CHAPTER SIX

GOVERNANCE ACCORDING TO LAW

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The most fundamental change in China’s governance over the past thirty years has been the shift from the rule of men (ren zhi 人治) to the rule of law (fa zhi 法治). This change means that the Chinese government has moved away from being a government with unlimited power towards being one with limited power, from being a government which uses the law as a tool towards one which considers the law a guide, from being a government above the law towards one under the rule of law; from being a government shrouded in mystery towards being transparent. The shift from a planned economic system to a market economic system is the fundamental reason behind the government’s move towards governance according to law. The growth of civil society and people’s increased awareness of their rights, both products of the market economy’s development, have been powerful forces impelling the government to move towards governance according to law.

To understand the development of governance according to law in China over the past thirty years, one must understand the Chinese legal system and its development. China today is still at a stage where the rule of man co-exists with the rule of law. The Chinese legal system has the rule of man as its foundation and this has driven its development historically. Today, however, the goal is to break free of the rule of man in favor of a system which imposes restraints on power. The Chinese government’s move towards the rule of law has, thus, been a painful one. Before the reforms began, China had a “Party and government inseparable, the Party acts for the government” system (dang

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1 In the process of writing this paper, Dr. Wei Jianxin 魏建新 and Dr. Huang Jianjun 黄建军 made valuable contributions of relevant materials and offered incisive opinions for the revision of this paper.
zheng bu fen, yi dang dai zheng 党政不分，以党代政). \(^2\) Looked at from this perspective, the government was all inclusive. Given the planned economy and public ownership, the government controlled all of the society’s resources; there was, thus, no aspect of citizens’ lives or of the society’s activities which fell outside of the government’s embrace. Against this backdrop, and driven by two pressures—first, to create a stable political environment and, second, to study Western systems to find solutions to the nation’s economic difficulties—the Chinese government began its march towards the rule of law.

1 Governance according to Law: 30 Years of Change

At the end of 1978, the Third Plenary Session of the 11th CPC Congress ended the Cultural Revolution. A generation of Chinese leaders like Deng Xiaoping, who had been persecuted during the Cultural Revolution, summarized their historical experiences and lessons in governing by proposing to make “the development of socialist democracy and the improvement of the socialist legal system” important goals of national construction. According to Deng, the legal system had to be strengthened in order to guarantee people’s democracy. Development of democracy and the legal system would ensure that the system and the laws did not change with changes in leadership or because particular leaders decided arbitrarily that they should be changed.\(^3\) Veteran leaders had come to a new understanding of the importance of legal construction and this served as the beginning of a process to develop the legal system, a process which has continued to this day. Throughout the reform and opening period, the government has been engaged in the process of reforming governance. With China’s entry into WTO and its market economic reforms, the government has moved step by step towards governance according to law. This process can be divided into three stages:

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\(^2\) This refers to the lack of separation between the power of the Communist Party and the power of state. During the Cultural Revolution, the Party and the state were one and the same, the former taking precedence over the latter. During the early stage of the reforms and opening, the power of state was separated from the power of the Party, but the system remained one in which the Party laid down policies for the state to implement.