as with the provisions concerning the legitimate grounds for judicial review, the standing of the parties to administrative pro-

ceedings, the submission of cases to the people's courts, the form of adjudication involved and the substantive remedies available in administrative cases. This notwithstanding, the essential principle of the judicial review procedure remains simple: that is, the principle to the effect that the procedure forms a judicial or adjudicative procedure, and where the applicant parties as plaintiffs and the administrative authorities as defendants stand subject to the jurisdiction of the people's courts as for the purposes of the resolution of disputes which are centred on the lawfulness of administrative action.

ii. The Judicial Review Procedure in the PRC

The Administrative Procedure Law was enacted by the National People's Congress on 4 April 1989, and it became effective in the PRC as from 1 October 1990. However, the procedure of judicial review that is described in the Administrative Procedure Law was already established in the PRC at the time of the enactment of the law, and, so far as the body of actual positive law is concerned, the procedure can be found appealed to in legal source materials from the years following the start of the reform period in 1978. To begin with, there is the State Constitution of the PRC as adopted at the 5th Session of the 5th National People's Congress as of 4 December 1982.[8] Here, it is to be noted that the State Constitution makes no explicit reference to judicial review as such, but that the principles of administrative law and judicial review, at least as to the accountability of the administrative authorities under law and in accordance with due legal procedure, are nevertheless to be found implicit in certain of its provisions. Thus Article 5 provides to the effect that the public bodies associated with the state, as with the state organs and the armed forces, are to be subject to such constraints and limitations as are contained in the State Constitution and the laws. Then again, Article 41 provides to the effect that ordi-

nary citizens have the right to challenge the state organs and their official personnel, and that the state organs are required to answer the complaints and charges brought against them by citizens in an open and responsible manner and may in addition be required to make payment of compensation.[9]

The problem with Articles 5 and 41 of the State Constitution, as in regard to administrative law and judicial review, is that while the articles do offer some basis in constitutional law for administrative law and judicial review, the terms of the articles are not such as to establish judicial review as a specific form of adjudicative procedure applying to state organs and state officials, and one that is distinct from the procedures belonging to the civil law and to the criminal law. To have a sense of the distinctness of administrative law and judicial review as comprising a specific form of legal order applying to state organs and state officials, and as to the period prior to the Administrative Procedure Law of 1989, it is necessary to move from the constitutional law and towards the statutes and administrative regulations where there is clear provision made for the judicial review procedure as in relation to the acts of the administrative authorities. There is a large body of such legal source materials to be reckoned with, and with these including, for example, the laws pertaining to such matters as the safety of maritime traffic (1983),[10] the pharmaceutical industry (1984),[11] the regulation of metrology (1985),[12] the postal services (1986),[13] the industrial state-owned enterprises (1988)[14] and the maintenance of standards (1988).[15]

With all these cases, the various laws concerned make explicit provision for the relevant administrative authorities to be considered subject to legal challenges as brought through the people's courts. The form of the judicial control of the administrative authorities as pointed to in the laws is that of the procedure for the judicial review of administrative action. Moreover, this is so in terms where the judicial review procedure is presented such that it

stands as a procedure for the subjecting of the administrative authorities to the people's courts which is distinct, and formally separate, from the civil procedure and the criminal procedure.[16]

The legal source materials pre-dating the Administrative Procedure Law, as cited, mark a significant advance on the State Constitution, as to the proper recognition of administrative law and judicial review, and of their particular characteristics, as embodying a specific form of legal order. However, the materials remain limited in their reference to judicial review, and they leave much unstated that is essential for completeness in the description of the judicial review procedure. Thus the terms of the laws referred to are such that they restrict the occasions for judicial review to the challenges made by affected parties to the application of administrative sanctions and penalties. As against this, there is the consideration that not all acts of the administrative authorities involve the application of sanctions and penalties, and that, as is in fact the case in the PRC, forms of administrative action other than the bare applying of sanctions and penalties are accepted to be subject to judicial review as from the standpoint of administrative law. Going beyond this, there is nothing in the laws that indicates the precise grounds on which challenges are to be made by affected parties as to administrative action, or that indicates the precise grounds on which the people's courts are justified to intervene in administrative cases and to find against the administrative authorities. In addition to the absence of the formal specification of the grounds for the application for judicial review, there is the absence also of any formal specification of the actual details of the principles of procedure, such as those to do with submissions, hearings and rules of evidence, which the people's courts are to follow for the purposes of the adjudication of administrative cases. Yet further, there is an absence from the laws cited of any reference to the matter of the remedies that are available to the people's courts in order to set right failures and improprieties in administrative action, and with this being as to the

advantage of the affected parties. The principles relating to grounds, procedures and remedies constitute the core principles essential to the judicial review of administrative action as such, and it is these principles that are central to the authoritative elaboration of judicial review that comes in the Administrative Procedure Law of 1989.

The Administrative Procedure Law comprises 75 articles, and with these being organized in the form of eleven separate chapters. In Chapter 1 (Articles 1-10), there are set down the general principles that apply to the procedure for the judicial review of the acts of the administrative authorities. In Chapter 2 (Articles 11-12), there are identified the various administrative acts that are recognized to be eligible for judicial review as through the people's courts, in addition to the various administrative acts that are held to be beyond the control of the people's courts and hence that are to be considered as being not subject to the judicial review procedure. In Chapter 3 (Articles 13-23), there are elaborated the principles relating to the form of the jurisdiction that is to be exercised in administrative cases, as by the people's courts at the various levels within the hierarchic structure of the judicial system.

Moving on to Chapter 4 (Articles 24-30), there are set out the principles that relate to the position of the parties in administrative cases, while in Chapter 5 (Articles 31-36) there are set out the principles relating to the forms of evidence which are to be accepted by the people's courts for the purposes of the judicial review of the acts of the administrative authorities. In Chapter 6 (Articles 37-42), there are stated the principles that relate to applications for judicial review and to the acceptance of applications by the people's courts. Chapter 7 (Articles 43-64) elaborates the principles that govern the hearing of administrative cases by the people's courts and the decision of the same through the judgments that are to be issued by the people's courts in administrative cases. Chapter 8 (Articles 65-66) concerns the sanctions that are available to the people's courts for ensuring the execution of their judgments in administrative cases,

and hence for ensuring the compliance with these on the part of the applicant parties and the administrative authorities. In Chapter 9 (Articles 67-69), there are stated the principles relating to the liabilities of the administrative authorities for the compensation of parties whose rights and interests have been unlawfully infringed upon through the acts of the administrative authorities in question. Chapter 10 (Articles 70-73) treats of the standing, and the rights and duties, of foreign parties in respect of cases that come under administrative law. Finally, there are the two provisions stated in Chapter 11 as supplementary provisions. Thus Article 74 provides for the awarding of costs by the people's courts as against one or both of the parties in administrative cases and relative to the extent of their liabilities and responsibilities. As for Article 75, this provides that the Administrative Law was to become effective as of 1 October 1990.

The judicial review procedure described in the terms of the Administrative Procedure Law, as to the mechanics of the form of adjudication that it involves, is complex, and the particulars of it are not such as to permit its full and complete exposition in the context of the present paper. Suffice it to say, here, that the judicial review procedure is an adjudicative procedure as conducted by the people's courts at the various levels of their jurisdiction, that the style of adjudication is that of adversarial presentation as on the part of the applicant parties as plaintiffs and on that of the relevant administrative authorities as defendants, and that the form of jurisdiction exercised by the people's courts following the acceptance of administrative cases for their determination is compulsory and inescapable as in regard to the administrative authorities. There are two parts of the judicial review procedure that we shall treat of in detail, in order to understand what is the very considerable extent of the control that the people's courts are held to exercise over the administrative authorities: first, there are the provisions concerning the administrative acts that are subject to judicial review, and hence sub-

ject to judicial control; second, there are the provisions concerning the remedies that are available to the people's courts as in administrative cases, and with these as relative to the accepted grounds for challenge to the administrative authorities as through the application for the judicial review of their acts.

The specification of the acts of the administrative authorities that are subject to judicial review comes in Chapter 2 of the Administrative Procedure Law. It is to be noted at once that the relevant administrative acts as specified include acts other than those to do with the applying of administrative sanctions and penalties that, as we have explained, stands out as the principal context for the judicial review of administrative action as referred to in the positive legal source materials as prior to 1989. For there are included also in Chapter 2 of the Administrative Procedure Law such acts as the so-called administrative compulsory measures and the issuing of licences and permits. Further, the administrative acts that are confirmed to be eligible for judicial review are not only acts of commission, as with the application of administrative sanctions and penalties. In addition, there are acts of omission, as where the administrative authorities are alleged to have failed to fulfil duties that are in law required of them. However, the key consideration with all the different administrative acts at issue is that these are acts that are claimed to involve some defect in law, and where it is their unlawfulness as acts that renders them, and the responsible administrative authorities, subject to challenge through the people's courts and hence subject to the terms of the judicial review procedure.

The acts of the administrative authorities giving proper occasion for applications by affected parties to the people's courts for judicial review are summarized in Article 11 of the Administrative Procedure Law as follows: (i) administrative sanctions and penalties, as with detention orders, fines, revocations of licences and permits, orders for the suspension of business operations and confiscations of assets and property; (ii) administrative compulsory measures, as

with the placing of restrictions on the liberty of persons and the seizure or freezing of assets and property; (iii) acts where, as it is claimed, the administrative authorities violate the independent decision-making rights and powers of the industrial enterprises; (iv) acts involving the failure of the administrative authorities to issue licences or permits to applicants, as who claim to be qualified to receive them, or involving the failure of the administrative authorities to respond adequately to due and proper applications for the same; (v) acts involving the failure of the administrative authorities to discharge their statutory duties of extending due and proper protection for personal and property rights as when legitimately requested to do so, or involving the failure of the administrative authorities to respond adequately to legitimate requests for this; (vi) acts where the administrative authorities fail to grant pensions and benefits, as when this is required under law; (vii) acts where, as it is claimed, the administrative authorities impose unlawful demands on parties as to the performance of duties and obligations; (viii) acts that result in the violation by the administrative authorities of the general personal and property rights of parties. Article 11 provides further that the people's courts are able to follow the administrative procedure in respect of other like acts of the administrative authorities, as where there are explicit stipulations to this effect as contained in standing laws and regulations.

It is evident from this that the terms of the Administrative Procedure Law establish that the greater part of the activities of the administrative authorities are to be considered as amenable to judicial review, and thus in this respect as falling under the control of the people's courts. Nevertheless, there are limits to the acts of the administrative authorities that are confirmed to be subject to the people's courts, as for the purposes of the judicial review of administrative action. These limits are underlined with Article 12 of the Administrative Procedure Law, where there are listed the acts of the administrative authorities that do not admit of challenges from

the affected parties as to the people's courts and, hence, that are such that they in effect exclude the possibility of their being subject to judicial review as through the administrative procedure. Thus it is stated that the people's courts are not permitted to accept administrative cases in respect of the following matters: (i) acts of the administrative authorities that have the standing of acts of state, such as acts to do with national defence and the conducting of diplomatic relations and foreign policy; (ii) acts of the administrative authorities that involve the promulgation of administrative regulations, lower status regulations, and other decisions and orders such as possess a binding effect in law; (iii) acts of the administrative authorities that involve decisions relating to the appointment and dismissal of official personnel, and relating to the rewarding and punishment of the same; (iv) acts of the administrative authorities where stipulations as contained in the relevant statutory legislation provide that the decisions of the administrative authorities as to the acts, as in question, are to be considered as final.

As to the question of grounds and remedies as in regard to judicial review, there is to be considered the detailed specification given in Article 54 of the Administrative Procedure Law as to the different judgments that may be made by the people's courts in administrative cases, and as to the substantive remedies that may be provided by the people's courts for the applicants, as plaintiffs, as through the judicial review procedure. First, it is open to the people's courts to find in favour of the administrative authorities, as defendants, and so through this to uphold the administrative acts that are the subject of applications for judicial review. This form of judgment is to be made in cases where the people's courts conclude that the evidence on which the acts of the administrative authorities at issue are based is adequate, that the administrative acts involve a correct application of the relevant laws and regulations, and that the performance of the administrative acts has been in conformity with the due legal procedures.

Second, it is open to the people's courts to find in favour of the plaintiff parties, and in doing this to order the administrative authorities that are the defendants to annul in whole or in part the administrative acts subject to judicial review and to order the administrative authorities to undertake new, and remedial, administrative acts. This form of judgment is to be made in cases where the administrative acts at issue are considered by the people's courts to fail, and in consequence of this failure to stand as invalid in law. The failure of administrative acts occurs where the acts are held to be lacking in the evidence essential to their support, where the acts are based in an erroneous application of the relevant laws and regulations, where the acts are performed in violation of due legal procedures, and where the performance of the acts involves the administrative authorities in actions which are ultra vires or tainted through the abuse of powers. The third form of judgment that the people's courts are able to make in administrative cases, as stated in Article 54, results in cases where it is held not that the administrative authorities have performed acts that fail through the absence of proper evidentiary, legal and procedural foundations, but rather that the administrative authorities have failed to perform, or have delayed in performing, acts which they are required to perform as a matter of legal obligation. Here, the administrative authorities are to be ordered by the people's courts to perform the acts in fulfilment of their legal obligations within a specified time period. Finally, there is the fourth form of judgment referred to in Article 54, and with this figuring in administrative cases that relate to applications for judicial review as in respect of administrative sanctions and penalties. In this matter, the people's courts are to order the administrative authorities to set aside or to modify the administrative sanctions and penalties that are made subject to judicial review, as when it is determined that the administrative sanctions and penalties are in some way unfair.

The remedial aspect of judgments in administrative cases, as

directed towards the situation of plaintiffs, is essential to the logic of the judicial review of administrative action. So also is it essential to that logic that the provision of remedies is to be contingent on the defectiveness of administrative acts as in relation to the accepted grounds for judicial review. These grounds, and to restate what is laid down in the Administrative Procedure Law, consist in the absence of sufficient evidence, the erroneous application of laws and regulations, the violation of due legal procedures, the presence of conduct that is ultra vires and involving the abuse of powers, the non-performance of duties and obligations, and the existence of unfairness in the application of administrative sanctions and penalties. However, the hearing of administrative cases may also result in the discovery of misconduct on the part of administrative officials, and with this misconduct going beyond the defects in administrative action that relate to the accepted grounds for judicial review and with it necessitating a response from the people's courts which goes beyond the providing of effective remedies for the plaintiffs. Thus it is laid down in Article 56 of the Administrative Procedure Law that where the people's courts find that the administrative authorities and their official personnel are in breach of the code on administrative discipline, then the materials relating to this are to be passed on for investigation to the administrative authorities in question, to the relevant administrative authorities at the next higher level, or to the administrative authorities which are responsible for supervision and personnel discipline matters. As to where the people's courts find that crimes have been committed by official personnel, then the materials concerned are to be passed on to the administrative authorities responsible for public security or to the relevant office of the people's procuratorial authorities.

In this connection, it is to be emphasized how the Administrative Procedure Law serves to establish the administrative law as a specific form of legal order applying to the administrative authorities, and thus as something distinct from the legal orders compris-

ing the rules and procedures that pertain to the criminal law and the civil law. To be sure, the civil law provides that the administrative authorities, and the official personnel, are accountable before the people's courts under the civil procedure and in respect of the regime of rights and obligations specific to civil law, as with contracts and with liabilities for civil damages arising from the violation of the rights and interests of citizens and other non-state parties. Likewise, the criminal law provides that the administrative authorities, and the official personnel, are accountable before the people's courts under the criminal procedure, as with the criminal misconduct of state officials involving bribery and embezzlement, negligent loss of public monies and malpractice for personal gain and profit. As against the civil procedure and the criminal procedure, however, there offers itself for attention in its full distinctness the judicial review procedure. For the concern of this procedure lies neither with the administrative authorities in their involvement in the various transactions and relationships with non-state parties that form the subject-matter of the civil law, nor with the investigation and prosecution of state officials who are guilty of acts of criminal wrong-doing and with their punishment according to the terms of the criminal law code. To the contrary, the judicial review procedure is directed essentially towards the acts of the administrative authorities as involving the exercise of official powers, and towards the examining of the basis and justification in law for the acts in question (but with this carrying no necessary implication of civil wrong or criminal misconduct in the event that no proper legal basis and justification are found to exist). Moreover, the judicial review procedure provides, in its essentials, only for the remedies to do with the effecting of alterations to the form and substance of administrative acts that are specific to administrative law (but with this being quite separate from such outcomes as the awarding of civil damages or the imposing of criminal punishments). Thus it is that the Administrative Procedure Law stands independently and

in its own right, as within the law of the PRC, alongside the landmark statutes that are foundational for the criminal law and civil law divisions: the Criminal Law of the PRC (1979),[17] the Criminal Procedure Law of the PRC (1979),[18] the General Principles of the Civil Law of the PRC (1986)[19] and the Civil Procedure Law of the PRC (1991).[20]

iii. The Judicial Review Procedure Considered and the Civil Society Question

The Administrative Procedure Law of 1989 marks the decisive step in the creation and establishment of the system of administrative law in the PRC. The establishing of the administrative law system reflects the full extent of the adoption, and development, of the socialist form of the rule of law as an integral part of the agenda that has been followed in the PRC since 1978 for the bringing about of fundamental political and economic reforms. The administrative law system is also bound up with what is now acknowledged to be a most notable outcome of the reform period. This is the emergence in the PRC of what stands, and flourishes, as a substantial civil society. As for the characteristics of the civil society that has come to form itself in the contemporary PRC, these are to be taken as being in agreement with the conceptualization of civil society which is now more or less conventional. This is the conceptualization where civil society is presented as forming a sphere of social order that gives effect to the principles of the economic market, and that, in consequence of this, gives effect to the regime of voluntary contract and the institution of private property which are essential for economic markets. It is also the conceptualization where civil society is presented as a sphere of social order that comprehends a plurality of free and independent associations, and that remains subject to an effective rule of law sufficient for the enforcement of all personal

rights pertaining to individuals, including all rights in property and by contract, and sufficient for the adequate regulation of all the various subordinate associations within society in their status as free and independent entities.

The sphere of social order, so characterized as civil society, is conceptualized further such that it is understood to be distinct from the state, and to possess a relative autonomy in respect of the state and the institutions of government through which the state organizes itself and acts in the exercise of its powers. In this, the condition of civil society, as relatively autonomous, is considered to involve the establishing of material impediments as to the arbitrary or unrestricted application of powers on the part of state and government, and with these impediments being explained as originating from within the autonomous structures and processes of civil society as these are determined through such factors as personal and property rights, freedom of contract and associational pluralism. The opposition as embodied within civil society to arbitrariness and the absence of restriction in the powers of state and government is of course something that is closely bound up with, and that is typically accounted for in reference to, the general normative principles concerning the rule of law and constitutional government which provide for the institutions of state and government to be maintained as subject to proper legal constraints and limitations. Included among these general normative principles are the principles to do with the basic rights of individuals. Thus it is that the condition of civil society is now linked together with the cause of human rights as inseparably as it is linked together with the ideal of the rule of law and the ideal of the constitutional form of statehood. The conceptualization of civil society here elaborated is the one that is encountered in the work of the recent commentators on the subject, and it is the one that is to be associated with the classic specification of civil society in its relation to the family and the state as provided by the German political philosopher G.W.F. Hegel (1770-

1831) in his *Philosophy of Right* (1821).[21]

There is an important qualification that it is necessary to enter as in regard to the above conceptualization of civil society. This is that, in much of the current literature on the subject of civil society, it would appear to stand as controversial as to whether civil society is to be thought of as something distinct from the economic market, or whether civil society is to be thought of as comprehending the economic market and hence as comprehending the modes of economic enterprise and relationship which are aimed at the securing of profit and the generation of wealth. In the case of the PRC, however, there can be no doubt about the matter. For civil society in the contemporary PRC has emerged and developed as the result of a reform programme where economic reform with a market-directed orientation has been a central, and indeed indispensable, component part. The main institutional context for the application of market principles in the economic sphere in the PRC has been with the reform of the industrial enterprises falling within the state sector. Essential to the process of state industrial sector reform has been the transition from a political command economic order, where the state held all rights of ownership and management control in the means of industrial production as on a sole and exclusive basis, and towards what is most appropriately described as a mixed economic order. As to the latter, this stands as a form of economic order where the state has maintained its overall ownership and management control of the so-called strategic industrial sectors, but where there has also been effected a qualification of unrestricted state ownership and management control of the means of industrial production as through the progressive extending of ownership rights and management control rights to non-state parties.[22]

The socialist market economic order that is hailed in the PRC as the outcome of the transition process, as from the political command economic order to the mixed economic order, has been such as to render the social and economic spheres autonomous in relative

terms as from the state and the institutions of state government. As a manifestation of this, there has been witnessed from the 1980s onwards a great enlargement in the scope and extent of the private economic rights and interests of the sort which are conventionally pointed to as being among the fundamental prerequisites for a functioning civil society. This the condition of emergent civil society in the PRC is at present nowhere more clearly in evidence than with the proliferation of private enterprises, established either as the privatized successors to state-owned industrial enterprises or as enterprises created entirely through the initiative and capital investment of the private parties owning them, and with the consequent formation through all this of what is a burgeoning private enterprise sector.[23] The impact of the private enterprise sector on state and society in the PRC has been profound, and, in consideration of it, the private enterprise owners were to acquire the mandate of legitimacy as through their formal recognition by the Party-State leadership at the 16th National Congress of the CPC in November 2002. Thus the private entrepreneurs were there recognized to belong among the new dynamic social strata in the PRC that are now to be regarded as contributing positively to the development of the productive forces and that, in consequence of this, are to be accommodated within the structure of the Party-State establishment, as in line with the terms of the Thought of the Three Represents which, as of November 2002, came to be accepted as an essential part of the official public doctrine of the CPC as this is embodied in its Constitution.[24] To underline further the newly legitimated position of the private entrepreneurs, the Thought of the Three Represents and the inviolability in law of private property rights were to be enshrined in the State Constitution of the PRC, as through the constitutional amendments which were adopted at the 2nd Session of the 10th National People's Congress as of 14 March 2004.[25]

If the state in the PRC has withdrawn its political command control of the social and economic spheres in favour of private rights

and interests sufficient to allow for the emergence of a relatively autonomous civil society, it remains the case that the condition of civil society in the PRC is one where civil society has been to a large extent dependent on state action and where a strong state-civil society relationship has persisted, and most particularly so in the economic sphere. To some extent, this has followed from the maintenance by the state of its overall ownership and management control rights in the strategic industrial sectors. Of greater account is the fact that, in the PRC, it is the state, acting in furtherance of the policy projections of the Party-State leadership, that has initiated and overseen the development of the socialist market economic order, as through the deliberate modification of the prior existing political command economic order. So also is it of great account that the state has exercised overall direction of the socialist market economic order as through the subjecting of it, and up to and including the parts of it based in private ownership and management control rights, to a comprehensive regime of public administrative regulation. With this regulatory regime, the administrative law system has been a vital component. For it is the administrative law that in the PRC presents itself as the legal-institutional framework by means of which the state has acted to effect the transitions in the economic order essential to the general reform agenda, and then to maintain the consistent regulation of the activities of the individuals and organizations involved within, and constitutive of, the emerging civil society. Thus and in concrete terms, the administrative authorities pertaining to state and government regulate the social and economic spheres through the performing of official acts which are to have due legal status as to their form and substance, and which are to conform with, and to be subject to, the principles of due legal procedure applying to them and in this including the procedure for the judicial review of administrative action.

Here, of course, the administrative law system has promoted the condition of civil society in the PRC, and this in conjunction

with its promoting of the principles of the rule of law and constitutional government and those to do with the rights of individuals which, as we have indicated, are thought of as being contained within the concept of civil society. Thus it is that the administrative law system appears to promise that the administrative authorities are to remain subject to legal constraints and limitations as to the exercise of their powers. It promises further, as to the specific modalities for this, that the institutions of government and administration are to remain accountable for their acts as before the people's courts and, as under the terms of the judicial review procedure, accountable in such a way as to protect the lawful rights of individual citizens and non-state parties as relative to the administrative authorities. The promise of all this notwithstanding, there still stands out one major area of doubt regarding administrative law in the PRC. This is to do with the question as to whether the judicial review procedure in the PRC does in fact establish a legal-institutional framework sufficient for the real and effective judicial control of the government and the administration, and hence also for the real and effective legal constraining and limitation of their powers as in relation to the position of non-state parties and as consistent with the terms of the general civil society conceptualization. In order to address this question, it is of the first importance to keep in mind certain of the defining purposes of the Administrative Procedure Law, as these are made explicit in the statement given in Chapter 1 of its general principles. The purposes that are in this connection of crucial relevance, as laid down in Article 1, are those relating to the office of the people's courts as follows: first, the proper protection of the rights and interests of citizens, legal person entities and other like organizations, as the parties affected by administrative action; second, the proper regulation of the administrative authorities in the exercise of their powers and the performance of their duties as in accordance with the laws.

One evident respect where the form of judicial review procedure

described in the Administrative Procedure Law is to be found imperfect, as in relation to its defining purposes, is that the control that it assigns to the people's courts over the administrative authorities is not a complete form of control. For, as we have seen, there are certain administrative acts that are excluded from the scope of the judicial review procedure, and that in consequence of this are held to fall outside the control of the people's courts. To repeat, these are the administrative acts falling within the four categories as follows: first, acts of state; second, administrative regulations and subordinate administrative norms; third, decisions on administrative personnel; fourth, acts of the administrative authorities where it is stipulated in the relevant legislation that the administrative authorities concerned are to have an ultimate decision-making power.

Of these various administrative acts, it is surely only the acts belonging to the third category where the absence of the jurisdiction of the people's courts as for judicial review is to be considered uncontroversial, as from the standpoint of the defining purposes of the Administrative Procedure Law. For it is hardly essential for the protection of the rights and interests of parties affected by administrative action, or essential for the regulation of the conduct of the administrative authorities, that the people's courts are to exercise judicial review powers in respect of the terms and conditions of the service of administrative personnel. However, it is another matter entirely with the administrative acts that belong to the first, second and fourth categories. To begin with, it is plain that acts of state may affect profoundly the situation of ordinary citizens, legal person entities and other like organizations, and that acts of state may therefore carry grave and detrimental consequences for the rights and interests of such parties. Hence the exclusion of acts of state from the scope of the judicial review procedure imposes a substantial restriction on the people's courts in the protection of the rights and interests of parties affected by administrative action, as it also

substantially restricts the people's courts in the regulation of the administrative authorities as to their duties and powers as in relation to the laws.

There are similar considerations involved with administrative regulations and subordinate administrative norms and with the acts of the administrative authorities to do with the issuing of these. For administrative regulations and administrative norms set the general policy objectives and frameworks for the administrative authorities, and in doing so they impact directly on the rights and interests of affected parties: with the result that their exclusion from the scope of judicial review must inevitably militate against the fulfilment by the people's courts of the defining purposes of the Administrative Procedure Law. Most serious of all in terms of the wider implications, there are the acts of the administrative authorities where the administrative authorities concerned are by statute law specified to be the final arbiters, and so where, in effect, the control of the people's courts as for the ends of administrative law is set aside as through the acts of the legislative power of the state government. Here, the exclusion of the relevant administrative acts from the scope of the judicial review procedure is such that this serves not only to restrict the competences of the people's courts, and in seeming frustration of the Administrative Procedure Law as to its defining purposes. At the same time, it serves to undermine the formal separation of governmental powers, and so goes against the principles of the rule of law and the principles of constitutional government that, as we have argued, are to be thought of as being closely associated with the principles of administrative law as such.

The excluding of administrative regulations and other administrative norms from the scope of judicial review points to what is a further limitation of the Administrative Procedure Law, considered as an instrument for the control of government and administration. This is that the judicial review procedure involves no powers belonging to the people's courts to review the general policy intentions

and directives of the administrative authorities. On the contrary, the judicial review procedure involves for the people's courts only the power to adjudicate cases arising from the substantive acts of particular and ascertainable administrative authorities, and with these as affecting the rights and interests of particular and ascertainable parties. Thus Article 41 of the Administrative Procedure Law provides that the adjudication of administrative cases by the people's courts requires that the following conditions are to be met: first, the presence of specific parties standing as plaintiffs and with lawful rights and interests violated by the acts of administrative authorities; second, the presence of specific administrative authorities to have standing as defendants; third, the presence of specific claims regarding the administrative acts that are to be reviewed, and with some factual basis existing for these; fourth, the presence of proper jurisdiction as exercised through the people's courts. No doubt, the conditions here for administrative cases are consistent with the ends of judicial review as a procedure directed towards the protection of the rights and interests of the parties as adversely affected by administrative action. However, these are conditions that render the judicial review procedure dependent, as to its operationalization, on the context set by the existence of plaintiffs, the infringement of plaintiff rights and interests, the performance of administrative acts and the agency of administrative authorities. In consequence of this, the judicial review procedure holds out the real prospect of remedies for parties aggrieved through administrative action, but with the form for the overall control of government and administration provided through the procedure being limited to the degree that it is context-determined in the respects to do with plaintiffs, plaintiff rights and interests, administrative acts and administrative authorities as referred to.

The final matter where the Administrative Procedure Law stands as imperfect, as to its defining purposes, relates to the judicial review procedure as a procedure where the people's courts are

concerned with the lawfulness of the acts of the administrative authorities. This concern is fundamental for the people's courts, in the respect that deliberation as to the lawfulness, or the unlawfulness, of administrative acts is the critical determining factor, as for the people's courts, in their intervention to protect the rights and interests of the parties affected by administrative action and to regulate the activities of the government and administration. That the people's courts are to concern themselves with the lawfulness of administrative action is underlined with the statement contained in Article 54 of the Administrative Procedure Law as to the grounds for the application for judicial review, and as to the grounds for the decision of administrative cases as for or against the providing of remedies for applicant parties. Thus and to repeat, it is provided that the people's courts are to uphold the acts of administrative authorities where the acts are based in sufficient evidentiary materials, and based in the correct application of the relevant laws and regulations and in the correct application of the relevant due legal procedures. At the same time, it is provided that the people's courts are to set aside the acts of the administrative authorities where the acts at issue lack a sufficient evidentiary basis, where the acts involve an erroneous application of the relevant laws and regulations or a violation of the relevant due legal procedures, or where the administrative authorities exercise their powers ultra vires or otherwise abuse their powers. In addition, the people's courts are empowered to order the administrative authorities to fulfil their legal duties where there is failure of performance, and to order the setting aside of administrative sanctions and penalties where these are adjudged to be unfair.

The grounds for judicial review stated in Article 54 of the Administrative Procedure Law are such that, with the exceptions of the evidentiary basis for administrative acts and the unfairness of administrative sanctions and penalties, these are all grounds where the essential consideration for the people's courts is the degree of

the fidelity of the administrative authorities to the established laws and regulations and to the established due legal procedures. It is clear that the law-focused form of the adjudication of administrative cases accords with the functions of judicial review understood as the proper protection of the rights and interests of parties affected by administrative action, and as the proper regulation of the administrative authorities in the exercise of their powers and the performance of their duties. Even so, there remain inherent limitations to this. As to the regulation of the administrative authorities, the judicial review procedure is directed towards the matter of the consistency between administrative action and the established laws and regulations and established due legal procedures, but without this permitting the people's courts to pass as such on the form and substance of the legal norms and procedures by which the administrative authorities are to go in the performing of their official acts. As to the protection of the rights and interests of the parties affected by administrative action, the judicial review procedure is directed towards this, but with it being so only where the rights and interests of the parties possess some basis in conventional law or where these are implicit in the procedural law that applies to the administrative authorities. There is not, however, any recognition contained in the Administrative Procedure Law as to the legal relevance of independent normative standards of justice and political morality for the determination by the people's courts of the legitimate rights and interests of the non-state parties in administrative cases. The absence of this recognition is a significant feature of the administrative law system in the PRC, as this is founded in the Administrative Procedure Law, and, as we may observe, it is something that will come to weigh increasingly with the jurists and legal commentators given what is now the explicit commitment of the PRC, at the level of constitutional law, to the principles of human rights.[26]

It is as well to avoid overstating the above considerations regarding the grounds for judicial review, and the matter of human

rights, in the assessment of the administrative law system in the PRC and as to its particularities and its imperfections. For the limitations on the grounds for judicial review that we have noticed are not in fact exclusive to the administrative law system in the PRC. Indeed, the grounds for judicial review accepted in the PRC have close parallels with those accepted in other jurisdictions. This is true, for example, for the United States and the United Kingdom, in both of which jurisdictions the judicial review procedure is applied, as it is in the PRC, through the ordinary courts. Even so, it is still the case, as in respect of the examples cited, that there remain major differences as to the form of legal order in the PRC and that as obtaining in the United States and the United Kingdom. The most notable of these differences is the presence in the United States and the United Kingdom, and the absence from the PRC, of a strongly entrenched jurisprudence of individual rights that involves appeal to fundamental liberal conceptions of justice and political morality which are rights-based in character. Here, the crucial factor is that the ruling ideology in the PRC stands as a socialist ideology, and where socialism is presented as something essential for the realization of what is endorsed within that ideology as the highest ideal and ultimate goal of a society founded in communism. It is this the official public doctrine of socialism that is to be taken as setting the final containing ideological framework in the PRC for the market economic order and for the legal order in their socialist form, and including the practice of the people's courts with the judicial review procedure. This, however, is a doctrine where the rights of individuals are, as it were, not absolute in their normative force, but are rather conditional as relative to the socialist desiderata. To the extent that this doctrinal position on individual rights is maintained in the PRC, then, it is to be concluded, the prospects for the full incorporation of human rights standards within the procedure for the judicial review of administrative action will remain limited, as will remain limited too the more general prospects within the PRC for

the full flourishing of an active and substantial civil society.[27]

Notes and References

1. The method adopted here in the discussion of administrative law and the judicial review procedure in the PRC is based in the critical exposition of legal source materials. The full Chinese-language texts of the legal source materials to which reference is made are to be found either in *Zhonghua Renmin Gongheguo Fagui Huibian* or in *Zhonghua Renmin Gongheguo Guowuyuan Gongbao.* The first named of these official publications is translated as *The Compilation of the Statutes of the People's Republic of China* and cited hereafter as *Compilation,* while the second named is translated as *The Gazette of the State Council of the People's Republic of China* and cited hereafter as *GSC.* The formal titles of the legal source materials are given first in English and then in Chinese phonetics, and with both the English translations and the Chinese phonetics versions being the authors' own. For a standard and authoritative account of administrative law and judicial review in the PRC, see: Lin Feng, *Administrative Law Procedures and Remedies in China* (Hong Kong and London: Sweet and Maxwell, 1996). For detailed treatment by the present authors of the subject, and as where the method of the critical exposition of legal source materials is followed, see: Charles Covell and Shahzadi Covell: 'The State Council and Administrative Law in the People's Republic of China', *Jurisprudentia,* 6 (March 1999), pp. 1-49; 'Judicial Review in the People's Republic of China: Selected Legal Source Materials from 1982 to 1989 (in two parts: Part 1)', *Tsukuba University Journal of Law and Political Science,* 37 (September 2004), pp. 1-69; 'Judicial Review in the People's Republic of China: Selected Legal Source Materials from 1982 to 1989 (in two parts: Part 2)', *Tsukuba University Journal of Law and Political Science,* 38 (March 2005), pp. 1-52.

2. Decree No. 23 of the President of the People's Republic of China.
State Compensation Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 23 hao).
Zhonghua Renmin Gongheguo Guojia Peichang Fa.
GSC, 27 June 1994, Issue No. 11, Serial No. 760, pp. 430-7.

3. Decree No. 63 of the President of the People's Republic of China.
Administrative Penalties Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 63 hao).
Zhonghua Renmin Gongheguo Xingzheng Chu Fa.
GSC, 10 April 1996, Issue No. 9, Serial No. 823, pp. 325-35.

4. Decree No. 85 of the President of the People's Republic of China.
Administrative Supervision Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 85 hao).
Zhonghua Renmin Gongheguo Xingzheng Jiancha Fa.
GSC, 19 May 1997, Issue No. 15, Serial No. 867, pp. 665-72.

5. Decree No. 16 of the President of the People's Republic of China.
Administrative Reconsideration Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 16 hao).
Zhonghua Renmin Gongheguo Xingzheng Fuyi Fa.
GSC, 8 June 1999, Issue No. 18, Serial No. 945, pp. 725-34.

6. Decree No. 7 of the President of the People's Republic of China.
Administrative Licensing Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 7 hao).
Zhonghua Renmin Gongheguo Xingzheng Xuke Fa.
GSC, 10 October 2003, Issue No. 28, Serial No. 1099, pp. 5-12.

7. Decree No. 16 of the President of the People's Republic of China.
Administrative Procedure Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 16 hao).
Zhonghua Renmin Gongheguo Xingzheng Susong Fa.
Compilation, January-December 1989, pp. 1-18.

8. Constitution of the People's Republic of China.
Zhonghua Renmin Gongheguo Xianfa.
Compilation, January-December 1982, pp. 1-42.

9. In specific terms, Article 5 of the State Constitution of the PRC provides that the state organs, the armed forces, the political parties, the state industrial enterprises and the other like public bodies are to act in conformity with the State Constitution and the laws, that the acts of such public bodies that involve contravention of the State Constitution and the laws are to be investigated, and that the public bodies are to be denied any privileges which serve to place them beyond the scope of the State Constitution and the laws. As for Article 41, this provides specifically that citizens have the right to criticize state organs and their official personnel and to make suggestions to them, and that citizens have the right to bring complaints and charges against, and to expose, state organs and official personnel where these have violated the laws or have been in dereliction of their duties. It is provided further in Article 41 that state organs are required to answer the complaints and charges brought against them by citizens in an open and responsible manner, and that where citizens suffer losses in con-

sequence of the infringement of their civil rights by state organs and official personnel, then the citizens concerned are to have the right to seek proper compensation as allowed for in law.

10. Decree No. 7 of the President of the People's Republic of China.
Maritime Traffic Safety Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 7 hao).
Zhonghua Renmin Gongheguo Haishang Jiaotong Anquan Fa.
Compilation, January-December 1983, pp. 435-45.

11. Decree No. 18 of the President of the People's Republic of China.
Pharmaceutical Administration Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 18 hao).
Zhonghua Renmin Gongheguo Yaopin Guanli Fa.
Compilation, January-December 1984, pp. 569-82.

12. Decree No. 28 of the President of the People's Republic of China.
Metrology Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 28 hao).
Zhonghua Renmin Gongheguo Jiliang Fa.
Compilation, January-December 1985, pp. 623-30.

13. Decree No. 47 of the President of the People's Republic of China.
Postal Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 47 hao).
Zhonghua Renmin Gongheguo Youzheng Fa.
Compilation, January-December 1986, pp. 741-50.

14. Decree No. 3 of the President of the People's Republic of China.
Law of the People's Republic of China on the Industrial State-Owned Enterprises.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 3 hao).
Zhonghua Renmin Gongheguo Quanmin Suoyouzhi Gongye Qiye Fa.
Compilation, January-December 1988, pp. 721-34.

15. Decree No. 11 of the President of the People's Republic of China.
Standardization Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 11 hao).
Zhonghua Renmin Gongheguo Biaozhunhua Fa.
Compilation, January-December 1988, pp. 1109-14.

16. For the relevant provisions of the various laws as cited where there is reference made to the judicial review of administrative action, see: Article 45 of the

Maritime Traffic Safety Law; Article 55 of the Pharmaceutical Administration Law; Article 32 of the Metrology Law; Article 40 of the Postal Law; Article 59 of the Law on the Industrial State-Owned Enterprises; Article 23 of the Standardization Law.

17. For the Criminal Law of the PRC as in its revised version as of 1997, see:
Decree No. 83 of the President of the People's Republic of China.
Criminal Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 83 hao).
Zhonghua Renmin Gongheguo Guoxing Fa.
GSC, 4 April 1997, Issue No. 10, Serial No. 862, pp. 419-94.

18. For the Criminal Procedure Law of the PRC as in its revised version as of 1996, see:
Decree No. 64 of the President of the People's Republic of China.
Criminal Procedure Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 64 hao).
Zhonghua Renmin Gongheguo Xingshi Susong Fa.
GSC, 18 April 1996, Issue No. 10, Serial No. 824, pp. 378-413.

19. Decree No. 37 of the President of the People's Republic of China.
General Principles of the Civil Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 37 hao).
Zhonghua Renmin Gongheguo Min Fa Tongze.
Compilation, January-December 1986, pp. 1-34.

20. Decree No. 44 of the President of the People's Republic of China.
Civil Procedure Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 44 hao).
Zhonghua Renmin Gongheguo Minshi Susong Fa.
GSC, 15 May 1991, Issue No. 13, Serial No. 652, pp. 481-520.

21. G.W.F. Hegel, *Elements of the Philosophy of Right,* trans. H.B. Nisbet, ed. Allen W. Wood (Cambridge: Cambridge University Press, 1991). For an indication of the thrust and direction of the recent thinking about civil society, see for example: *Civil Society: Theory, History, Comparison,* ed. John A. Hall (Cambridge: Polity Press, 1995); *The State of Civil Society in Japan,* ed. Frank J. Schwartz and Susan J. Pharr (Cambridge: Cambridge University Press, 2003).

22. For wide-ranging discussion of the economic reform programme in the PRC, as this has been centred on the reform of the state industrial sector, see: Shahzadi Covell: *The Reform of the Industrial State-Owned Enterprises and its Impact on the Political-Administrative System in the People's Republic of China since 1978,*

PhD Dissertation in International Political Economy (Tsukuba, Japan: Graduate School of International Political Economy, University of Tsukuba, March 2001); *The Corporation System in the People's Republic of China in its Practice and Operation: The Parent-Subsidiary Corporate Organizational Structure and the Framework for State Industrial Sector Reform,* IPE Monograph No. 1, Monograph Series in International Political Economy: The Doctoral Program in International Political Economy, University of Tsukuba (Tsukuba Science City, Japan: January 2002).

23. In connection with the rise of the private enterprises in the PRC during the reform era, see: Charles Covell and Shahzadi Covell, 'The Law of the Individual-Exclusive Funded Enterprises and the Private Enterprise Sector in the People's Republic of China', *Tsukuba University Journal of Law and Political Science,* 34 (March 2003), pp. 1-95.

24. For the details of the Thought of the Three Represents, as per its inclusion in the Constitution of the CPC as at the 16th National Congress of the CPC held in Beijing from 8 to 14 November 2002, see:
Report Delivered by Jiang Zemin at the 16th National Congress of the Communist Party of China on behalf of the 15th National Congress of the Communist Party of China as of 8 November 2002, and entitled:
Build a Well-Off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics.
Quanmian Jianshe Xiaokang Shehui Kaichuang Zhongguo Tesi Shehui Zhuyi Shiye Xin Jumian.
Renmin Ribao (*People's Daily*), 18 November 2002, pp. 1-4.
Constitution of the Communist Party of China (Zhongguo Gongchandang Zhangcheng), as amended and adopted at the 16th National Congress of the Communist Party of China on 14 November 2002. For the full Chinese text of this with an English translation in two parts, see: *Beijing Review:* 45 (19 December 2002), Supplement; 45 (26 December 2002), Supplement.

25. The Thought of the Three Represents is affirmed to comprise part of the official public doctrine in the PRC in the now amended form of the seventh paragraph of the Preamble to the State Constitution. Article 13 of the State Constitution provides in its amended version that the lawful private property of citizens is inviolable, and that the state is to protect according to law the right of citizens to own and to inherit private property (albeit that it is allowed that the state may, in the public interest, appropriate or requisition the private property of citizens for its own use, as in accordance with the laws and subject to proper compensations). The reference details for these and the other amendments to the State Constitution as adopted on 14 March 2004 are as follows:
Amendments to the Constitution of the People's Republic of China.

Constitution of the People's Republic of China.
Zhonghua Renmin Gongheguo Xianfa Xiu Zheng An.
Zhonghua Renmin Gongheguo Xianfa.
GSC, 10 May 2004, Issue No. 13, Serial No. 1120, pp. 4-17.

26. Under the terms of the amendments to the State Constitution as of 14 March 2004, Article 33 stands revised such that there is added to it a new paragraph affirming that the state is to respect and guarantee human rights. The provision on human rights supplements the existing provisions, as contained in the article, where it is affirmed that the nationals of the PRC are its citizens, that the citizens of the PRC are equal under the law, and that all citizens are entitled to the rights and subject to the duties set forth in the State Constitution and in the laws. For the reference details for the March 2004 constitutional amendments, see note 25 above.

27. The official public doctrine in the PRC is that prescribed by the CPC as the power exercising rulership within the state, and with the core of this public doctrine consisting in the so-called four cardinal principles. These provide for the maintenance of the socialist road, the democratic dictatorship of the people, the leadership of the CPC, and the ideological primacy of Marxism-Leninism and Mao Zedong Thought. As such, the four cardinal principles underline the public commitment in the PRC to the building of the true socialist society, as the precondition for the final realization of communism, and in doing this the four cardinal principles serve to set the ultimate normative standard that is to be adhered to throughout the course of the unfolding of the public policy programme of socialist modernization. In the current version of the official public doctrine of the PRC, as set forth in the Constitution of the CPC as amended in November 2002 at the 16th National Congress of the CPC, it is affirmed that the PRC is now in the primary stage of socialism, and that this stage of socialism will remain in being for a long period of time. As for the tasks specific to the primary stage of socialism, these in their essentials are stated to concern the development of productive forces, adequate to meet the material and cultural needs of the people, as through the effecting of the reform of the existing production relations and the superstructure. In line with this, the principal reforms effected in the PRC since 1978, as with the ones relating to the economic sphere and the legal sphere and relating to the concession of rights within these spheres, stand as reforms that are to be understood to be necessary for, but also as particular to, this the primary stage of socialism and its own defining conditions. Thus it is that it is suggested that the status of the rights of individuals, as within the PRC, is not one of absolutism, as with the prevailing Western liberal conceptions of justice and political morality, but is rather a conditional status as relative to the desiderata of socialism and to the advancement of the final end state of the perfectly realized communist society. (As regarding liberal conceptions of

justice and political morality, it is to be noted that the official public doctrine of the PRC is such that the project of socialist modernization is quite explicitly opposed to what is referred to as bourgeois liberalization.) For reference details for the Constitution of the CPC in its amended version as of November 2002, see note 24 above.