

“Governing the Country according to the Law”: China’s Rule of Law Policy as Political Reform

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This article analyzes China’s rule of law policy—that is, “governing the country according to the law” (yifa zhiguo)—in terms of political reform. It addresses two issues: one is the formation and actual implementation of the rule of law policy. The other is the nature and implementation of the rule of law policy. To this end, the article investigates specific policies of the rule of law. It then looks into the processes of the rule of law policy’s emergence and development at both the central and local levels. Finally it closely examines the implementation of the rule of law policy. The article argues that the rule of law policy is not just legal or judicial reform but comprehensive political reform which aims at transforming the way that the Chinese Communist Party rules the country. Moreover, it has developed for about 17 years through the processes of mutual influence between the central and local levels.

Keywords: *political reform, rule of law, legal system, law dissemination campaign*

1. INTRODUCTION

In the world of Chinese political studies community, there is a widely shared argument that Chinese political reform was at a virtual halt entering the 1990s and administrative reform was instead actively in pursuit over political reform. Partly for this reason, it leads many to conclude that the Chinese political system is still a party-state or a one-party system solely ruled by the Chinese Communist Party (CCP), while the socioeconomic system has already shifted from a planned economy to a market economy. According to this interpretation, the CCP cancelled several political reform initiatives, such as the functional separation of the Party and state (*dangzheng fenkai*) adopted at the 13th Party Congress in 1987, due to the Tiananmen Incident in 1989 and the collapse of the Soviet Union in 1991. China, however, has further advanced its economic reform efforts by introducing market and private ownership, decentralizing the state authorities, and opening-up the trade and investment opportunities to foreigners.

Then, how are these socio-economic reforms considered relevant to the absence of political reforms? Is it true that China has not had any concrete directives for political reform and has not implemented any political reforms since the 1990s? This article argues otherwise. China has adopted a new and comprehensive direction for political reform starting in the mid-1990s and achieved a relatively good success. That is “governing the country according to the law” (*yifa zhiguo*, hereafter the rule of law policy) which officially became a new guiding principle of government and of political reform at the 15th Party Congress in 1997. The rule of law policy is different from the functional separation of the Party and state in the 13th Party Congress. In this vein, it is a new direction of political reform. Furthermore, the rule of law policy is a synthetic policy of previous individual reforms of the Party and state organs that China has carried out in the past decades, ranging from administration, legislature, and judiciary to party reforms. In this sense, the rule of law policy constitutes a

comprehensive direction for political reform.

It is, therefore, not appropriate to postulate that China has not implemented political reform since the 1990s or that administrative reform was put in place over political reforms. Instead, China has seriously promoted political reform with hopes to institutionalize the Chinese political structures and processes, while resolutely opposing political democratization such as introducing a multi-party system and free elections. Implementation of the rule of law policy since the 15th Party Congress in 1997 proves this fact. Successful political institutionalization has been the bedrock for China's rapid economic growth with relatively stable social order during the past decades.

To illustrate this argument, the article aims at analyzing China's rule of law policy (i.e., *yifa zhiguo*). The policy of establishing a legal system (*fazhi*) started concurrently with the reform and opening-up policy adopted at the Third Plenum of the 11th Central Committee of CCP in 1978. The Party embarked on the construction of a socialist democracy and the perfection of a legal system as new party policies, along with the modernization of socialism (i.e., reform and opening-up). About 20 years later, at the 15th Party Congress in 1997, the CCP approved the rule of law policy and the construction of a socialist rule-of-law state as new guiding principles of government. Soon after that, this principle was inserted into the Constitution at the Second Plenary Session of the Ninth National People's Congress (NPC) in 1999.

Since the CCP adopted the rule of law policy as a new direction in 1997, previous political reforms were included as one of its specific measures. For instance, the State Council has executed "administration according to the law" (*yifa xingzheng*) by promulgating the Decision on the Comprehensive Implementation of the Administration according to the Law in 1999 and the Implementing Outline on the Comprehensive Promotion of the Administration according to the Law in 2004, respectively (Yuan 2004: 329-32, 334-43). Likewise, the Supreme People's Court has started comprehensive judicial reform with the goals of judicial fairness and efficiency since 1999 by enacting the Outline on the Reform of the People's Courts in the Next Five Years in 1999, and the Outlines on the Second Five-Year People's Court Reform (2004-2008) in 2005 and the Third Five-Year People's Court Reform (2009-2013) in 2009, respectively (Gong 2009: 74). Furthermore, the CCP has implemented "ruling the country according to the law" (*yifa zhizheng*) as a new party policy since the 16th Party Congress in 2002 (Zhang 2004: 1-23, 115-36; Yu 2007: 1-9). These facts strongly indicate that the rule of law policy emerged as a new comprehensive direction of political reform since the mid-1990s.

There are many studies on the policies of legal system or rule of law in China, and they can be divided into two categories (Liang 2008: 3-5). One is studies of laws or legal reform (including the constitution, civil, criminal and administrative laws), and the other is studies of judicial reform (including the courts, procuracy, lawyers, legal education and legal aid). But they have two shortcomings. First, they have a narrow analytical perspective. That is, previous studies tend to approach the rule of law policy in terms of jurisprudence, and accordingly they analyze it as a merely legal or judicial reform. This perspective is not appropriate to the rule of law policy. In fact, Chinese official documents and actual implementation of the rule of law policy demonstrate that it is not limited to legal or judicial reform. For instance, *the Construction of Rule of Law in China* (White Paper), which was released by the State Council in 2008, includes legislative, administrative, and judicial reforms as core elements of "the rule of law construction" (Guowuyuan 2008; Horsley 2007: 93-108). In short, the rule of law policy can be adequately understood only when analyzed

from the perspective of political reform.

Second, previous studies tend to focus on the theoretical aspects of the rule of law policy. Analysis of the debate about the rule of law and investigation into the nature of legal system are cases in point (Turner, Feinerman and Guy 2000; Peerenboom 2002: 126-87; Peerenboom 2004: 113-45; Zhao 2006; Li 2007). In contrast, it is rare to find empirical studies on the kinds of measures the rule of law policy includes and how they have been carried out. Linda C. Li's study of the rule of law policy in Guangdong is an exception (Li 2000). For these reasons, these studies do not allow for a proper understanding of the impact the rule of law policy has on Chinese politics and its implications for political reform.

This article aims at analyzing the rule of law policy in terms of political reform focusing on two issues: one is the formation and implementation of the rule of law policy. How has the rule of law policy been fashioned, what kind of measures has it entailed, and how have they been practiced? The other is the nature and elements of the rule of law policy. What specific measures were adopted for the rule of law policy? If the rule of law policy is not just a legal or judicial reform, as this article argues, what kind of characteristics does it have? In this regard, we need to investigate the individual areas of administrative, legislative, judicial and party reforms if we want to understand fully how China has concretely practiced the rule of law policy. However, this article does not aim to examine individual cases of the rule of law policy's practice in every individual area. Instead, it examines the rule of law policy in terms of political reform, and its several key elements. Therefore, studies on individual areas of the rule of law policy's practice should remain reserved for future studies.

The article will deal with several issues as follows. First, it investigates the process of how the rule of law policy has emerged and been decided as an official policy of the CCP. It was possible due to the voluntary practices of legal reform at the local level for more than ten years and the efforts on part of the central government in spreading the practice across the country. Second, it delineates the concrete measures of the rule of law policy. Through this investigation can we find that the rule of law policy is not legal or judicial reform but a new direction of political reform. Third, it examines the actual way of the rule of law policy promotion at the local level, focusing on the experiences of Guangdong Province. Finally, it discusses the problems of the rule of law policy.

2. THE EMERGENCE AND DEVELOPMENT OF THE RULE OF LAW POLICY

The rule of law policy began as a reform of the legal system in the early 1980s with a view to establishing a workable legal system and regulating government behavior, and it gradually developed into a comprehensive political reform in the mid-1990s with the purpose of changing the way that China is ruled. At the same time, the rule of law policy emerged through the collaboration between the center and localities.

2.1 Construction of a Legal System and the Debate of Rule of Law at the Central Level

As noted earlier, constructing a socialist democracy and perfecting a legal system were decided at a party meeting in 1978. This was the most important background against which the CCP has implemented the rule of law policy as political reform since the mid-1990s. Originally, China intended to end the chaos of the Cultural Revolution (1966-76) and restore political stability with the legal system. The Official Bulletin of the Third Plenum of the 11th

Central Committee clearly expressed the Party's intention: that is, "the CCP must strengthen the socialist legal system in order to guarantee people's democracy, and thereby it should institutionalize and legalize democracy. Therefore, there must be laws to rely on; where there are laws, they must be followed; laws must be strictly enforced; and violation of laws must be corrected." At the same time, "the CCP must guarantee that all people are equal before the law, and that no one is privileged to be beyond the law" (Zhonggong 1982: 10; Epstein 1994: 19-20).

The policy was inserted verbatim into the Constitution in 1982. Article Five stipulates that "All state organs, the armed forces, all political parties and public organizations, all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual is privileged to be beyond the Constitution or the law." The 13th Party Congress in 1987 also mentioned the policy. Perfecting a legal system and constructing an advanced form of democracy became long-term goals of political reform in the process of constructing a socialist democracy with Chinese characteristics. Eventually, the official formulation (*tifa*) emerged that the construction of democracy and the perfection of legal system are the two goals of China's political reform (Zhonggong 1991: 4-61).

Meanwhile, academic and legal circles engaged in heated debates over the issues of the legal system and the rule of law in the 1980s and 1990s, and they played a vital role in the emergence of the rule of law policy in the theoretical aspect. For example, legal system theory (*fazhilun*) replaced the rule of person theory (*renzhilun*) after the "legal system vs. rule of person" controversy in the early 1980s. The result affected both the enactment of the Constitution in 1982 and the political report of the 13th Party Congress in 1987. Then in the early to mid-1990s the legal system theory and "governing the country by use of the law" (*yifa zhiguo*) were criticized in the "rule of law vs. legal system" controversy, and consequently the rule of law theory (*fazhilun*) occupied the dominant position in academic and legal circles (Peerenboom 2002: 56-60; Shen 2000: 26-7; Li 2007: 115-57). Under these circumstances, the rule of law policy was adopted as a guiding principle of the Party at the 15th Party Congress in 1997.

2.2 The Law Dissemination Campaign and Legal Practices at the Basic and Local Levels

Facilitating the development of the rule of law policy in concrete policy aspect, however, has been legal practices at the basic and local levels. In the early 1980s, several localities started to propagate the legal system and to educate legal knowledge to people in order to cope with deteriorating public order and the collapse of the social management system after the unraveling of the collective system in the Mao era. In the process, "governance according to the law" (*yifa zhili*) was spontaneously carried out in several localities, which combined legal education and legal practices.¹ And the CCP and the State Council, based on these successful experiences in several localities, decided to launch the "law dissemination campaign" (*pufa huodong*) in 1986 with the purpose of proliferating the experience across China. Through such measures, the governance according to the law, which spontaneously

¹ The governance according to the law is defined in China as, "a set of activities that people undertake in local affairs, trade affairs and basic affairs by use of various channels and methods in accordance with the law, thereby realizing the legalization of public management" (Yuan and Xiao 2003: 1).

started in a few localities in the early 1980s, developed into the rule of law policy in the mid-1990s.

Benxi City, Liaoning Province, as the earliest region to practice the governance according to the law, became a role model in the process of spreading it across China. The city conducted a large-scale campaign for the propagation and education of the legal system at the request of the Ministry of Justice from 1981 to 1984. It was originally launched to address the region’s deteriorating public order. In the process, some rural villages and enterprises attempted to integrate legal knowledge study and legal practices in the name of the governance according to the law. “Governing villages according to the law” (*yifa zhicun*), “managing factories according to the law” (*yifa zhichang*), “operating schools according to the law” (*yifa zhixiao*), and “controlling water according to the law” (*yifa zhishui*) were representative cases. The city’s party committee praised the practices, and decided to spread them all over the region. As a consequence, “governing the city according to the law” (*yifa zhishi*) in Benxi was officially enacted and implemented for the first time in 1986.

Benxi City implemented five policies in the name of *yifa zhishi*. These policies became the prototype measures of the rule of law policy that China has implemented across the country since the mid-1990s. First, the role of local people’s congresses, especially legislative oversight, should be strengthened. Local legislatures were meant to help local governments to properly implement the law by use of legislative supervision. Second, courts should play their role more independently and adjudicate the law more stringently. Third, governments should exercise their authority by abiding the law, and society should strengthen its supervision over administrative wrongdoings. Because government agencies implemented most of the laws and rules, exercising administrative authority in accordance with the law was considered to be a key task of governing the city according to the law. Fourth, enterprises and basic-level units should practice the governance according to the law more strictly. Finally, ordinary people should actively participate in protecting public rights and interests according to the law (Sifabu 2001b: 1957-61).

Meanwhile, the Ministry of Justice paid considerable attention to the propagation and education of the legal system and Benxi’s governance according to the law practices, and decided to implement the law dissemination campaign with a view to popularizing this pioneering experience in other parts of China. Specifically, the Ministry convened an On-the-Spot National Conference on the Propagation of the Legal System in Benxi in 1984, wherein participants discussed the ideas of promoting the law dissemination campaign for the next five years, on the basis of, and under the encouragement of, Benxi’s successful experience. With the strong support of and at the request of top leaders such as Peng Zhen, the Central Propaganda Department of the CCP and the State Council’s Ministry of Justice held the National Work Conference on the Propagation and Education of the Legal System in Beijing in 1985. They considered the draft of the first five-year (1986-90) plan of the law dissemination campaign, and officially decided to launch the campaign in 1986. In this way, Benxi’s experience of the governance according to the law began to spread to other regions and to shift to higher administrative units (Yuan and Xiao 2003: 18-21).

In the second five-year (1991-95) of the law dissemination campaign, the governance according to the law rapidly proliferated horizontally and vertically. The Ministry of Justice decided that the spread of the governance according to the law was a core task in the second campaign, and tried to implement the decision. Convening related meetings and conferences every year around the country was one of its strategies, and this was vital in spreading the governance according to the law. Accordingly, in 1995 (i.e., the last year of the second

campaign), the rate of practicing “governing provinces according to the law” (*yifa zhisheng*) was 40 percent (i.e., 12 out of 30), the rate of municipal levels 45 percent, the rate of county levels 49 percent, and rate of village levels 50 percent (Zhu 2007: 583).

In 1996 the then General Secretary, Jiang Zemin, approved the governance according to the law which had been implemented at local levels for about ten years. That is, at a Politburo collective study session of the law in 1996, he made public the term *yifa zhiguo* as a new ruling principle. One year later, the 15th Party Congress made it an official principle. With this decision at the central level, localities which had been lukewarm in their practice actively adopted it in the third five-year (1996-2000) of the law dissemination campaign. As a consequence, in 2000 (i.e., the last year of the third campaign), all provincial-level units adopted “governing provinces according to the law,” and the rates of municipal, county and basic levels that year were 95 percent, 87 percent and 75 percent, respectively. Three years later, the rates increased to 98 percent, 95 percent and 92 percent (Zhu 2007: 587). In other words, almost all regions from basic to provincial levels during the fourth (2001-05) of the law dissemination campaign put it into practice.

Taken together, the governance according to the law at the basic and local levels has started and dissipated across the country since the early 1980s and finally developed into the rule of law policy under the approval of Jiang Zemin in 1996 and official decision at the 15th Party Congress in 1997. In these ways, the rule of law policy emerged owing in large part to the interaction between the center and localities in which the former debated and decided the policy of establishing legal system and the latter practiced legal experimentations.

3. MAIN MEASURES OF THE RULE OF LAW POLICY

As noted above, the rule of law policy since the mid-1990s has the character of political reform, not just legal or judicial reform. It is true that the policy started as legal reform in the early 1980s with a view to establishing a workable legal system, maintaining public order, and facilitating government’s strict enforcement of law. Then, in the 1990s, the rule of law policy transcended the boundary of legal reform and developed into a political reform aimed at transforming the way the country is ruled. Consequently, the rule of law policy as political reform encompasses such diverse areas as the legislative, the administrative, the judiciary and the Party.

We can find evidence by investigating concrete policies which some local governments at provincial level have implemented in the name of the rule of law policy since the mid-1990s. The first is Beijing. The Beijing Party and Government jointly promulgated the Long-term Work Plans of Governing the Municipality according to the Law (1999-2002, 2003-2007) in 1999 and 2003, respectively. These plans illustrate that Beijing has implemented five measures to carry out the rule of law policy: a) legislative reform, especially the strengthening of legislation which prioritizes the enhancement of lawmaking quality; b) administrative reform and the administration according to the law (*yifa xingzheng*); c) judicial reform and the enhancement of judicial fairness; d) the intensification of legal education and propagation (*pufa*); and e) the improvement of legal services (Wang and Jiang 2008: 219-35; Beijingshi 2006: 2-4).

Shanghai took similar measures for implementing the rule of law policy. In 1999 the Shanghai Party enacted the Implementing Outline on Governing the Municipality according to the Law in Shanghai. The Outline indicated that the rule of law policy included six

measures: a) the strengthening of legislation focusing on the elevation of lawmaking quality; b) the strengthening of government construction of the legal system and the enhancement of level and capacity of the administration according to the law; c) the promotion of judicial reform and the protection of judicial fairness; d) the strengthening of propagation and education of the legal system toward citizens; e) the improvement of the legal service system and the standardization of the legal service market; and f) the strengthening of government oversight and the effective enforcement of law (Sifabu 2001a: 196-200). In the same vein, Guangzhou and Shenzhen in Guangdong have also implemented the rule of law policy since the late 1990s (Shu 2007: 178; Fu 2000: 21-33).

In these ways, the rule of law policy has developed into a comprehensive political reform that embraces most previous reforms to individual organs and areas. And they can be categorized as follows: the first is legislative reform with the strengthening of the lawmaking function of legislatures as a priority. The second is administrative reform, focusing on the administration according to the law. The third is judicial reform. The fourth is the dissemination of legal knowledge and the enlargement of legal services (including legal aid systems) to ordinary people in order to elevate public legal consciousness and protect the basic rights of citizens. The fifth is the construction of “basic” democracy, which refers to the democratic election and operation of villagers’ committees in the countryside and residents’ committees in urban areas. Finally, ruling the country according to the law (*yifa zhizheng*) was adopted as a party policy at the 16th Party Congress in 2002, and it is considered to be one of the rule of law policy’s key elements. That is, *yifa zhizheng* is the application of the rule of law policy to party reform. If this is included, the rule of law policy is composed of six measures to reform the organs of the party-state.

Meanwhile, among the six measures of the rule of law policy implemented since the late 1990s, the administration according to the law has been regarded as central to it (Zhuo 2007: 238). It is natural as well as logical because governments implement about 80 percent of all laws and regulations and as a result the rule of law policy cannot be properly actualized without complete implementation of the administration according to the law (Ying 2001: 174-5). For example, Shenzhen proclaimed the policy of “legal-binding administration” (*xingzheng fadingshua*) in 1999 and has thoroughly implemented it as a core rule of law policy since 2001.² It is geared to regulate and standardize the activities of government agencies and officials by use of the law. It covered nine areas, such as a) organizations, functions and personnel of government structures; b) administrative procedures; c) administrative approval; d) administrative fees; e) administrative punishment; f) public construction and supply of government materials; g) government investment; h) administrative responsibility; and i) internal management of government (Fu 2000: 21-33).

Shenzhen developed this policy into “evaluation index system of constructing the-rule-of-law government” (*fazhi zhengfu jianshe zhibiao tixi*) in 2008, which extended and improved the above-mentioned nine areas into 12 ones, including government’s lawmaking affairs, decision-making, legal-political service, information transparency, and rule of law policy consciousness and capacity (Zhou and Wang 2009: 323-39). By way of reference, Beijing and Yuhang District of Hangzhou in Zhejiang have also implemented this system since 2005 and 2006, respectively (Wang and Jiang 2008: 116-8; Zhongguo 2009: 385-401).

To sum up, the rule of law policy (i.e. *yifa zhiguo*) is the integration of previous political

² Interviews with senior officials of governments in Guangdong and Shenzhen: February 22, 2006 and August 11, 2009 in Guangzhou; February 17, 2006 and August 12, 2009 in Shenzhen.

reforms under the name of the rule of law, which has been implemented separately in individual state organs, the party apparatus and social organizations. Among these policies, the administration according to the law has been most central to the rule of law policy since the late 1990s.

4. IMPLEMENTING THE RULE OF POLICY: PROCESSES AND METHODS

The rule of law policy has been implemented in localities, and the CCP and State Council have presented local governments with just abstract ideas (not concrete guidelines) as to how to implement it. For this reason, each region had conducted various kinds of experiments, and as a result the rule of law policy were implemented at different times and with different policies from one region to another until the late 1990s when the State Council set up the policy standard and actively sought the exchange of experiences among regions.

4.1 Regional Disparities in Implementing the Rule of Law Policy

The rule of law policy was introduced at different times between regions, which can be divided into two groups for analytical convenience: “pioneer” and “bandwagon” provinces. “Inactives” could exist in theory but after the rule of law policy was officially set as a new guiding principle of government at the 15th Party Congress in 1997, they could no longer exist. In other words, every region has executed the rule of law policy.

Pioneers refer to the provinces where the rule of law policy was carried out in the form of governing provinces or municipalities according to the law before 1997. They are composed of four subtypes: the first is Guangdong. It was a leader of the reform and opening-up policy and explored the legal system and rule of law as well. The second is Beijing, where the strengthening of the legal system had been seriously implemented from the late 1970s in order to maintain political stability and public order. The third is Liaoning, in which the advanced city (i.e., Benxi) of governance according to the law took the lead implementing the rule of law policy all over the province. The last is Chongqing that, as a trial point (*shidian*) for establishing a legal system designated by the State Council, carried out the rule of law policy from the late 1980s.

Guangdong as a laboratory and a scouting team of reform policy has played a pioneering role in legal and administrative reform (Ge 2009: 1-2). In 1989, Guangzhou City formulated the prototype of rule of law policy, and it started to implement the Five-Year Plan of Governing the City according to the Law in 1990. In 1992, a professor at Zhongshan University submitted a proposal to the provincial Party Committee, entitled the Proposal on Taking the Lead of Experimenting Governing the Province by Use of the Law; the then Party Secretary, Xie Fei, accepted it. As a result, the Seventh Party Congress in Guangdong decided the policy of governing the province by use of the law in 1993. But at that time, it was not exactly same as the rule of law policy.

The Party Group (*dangzu*) in the Guangdong Provincial People’s Congress asked the provincial Party to promote the rule of law policy in Shenzhen in late 1993, and the Party approved it. From this time on, the rule of law policy was officially carried out in Shenzhen. And based on the experiences in Shenzhen for over two years, the Standing Committee of the Provincial People’s Congress convened a discussion meeting in 1995, where chairpersons of all legislatures in the region considered the issue of spreading the rule of law

policy across the province. In 1996, the provincial Party Committee held the Expanded Conference of High-Ranking Cadres, where the Decision on Further Strengthening the Work of Governing the Province according to the Law was officially adopted. At the same time, the Leading Small Group of the Rule of Law Policy (*yifa zhiguo lingdao xiazu*), with the Party Secretary of Guangdong as a director, was formed and led the rule of law policy in the province (Li 2000: 119-220; Quanguo renda 1997: 371-7).

As the capital, Beijing started the rule of law policy earlier than other provincial units. In 1979, Beijing was designated as one of ten trial points by the State Council where a legal propagation policy was launched to cope with deteriorating public order (Sifabu 2001b: 1049-55). Furthermore, the Beijing Party Committee required the government to start the rule of law policy in 1987, following in the footsteps of Benxi’s implementation of the governance according to the law. In 1990, the city legislature also asked the government to implement the rule of law policy strictly. Finally, in 1991, the city convened the Sixth Work Conference of Democracy and Legal System and passed the Work Plan on Governing the Municipality according to the Law in Beijing. Thanks to the promulgation of the plan, individual policies such as legislation, administrative law enforcement, judicial affairs, law dissemination, and the governance according to the law at the basic levels were integrated into the rule of law policy. The city made the second and the third long-term plans for implementing the rule of law policy in 1999 and 2003, respectively (Beijingshi 2006: 1-2, 31-4).

Due to the existence of the earliest place (i.e., Benxi City) to execute the governance according to the law in the early 1980s, Liaoning started the rule of law policy throughout the province in 1991 (Sifabu 2001a: 141-59). And Chongqing, before being elevated to a provincial-level city in 1997, was designated as a trial point for establishing a legal system and implementing the rule of law policy by the State Council in 1986 and by the Party Committee of Sichuan in 1988. For this reason, Chongqing has implemented the rule of law policy since the late 1980s, promulgating several documents about the policy (Ying and Yuan 2001: 522-36; Sifabu 2001a: 417-9).

Other regions can also be classified as bandwagoners.³ A few regions belonging to this group also conducted the law dissemination campaign from 1986 and several sub-regions under its jurisdiction practiced the governance according to the law at the basic and local levels. But in these regions, the rule of law policy officially evolved on a provincial-wide scale after the rule of law policy was declared as a new guiding principle in 1997.

4.2 Implementing and Leading the Rule of Law Policy

The general procedures of implementing the rule of law policy at the local levels were as follows. First, the propagation and education of the legal system and rule of law were conducted in the process of the law dissemination campaign. At this phase, the main task was to build and intensify the consensus about the necessity of implementing the rule of law policy among party cadres and government officials, and to spread fundamental legal knowledge to ordinary residents. Next, all state organs and major social organizations under the leadership of the Party undertook to develop long-term plans (mostly for five years) and annual plans for the rule of law policy which included its purposes, methods and specific

³ For a close examination of the implementation of rule of law policy in other provinces, see Sifabu 2001a (57-585).

policies. Third, legislatures and state organs cleared the lists of laws and regulations that would be implemented in each organ and area, and enacted new regulations, if necessary. Fourth, leading small groups, as the highest leadership body in implementing the rule of law policy, were formed and their administrative offices were set up. Finally, to start the large-scale propagation and education of the rule of law policy, the Party, state organs and social organizations launched it (Sifabu 2001b: 1107-12).

The discussion below examines the evolution of the rule of law policy in Shenzhen in greater detail (Quanguo renda 1997: 392-8; Guangdongsheng 1997: 135-44).⁴ After being designated as a trial point of the rule of law policy in 1993 by the Guangdong Party Committee, Shenzhen's Leading Small Group for the Rule of Law Policy was immediately formed. The Shenzhen Party Secretary took the directorship, and the chairman of legislature and the mayor of city served as vice-directors. At the same time, the Working Program on Governing the Municipality according to the Law was promulgated. A critical challenge was how to make a breakthrough, thus leading to the comprehensive implementation of the rule of law policy. To this end, the Standing Committee of People's Congress in Shenzhen organized five small groups composed of a dozen Committee members each in early 1994, and started to inspect the state of law enforcement in the region for two weeks. Based on the inspection, the city selected three areas for experimentation with the rule of law policy.

First, Shenzhen selected the government's Labor Bureau and Planning & Land Bureau as experimental units. The bureaus started legal education of officials and then announced the basic procedures of the administration according to the law and the hotlines of supervision over government behavior. The city also attempted to promulgate the administrative procedures and ultimately to transform the method of administration from regulation-centered law enforcement to a service-oriented one. One and half years later in 1995, the Party decided to spread the rule of law policy across the city based on the successful experiences of the two bureaus. The focus of the rule of law policy's policies was the administration according to the law. Specifically, several new policies were introduced in the name of the rule of law policy, such as the transformation of government functions, the simplification of administrative procedures, the strengthening of government service functions, rigorous law enforcement and working in accordance with the law, opening administrative procedures to the public and enacting regulations for more transparent administration, and the implementation of the responsibility system for law enforcement.

Second, Shenzhen decided to implement the governance according to the law more thoroughly by focusing on difficult and socially-sensitive cases. These included supervisory appraisal (*pingyi*) over courts and procuracies in 1995, the comprehensive management of environmental pollution, the clearing and strict management of arbitrary collection of fees and illegal taxes, and the maintenance of law and order. Third, Shenzhen selected 33 enterprises in the region and inspected how the Enterprise Law was enforced in June and September 1995. In addition, the city intensified the propagation and education of the legal system to all walks of society. In these ways, the rule of law policy was implemented for about three years, and on the basis of the successful experiences in Shenzhen, the Guangdong Party decided in July 1996 that the rule of law policy should be implemented throughout the province.

Meanwhile, each region across China has established leadership organs (i.e. leading small groups) to direct the implementation of the rule of law policy. Generally speaking, the

⁴ See footnote 2.

leadership apparatus is formed following the formation of “leadership of party, participation of all state organs, support of people’s political consultative conferences and social associations, and mobilization of residents.” In reality, however, depending on how much the party leadership pays attention to the rule of law policy, two models of leading small groups emerge: the general model of “leadership of party, supervision of legislature, and implementation of government”; and the “Guangdong model” of “leadership of party, leading role of legislature, and main role of government.”

The Guangdong model has two features. First, the party leadership attaches greater importance to the rule of law policy. Consequently, party secretaries themselves from the provincial- to basic-levels direct the leading small groups. In contrast, in most provinces and municipalities, such as Beijing, Shanghai and Chongqing, vice-secretaries of party or secretaries of political-legal affairs committees hold the directorships. Second, legislatures play an important role in implementing the rule of law policy, compared to other regions. To begin with, Guangdong legislatures took the lead in raising the necessity of implementing the rule of law policy and actively reported related plans to party committees. Furthermore, legislatures accelerated local state organs (chiefly governments) to strictly implement the rule of law policy by enacting resolutions and decisions that had legal binding force and by conducting legislative supervision over them. Third, because the administrative offices of the rule of law policy are located in legislatures, instead of governments, legislatures can take the initiative in the affairs of leading small groups. In contrast, the offices in most provinces are located in the justice bureaus of governments (Fu 2000: 34-45, 46-68; Ge 2009: 38-9; Guangdongsheng 1997: 114-22; Shu 2007: 176-82).⁵

5. THE PROBLEMS OF THE RULE OF LAW POLICY

The rule of law policy, however, has a few fundamental problems associated with its practice thus far, and due to these problems it is unlikely to fully achieve the expected results. In particular, no matter how the rule of law policy is intended to change the way of governance by the CCP, it can only play a limited role in addressing the fundamental problems of the present political system such as the concentration of power into the Party and the exclusion of popular political participation in decision-making process.

First of all, the rule of law policy can play a very limited role in restricting the wield of state power and protecting civil rights. It is because the rule of law policy is initiated in a party-state in a top-down fashion without meaningful participation by the general public and society. The past experience of South Korea and Taiwan illustrate that it may be inevitable that the state, not the society, takes the initiative of implementing the rule of law policy, especially at the initial phase of rapid economic development and social change (Jaysuriya 1999: 8-10, 12-13). However, ordinary Chinese people and civil society are marginalized in the process of implementing the rule of law policy, although present China has already surpassed that initial phase. Consequently, the rule of law policy serves as a state measure of rule by law intending to control people and society, rather than a popular method of rule of law aiming at restricting the wield of state power and protecting civil rights. For this reason, the rule of law policy cannot realize the two goals of the rule of law policy (i.e., restriction of state power and protection of civil rights), even if China promotes it much more strongly in

⁵ See footnote 2.

the future.

Furthermore, the rule of law policy is unlikely to play a meaningful role in restricting the CCP and the core organs of the state power (such as the military, intelligent service, prosecutors, and police) according to *the law*. Restricting the power of the CCP and core state organs according to the law is a prerequisite for the realization of rule-of-law's two goals. In China, however, the principle of "the party controls the party" is firmly maintained. The fact that the Party Constitution and regulations take precedence over the state Constitution and laws in disciplining party members and organizations is a case in point. In addition, the military, intelligent service, prosecutors, and police exercise their power without any serious external supervision such as strict legislative oversight. Instead, they are only subject to internal supervision by the party watchdog (i.e., discipline inspection commission) and self-overseeing agencies of each organ.

These problems arise from the present Chinese political system, and therefore they cannot be resolved without a radical reform of the present system. That there exist no political forces or mechanisms in China that can restrict the CCP and powerful state organs is a grim reality. The CCP is practically free of challenges from political parties and social organizations, and does not need to participate in any competitive elections to secure legitimacy of its ruling status from the Chinese people. For these reasons, power abuse and political corruption by party cadres and apparatus are still widespread across the country even though it has already passed more than 17 years since the Party adopted the rule of law policy. This indicates that the Party and power organs reign over the law, and the basic principle of rule of the law (i.e., the supremacy of law) is not strictly observed. Instead, exercise of the Party leadership still prevails in the process of implementing the rule of law policy.

After all, the introduction of political democratization is indispensable in addressing these problems in addition to the implementation of the rule of law policy (Reitz 1997: 130-36; Zhang 2006: 122-23; Li 2007: 150-51). Put differently, the rule of law policy without democratization has obvious limitations and democratic political reform is a prerequisite to their solution. Only with political democratization, state power can be restricted, civil rights be protected, and popular political participation be guaranteed. But, at this moment and the foreseeable future, the CCP is unlikely to pursue a radical political reform for democratization purposes, and consequently the limitations of rule of law policy will prevail.

6. CONCLUSION: IMPLICATION AND PROSPECTS OF THE RULE OF LAW POLICY

The rule of law policy has important implications for political reform in China. As several studies argue (White 1994: 73-92; Unger and Chan 1996: 73-94; Xia 2000; Peerenboom 2006; Guthrie 2006; Cho 2009; Lee 2010), the overall implementation of the rule of law policy confirms that China in the reform era has pursued a priority of political institutionalization as its political developmental strategy, as did East Asian developmental states including Japan, South Korea, Taiwan, Malaysia, Singapore and Hong Kong. That is, the rule of law policy is the Chinese version of a political institutionalization strategy. Although it was not clear in the 1980s, entering the 1990s, especially at the 14th and 15th Party Congresses in 1992 and 1997, the CCP made clear its intention. The decisions to establish a socialist market economy at the 14th Congress and the rule of law policy at the 15th Congress demonstrate its intention.

Originally, the CCP implemented the functional separation of the Party and state as a guiding principle of political reform at the 13th Party Congress in 1987. But the Tiananmen Incident in 1989 and the collapse of the Soviet Union in 1991 shocked the Party into abandoning it and instead strengthening its monopoly of political power over state and society. Simultaneously, the focus of political reform shifted from a question of how to separate the functions of the Party and state to a question of how to rationally rule the country without shaking the foundation of the Party’s firm hold on power. The decision on the rule of law policy, which was based on the integration of the Party and state (*dangzheng bufen*) at the 15th Party Congress, was the result. That is, the Party decided to institutionalize the political system by mobilizing the law, instead of separating the functions of the Party and state or democratizing the political system. And China, following this strategy of political development, has been able to continue its rapid economic growth and maintain relatively stable socio-political environment concurrently.

About 17 years have passed since the CCP officially practiced the rule of law policy nationwide. Such practice suggests that China will continue to pursue political institutionalization instead of democratization at least for the foreseeable future. This is because the Party has acquired enough confidence from China’s achievements to assert that its decision was a correct one. In particular, since the mid-1990s, the “democratic recession” in transition countries proves to party leaders, intellectuals and ordinary citizens that their strategy of political development is far superior to others. The rapid spread of the so-called “Beijing Consensus” or “Chinese model” is also the reflection of this confidence. Under these circumstances at home and abroad, the CCP can find no reason to change its political reform strategy, and as a consequence the rule of law policy as political reform will continue at least for the near future.

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