THE 1982 CHINESE CONSTITUTION AND THE RULE OF LAW

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1. Introduction

One of the major reforms of the post-Mao leadership in the People's Republic of China (PRC) is to strengthen the socialist legal system in order to provide a more secure and stable environment for carrying out the PRC's four modernizations program. To achieve this goal, the PRC has taken a series of measures to reform its legal system in an attempt to establish a limited degree of a "rule of law" in China. Among these measures, the PRC leaders and scholars have placed a special emphasis on the Constitution promulgated on 4 December 1982. In presenting the draft of the Constitution to the Fifth Plenary Meeting of the Fifth National People's Congress on 26 November 1982, Peng Zhen, Vice-Chairman of the Committee on Constitutional Amendment stated:

Our state system and social system provide both legal and practical guarantees that our citizens enjoy extensive and genuine freedoms and rights. The draft has reinstated the provision in the 1954 Constitution that all citizens are equal before the law. China's laws are drawn up by the whole nation under the leadership of the working class and are the concentrated expression of the will and interests of the people. All citizens are equal before such laws, which apply to all citizens equally; no citizen is allowed to enjoy the privilege of being above the Constitution and the law. It is imperative to reinstate this provision, for it represents a basic principle that ensures the application of socialist democracy and legality.

In concluding, Peng also emphasized that the Chinese Communist Party (CCP) is very serious about this Constitution and also understands the importance of a constitution to the political life of a state. He said:

In his report to the 12th National Congress of the Communist Party of China, Comrade Hu Yaobang solemnly declared: "In particular Party members should be educated and urged to take the lead in observing the Constitution and laws." The stipulation in the new Party Constitution that 'the Party must conduct its activities within the limits permitted by the Constitution and laws of the state' embodies a most important principle. It
is impermissible for any Party organization or member from the Central Committee down to the grass roots, to act in contravention of the Constitution and laws". The Chinese people and the Communist Party of China fully recognize that the authority of the Constitution concerns the political stability and the future of our country, and that it is absolutely impermissible to undermine the Constitution in any way.4

The preamble of the 1982 Constitution states that "[t]he people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation". Article 5 specifically provides that "[a]ll state organs, the armed forces, all political parties and public organizations, all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be examined".5

In the opinion of a prominent PRC scholar, "the new Constitution makes clear the important principle of 'governing a country by law' and fully confirm the 'rule of law'; thus possesses the important significance of restoring order and returning to the right path in both theory and practice".6 Other Chinese scholars, however, are not so optimistic since most of them only referred to "strengthening the legal system" or "governing the country by law", and almost no one referred to a "rule of law".7

This paper will analyze the Chinese Constitution and its related problems in order to discern whether a "strengthened" Chinese legal system with emphasis on "governing the country by law" would provide a limited "rule of law" for Chinese society. The paper will begin with an analysis of the Chinese constitutional experience prior to the promulgation of the 1982 Constitution.

2. Chinese Constitutional Development from 1949 to 1981

Before the promulgation of the present Constitution in 1982, the PRC lived under four constitutions. Furthermore, a draft constitution of 1970 was recalled before its promulgation. The following table provides a concise description of the fate of each constitution:

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<th>Year of Constitution</th>
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<td>1) 1949 Common Program of the Chinese People's Political Consultative Conference (Provisional Constitution)</td>
<td>Replaced by the 1954 Constitution</td>
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