

Rule of Law in the Classroom: Teacher Interpretation and Application
of Policy Regarding
Teaching Methods in Undergraduate Ideo-Political Subjects in China

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Statement of Authorship

This thesis contains text taken directly, with minor edits, from a paper published by the author of this thesis. This paper reports on original research I conducted during the period of my Higher Degree by Research Candidature and is not subject to any obligations or contractual agreements with a third party that would constrain its inclusion in this thesis. I am the primary author of this paper.

The aforementioned article was published in 2021 in the *University of Western Australia Law Review*: Michael Hooper, 'Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China's Early Covid-19 Response in Wuhan' (2021) 48(2) *University of Western Australia Law Review* 330.

Significant portions of this article have been reproduced, with minor changes, in this thesis including in parts of Chapter One, Chapter Two, and the entirety of Section III in Chapter Four.

Abstract

While rule of law is already a contested concept, the use by Chinese leaders of the term *Yifa Zhiguo*, translated as ‘rule of law’ or ‘ruling the country according to law’, in China’s context naturally draws controversy. This thesis interprets China’s *Yifa Zhiguo* legal paradigm to reveal that the Party-state sees law as a tool for achieving policy goals. This tool is utilised when it suits authorities and discarded when it hinders Party-state objectives. This thesis engages with ongoing debates around the meaning of Chinese ‘rule of law’, compares three common features of liberal rule of law definitions with three features of Chinese law (i.e., Party-state supremacy over law, instrumentalism and reform–repression dualism) and provides a rich historical analysis of Chinese legal reform, with a focus on the post-Mao period. This analysis supports the arguments that China, under the *Yifa Zhiguo* paradigm, does not have a Western liberal rule of law. Instead, it has a system where the Party-state wields law as its tool.

This thesis concurrently proposes that law scholars should approach ‘ideo-political education’ as a subject of legal study. This thesis argues that studying ideo-political education reveals a mechanism the Party-state applies to present and justify its official worldview, including on law and *Yifa Zhiguo*, to young Chinese citizens. Analysis of the Soviet origins of ideo-political education, scholarly critiques and the content of official textbooks supports this argument. This thesis not only reveals what students are taught but also examines government policies that guide the implementation of ideo-political education. Finally, interviews with ideo-political subject teachers in Chinese universities explored the relationship between them and policy directives, revealing that teachers were largely unaffected by policy recommendations on teaching methods but were likely influenced by political pressures.

Statement of Originality

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide.

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Chapter One: Introduction

On his ascension to the position of general secretary of the Communist Party of China in 2012, Xi Jinping re-emphasised and elevated the concept of 依法治国 (*Yifa Zhiguo*), translated as ‘rule of law’, ‘rule by law’ and ‘ruling the country according to the law’.¹ Following the increased emphasis on *Yifa Zhiguo* by Chinese officials and statements by the new leader, such as ‘no organisation or individual has the privilege to overstep the Constitution and the law’,² scholars variously hoped for and expected reforms that would limit the power of the Party and lead to constitutional government.³ Even within China, there was public debate among scholars and in the media, while news analysis showed supportive reporting regarding constitutionalism.⁴

A decade later, Xi Jinping, the ‘Chairman of everything’,⁵ presided over harsh crackdowns on lawyers who sought to defend the lawful rights of their clients and successfully removed term limits on his own position as president of the People’s Republic of China (PRC) from the constitution.⁶ Officials even quashed the brief flowering of debate following his supremacy of law speech, and the Chinese media quickly reversed its previously positive reporting on constitutionalism to instead cast it in a negative light.⁷

Such a shift must puzzle observers who saw *Yifa Zhiguo* translated as ‘rule of law’, interpreted this in light of Western definitions and took Xi’s statements as reflecting a desire to emulate that vision. This experience should lead legal scholars to question what China’s leaders really mean when they speak of ‘rule of law’ or ‘governing according to the law’. Even in the West, rule of law is a contested topic at the best of times, and attempting to define it in the unique conditions of the PRC leaves even greater room for contention.

Another question facing legal scholars is how China presents and promotes its hegemonic approach to rule of law to its citizens. The Chinese Party-state produced its own legal paradigm and actively promotes its official views on law to the Chinese public. ‘Ideo-political education’, a school and university-based process of inculcating young people through set lessons and extra-curricular activities with the worldview of the Party-state, is one such means that has received very little attention in Western scholarship. This field is relevant to legal

¹ Elisa Nesossi et al, ‘Interpreting the Rule of Law in China’ (2016) 1(2) *Made in China* 26, 26; Michael Hooper, ‘Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China’s Early Covid-19 Response in Wuhan’ (2021) 48(2) *University of Western Australia Law Review* 330.

² Li Cheng, *Chinese Politics in the Xi Jinping Era* (Brookings Institute Press, 2016) 189. See also Hooper (n 2) 330.

³ Qiang Fang and Xiaobing Li, *Power Versus Law in Modern China: Cities, Courts and the Communist Party* (University Press of Kentucky, 2017) 178; Li Cheng (n 2) 189.

⁴ Suisheng Zhao, ‘The Ideological Campaign in Xi’s China’ (2016) 56(6) *Asian Survey* 1168, 1176. See also Susan Trevaskes, ‘A Law Unto Itself: Chinese Communist Party Leadership and *Yifa Zhiguo* in the Xi Era’ (2018) 44(4) *Modern China* 347, 349; Ewan Smith, ‘The Rule of Law Doctrine of the Politburo’ (2017) 79(1) *China Journal* 40, 57.

⁵ Geremie Barme, ‘Peak Xi Jinping?’, *ChinaFile* (Web Page, 4 September 2018) <<https://www.chinafile.com/reporting-opinion/viewpoint/peak-xi-jinping>>.

⁶ See Fu Hualing, ‘The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State’ (2018) 27(112) *Journal of Contemporary China* 554, 557; James Doubek, ‘China Removes Presidential Term Limits, Enabling Xi Jinping to Rule Indefinitely’, *NPR* (Web Page, 11 March 2018) <<https://www.npr.org/sections/thetwo-way/2018/03/11/592694991/china-removes-presidential-term-limits-enabling-xi-jinping-to-rule-indefinitely>>.

⁷ Zhao (n 4) 1176; Trevaskes (n 4) 349.

scholars because it is a means by which the Chinese Government presents to young Chinese citizens the official positions on what law means, the justifications for this position and what these citizens are expected to believe and do in relation to law. That is not to say that ideological education perfectly achieves the Party-state's goal or that it is the only medium for doing so, but it is at least one means and deserves attention from Western scholars.

Law scholars interested in legal developments in China ignore such information at their peril. Failing to take into account that Chinese students are subjected to a sophisticated, comprehensive system of ideological education that includes inculcation in the Party-state's own theories of law, and the attitudes and behaviours they want students to internalise, may increase the likelihood that scholars will make inaccurate predictions about the direction of future reforms or the way that Chinese people will react to events. Students who have internalised the Party-state's views and who have been blocked from competing views due to strict media censorship may be less likely to develop the attitudes towards law that liberal scholars desire or may assume are the natural result of the growing legalisation of a society.

This introductory chapter is divided into two sections. Section I lists the arguments that this thesis makes, as well as briefly addressing its limitations, particularly its focus on undergraduate ideological education, and those matters that it will not address. Section II outlines the structure of the thesis, including an overview of each chapter. Together, these sections provide an outline of how this thesis addresses the nature of *Yifa Zhiguo* and explores ideological education as a vehicle for presenting and justifying this legal paradigm. It is worth noting here that despite the Party's status as the sole governing party, it still seeks to bolster its legitimacy, at least in part through law.

I. Arguments

The previous section identified two problems this thesis addresses. First, what does 'rule of law' mean in the Chinese context and how does it relate to Western liberal understandings of rule of law? Second, how does the Chinese Party-state promote its legal paradigms, including its peculiar approach to rule of law in the form of *Yifa Zhiguo*, to young Chinese citizens?

In response to the first problem, this thesis demonstrates that the *Yifa Zhiguo* paradigm is not Western liberal rule of law and that *Yifa Zhiguo* positions law as a tool for the Party-state to achieve policy goals. In addition, it identifies three features of Chinese law: the supremacy of the Party over law, instrumentalism and a 'reform–repression dualism'.⁸ In addressing the second problem, this thesis argues that ideological education should be viewed as a topic of legal study because of its role in promoting the Party-state's views on law to young citizens and how they should engage with it. This thesis approaches ideological education as a topic of legal study by confirming its task of presenting official positions on law, of which *Yifa Zhiguo*, as described in Part I of this thesis, is a component part; discovering the legal content of this education; exploring the role of normative documents in guiding its implementation;

⁸ Trevaskes and Nesossi applied the term 'reform–repression dualism' in their analysis of *Yifa Zhiguo*; see Susan Trevaskes and Elisa Nesossi, 'Control by Law' in Jane Golley, Linda Jaivin and Luigi Tomba (eds), *China Story Yearbook 2016: Control* (ANU Press, 2017) 42, 57.

and conducting a case study of ideo-political education teachers to examine the effect of normative documents on the teaching of these subjects.

A. The Meaning of Rule of Law in China

By synthesising scholarly debates comparing *Yifa Zhiguo* to common features of Western liberal rule of law and analysing Chinese law reform since the Mao era, this thesis draws the conclusion that *Yifa Zhiguo* is not the Western liberal rule of law. Scholars largely agree that the Chinese Government has either failed thus far or is uninterested in pursuing this form of rule of law.⁹ To make this argument, a simplified model of the Western liberal rule of law is developed, drawing upon three common elements: supremacy of the law, judicial independence and formal legality. The thesis compares this model to Chinese conditions to show that the Chinese legal system does not meet these criteria. Instead, the Chinese system privileges the Communist Party over the law and denies the judicial independence that Western liberal rule of law definitions often require.

This thesis also identifies three features of Chinese law: supremacy of the Party over law, instrumentalism and a reform–repression dualism. This thesis argues that these elements were common features throughout the history of PRC law reform, although the analysis presented here largely focuses on the post-Mao era. Looking at developments from 1979 to the present shows that the Party-state holds a privileged position over the law, that law is seen as serving policy goals rather than being intrinsically valuable and that reforms promoting the role of law exist alongside extra-legal abuses. These three elements support the interpretation of *Yifa Zhiguo* presented in this thesis.

Yifa Zhiguo represents a legal paradigm where law serves instrumentally to achieve Party-state policy goals. Chinese authorities have seen law as useful for facilitating economic reforms, promoting the political stability necessary to entrench these changes against popular opposition and addressing the principal–agent problem.¹⁰ Presently, the Party-state sees law as a tool for addressing the principal–agent problem and allowing citizens and businesses to resolve disputes through the legal system. The development of law in China has provided tangible improvements to procedural justice and improved means for citizens to challenge extra-legal abuses by lower officials;¹¹ however, authorities also apply the law as a powerful tool for crushing citizens who cross Party-state red lines.¹² Law is not allowed to be used against the interests of the national-level Party-state, and law, as written, can be ignored or interpreted at the convenience of high Party officials. Law is the Party’s tool for controlling its lower officials and society, not for citizens to challenge high-level abuses of their interests. After establishing the meaning of *Yifa Zhiguo*, Part II of the thesis turns to explaining the role

⁹ See, eg, Randall Peerenboom, ‘Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!': What Does the 4th Plenum Decision Mean for Legal Reforms in China?’ (2015) 7(1) *Hague Journal on the Rule of Law* 49, 55; Benjamin Liebman, ‘China’s Law and Stability Paradox’ in Jacques deLisle and Avery Goldstein (eds), *China’s Challenges* (University of Pennsylvania Press, 2015) 157, 174.

¹⁰ See Liebman (n 9) 159; Frances Foster, ‘Codification in Post-Mao China’ (1982) 30(3) *American Journal of Comparative Law* 395, 395.

¹¹ See, eg, Yuchao Zhu, ‘Legal Institution Building for the Rule of Law and Human Rights’ in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform* (University Press of Kentucky, 2013) 215, 220–1.

¹² See, eg, Elisa Nesossi, ‘Political Opportunities in Non-Democracies: The Case of Chinese *Weiquan* Lawyers’ (2015) 19(7) *International Journal of Human Rights* 961, 965–6.

of ‘ideo-political education’ in inculcating students with officially sanctioned narratives on law, including the Party-state interpretation of rule of law.

B. Ideo-Political Education as a Topic of Legal Study

This thesis argues that ideo-political education constitutes an important subject of legal study in its own right; what one finds is a means through which the Party-state presents and justifies its official position on law, which includes the *Yifa Zhiguo* paradigm, to young Chinese citizens. In studying this form of education, therefore, legal scholars may learn what Chinese students are taught about law, such as the official Party-state perspective on rule of law explored in Part I of this thesis, and how this education is conducted.

In China, ideo-political education is a systematic effort to inculcate young people with the official worldview of the Party-state. It is a formal kindergarten to graduate school effort to ensure that every student knows the Party-state’s ideology and how the Party-state expects them to think, act and live. At the undergraduate level it involves sets of compulsory and elective courses, as well as extra-curricular activities, managed respectively by ideo-political departments and the Communist Youth League. These courses differ from politics courses students in the west may be familiar with in that only the official narrative of the Communist Party of China (CPC) is taught, and the main four courses are mandatory for undergraduates of all majors. This thesis provides context by showing how earlier Soviet efforts influenced this process, demonstrating the role of ideo-political education and examining textbooks used in ideo-political subject classes for the presence and nature of their legal content. It must be recognised here that the content of ideo-political education encompasses far more than simply *Yifa Zhiguo*, however, *Yifa Zhiguo* and the Party-state’s official view on law is a component part of this overall education program.

Examining the state-sanctioned textbooks used in ideo-political subject classes reveals that their law-related content focuses on presenting and justifying the legal status quo in China and telling students how they should engage with the law.¹³ Instead of being taught various theories of law and critically engaging with them, students are simply presented with official legal paradigms, such as *Yifa Zhiguo*, and bold statements to follow the CPC’s leadership. Ideo-political education provides a historical materialist perspective on the development of law and justifications for the Party-state’s own slogans on law and instructs students on their responsibility to obey the law.¹⁴ There is little discussion of how the Party-state legally operates or how to exercise one’s legal rights, showing that the emphasis is on obedience to law as interpreted by the state, not defending one’s interests through the legal system.

After establishing that the Party-state uses ideo-political education to inculcate students with official narratives on law, this thesis focuses on how this process takes place. This thesis treats ideo-political education as a topic of legal study by uncovering how ideo-political education is used to promote the Party-state’s official narratives on law, including the *Yifa Zhiguo* paradigm, with a specific focus on the normative documents that guide the implementation of ideo-political education and their influence on teaching methods in these

¹³ For the textbook in question, see 姚都卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (eds), 《思想道德修养与法律基础》 [*Cultivation of Ideo-Morality and Fundamentals of Law*] (Higher Education Press, 8th ed, 2018).

¹⁴ See *ibid.*

subjects. These documents provide the regulatory scaffold for Party-state efforts to present the official account of rule of law to students.

This study analyses the high-level, quasi-legal Party-state ‘normative documents’ that guide ideo-political education. Normative documents are essentially policy documents, often released jointly by CPC and Chinese government bodies, which provide broad guidance on how work in specific areas should be conducted. This thesis identifies the normative documents most relevant to undergraduate ideo-political theory classes, beginning with the set of three documents that have formed the basis of undergraduate ideo-political education since 2005. It analyses these documents, focusing on their content regarding teaching methodologies. This analysis reveals which normative documents emphasise teaching methods and argues that Hu-era documents focus on standardisation while Xi-era documents more strongly stress political loyalty and orthodoxy among subject teachers.

Building on these arguments, this thesis presents a case study of ideo-political education teachers that explores how they interpret normative documents and the role these documents play in teacher selection of teaching methods. Engaging with this data provides insights into classroom methodologies used to teach students about *Yifa Zhiguo*, as well as the effect of normative documents on the agents responsible for expressing the Party-state interpretation of rule of law advanced in Part I.

Two key conclusions emerged from the results of the case study. First, the provisions in normative documents recommending specific teaching methods to teachers had little effect on teacher choice of pedagogy. Instead, it is likely that the recommended methods in normative documents are a synthesis of successful methods already widely implemented in Chinese universities. In this case, legal scholars may still learn how students are taught *Yifa Zhiguo* in the classroom by examining normative documents.

The second conclusion is that greater attention from the Party-state to ideo-political education, combined with stricter political requirements on teachers in normative documents, may place greater political pressure on teachers, discouraging them from experimenting with innovative teaching methods. Teachers pressured to be faithful preachers of the Party-state’s view on rule of law may want to avoid student-centred teaching methods that provide space for students to contradict the official line and place teachers at risk of making political mistakes.

This thesis has a clearly defined and limited scope. It focuses on one method that the Party-state uses to present and justify its official law paradigm, and it limits its analysis of ideo-political education to only the undergraduate level. Although ideo-political education takes place from kindergarten to postgraduate study, this thesis focuses narrowly on the undergraduate level. It also only focuses on classroom teaching in these subjects and does not investigate the role of extracurricular ideo-political education. Attempting to cover the entire gamut of ideo-political education in China is simply too much for a single thesis to adequately address. The conclusions drawn in this thesis can thus only be directly applied to undergraduate ideo-political education.

This thesis also does not seek to prove the success of ideo-political education. Arguing that ideo-political education is a topic of legal study does not require showing how successful this

form of education has been in shaping the legal outlooks of young citizens. It is merely necessary to show that the Party-state is attempting this project. Additionally, I am not in a position to robustly prove the efficacy of ideological education. Experiments to determine its effect would require interviewing students directly, which is considered highly sensitive in the Chinese context and is currently beyond my level of access as a non-Chinese researcher. Therefore, this thesis focuses on the ‘what’ of *Yifa Zhiguo* and the ‘how’ of its presentation to young Chinese citizens rather than whether it is ultimately successful.

II. Thesis Structure

This thesis comprises two parts. Part I, containing three chapters, examines the debates surrounding *Yifa Zhiguo*, China’s ‘rule of law’ paradigm, and applies a historical approach to explore its features. Part II, also comprised of three chapters, builds on this analysis, focusing on one medium the Party-state uses to present and justify the official law paradigms explored in Part I of this thesis.

A. Chapter Two

Chapter Two begins by analysing the debate surrounding rule of law in China. Analysis of the available literature on rule of law in China shows that scholars are divided over the meaning of rule of law in general, let alone what Chinese officials mean when they use the term. Accounts of rule of law in China range from highly critical, dismissing the possibility of genuine rule of law without fundamentally altering the Chinese political system and the leadership of the CPC,¹⁵ to highly supportive outlooks that claim the Chinese system has its own unique, legitimate rule of law or that it is drawing closer to a genuine rule of law.¹⁶ Despite their differences, these scholars often recognise common features, such as that China is not pursuing a liberal rule of law.

After identifying this point of consensus, Section II of the chapter tests the consensus position by creating a synthesised set of three common liberal rule of law elements to later contrast with three elements of Chinese law. The three chosen common elements are supremacy of law, judicial independence and formal legality. Section III of the chapter then identifies three elements of Chinese law to be compared against the Western liberal standards from Section II: the supremacy of the CPC over law, instrumentalism and reform–repression dualism. By comparing these elements, Section III shows that China under the *Yifa Zhiguo* paradigm does not meet the standards of a typical Western liberal rule of law. Instead, in the Chinese context, law is a tool for achieving Party-state policy goals.

B. Chapter Three

Chapter Three analyses law reform in the PRC, with a focus on the opening and reform era, to support the claim made in Chapter Two that Party supremacy over law, instrumentalism and

¹⁵ See, eg, Chongyi Feng, ‘China’s Socialist Rule of Law: A Critical Appraisal of the Relationship between the Communist Party and Comprehensive Law Reform’ in John Garrick and Yan Chang Bennett (eds), *China’s Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 45.

¹⁶ See, eg, Ding Xiaodong, ‘Law According to the Chinese Communist Party: Constitutionalism and Socialist Rule of Law’ (2017) 43(3) *Modern China* 322, 323.

reform–repression dualism are features of Chinese legality. The chapter achieves this in four parts.

Section I identifies the underlying tension between formal and informal law under Mao’s leadership, while Section II describes the triumph and re-emergence of formal law, legislation and legal institutions under Deng. Section II presents an analysis of academic critiques and contemporary Chinese scholarly debates to show the instrumentalist application of law by Deng-era officials as a tool for achieving the Party-state’s economic reform and political stability goals. Section III identifies the beginnings of *Yifa Zhiguo* as an official term while also engaging with the legal reform achievements and ongoing repression during Jiang Zemin’s tenure as national leader. Section IV describes official efforts in the Hu-era to further develop the *Yifa Zhiguo* concept even as the Party-state further politicised courts and deemphasised judicial adjudication in favour of non-judicial mediation.

The themes of Party supremacy over law, instrumentalism and reform–repression dualism emerge from all three historical cases presented in Chapter Three. Analysing the examples of the Deng, Jiang and Hu eras supports the claim that law in China is a tool of the Party-state to be used in the service of its objectives. These arguments are further supported in the following chapter.

C. Chapter Four

Chapter Four develops the arguments presented in Chapters Two and Three by transitioning from a historical analysis to focus instead on *Yifa Zhiguo* and the practice of Chinese law during the Xi-era. The chapter approaches this task in three parts.

Section I explores how Xi Jinping re-emphasised the importance of law as a tool of governance and raised the prominence of *Yifa Zhiguo*. This is achieved through an analysis of the historic plenary session on *Yifa Zhiguo* held in 2014 and the scholarly discussions surrounding it. The Plenum’s emphasis on law as a tool of the Party-state, an instrumentalist attitude to law and the unassailable ‘leadership’ of the Party over law, reflect the themes of Chinese law advanced in Chapter Two, demonstrated by the historical analysis in Chapter Three and discussed further in Section II of this chapter. Section II approaches the themes of Party supremacy, instrumentalism and reform–repression dualism by comparing successful reforms with their partly successful counterparts and ongoing forms of extra-legal repression. Reforms proposed at the plenary session represented significant improvements in procedural justice and the ability of ordinary people to hold officials to account. Analysis of the Administrative Litigation Law (ALL) alongside improvements in the transparency of Chinese court records and successes in cracking down on police abuses provide evidence of reform. However, renewed and deepened attacks on citizens attempting to utilise their lawful rights, in ways that run counter to state interests, also accompanied these developments.

Section III of the chapter shows how the Party-state used law to fulfil the policy aim of responding to a pandemic by utilising selected, high-profile events from the early months of the COVID-19 outbreak in Wuhan, such as the suppression of whistleblower Dr Li Wenliang and the lockdown of Wuhan, alongside less well-known examples of individuals punished for breaching COVID control regulations. Overall, Chapter Four supports the arguments made in

Chapters Two and Three. It argues that China, under the *Yifa Zhiguo* paradigm, is still a place where law is a tool wielded by the Party-state to achieve its policy goals.

Chapters Two through Four provide an account of *Yifa Zhiguo*, China's interpretation of rule of law, as an instrument of Party-state rule. This is the legal paradigm that the ideo-political education discussed in Part II of this thesis seeks to justify to young Chinese citizens.

D. Chapter Five

Part II of this thesis transitions from discussing the meaning of *Yifa Zhiguo* and the character of law in China to exploring how the Party-state seeks to transmit and justify the official law narratives, discussed in Part I, to students. This part comprises three chapters which in turn advance, and then act upon, the argument that ideo-political education should be treated as a subject of legal study by legal scholars.

Chapter Five provides context for understanding the character and purpose of ideo-political education and then argues that ideo-political education should be considered a subject of legal inquiry since it is a method used by the Party-state to promote its official law paradigm. The chapter introduces the concept of ideo-political education, a form of education that other countries might term morality, citizenship, patriotic, political or psychological education.¹⁷

Sections I through III discuss the roots of Chinese ideo-political education in Soviet *vospitanye* (character education) by synthesising policies, statements by officials and scholarly sources to identify common themes in the Chinese and Soviet systems. The analysis reveals these systems shared the common task of shaping ideal citizens who believe the officially sanctioned worldview and hold common values such as collectivism, a love of labour and socialist patriotism. Common pedagogical approaches, such as extracurricular activities organised through Young Communist Leagues, also emerge from this analysis.

Section IV compares scholarly accounts of the motives of contemporary Chinese ideo-political education, revealing two general camps of scholars that emphasise selfish state motives and altruistic goals, respectively. Sections I–IV, taken together, support the claim that ideo-political education in China is a process of presenting and justifying the Party-state's official worldview to students in an attempt to shape their outlook and behaviour.

With this context established, Section V then focuses on uncovering the legal content of ideo-political education at the undergraduate level. The section analyses the four official ideo-political education textbooks used by all undergraduate students in China and examines them for law-related content. The synthesised legal content is then organised into three broad categories: descriptions of the Party-state's worldview, justifications of the legal status quo and exposition on the responsibilities of students. Instead of offering alternative theories of law or discussing competing legal systems, ideo-political education merely presents and justifies official Party-state law narratives, such as *Yifa Zhiguo*, and primes students to be loyal and obedient citizens.

¹⁷ See Lei Yu, 'The Transformation of Citizenship Education at Universities in the People's Republic of China from 1998–2006' (PhD Thesis, Columbia University, 2010) 4; Cheung Yupang, 'Changes in the Conception of Moral Education in China in the Post-Mao Period' (Master's Thesis, The University of Hong Kong, 1994) 1–2;

E. Chapter Six

Chapter Six treats ideo-political education as a subject of legal study and seeks to explore the role of normative documents as the regulatory scaffold for Party-state efforts to inculcate students with the official *Yifa Zhiguo* narrative.

It begins, in Section I, by approaching the question of what normative documents are and then analyses normative documents related to ideo-political education from the Hu era with an emphasis on their content related to teaching methodology. National authorities released a series of three normative documents between 2004 and 2005. These documents standardised undergraduate ideo-political education with a set of nationally approved textbooks, consolidated the range of subjects down to four common courses and proposed updated student-centred pedagogy.

Section II similarly analyses key normative documents of the Xi-era, with a focus on Xi's 2019 speech on ideo-political theory classes and the 2019 and 2020 policies. Despite the strong emphasis on teaching methodology in Xi's speech, the following normative documents, which faithfully echo other parts of the national leader's speech, are largely silent on teaching methods. Examination of these documents reveals a Xi-era emphasis not on effective teachers but instead on ensuring that teachers are faithful missionaries of the Party-state's worldview. This conclusion supports the argument in Chapter Five about the role of ideo-political education and provides the necessary background for the case study in Chapter Seven.

F. Chapter Seven

Chapter Seven is the qualitative research component of this thesis and further explores ideo-political education as a subject of legal study by uncovering and analysing the experiences of ideo-political theory subject teachers as they engage with normative documents in regard to teaching methodologies. By doing so, it contributes to our understanding of how the Party-state attempts to win support for *Yifa Zhiguo* among students.

Section I of the chapter outlines and justifies the study's design. It describes the limitations of existing studies and then discusses the study's phenomenological approach. The study itself is comprised of semi-structured interviews with three categories of questions designed to elicit the classroom teaching experiences of subject teachers and their interaction with normative documents. Finally, the section addresses sampling issues, identifying this study's use of information-rich sources, gatekeepers and snowball sampling.

Section II synthesises respondent answers to each interview question, attempting to find common replies and trends. Section III discusses these findings and draws the two main conclusions presented in the arguments section of this introductory chapter. These findings reveal that studying ideo-political education provides insight into how the Party-state teaches its unique interpretation of rule of law, *Yifa Zhiguo*, to young Chinese citizens.

Part I

Chapter Two: *Yifa Zhiguo*, Rule of Law and the Character of Chinese Law

This chapter addresses the problem of what rule of law means in the Chinese context. It explores the character of law in China under the *Yifa Zhiguo* paradigm, arguing that China does not possess a Western liberal rule of law. Instead, law in China exists to serve the Party-state's will. It is an instrument that successive leaderships have seen as useful for achieving their political goals and ignored when it is not.

The chapter contains three substantive sections. Section I recognises that rule of law is a 'contested concept' cloaked in endless debates about its precise meaning before dividing scholarship on the question of rule of law in China into two broad categories. The first group of scholars reject claims that China has built or is building a genuine rule of law and consider Chinese efforts to be mere legitimisation strategies, tools for consolidating power or demonstrating the supremacy of the Party without any real commitment to be bound by law.¹ The other group sees China as either moving towards a form of rule of law that is recognisable in the West or possessing its own unique, genuine rule of law as a sinofied constitutionalism or a new theory of socialist rule of law that lays out a more rules-based order.²

Section II begins by recognising a common, though not unanimous, position among scholars that China does not have, or is not pursuing, a Western liberal rule of law.³ To test this proposition, Section II collects three common elements of liberal rule of law definitions, including supremacy of law, judicial independence and formal legality, to compare against key characteristics of Chinese law. Section III compares the elements of rule of law identified in Section II with three features of law in China: the supremacy of the CPC over law, instrumentalism and the reform–repression dualism.

This comparison reveals that when Chinese leaders speak of China's rule of law, their meaning is unlike a Western understanding of that phrase. Instead, their 'rule of law' is a system where the law is viewed as a useful tool for achieving Party-state objectives but is ignored or discarded when it becomes an impediment to those goals.

¹ Qiang Fang and Xiaobing Li, *Power Versus Law in Modern China: Cities, Courts and the Communist Party* (University Press of Kentucky, 2017) 179; Susan Trevaskes, 'A Law Unto Itself: Chinese Communist Party Leadership and *Yifa Zhiguo* in the Xi Era' (2018) 44(4) *Modern China* 347, 350; Ding Xiaodong, 'Law According to the Chinese Communist Party: Constitutionalism and Socialist Rule of Law' (2017) 43(3) *Modern China* 322, 323; Xiaodan Zhang, 'Rule of Law Within the Chinese Party-State and Its Recent Tendencies' (2017) 9(2) *Hague Journal on the Rule of Law* 373, 376.

² Ding (n 1) 327–33; Xiaodan Zhang, (n 1) 375–6.

³ See Suisheng Zhao, 'The Ideological Campaign in Xi's China' (2016) 56(6) *Asian Survey* 1168, 1172; Trevaskes, 'Law Unto' (n 1) 349; Ding (n 1) 322–3; Benjamin Liebman, 'China's Law and Stability Paradox' in Jacques deLisle and Avery Goldstein (eds), *China's Challenges* (University of Pennsylvania Press, 2015) 157, 174 ('Paradox'); Randall Peerenboom, 'Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!: What Does the 4th Plenum Decision Mean for Legal Reforms in China?' (2015) 7(1) *Hague Journal on the Rule of Law* 49, 55 ('Fly High').

I. Rule of Law in the Chinese Context⁴

When discussing rule of law in the Chinese context, it is important to recognise that there is no single commonly accepted understanding of what the term means.⁵ The difficulty in establishing a specific, authoritative and widely accepted definition of rule of law in China is at least in part due to the fact that rule of law itself is a disputed term.⁶ Jeremy Waldron popularised the idea of rule of law as an ‘essentially contested concept’⁷ in his 2002 article exploring the concept in the wake of the controversial 2000 US presidential election.⁸ He noticed that, during that controversy, commentators on opposite sides of the debate both commonly used the language of rule of law to justify their side’s position.⁹ Waldron argued that this could be placed into a historical context of fundamental disagreement over what rule of law is and how best to pursue it.¹⁰

As a contested concept, different political actors are able to claim rule of law in service of their own aims. Peerenboom, a long-time observer of Chinese legal reform, wrote that:

Rule of law is a contested concept. It means different things to different people and has served a wide variety of political agendas from Hayekian libertarianism to Rawlsian social welfare liberalism to Lee Kuan Yew’s soft authoritarianism to the Party’s socialist rule of law with Chinese characteristics.¹¹

Tamanaha noted that political leaders from wildly different political systems, such as in Afghanistan, Indonesia and Zimbabwe, all publicly endorsed rule of law, and he compared rule of law to the idea of ‘good’: ‘everyone is for it, but have contrasting convictions about what it is’.¹² This theme of a ‘ubiquitous common sense’ held by proponents of radically different political systems despite ‘little agreement on its substantive meaning’¹³ is commonly recognised and should warn us that, when discussing rule of law, it is important to recognise the ongoing contest to appropriate its meaning.

We can see the contest between competing concepts of rule of law in action when it comes to scholarly debates regarding rule of law and China. If so much contention surrounds rule of law within a Western context, then it should not be seen as surprising that the search for consensus becomes even more vexed when discussing its application in an entirely different historical, cultural and political context.

⁴ The following section, as well as the introduction of section II, and much of section III has been adapted from an article published by the author of this thesis. See Michael Hooper, ‘Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China’s Early COVID-19 Response in Wuhan’ (2021) 48(2) *University of Western Australia Law Review* 330. This also applies to other parts of the thesis, see page v for details.

⁵ Xiaodan Zhang (n 1) 374–5.

⁶ Peerenboom, ‘Fly High’ (n 3) 72.

⁷ Jeremy Waldron, ‘Is the Rule of Law an Essentially Contested Concept (in Florida)?’ (2002) 21(2) *Law and Philosophy* 137.

⁸ See *ibid.*

⁹ *Ibid* 137–8.

¹⁰ See *ibid* 140–4.

¹¹ Peerenboom, ‘Fly High’ (n 3) 72.

¹² Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) 2–3.

¹³ Christopher May and Adam Winchester (eds), *Handbook on the Rule of Law* (Edward Elgar, 2018) 2.

From liberal substantive ‘thick’ rule of law to Jiang Shigong’s Chinese constitutionalism, there have been numerous scholarly attempts to explain the character of law in China.¹⁴ Although the positions taken by scholars on this issue are diverse, they can be broadly divided into two categories: those that dismiss or focus on criticising the Chinese project for failing to meet specific standards and those that recognise it as either a genuine rule of law or emphasise how it is gradually becoming one.¹⁵

According to scholars such as Ding Xiaodong and Zhang Xiaodan, supporters of Western-style liberal rule of law theories believe ‘the party’s rule of law project and constitutionalism are destined to fail’¹⁶ and that their viewpoint ‘denies any possibility of rule of law in China’.¹⁷ The term ‘rule by law’ rather than ‘rule of law’ allows these authors to emphasise the instrumental function of the law as serving the CPC and its aims.¹⁸ This can be seen in Trevaskes and Nesossi’s claim that Chinese rule of law ‘can be understood to mean Party-Rule-Through-Law’,¹⁹ Cho’s argument that ‘the rule of law policy is really a state-imposed rule *by* law that intends to control people and society’²⁰ and Feng’s statement that “‘rule of law with Chinese characteristics’ means rule by law under the CPC’.²¹

Critiques from this category may also identify the leading role of the Party as a contradiction incompatible with rule of law.²² Scholars holding a liberal thick outlook highlight rights abuses and criticise the lack of legal mechanisms, or the impotence of those mechanisms, to protect rights in the face of unassailable state power.²³ Legal reform that does not diminish the power of the Party and ensure many, if not all, political rights that nominally exist in the West will fail to meet their standard of rule of law. Indeed, as Xi has presided over a greater restriction of rights and lawyers seeking to defend them through the legal system, Trevaskes and Nesossi noted, ‘As a result, Xi’s years in power will almost surely be remembered far more for his intolerance of discordant voices than for any rule of law’.²⁴

¹⁴ For a description of a liberal democratic thick rule of law, see Randall Peerenboom, *China’s Long March Toward Rule of Law* (Cambridge University Press, 2002) 3 (*‘Long March’*). For a contrasting attitude to rule of law, see Jiang Shigong, ‘Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China’ (2010) 36 (1) *Modern China* 12 (*‘Written’*).

¹⁵ For an example of a critical perspective on Chinese rule of law, see Chongyi Feng, ‘China’s Socialist Rule of Law: A Critical Appraisal of the Relationship between the Communist Party and Comprehensive Law Reform’ in John Garrick and Yan Chang Bennett (eds), *China’s Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 45. For an example of a supportive account, see Ding (n 1) 323–4.

¹⁶ Ding (n 1) 323.

¹⁷ Xiaodan Zhang (n 1) 376.

¹⁸ See Peerenboom, ‘Fly High’ (n 3) 55; Ding (n 1) 323.

¹⁹ Susan Trevaskes and Elisa Nesossi, ‘The Fog of Law’ in Gloria Davies, Jeremy Goldkorn and Luigi Tomba (eds), *Pollution: China Story Yearbook 2015* (ANU Press, 2016) 64, 68 (*‘Fog’*).

²⁰ Young Nam Cho, ‘China’s “Rule of Law” Policy and Communist Party Reform’ (2016) 40 *Asian Perspective* 675, 692 (*‘Party Reform’*).

²¹ Chongyi Feng (n 15) 56.

²² Qianfan Zhang, ‘Judicial Reform in China: An Overview’ in John Garrick and Yan Chang Bennett (eds), *China’s Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 17, 29 (*‘Judicial Reform’*); Peerenboom, ‘Fly High’ (n 3) 55; Ding (n 1) 326.

²³ For a discussion of ‘powerless law’ and ‘lawless power’ in China and how this affects ordinary citizens seeking to protect their rights, see Fang and Li, *Power* (n 1) 175–80. See also Cho, ‘Party Reform’ (n 20) 692; Thomas Kellogg, ‘Rule of Law in Asia: The Case of China’ in Christopher May and Adam Winchester (eds), *Handbook on the Rule of Law* (Edward Elgar Publishing, 2018) 490, 499.

²⁴ Trevaskes and Nesossi, ‘Fog’ (n 19) 85. For information on increasing crackdowns under Xi, see Peerenboom, ‘Fly High’ (n 3) 53–4.

At this point it is worth mentioning that some scholars might consider rights criticisms to be unfair, instead framing rights as a concept foreign to China's political and legal history. This thesis takes the view that the foreign origin of a concept does not prevent it from becoming a significant factor in a society – Marxism-Leninism is foreign to China yet had an enormous impact. This thesis recognises that the Party-state explicitly states, in legal document such as the Constitution and in ideo-political classes, that citizens have legal rights, however limited they may be, so discussing rights, government attempts to stifle them, and popular attempts to defend them, are elements of China's rule of law story.

Opposed to the stark condemnation of the previous category, a separate group of scholars suggest that China either has its own form of rule of law or is on the way to achieving it. In keeping with his comment that 'Establishing rule of law is a long, hard slog',²⁵ Peerenboom argues that China has embarked on a 'long march toward rule of law'.²⁶ He recognises China's achievements in terms of building a formal legal system and procedural justice reforms, noting that in terms of rule of law metrics, China does not lag behind other upper-middle-income countries.²⁷ He also criticises liberal accounts for their tendency to undervalue procedural improvements and their ability to improve the lives of Chinese people; to cast rational reforms to material conditions as plots to consolidate power; and their bias towards liberal thick concepts of rule of law.²⁸

Scholars such as Backer and Jiang argue that China has a legitimate constitutional system, despite the gap between the state constitution as written and reality, and hence rule of law is possible without abandoning Party leadership. Backer believes that China's constitution is comprised of both the state and the Party's constitutions and that a constitutionalism based on this understanding:

can serve as a basis for understanding the way in which rule of law governance is legitimately possible where the disciplinary focus of constitutional duty is focused not primarily on the state apparatus, but instead centers on the Party apparatus.²⁹

Jiang argues in a similar way that China's constitution is not simply the text of the state constitution but an unwritten constitution comprised of four sources: 'the party's constitution, constitutional conventions, constitutional doctrine, and constitutional statutes'.³⁰ To Jiang, China has a 'hybrid rule-of-law concept'³¹ that combines 'basic Western principles for the rule of law'³² with Party leadership in a system where a rules-based order has replaced arbitrary exercise of power.³³

²⁵ Peerenboom, 'Fly High' (n 3) 56.

²⁶ Ibid 73.

²⁷ Ibid 60.

²⁸ See Randall Peerenboom, 'The Battle Over Legal Reforms in China: Has there been a Turn against Law?' (2014) 2 (20) *Chinese Journal of Comparative Law* 188, 210 ('Battle Over'); Randall Peerenboom, 'Rule of Law Political Legitimacy and Civil Disobedience in China: A Reply' (2015) 7(1) *Hague Journal on the Rule of Law* 91, 93 ('Reply').

²⁹ Larry Backer, 'Party, People, Government and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System' (2012) 30(2) *Boston University International Law Journal* 331, 340.

³⁰ Jiang, 'Written' (n 14) 12.

³¹ Jiang Shigong, 'Chinese-Style Constitutionalism: On Backer's Chinese Party-State Constitutionalism' (2014) 40(2) *Modern China* 133, 156.

³² Ibid 158.

³³ Ibid.

By contrast, Ding Xiaodong criticises liberal rule of law theories as ‘self-contradictory, illusive, and, in the end, meaningless’, presenting China’s socialist rule of law theory as a more consistent alternative.³⁴ Ding argues that the CPC rejects law as an ephemeral, objective set of norms capable of restraining political action and instead posits socialist law as ‘the embodiment of the will and self-discipline of the people’.³⁵ Rather than simply creating laws and then becoming private citizens under law as liberal theories suggest, ‘Under the party’s socialist rule of law theory, the people should not only enact law and legitimate the law, but they should also affirm the law and be responsible for actualizing it’.³⁶

Scholarly debate continues to rage when it comes to the contentious concept of rule of law. Detractors of the Chinese experience point to fundamental political obstacles to achieving a Western-style liberal rule of law, while supporters claim that China either has its own special rule of law or is on a long journey to one day achieving a form of rule of law. The following section takes a point of agreement among many scholars: that China’s current paradigm is not a liberal rule of law. It proposes a broad definition of liberal rule of law with which to compare the Chinese situation.

II. Liberal Rule of Law as a Point of Comparison for Chinese Law

While debate rages over whether China has a genuine rule of law and how significant specific reforms are, there is consensus on at least one idea. Scholars commonly agree that whatever Chinese rule of law might be, it is not a liberal rule of law.³⁷ Writers such as Minzner and Peerenboom, whose interpretations of legal reform in China differ wildly, both see Chinese legal developments as rejections of what they, respectively, referred to as ‘foreign rule-of-law norms’³⁸ and ‘globally dominant liberal democratic conceptions of rule of law’.³⁹ Liebman also used the language of rejection when he wrote that ‘rule of law China’ involved ‘a rejection of Western models’.⁴⁰ Other scholars recognise this difference by variously claiming that China is ‘pursuing a model of rule of law of its own’⁴¹ and that it ‘presents itself as an alternative to the dominant international understanding of the rule of law’.⁴² Some scholars simply directly state that ‘the Chinese Communist Party’s socialist rule of law is very different from the Western liberal idea of the rule of law’.⁴³

To argue that China has a different rule of law to that in the West or that it fails to measure up to a Western ideal requires a model to be measured against. This is challenging given the contested nature of rule of law and the proliferation of definitions. For the purpose of comparison, however, this thesis adopts three relatively uncontroversial essential elements

³⁴ Ding (n 1) 333–4.

³⁵ Ibid 342.

³⁶ Ibid 334.

³⁷ For examples of scholars recognising this fact, see Peerenboom, ‘Fly High’ (n 3) 55; Liebman, ‘Paradox’ (n 3) 174.

³⁸ Carl Minzner, ‘China’s Turn Against Law’ (2011) 59 (4) *American Journal of Comparative Law* 935, 936–7 (‘Turn’).

³⁹ Peerenboom, ‘Fly High’ (n 3) 53.

⁴⁰ Liebman, ‘Paradox’ (n 3) 173.

⁴¹ Sanzhu Zhu, ‘Socialist Rule of Law in the 21st Century China’ (2015) 7(1) *Hague Journal on the Rule of Law* 75, 78.

⁴² Susan Trevaskes and Elisa Nesossi, ‘Control by Law’ in Jane Golley, Linda Jaivin and Luigi Tomba (eds), *China Story Yearbook 2016: Control* (ANU Press, 2017) 42, 57 (‘Control’).

⁴³ Ding (n 1) 342.

commonly found in rule of law definitions to form a yard stick for measuring China's law: the supremacy of law, judicial independence and formal legality. This definition necessarily cannot be considered the one 'true' version of rule of law with unanimous support. It need not be such a definition; instead, it need only facilitate the present inquiry.⁴⁴

A. Supremacy of Law

Supremacy of law is a fundamental principle that lies at the heart of many rule of law definitions.⁴⁵ Peerenboom, in his discussion of competing concepts of rule of law, stated 'At its most basic, rule of law refers to a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite'.⁴⁶ Tamanaha similarly claimed that the 'broadest understanding of the rule of law' is 'that the sovereign, and the state and its officials, are limited by the law'.⁴⁷ This emphasis on limiting officials and state action can be seen as a reaction to, and a desire to be free from, 'government tyranny'.⁴⁸ Bedner's observation that protecting citizens from the state is one of the key 'functions the rule of law is intended to serve' fits well with this concept.⁴⁹

Within this rule of law paradigm, protection from government tyranny involves limiting the discretion of officials.⁵⁰ This can be understood as officials complying with legitimately produced laws, rather than simply exercising their own discretion, but can also be understood to mean that the laws that exist cannot be changed at will.⁵¹ In both cases, there should be limits on the actions of officials. An expanded interpretation of this idea is that where agents of the state are invested with the power to make decisions, such as a licensing official, they must do so within a lawfully established framework that guides their judgements.⁵² Bingham takes this concept further, stating that 'What matters is that decisions should be based on stated criteria and that they should be amenable to legal challenge'.⁵³

B. Judicial Independence

How the state may be held accountable for failing to follow laws is not covered by the above definitions. For that, a discussion of courts and their independence is necessary. Bingham, whose definition of rule of law is informed by the British tradition of A. V. Dicey, wrote:

⁴⁴ Jorgen Moller faced a similar problem in their discussion of thin rule of law concepts and argued that the choice of definition should account for the purpose of the investigation. See Jorgen Moller, 'The Advantages of a Thin View' in Christopher May and Adam Winchester, *Handbook on the Rule of Law* (Edward Elgar Publishing, 2018) 32.

⁴⁵ See Tom Bingham, *The Rule of Law* (Penguin Books, 2011) 15; Peerenboom, *Long March* (n 14) 2; May and Winchester (n 13) 7. See also Tamanaha (n 12) 114–15; Colleen Murphy, 'Lon Fuller and the Moral Value of the Rule of Law' (2015) (24) *Law and Philosophy* 239; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979) 212.

⁴⁶ Peerenboom, *Long March* (n 14) 2.

⁴⁷ Tamanaha (n 12) 119.

⁴⁸ See Tamanaha (n 12) 115.

⁴⁹ Adrian Bedner, 'The Promise of a Thick View' in Christopher May and Adam Winchester (eds), *Handbook on the Rule of Law* (Edward Elgar Publishing, 2018) 34, 35.

⁵⁰ See Bingham (n 45) 55–60; Tamanaha (n 12) 115.

⁵¹ Tamanaha (n 12) 115.

⁵² See Raz (n 45) 215–16; Bingham (n 45) 57.

⁵³ Bingham (n 45) 57.

The core of the existing [rule of law] principle is ... that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.⁵⁴

Bingham's basic definition also references the idea of the state being bound by law, but it further introduces a mechanism for enforcement: courts. When Bingham refers to courts, he is not referring to any old organisation that claims to conduct judicial work. He explicitly states that 'ordinary courts of the land' must try people for breaches of the law, 'not a tribunal of members picked to do the government's bidding, lacking the independence and impartiality which are expected of judges'.⁵⁵ Like Dicey, he means the British form of court, which prides itself on its independence from the legislature and the executive. Joseph Raz also identified judicial independence as a fundamental element of rule of law,⁵⁶ noting that for law to be a predictable guide for people's behaviour, courts must pass judgement in accordance with the law, and processes must be in place to ensure their independence from political interference.⁵⁷ In summary, the liberal rule of law requires an independent judiciary, capable of withstanding political pressure, to make judgements based purely on the law.⁵⁸

C. Formal Legality

Another foundation principle of the rule of law posits a predictable rules-based order to guide the behaviour of citizens, or what can also be referred to as 'formal legality'.⁵⁹ Lon Fuller and Joseph Raz, influential advocates of this understanding of rule of law, each proposed their own, partially overlapping, eight-point criterion for the rule of law. Fuller's criteria are that laws must be 'general', 'promulgated', 'prospective', 'clear', 'non-contradictory', 'not ask the impossible', stable and applied in practice.⁶⁰ These elements assist citizens as rational actors to identify what actions are legal and to avoid government sanction.⁶¹ For example, a secret or retroactive law cannot govern behaviour; publicly announcing requirements helps citizens to avoid illegal conduct. Likewise, if officials do not act in accordance with the law and courts make judgements based on political criteria or personal whim, then law loses its predictability and is no longer a useful standard for citizens to base their behaviour on. Raz supports the requirements for publicly available, clear, prospective and stable laws but further requires, as mentioned previously, checks on discretion and an independent judiciary.⁶² His list also includes easy access to courts, court review of 'parliamentary legislation and of administrative cases' and a requirement for adherence to natural justice principles.

The supremacy of law, judicial independence and formal legality are the three basic elements that will be taken here to represent the concept of Western liberal rule of law. This is not an exhaustive definition; thick liberal definitions also often incorporate political elements such as

⁵⁴ Ibid 15.

⁵⁵ Ibid 11.

⁵⁶ In fact, according to Bedner, 'the requirement of an independent judiciary is included in all rule of law definitions in the western liberal tradition': Bedner (n 49) 40.

⁵⁷ Raz (n 45) 216–17.

⁵⁸ Tamanaha wrote that it was possible to hold the state politically accountable for breaches but to seek *legal* remedies, such as taking officials to common law courts, requires judicial independence. See Tamanaha (n 12) 117.

⁵⁹ See Tamanaha (n 12) 119; Raz (n 45) 213–14.

⁶⁰ Lon Fuller, *The Morality of Law: Revised Edition* (Yale University Press, 1969) 33–91.

⁶¹ Tamanaha (n 12) 119.

⁶² Raz (n 45) 214–18.

the desired economic system, specific human rights or competitive, multi-party elections.⁶³ The purpose of the present analysis, however, is not to provide a comprehensive, universal definition but, rather, a means of comparison aimed at supporting an investigation of the rule of law in the Chinese context. That done, the next section turns to the Chinese approach.

III. Party Supremacy, Instrumentalism and Reform–Repression Dualism

Contrasting the Party-state’s approach to law with the basic elements typical of liberal rule of law shows the gap that exists between them. This section identifies three characteristics of law in China: the supremacy of the CPC; the Party-state’s instrumentalist attitude to law; and the coexistence of continuing improvements to procedural and substantive elements of the legal system with ongoing extra-legal exercise of power and abuses of rights—in other words a ‘reform–repression dualism’.⁶⁴ The supremacy of the CPC over law and the Party-state’s application of law as an instrument of its will, rather than something intended to limit government tyranny or to promote predictability, are antithetical to the rule of law described above. Discussing reform–repression dualism adds nuance to the following description of law in China. It recognises that law is not absent and reforms take place that liberal law scholars would approve of, but these improvements do not yet, and perhaps never will negate the supremacy of the Party and its use of law as a tool. It is this approach to law that characterises the Chinese Party-state’s interpretation of rule of law.

A. The Supremacy of the CPC over Law

Despite Xi’s assertion that no organisation should be above the law,⁶⁵ scholars recognise that one specific organisation holds a special place that casts doubt on the sincerity of his claim: the CPC.⁶⁶ Tension has existed between the Party’s claims of rule of law or a ‘rules-based system’⁶⁷ and Party supremacy since at least Jiang Zemin’s time.⁶⁸ The Hu administration announced that the concepts of Party leadership, people as the masters of society and rule of law exist as an ‘organic unity’.⁶⁹ Hu also announced his ‘Three Supremes’ formulation: the supremacy of the Party’s cause, the supremacy of the people’s interests and the supremacy of the constitution and the law.⁷⁰ Scholars claim that the role of the Party in relation to rule of

⁶³ See Peerenboom, *Long March* (n 14) 3.

⁶⁴ For ‘reform–repression dualism’, see Trevaskes and Nesossi, ‘Control’ (n 42) 57.

⁶⁵ Choi Chi-yuk, ‘Xi Jinping Vows to Uphold Constitution and Rule of Law’, *South China Morning Post* (online, 25 February 2013) <<https://www.scmp.com/news/china/article/1157878/xi-jinping-vows-uphold-constitution-and-rule-law>>.

⁶⁶ For arguments that the CPC holds a privileged position and is above the law, see Ding (n 1) 323; Fang and Li (n 1) 178.

⁶⁷ Qianlan Wu, ‘How has China Formed its Conception of the Rule of Law? A Contextual Analysis of Legal Instrumentalism in ROC and PRC Law-Making’ (2017) 13(3) *International Journal of Law in Context* 277, 289.

⁶⁸ See *ibid* 289; Ewan Smith, ‘The Rule of Law Doctrine of the Politburo’ (2017) 79 (1) *China Journal* 40, 52.

⁶⁹ Smith (n 68) 53–4.

⁷⁰ For a report on the original speech where Hu Jintao presented this idea, see ‘胡锦涛同全国政法工作会议代表和全国大法官、大检察官座谈时强调 扎实开创我国政法工作新局面’ [Hu Jintao Stressed Creating a New Situation in China’s Political and Legal Work in a Down-to-Earth Manner During a Discussion with Representatives of the National Political and Legal Work Conference and to National Judges and Prosecutors], *Sina* (Web Page, 26 December 2007) <<http://news.sina.com.cn/c/2007-12-26/032013143978s.shtml>>.

law changed under Xi Jinping to further emphasise Party leadership⁷¹ and officially recognise the Party's supremacy.⁷²

Meanwhile, Chinese scholars and Party propaganda, have argued that Party supremacy is either necessary, or at least does not contradict the other elements represented in the organic unity, because these elements share the same interests and embody or realise the will of the masses.⁷³ The resolution of the 18th Central Committee's Fourth Plenary Session, which focused on the question of rule of law, stated that 'Leadership by the Party is consistent with socialist rule of law: socialist rule of law must uphold the Party's leadership, while the Party's leadership must rely upon socialist rule of law'.⁷⁴

The idea that the CPC either stands above the law or alongside it instead of under it is commonly accepted by many scholars.⁷⁵ One scholar, referring to Article 5 of China's constitution, which claims that no organisation or individual is beyond the constitution or other laws,⁷⁶ wrote, 'yet despite wide acceptance of this principle [Article 5 of the PRC constitution], the Party in fact does not fully embrace it'.⁷⁷ Noticing a similar theme, Trevaskes wrote, 'To leave no one in doubt of its ambitions, in late 2017, the phrase "the Party leads over everything" ... was inserted into the Party's constitution'.⁷⁸ Comparing current Chinese legal trends with the Mao era, Trevaskes further claimed that Xi's '*yifa zhiguo* [rule of law] is indeed a system of norms of conduct based on relations of domination – Party domination'.⁷⁹

Putting flowery words about organic unity and people's interests aside, scholars note how the CPC is above the law in practice.⁸⁰ Fang and Li argued that '[b]ecause the CCP dominates the three principal state powers, it is actually above the law'.⁸¹ Indeed, 'neither the [National People's Congress] NPC nor its Standing Committee [SCNPC] has ever refused to adopt a law suggested by the Party and neither of them has ever adopted law without the prior approval of the Central Committee of the Party'.⁸²

Although official statements claim that the Chinese constitution is supreme, a constitution cannot speak for itself; its contents must be interpreted and enforced in ways that give it practical meaning. Despite this, the Party 'forbids the interpretation and application of the constitution by the judicial system or a constitutional court'.⁸³ In this context, Peerenboom

⁷¹ Susan Trevaskes, '社会主义法 [Socialist Law]: Socialist Law' in Christian Sorace, Ivan Franceschini and Nicholas Loubere (eds), *Afterlives of Chinese Communism* (ANU Press, 2019) 251, 252–4 ('Socialist Law').

⁷² Smith (n 68) 58.

⁷³ See Wu (n 67) 290; Trevaskes, 'Socialist Law' (n 71) 254.

⁷⁴ Compilation and Translation Bureau of the Central Committee of the Communist Party of China (ed), *Documents of the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China* (Central Compilation and Translation Press, 2015) 10.

⁷⁵ See Trevaskes, 'Socialist Law' (n 71) 255; Fang and Li (n 1) 178; Feng (n 15) 48, 56–7; Ding (n 1) 233; Jianfu Chen, 'Out of the Shadows and Back to the Future: CPC and Law in China' (2016) 24(2) *Asia Pacific Law Review* 176, 200 ('Shadows').

⁷⁶ 《中华人民共和国宪法》 [Constitution of the People's Republic of China] art 5.

⁷⁷ Ding (n 1) 323.

⁷⁸ Trevaskes, 'Socialist Law' (n 71) 254.

⁷⁹ *Ibid* 255.

⁸⁰ See Fang and Li (n 1) 178. See also Chen, 'Shadows' (n 75) 188–9; Ding (n 1) 323; Feng (n 15) 56–7.

⁸¹ Fang and Li (n 1) 178.

⁸² Chen, 'Shadows' (n 75) 188.

⁸³ Ding (n 1) 323. See also Peerenboom, 'Battle Over' (n 28) 198.

questioned how the principle of constitutional supremacy could be upheld in China.⁸⁴ Others have been more direct in their criticism, claiming that ‘The lack of judicial independence and thus enforceable constitutional law further strengthens the CCP’s power and makes the law merely its knife hilt’.⁸⁵ The question of Party supremacy can also be approached by considering the strongly instrumentalist character of law in China.

B. Instrumentalist Character of Chinese Law

Instrumentalism has been described as ‘deeply rooted in China’s legal tradition’⁸⁶ and as playing a significant role in both the earlier Republic of China and the current Chinese legal systems.⁸⁷ In China’s context, an instrumentalist approach to law means that, rather than having an intrinsic value, law is valuable only in so far as it helps realise Party goals.⁸⁸ One of the key architects of China’s legal development in the opening and reform era, Peng Zhen, supported the idea that law was ‘an instrument to achieve the CCP’s policy goals’.⁸⁹ Later Politburo study sessions showed this instrumentalist approach to law in the way they framed rule of law as ‘a mandate, a requirement for, or guarantee of other values and goals’.⁹⁰ An instrumentalist attitude towards law is still prevalent in China today.⁹¹

Critics may rightly claim that Western legal systems are no stranger to instrumentalism.⁹² However, instrumentalist excesses in the West amount to a cynical use of the law for political aims while remaining faithful to the principle of the supremacy of law. The important point of departure with the Chinese system is that law is *only* valuable as a tool. When this tool becomes an impediment to Party-state goals, such as when it needs to suppress dissent, it will be discarded in favour of extra-legal methods.

C. Reform–Repression Dualism

When assessing China’s claims of rule of law, it is important to consider the ‘reform–repression dualism’⁹³ that is obscured by focusing solely on procedural improvements or enduring abuses. Scholars recognise that there have been legitimate achievements in improving procedural justice in China alongside continuing repression.⁹⁴

Decades of legal institution building and the refining of legal structures and procedures have produced a more just legal system.⁹⁵ Chen Jianfu stated, ‘There is general agreement that

⁸⁴ Peerenboom, ‘Battle Over’ (n 28) 198.

⁸⁵ Fang and Li (n 1) 178.

⁸⁶ Yuchao Zhu, ‘Legal Institution Building for the Rule of Law and Human Rights’ in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform* (University Press of Kentucky, 2013) 215, 230 (‘Institution’).

⁸⁷ See Wu (n 67) 279.

⁸⁸ See Liebman, ‘Paradox’ (n 3) 159; Smith (n 68) 56–7.

⁸⁹ Wu (n 67) 284.

⁹⁰ Smith (n 68) 56–7.

⁹¹ Wu (n 67) 291.

⁹² See, eg, Ian Ward, *An Introduction to Critical Legal Theory* (Cavendish Publishing, 1998) 156–7; Jeffery Van Detta, ‘The Irony of Instrumentalism: Using Dworkin’s Principle-Rule Distinction to Reconceptualize Metaphorically a Substance-Procedure Dissonance Exemplified by Forum Non Conveniens Dismissals in International Product Injury Cases’ (2004) 87(3) *Marquette Law Review* 425, 425–8.

⁹³ Trevaskes and Nesossi, ‘Control’ (n 42) 57.

⁹⁴ See, eg, Zhu, ‘Institution’ (n 86).

⁹⁵ See Zhu, ‘Institution’ (n 86) 218–19; Peerenboom, ‘Fly High’ (n 3) 72. For a detailed discussion of these reforms and how they have led to a more just legal system, see Chen, ‘Shadows’ (n 75).

impressive efforts have been made and measures taken by the judiciary ... to ensure transparency, fairness and impartiality',⁹⁶ while Liebman recognised that 'Substantive legal reforms have continued in many important areas'.⁹⁷ These improvements include updated legislation, such as the 2012 revision of the Criminal Procedure Law (CPL) and the 2014 revision of the ALL, which, at least on paper, ensure elements of procedural justice, such as the right to silence, the presumption of innocence, stricter evidence rules and better protections against state intimidation in administrative litigation.⁹⁸ Other legal reforms have focused on limiting the influence of governments on courts within their jurisdiction,⁹⁹ promoting judicial transparency¹⁰⁰ and raising the professionalism of the judiciary.¹⁰¹

Although there has been significant progress in strengthening procedural justice, serious abuses of legally granted rights and the exercise of extra-legal power, most notably arbitrary detention, continue to cast a shadow on China's rule of law claims. Zhu Yuchao noted that in rule of law societies, legal practice should closely mirror written law; however, in China, 'deviation is routine, widespread and even largely accepted'.¹⁰² The protection of rights in legislation or the constitution itself does not guarantee their realisation as crackdowns on the lawful rights of citizens continue.¹⁰³ Some recorded procedural rights abuses include illegally denying representation to defendants and judges adding additional charges during a trial in contravention of procedural rules.¹⁰⁴ Liu, Hsu and Halliday considered fundamental procedural rights in the Chinese legal system to be 'empty promises', blaming the shortcomings on a lack of judicial independence.¹⁰⁵

Judicial independence, one of the key elements of a liberal rule of law identified earlier, is highly limited or even 'alien' in China.¹⁰⁶ Chinese courts occupy a weak position in the state hierarchy and face myriad political pressures that influence their operation.¹⁰⁷ Commentary from top Supreme People's Court (SPC) officials explicitly recognises the political role of judges, their need to take non-judicial criteria into account when passing judgements and even rejects judicial independence as an 'erroneous western ideological trend'.¹⁰⁸ In practice,

⁹⁶ Chen, 'Shadows' (n 75) 189–90.

⁹⁷ Liebman, 'Paradox' (n 3) 157.

⁹⁸ Jianfu Chen, 'Efforts Towards Procedural Justice in Post-Mao China' in John Garrick and Yan Bennett (eds), *China's Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 94, 103 ('Efforts Towards').

⁹⁹ Li Cheng, *Chinese Politics in the Xi Jinping Era* (Brookings Institute Press, 2016) 190; Chen, 'Shadows' (n 75) 193.

¹⁰⁰ Susan Trevaskes and Elisa Nesossi, 'The Sword of Discipline and the Dagger of Justice' in Geremie Barme, Linda Jaivin and Jeremy Goldkorn (eds), *China Story Yearbook 2014: Shared Destiny* (ANU Press, 2015) 262, 272–3 ('Sword').

¹⁰¹ Qianfan Zhang, 'Judicial Reform' (n 22) 27. See also Peerenboom, 'Fly High' (n 3) 69.

¹⁰² Yuchao Zhu, 'Deviation in Legal Practice: Rule of Law with Chinese Characteristics' in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform* (University Press of Kentucky, 2013) 61, 68 ('Deviation').

¹⁰³ See Trevaskes and Nesossi, 'Fog' (n 19) 78; Feng (n 15) 49; Sida Liu, Ching-Fang Hsu and Terrence Halliday, 'Law as a Sword, Law as a Shield: Politically Liberal Lawyers and the Rule of Law in China' (2019) 2019(1) *China Perspectives* 65, 67 ('Shield').

¹⁰⁴ Liu, Hsu and Halliday, 'Shield' (n 103) 67; Trevaskes and Nesossi, 'Fog' (n 19) 83.

¹⁰⁵ Liu, Hsu and Halliday, 'Shield' (n 103) 67.

¹⁰⁶ Elisa Nesossi and Susan Trevaskes, 'Procedural Justice and the Fair Trial in Contemporary Chinese Criminal Justice' (2017) 2(1–2) *Brill Research Perspectives in Governance and Public Policy in China* 1, 65.

¹⁰⁷ See, eg, Sarah Biddulph, Elisa Nesossi and Susan Trevaskes, 'Criminal Justice Reform in the Xi Jinping Era' (2017) 2(1) *China Law and Society Review* 63, 107–8 ('Justice Reform').

¹⁰⁸ Donald Clarke, 'Order and Law in China' (2020) (52) *GW Law Faculty Publications & Other Works* 1, 11, 40. See also, Willy Lam, 'The Politicisation of China's Law-Enforcement and Judicial Apparatus' (2009) 78(2) *China Perspectives* 42, 48; Benjamin Liebman, 'A Return to Populist Legality? Historical Legacies and Legal

processes such as ‘case coordination’ and ‘supervision over individual cases’ subject Chinese courts to political interference from state bodies, such as People’s Congresses and their standing committees, and Party bodies, such as the ‘Party Political Legal Committees’, which may direct courts to issue specific outcomes in trials and alter past verdicts.¹⁰⁹ Even beyond this system, courts are held hostage by ‘the financial and personnel control of other, stronger institutions’ and therefore have ‘no choice but to agree to deliver’ on the interests of the Party-state institutions.¹¹⁰

Unlike the ideal courts Dicey and Bingham refer to, Chinese courts do not adjudicate solely on the basis of law. Due to a combination of factors, including direct political control and bureaucratic promotion and punishment criteria, judges take political factors into consideration when making judgements and even in deciding which cases to take.¹¹¹ As well as bowing to Party-state interests in ‘sensitive cases’, judges seek to avoid passing judgement that may damage ‘social stability’ or that will lead to petitions to higher levels, sometimes by refusing cases.¹¹² Liebman’s research into courts and petitioning found that judges may be ‘fined if cases they handle result in petitioning, even if the outcomes are substantively correct’.¹¹³ The practical result of this system is that, whether dealing with divorces¹¹⁴ or medical compensation cases,¹¹⁵ judges do not solely judge cases on their legal merits and are, therefore, undermining a basic principle of rule of law.

Extra-judicial, arbitrary detention is an ongoing issue in China. Internally, the Party traditionally used the ‘*Shuang Gui*’ system, which allowed internal Party disciplinary bodies to exercise police and spy agency-style powers, including detaining and torturing Party members.¹¹⁶ Despite being clearly illegal under the Criminal Law and the CPL,¹¹⁷ the system openly persisted until the promulgation of the Law on Supervision in 2018. Although these powers now officially rest with a state body, the statute governing this body does not confer meaningful limits on its discretion.¹¹⁸ Victims of Supervision Commission excesses have no legal recourse except to higher, unaccountable levels of the Supervision Commission itself.¹¹⁹ The commission is theoretically subordinate and accountable only to the National People’s Congress; however, this body rarely meets and is itself utterly subordinate to the CPC leadership.¹²⁰ Although the previous extra-judicial apparatus has been replaced with a debatably legal one, it remains beyond judicial accountability.¹²¹

Reform’ in Sebastian Heilmann and Elizabeth Perry (eds), *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China* (Harvard University Press, 2011) 165, 177 (‘Return’).

¹⁰⁹ Zou Keyan, *China’s Legal Reform: Towards the Rule of Law* (Martinus Nijhoff Publishers, 2006) 30 (‘*China’s Legal Reform*’); Kwai Hang Ng and Xin He, *Embedded Courts: Judicial Decision Making in China* (Cambridge University Press, 2017) 123.

¹¹⁰ Ng and He (n 109) 120.

¹¹¹ See *ibid* 123, 133, 169.

¹¹² *Ibid* 125–6.

¹¹³ Liebman, ‘Return’ (n 108) 177. See also Ng and He (n 109) 130.

¹¹⁴ Ng and He (n 109) 129–32.

¹¹⁵ Benjamin Liebman, ‘Malpractice Mobs: Medical Dispute Resolution in China’ (2013) 113(1) *Columbia Law Review* 181, 181.

¹¹⁶ Feng (n 15) 50; Chen, ‘Shadows’ (n 75) 189.

¹¹⁷ Clarke (n 108) 22.

¹¹⁸ *Ibid* 26–7.

¹¹⁹ *Ibid* 26.

¹²⁰ See *ibid* 26; Chen, ‘Shadows’ (n 75) 188.

¹²¹ Clarke (n 108) 27.

Extra-judicial detention extends to citizens attempting to complain to authorities about local government abuses. Although Chinese citizens theoretically retain the ancient legal right to petition higher government bodies to seek redress for the wrongdoings of lower-level officials,¹²² local governments sometimes attempt to block these petitions by arbitrarily detaining petitioners or employing private contractors to do it for them.¹²³ Despite the illegality of this process, central authorities have shown little interest in combating the trend,¹²⁴ hence signalling to lower levels that arbitrary detention of lawful petitioners is an acceptable method for maintaining order.¹²⁵ Although the two most famous forms of arbitrary detention, ‘reform through labour’ and *Shuang Gui*, have been abolished and made lawful, respectively, Liebman pointed out that other extra-judicial methods will likely be found to imprison inconvenient people.¹²⁶

Therefore, when considering rule of law in China, it is important to take into account that there have been procedural and substantive improvements to the legal system and how it operates, while at the same time, these improvements exist within a context where extra-legal exercise of power still takes place, and the lawful rights of citizens can still be denied. Limited forms of accountability and fairer trial processes have emerged over the past 40 years, but the fundamental supremacy of the CPC over law and other elements incompatible with liberal rule of law persist.¹²⁷

IV. Conclusion

Although scholars are divided on whether China has a genuine rule of law, they largely agree that China does not have or is not interested in pursuing a form of Western liberal rule of law. This chapter has tested that position by contrasting three common liberal rule of law elements with three features of Chinese law. If liberal rule of law can be understood to require the supremacy of law, judicial independence and formal legality, then the legal order in China does not fit this paradigm.

Instead, China’s ‘rule of law’ is a system where the CPC retains for itself a privileged position above a legal system that is designed to facilitate its policy objectives. Instead of promoting predictability or reliably constraining discretion, law is a tool of the Party-state to be deployed where useful and discarded when it becomes inconvenient. Rather than Dicey’s ideal independent courts, where judgement rests on judicial issues alone, Chinese courts are political agents embedded within government, which are encouraged to apply non-judicial reasoning and reach verdicts counter to existing laws. This is what ‘rule of law’ amounts to in China.

¹²² Zhu, ‘Deviation’ (n 102) 64–5.

¹²³ Ibid 68; Liebman, ‘Paradox’ (n 3) 170; Yuhua Wang, *Tying the Autocrat’s Hands: The Rise of the Rule of Law in China* (Cambridge University Press, 2015) 83–4.

¹²⁴ Clarke (n 108) 29–30.

¹²⁵ Ibid 29–31.

¹²⁶ Liebman, ‘Paradox’ (n 3) 173.

¹²⁷ This section, as well as section I and the introduction of section II of this chapter have been adapted from an article published by the author of this thesis. See Michael Hooper, ‘Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China’s Early COVID-19 Response in Wuhan’ (2021) 48(2) *University of Western Australia Law Review* 330. This also applies to other parts of the thesis, see page v for details.

Chapter Three takes a historical approach to law in the PRC to show how the elements of Chinese law mentioned previously (i.e., supremacy of the Party, instrumentalism and reform–repression dualism) manifested during the terms of each ‘paramount leader’.¹²⁸ It charts legal reform beginning with a brief description of law in Mao Zedong’s China before delving more deeply into the legal developments of successive leaderships from Deng Xiaoping to Hu Jintao. Each leadership faced their own challenges and pursued specific policy aims. They saw law as a useful tool for achieving such policy objectives. Despite the sometimes seemingly contradictory policy directions of different administrations, the basic elements of Chinese law described in this chapter remained unchanged, even if how they manifested differed.

This analysis shows that the three identified features are indeed features of Chinese law. They are long-term characteristics outliving specific Chinese administrations and the rapidly changing situations they presided over. By describing key reforms and developments under each leader, the supremacy of the CPC, the Party-state’s instrumentalist attitude to law and the tug of war between reform and repression emerge as regular features of the Chinese legal system, further justifying their use in this chapter.

¹²⁸ The term ‘paramount leader’ refers to the de facto ruler of China. The paramount leader is not necessarily the head of state (i.e., the president of the People’s Republic of China) or even the formal leader of the CPC. Deng Xiaoping was supremely powerful without holding the posts of general secretary of the CPC or president of the People’s Republic. In fact, two Party general secretaries were dismissed during Deng’s reign. Jiang Zemin also continued to exercise significant influence while Hu Jintao was general secretary and president.

Chapter Three: Historical Context of *Yifa Zhiguo* and Consistent Features in the Post-Mao Era

Yifa Zhiguo is best understood when placed within the historical context of legal reform in the PRC. This history includes the Marxist–Leninist-inspired legal instrumentalism and later legal nihilism of the pre-Reform era, Deng-era efforts to create a formal legal system that would facilitate economic reforms and protect them from popular reaction, official adoption of the term *Yifa Zhiguo* in Jiang Zemin’s administration and, finally, the Hu-era attempts to theoretically combine the coexistence of rule of law and Party leadership. Throughout these developments, the three characteristics identified in Chapter Two—supremacy of the Party, an instrumentalist attitude to law and the reform–repression dualism—remained key features of China’s legal order, and it is from this foundation that what Xi Jinping really means when he speaks of ‘rule of law’ emerges.

This chapter focuses on how the three key features of Chinese law identified in Chapter Two are long-term features apparent during the tenures of each paramount leader. Chapter Three approaches this task in four parts. Section I briefly introduces official attitudes to law in the PRC under Mao Zedong, including the conflict between ‘bureaucratic’ and ‘popular’ law paradigms. Section II explores how Deng-era reformers revived formal law, seeing in it a means to facilitate their economic development plans. While reformers forged ahead with their plans, contemporary Chinese scholars debated the role of law in post-Mao China, contrasting ‘rule of law’ with ‘rule of man’. Section II also addresses scholarly treatments of the Deng era, identifying the instrumentalist use of law to achieve, and protect, economic reforms, before engaging with scholarly critiques from liberal and Maoist perspectives. Section III discusses the emergence of the term *Yifa Zhiguo* under Jiang Zemin, alongside the achievements and limitations of Jiang-era law reform, further showing the reform–repression dualism at work. In Section IV, the chapter turns to the Hu-era development of *Yifa Zhiguo* and attempts to justify the concept at a time of greater judicial politicisation and undermining of courts in favour of non-judicial mediation.

I. The Marxist Pre-History of *Yifa Zhiguo*

Marxist jurisprudence was the original inspiration for the CPC’s conception of law and how it should function in a socialist society.¹ What little Marx said on the subject focused on the relationship of law to society, viewed through the lens of class, noting that law functioned as a tool of the ruling class.² At this point, it should be noted that there is no single, Marxist-inspired, legal doctrine that applied equally to all socialist societies at all times. For example, Huskey claimed that the popularity of three competing, Marxist-inspired, doctrines of law waxed and waned during different historical stages in the Soviet Union.³

¹ Xiaodan Zhang, ‘Rule of Law Within the Chinese Party-State and Its Recent Tendencies’ (2017) 9(2) *Hague Journal on the Rule of Law* 373, 379 (‘Recent Tendencies’); Qianlan Wu, ‘How has China Formed its Conception of the Rule of Law? A Contextual Analysis of Legal Instrumentalism in ROC and PRC Law-Making’ (2017) 13(3) *International Journal of Law in Context* 277, 288.

² Wu, ‘Conception’ (n 1) 288. See also Veniamin Chirkin et al, *Fundamentals of the Socialist Theory of the State and Law* (Progress Publishers, 1979) 239.

³ Eugene Huskey, ‘A Framework for the Analysis of Soviet Law’ (1991) 50(1) *Russian Review* 53, 55–7.

The class approach to law under Mao's leadership is apparent in the way law served as a tool for suppressing and eliminating the former exploiting classes.⁴ Law retained a role during the early period of the PRC's existence, but it was not allowed to interfere with revolutionary goals.⁵ Instead, law was viewed as a tool to be used when useful and discarded when it stymied political objectives. This fits the description provided in Chapter Two and, later in this chapter, will be shown to be a common theme in the post-Mao era.

Scholars identified two competing trends or aspects of the Mao-era legal system, which they variously described as 'popular' versus 'bureaucratic', 'mass-line' versus 'regularity' and 'internal' versus 'external'.⁶ 'Bureaucratic', 'regularity' and 'external' are three different labels scholars have used in the Chinese context to describe the trend towards a legal system that emphasises formal legal codes, regularity and the processing of justice through state institutions such as courts and police.⁷ Example reforms in favour of this approach would involve strengthening legal institutions, training more legal professionals and creating a greater number of more detailed laws. 'Popular', 'mass-line' and 'internal', in contrast, are interchangeable terms referring to a paradigm where legal bureaucracies and formal processes are de-emphasised in favour of a larger role for communities in policing social behaviour.⁸ Laws need to be relatively simple since non-legal professionals play a role in legal affairs and, according to Brady, 'Justice professionals are expected to work closely with citizen activists and to maintain procedures which are informal and open to popular participation'.⁹

While Mao Zedong emphasised the popular approach, his contemporary Liu Shaoqi advocated for the bureaucratic paradigm of a formalised, complete legal system to support the development of productive forces.¹⁰ As will be seen in Section II, Liu's preference for a formal legal system would be realised during Deng Xiaoping's reign. Although Brady claimed that a 'dialectic of co-operation and confrontation' existed between these systems, even during the 1970s, other scholars argue that legal institutions were largely irrelevant or 'politicised' by the mass movements of the 1950s.¹¹

The rapidly changing political environment of the late 1950s saw the competition between differing legal concepts firmly settled in Mao's favour.¹² The official CPC position towards law shifted away from the bureaucratic approach, as the role and powers of judicial organs weakened, and Party committees and public security bodies increasingly assumed control of judicial tasks.¹³ According to Li, the Party-state's increasingly nihilistic attitude towards law in China is demonstrated by Mao Zedong's comment in 1958 to a Politburo meeting that

⁴ Wu, 'Conception' (n 1) 288; Shao-Chuan Leng, 'The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence' (1977) 68(3) *Journal of Criminal Law and Criminology* 356, 364.

⁵ Leng (n 4) 357.

⁶ James Brady, *Justice and Politics in People's China: Legal Order or Continuing Revolution?* (Academic Press, 1982) 231; Victor Li, 'The Role of Law in Communist China' [1970] (44) *China Quarterly* 66, 72–4.

⁷ See Brady (n 6) 231–2; Victor Li (n 6) 72.

⁸ Brady (n 6) 232; Victor Li (n 6) 73. See also Leng (n 4) 357.

⁹ Brady (n 6) 232.

¹⁰ Leng (n 4) 358.

¹¹ Brady (n 6) 232.

¹² Leng (n 4) 358.

¹³ *Ibid* 358–9.

‘Every one of our party resolutions is law, and every meeting itself is law, and we can therefore maintain social order through resolutions and meetings’.¹⁴

The role of the CPC as the source of legal norms is not only the result of ideology but also the practical result of limited legislative activity since the formation of the PRC. After the founding of the People’s Republic, all laws promulgated by the Nationalist Party during their rule of the Republic of China were abolished.¹⁵ According to a CPC Central Committee decision, party policies could guide legal work in cases that new PRC legislation did not yet cover.¹⁶ Despite some earlier legislative achievements,¹⁷ an emerging climate of regular political campaigns and disruption saw the National People’s Congress rarely produce legislation, leaving State Council regulations and Party policies to act as law.¹⁸

To some scholars, the Cultural Revolution represented the ultimate negation of a formal state and legal system.¹⁹ Revolutionary committees replaced many state organs and, according to Zhang, ‘Policies of the CCP became the unique source of norms for state and society and the dualism of the Party and the state degenerated into a monism of the Party’.²⁰ Other scholars, such as Xu Lizhi, called this a ‘trope of destruction’ that wrongly assumes that ‘the socialist legal system built after 1949 was abandoned’ and ‘ceased to function’.²¹ Xu believed that the Cultural Revolution was destructive but not on the scale critics claimed and that ‘parts of the legal system continued working with certain limits and some functions of the system were even strengthened’.²²

Whether formal law was truly negated, or merely sidelined, these accounts of Mao-era law suggest that instrumentalism was a feature of the PRC’s legal system during its early years, as was the supremacy of the CPC over legal norms. Reminiscent of the Marxist concept of the ‘negation of the negation’, Mao’s attempts to negate formal law in China in favour of a more democratic mass-line-based legality were negated by Deng Xiaoping and his efforts to implement a formalised legal system. Despite the enormous changes that took place in the Deng era, the fundamental instrumentalist approach to law would remain, as would the supremacy of the CPC. The next section begins this chapter’s discussion of Deng-era law reform.

II. Formal Law Reform and Deng Xiaoping

The first 30 years of the People’s Republic saw ‘popular’ and ‘bureaucratic’ approaches to law coexist before the eventual triumph of the former over the latter. However, this victory was short-lived. The next phase in the PRC’s legal history began shortly after Mao Zedong’s death in 1976, as the new leadership of the CPC began to express the potential value of a

¹⁴ Li Cheng, *Chinese Politics in the Xi Jinping Era* (Brookings Institute Press, 2016) 189.

¹⁵ Zou Keyan, *China’s Legal Reform: Towards the Rule of Law* (Martinus Nijhoff Publishers, 2006) 45; Xiaodan Zhang, ‘Recent Tendencies’ (n 1) 379.

¹⁶ Xiaodan Zhang, ‘Recent Tendencies’ (n 1) 380.

¹⁷ For an account of legislative achievements, see Victor Li (n 6) 79.

¹⁸ Ibid 380.

¹⁹ Ibid 381.

²⁰ Ibid 382.

²¹ Xu Lizhi, ‘Beyond “Destruction” and “Lawlessness”’: The Legal System During the Cultural Revolution’ in Daniel Leese and Puck Engman (eds), *Victims, Perpetrators, and the Rule of Law in Maoist China: A Case-Study Approach* (Walter de Gruyter GmbH, 2018) 25, 27 (‘Beyond’).

²² Ibid 17.

formal legal system for pursuing their policy goals. Unlike his predecessor, who spoke of Party decisions acting as laws, Deng Xiaoping and many of his contemporaries believed in the necessity of a formal legal system.²³ Legal reform in the Deng era displays the three characteristics raised in Chapter Two: the supremacy of the Party over law, an instrumentalist attitude to law and a reform–repression dualism. The Deng-era reformers’ interest in law was intensely practical since law was seen as instrumental for promoting economic growth and the political stability it required. Achievements in re-establishing a formal legal system and *de jure* protections of new rights represented the reform side of the reform–repression dualism. However, scholarly critiques exposed continuing *de facto* Party supremacy over law.

The following subsection of this chapter presents a selection of Deng-era reforms to show official efforts to build a formal legal system. Later subsections describe contemporary scholarly debates within China about whether the country should pursue rule of law or rule by law; identify the Deng administration’s achievements in law reform; and discuss scholarly critiques of the Deng era. Taken together, these subsections will show how Party supremacy, instrumentalism and reform–repression dualism were present in China during Deng’s tenure as leader.

Beginning in 1978, newly formulated principles of governance stood in almost complete contradiction to those of Mao’s era.²⁴ Debates among legal scholars and the speeches of Party leaders would eventually be codified into a set of principles that were largely written into the 1982 constitution. Even before the debates had concluded, practical efforts to build a formalised legal system resulted in new legislation, courts and a renewed legal profession. Despite these concrete efforts, official announcements of lofty legal principles and the *de jure* granting of numerous rights, scholars still question the extent to which they were realised in practice, given the political realities of Deng-era China. In practice, the supremacy of the CPC over law and the Party’s instrumentalist attitude to law remained, and the reform–repression tug of war continued.

A. Emphasis on Law Reform in the Deng Era

The post-Mao transition of power saw law reform become a policy priority. Writing in 1982, a few years after the reform began, Foster noted that ‘A consistent element of post-Mao leadership programs has been the clarion call for ‘strengthening the socialist legal system’. Indeed, it was Hua Guofeng, Mao’s successor, who issued this ‘clarion call’ and took the first steps towards restoring the role of the legal system through amending the constitution.²⁵ The updated 1978 constitution restored many elements of procedural justice formerly included in the 1954 constitution and returned judicial authority to the Ministry of Justice and the Procuratorate.²⁶ However, the scope of reforms under Deng Xiaoping both dwarfed those of

²³ See Carlos Lo, ‘Deng Xiaoping’s Ideas on Law: China on the Threshold of a Legal Order’ (1992) 32(7) *Asian Survey* 649, 650 (‘Legal Order’); Ronald Keith, ‘Chinese Politics and the New Theory of “Rule of Law”’ [1991] (125) *China Quarterly* 109, 113–16 (‘New Theory’); Frances Foster, ‘Codification in Post-Mao China’ (1982) 30(3) *American Journal of Comparative Law* 395, 395.

²⁴ See Keith, ‘New Theory’ (n 23) 112; Richard Baum, ‘Modernization and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality’ (1986) 19(2) *Studies in Comparative Communism* 69, 69.

²⁵ Baum (n 24) 84.

²⁶ *Ibid* 84.

Hua's administration and marked a stronger demarcation from the Mao era.²⁷ Deng and the cadres rehabilitated under his watch embarked on a project that would go beyond restoring the pre-Cultural Revolution legal system to, at least on paper, provide a rules-based order for China.

While it can be said that Deng Xiaoping 'lacked a comprehensive theory of law', he did advance a series of maxims that guided legal reform.²⁸ According to Lo, by 1978, Deng had already made clear that 'there was an urgent need for an impersonal, highly institutionalised legal system with a complete set of legal codes'.²⁹ Lo further summarised Deng's thinking in relation to law by referring to the former leader's five practical principles: 'there must be laws for people to follow, the law must be observed, law-breakers must be dealt with, law enforcement must be strict, and all persons are equal before the law'.³⁰ The last of these principles appeared in speeches where Deng criticised the behaviour of cadres who felt they were above the law and was a major step forward compared with the pre-Deng era.³¹ Deng's famous expression that 'law is better than no law, faster [law-making] is better than slower [law-making]',³² expresses how the Chinese leadership preferred a swift implementation of an imperfect legal system to immediately support economic development rather than waiting for a more comprehensive system.

Although Deng's speeches made clear that legal reform was a policy priority and law would play a larger role in Chinese society compared with the previous 30 years,³³ there were 'considerable differences of opinion as to the merits of rule of law, its compatibility with the leadership role of the party, its value for China, and its meaning'.³⁴ Chinese legal scholars took advantage of the new official support for law in the late 1970s to early 1980s to debate a range of legal questions, including to what extent the class nature of law should be emphasised and the relationship between law and democracy.³⁵ Ultimately, these questions relate to one of the major legal debates of the time, the question of rule of law versus 'rule of man'.³⁶

B. 'Rule of Law' versus 'Rule of Man' Debate

The views of scholars participating in the rule of law versus 'rule of man' debate can be roughly divided into three categories described by Shen as the 'pro-rule of law view', the

²⁷ See *ibid* 84–6.

²⁸ Lo, 'Legal Order' (n 23) 650.

²⁹ *Ibid* 649.

³⁰ *Ibid* 664.

³¹ See Keith, 'New Theory' (n 23) 112.

³² *Ibid* 112.

³³ It is possible, through the lens of Hart's analysis, to assign the label of law to a unity of primary and secondary rules, in which case the rule by Party decree presented in the previous section may count as a form of law. However, the focus of Chapters Two to Four is on rule of law in China as measured against a modern Western liberal definition, so the primary–secondary rule argument will not be investigated here. For Hart's discussion of primary and secondary rules, see HLA Hart, *The Concept of Law* (Oxford University Press, 2nd ed, 1994) 81.

³⁴ Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge University Press, 2002) 55 ('*Long March*').

³⁵ *Ibid* 56; Keith, 'New Theory' (n 23) 114; Carlos Lo, *China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era* (Hong Kong University Press, 1995) 247–59 ('*Legal Awakening*').

³⁶ Peerenboom, *Long March* (n 34) 56.

‘combination theory’ and the ‘abandonment approach’.³⁷ To the ‘abandonment group’, rule of law and related approaches were unacceptable, ‘unscientific’ concepts that could not be applied within China’s socialist system.³⁸ However, their views were largely sidelined in favour of rule of law or the combination theory.³⁹ Proponents of the combination theory argued that law is reliant on the people who create and enforce it, so it is important to seek a positive unity of rule of law with rule of persons where education and morality support the function of law.⁴⁰

Terminological confusion plagued the debate as political figures and scholars alike ‘had indiscriminately used *fazhi* to connote both these concepts’.⁴¹ The two concepts Keith referred to are ‘rule of law’ and ‘legal system’, which are homophones in Chinese.⁴² Instead, the main point of departure between the ‘rule of law’ and ‘combination’ schools was whether law should be considered supreme or, as Peerenboom put it, ‘the difference lies in whether to rely on the wisdom and discretion of rulers or laws to rule, and whether law is supreme and the rulers are also bound by laws’.⁴³

For rule of law advocates, it was clear that laws should be equally binding on the rulers and the ruled; even the Party should only act through law.⁴⁴ In contrast, the combination theory ‘rejected the idea of the supremacy of law, viewing law simply as an official tool for ruling’.⁴⁵ The combination approach to law was an instrumentalist attitude, just the latest in a long string of instrumentalist theories in Chinese legal history.⁴⁶ Put simply, the debate between the two categories of scholars was between ‘rule of law’ and ‘rule by law’.⁴⁷

Which group ultimately ‘won’ the debate is open to interpretation. Scholars like Peerenboom and Lo wrote that the rule of law group prevailed, with Lo stating, ‘in its desire to end the ‘rule of persons’, the ‘rule of law’ school overwhelmed the ‘unity school’.⁴⁸ Peerenboom argued that the ‘debate ended in a victory for the rule-of-law camp’ since many concepts important to that group, such as the supremacy of law, were written into the 1982 constitution.⁴⁹ However, according to Shen, the ‘combination theory’ was ‘preferred ... among the Chinese legal scholars’.⁵⁰ If, when considering who ‘won’ the debate, one focuses on concrete application rather than rhetoric and paper rights, then the ‘rule by law approach’ was applied in practice. In other words, law is not supreme, meaning a key component of the liberal concept of rule of law remains unmet.

³⁷ Yuanyuan Shen, ‘Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China’ in Karen Turner, James Feinerman and Kent Guy (eds), *The Limits of the Rule of Law in China* (University of Washington Press, 2000) 20, 26. See also Keith, ‘New Theory’ (n 23) 114–15; Peerenboom, *Long March* (n 34) 56.

³⁸ Peerenboom, *Long March* (n 34) 56; Shen (n 37) 26.

³⁹ Keith, ‘New Theory’ (n 23) 115.

⁴⁰ Ibid 115; Peerenboom, *Long March* (n 34) 56; Shen (n 37) 26.

⁴¹ Keith ‘New Theory’ (n 23) 115. See also Shen (n 37) 26–7.

⁴² See Keith, ‘New Theory’ (n 23) 115.

⁴³ Peerenboom, *Long March* (n 34) 56.

⁴⁴ Ibid 56; Shen (n 37) 27.

⁴⁵ Shen (n 37) 27.

⁴⁶ Ibid 27.

⁴⁷ Ibid.

⁴⁸ Peerenboom, *Long March* (n 34) 57; Lo, *Legal Awakening* (n 35) 251.

⁴⁹ Peerenboom, *Long March* (n 34) 57.

⁵⁰ Shen (n 37) 27.

C. Achievements of Deng-Era Legal Reform

While scholars debated the merits of different schools of legal thought and addressed various legal questions, officials forged ahead with laying the foundations of a new legal order.⁵¹ The Third Plenum of the 11th Central Committee of the CPC is perhaps most famous as the official start point of the opening and reform policy. It also simultaneously marked the beginning of major official efforts to build a formal legal system.⁵² According to Li, the reforms engaged in ‘systematic efforts to build a strong framework of laws in China’.⁵³ Within a few years of Deng’s ascendancy, the State Council, the SCNPC produced a raft of major legislation that restored legal institutions and judicial procedures.⁵⁴ Alongside the 1982 constitution, they ‘served substantially to alter the course of Chinese jurisprudence’.⁵⁵ A Chinese Government white paper stated that during the period following the famous plenary session, the ‘legislation in this period focused on restoring and re-establishing state order, and carrying out and advancing reform and opening up’.⁵⁶ The white paper’s assessment seems accurate given that at a single session of the NPC in 1979, seven major new laws were created, the majority of which related to establishing legal institutions and procedures.⁵⁷ Out of the seven, three of these laws related to re-establishing or reforming the function of state organs (the people’s congresses, procuratorates and courts), one was an electoral law for people’s congresses and two others included a new criminal code and a CPL.⁵⁸

The 1979 Criminal Law and CPL were important documents for the developing legal system, especially for the new procedural justice elements they included.⁵⁹ Baum described how the Criminal Law’s ‘crimes against citizens’ rights’ and ‘crimes of official misconduct’ sections made a range of official abuses of power illegal, including, for example, ‘extraction of coerced confessions, illegal search and seizure and fabrication of criminal charges’.⁶⁰ Aside from further statements about the equality of all before the law, the CPL also included protections or restatements of existing protections, such as the ‘defendant’s right to public trial’, ‘a maximum time limit of two to three months for preliminary detention of suspects’ and the ‘right to hire a lawyer’.⁶¹ These new criminal codes provided material for the recently revived judicial organisations such as the Procuratorate, courts and the Ministry of Justice to work with.

According to Lo, ‘The Organic Laws of the Procuratorate and People’s Courts and the normalization of public security organs signalled resumption of the system established in

⁵¹ See Lo, *Legal Awakening* (n 35) 261; Baum (n 24) 85.

⁵² See Young Nam Cho, ‘“Governing the Country According to the Law”: China’s Rule of Law Policy as Political Reform’ (2014) 21(1) *Journal of International and Area Studies* 21, 22 (‘Policy as Political Reform’).

⁵³ Li, *Chinese Politics* (n 14) 189.

⁵⁴ See Zhusheng Ye, ‘China’s Transitive Legal System in the Reform Era: Between Rule by Law and Rule of Law’ (PhD Thesis, The Chinese University of Hong Kong, 2014) 81.

⁵⁵ Baum (n 24) 85.

⁵⁶ State Council Information Office (SCIO), *The Socialist System of Laws with Chinese Characteristics* (White Paper, 27 October 2011)

<https://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284659.htm> (‘*System of Laws*’).

⁵⁷ See *ibid*; Foster (n 23) 402; Ye (n 54) 81.

⁵⁸ See SCIO, *System of Laws* (n 56); Ye (n 54) 81.

⁵⁹ See Baum (n 24) 86.

⁶⁰ *Ibid* 86.

⁶¹ *Ibid* 88.

1954’ or in other words, a return to a type of formal legality abandoned during the Cultural Revolution.⁶² During the Cultural Revolution years, the roles of the aforementioned judicial organisations were dramatically reduced and in some cases completely eliminated.⁶³ The organic laws of the Procuratorate and people’s courts restored key judicial organisations to their prominent positions and provided a division of responsibilities between them.⁶⁴ This division of labour led to ‘mutual supervision among the three organs [Procuratorate, police and courts] engaged in investigation to prevent miscarriage of justice’.⁶⁵

A new constitution soon supported the rash of novel legislation by providing a more stable foundation for their exercise. The 1982 constitution can be seen as the legal cornerstone of the Dengist project. It was described by Baum as ‘by far the most permissive of China’s post-revolutionary charters’,⁶⁶ by Ye as representing ‘Deng Xiaoping’s emphasis on the importance of law for preventing recurrence of the chaotic situation of the Cultural Revolution’⁶⁷ and by Zhang as existing to ‘purge the revolutionary rhetoric’ of the 1978 constitution and ‘confirm the shift of national focus to economic construction’.⁶⁸ Scholars variously referred to the document as a ‘reversion’⁶⁹ to the 1954 constitution or having ‘inherited and developed the basic principles [it] embodied’,⁷⁰ as the new constitution shared more in common with it than either the 1975 or 1979 documents.

In terms of legal development, one important reversion involved reintroducing the phrase, ‘all citizens of the PRC are equal before the law’.⁷¹ Also important was the inclusion in Article 5 of the sentence: ‘No organization or individual may enjoy the privilege of being above the constitution and the law’.⁷² This constitutional supremacy is reinforced by the stipulations that the rule clearly applies to all political parties and ‘state organs’ and that no laws or regulations may contravene the contents of the constitution.⁷³ A common theme in academic treatments of the 1982 constitution is that the document contains a greater emphasis on rights compared with previous constitutions.⁷⁴ Four new rights included ‘personal dignity’, ‘privilege of residence’, ‘freedom and privacy of correspondence’ and compensation when one’s rights have been infringed upon by the state.⁷⁵

A new constitution emphasising the law’s role, the restoration of legal institutions and a collection of new basic legislation created demand for professionally trained legal personnel. When the Deng-era legal reforms began, there were few trained legal personnel, and many

⁶² Lo, *Legal Awakening* (n 35) 261.

⁶³ Ye (n 54) 80.

⁶⁴ *Ibid* 82; Lo, *Legal Awakening* (n 35) 261–2. See also Jianfu Chen, ‘Efforts Towards Procedural Justice in Post-Mao China’ in John Garrick and Yan Bennett (eds), *China’s Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 94, 95 (‘Efforts Towards’).

⁶⁵ Lo, *Legal Awakening* (n 35) 262.

⁶⁶ Baum (n 24) 93.

⁶⁷ Ye (n 54) 84.

⁶⁸ Qianfan Zhang, *The Constitution of China: A Contextual Analysis* (Hart Publishing, 2012) 49 (‘*Constitution of China*’).

⁶⁹ *Ibid* 50.

⁷⁰ Zou Keyan (n 15) 30.

⁷¹ Baum (n 24) 94.

⁷² 《中华人民共和国宪法》 [Constitution of the People’s Republic of China] art 5.

⁷³ *Ibid* art 5.

⁷⁴ Ye (n 54) 86; Qianfan Zhang, *Constitution of China* (n 68) 51. See also Baum (n 24) 94–5.

⁷⁵ Qianfan Zhang, *Constitution of China* (n 68) 51.

judicial officials had either no or very limited formal legal training.⁷⁶ Figures from 1980 showed that 3.6 per cent of court personnel had studied law at the university level, and in 1983, ‘only three per cent of judges, procurators, and justice bureau officials held the equivalent of a junior college degree in law or above’.⁷⁷ Out of that number, ‘Over 54 per cent had received less than a month of legal training’.⁷⁸ These figures are a direct result of the disruption to higher education, including law schools, which only began offering classes again in 1977, during the Cultural Revolution.⁷⁹ Under these circumstances, it should not be seen as surprising that officials lacking formal legal training assumed the roles of judges and procurators;⁸⁰ however, this situation could not continue if the leadership’s plans for a law-governed China were to succeed.⁸¹ Hence, the development and professionalisation of China’s judicial workforce occurred alongside the promulgation of laws and the restoration of legal institutions.⁸²

The number of judicial professionals and the means of training them have grown dramatically since legal reform began.⁸³ Across the country, law schools opened to train the functionaries China sorely lacked.⁸⁴ While there were only six university law departments in 1978,⁸⁵ by 1985, there were 36,⁸⁶ and by 1987, there were 86 law colleges.⁸⁷ More law schools also meant more teachers and more law graduates. Between 1978 and 1987, ‘the number of teachers increased from 178 to 5,216; and the number of law graduates increased from 99 to 12,639’.⁸⁸ Baum noted that the number of students studying at law departments in 1985 was ‘almost three times greater than the peak pre-Cultural Revolution year of 1957’,⁸⁹ yet even this impressive statistic pales compared to the 41,984 university law students in 1989.⁹⁰

Growth in the number of legal professionals occurred alongside the incredible growth in legal training. A good example of this was the rapid increase in lawyers following the passing of the 1980 *Interim Regulations of the PRC on Lawyers*, which, according to Ren and Lu, represented the ‘initial establishment of the Chinese lawyer system’.⁹¹ Although there is disagreement over exact numbers, between 1978 and 1980, there were roughly 3,000 lawyers in China; however, by 1989–1990 there were between 38,000 and 44,000, a more than tenfold

⁷⁶ Chuan Feng, Leyton Nelson and Thomas Simon, *China’s Changing Legal System: Lawyers & Judges on Civil & Criminal Law* (Palgrave Macmillan, 2016) 21–2; Yuwen Li, *The Judicial System and Reform in Post-Mao China: Stumbling Towards Justice* (Ashgate, 2014) 65.

⁷⁷ Feng, Nelson and Simon (n 76) 21.

⁷⁸ *Ibid* 21–2.

⁷⁹ See Yuwen Li (n 76) 65.

⁸⁰ *Ibid*.

⁸¹ See *ibid*.

⁸² *Ibid* 65; Ye (n 54) 83; Baum (n 24) 99; Bin Liang, ‘The Changing Chinese Legal System, 1978–Present: Centralization of Power and Rationalization of the Legal System’ (PhD Thesis, Arizona State University, 2003) 57 (‘Changing’).

⁸³ Ye (n 54) 83; Roderick O’Brien, ‘China’s Lawyers: A New Role’ (2006) 13(3) *International Journal of the Legal Profession* 297, 297.

⁸⁴ See O’Brien (n 83) 297; Baum (n 24) 99; Feng, Nelson and Simon (n 76) 21.

⁸⁵ Yuwen Li (n 76) 65.

⁸⁶ Baum (n 24) 99.

⁸⁷ Feng, Nelson and Simon (n 76) 21.

⁸⁸ *Ibid*. For similar statistics up to 1989; see Ye (n 54) 83.

⁸⁹ Baum (n 24) 99.

⁹⁰ Ye (n 54) 83.

⁹¹ Yong’an Ren and Xiangyang Lu, *A New Study on the Judicial Administrative System with Chinese Characteristics*, tr Guoyong Wang, Ying Chu and Lu Wang (中国政法大学出版社 [China Politics and Law University Press], 2020) 401.

increase in the space of a decade.⁹² Other features of the time include a leap in the number of law firms, diversification in ownership structures as cooperative and partnered firms emerged, and the creation of the All-China Lawyers Association in 1986.⁹³

Law reform in the Deng era involved a concerted effort to build a formal legal system. From the official sanction of the highest levels of the Party-state flowed reforms in the formal legal apparatus. Re-empowered institutions, new laws, improvements in procedural justice and a trained legal profession necessary for a formal legal system all emerged as the ‘reform’ side of the reform–repression dualism. A description of the features of law in China that does not recognise the reform side of this dualism is not only inaccurate but threatens to present a caricature of China as a country where law has no role to play.

As will be shown in the following section, law played an instrumental role in supporting Deng-era economic reforms. The Party-state shows its instrumentalist approach to law through an emphasis on law’s value in facilitating policy goals. Scholars are under no illusion, however, that law is supreme in China; rather, when it aligns with policy goals, it is applied as a useful tool of state administration.

D. Scholarly Treatment of Deng-Era Law Reform

The sudden reversal of official attitudes towards law during the Deng era when compared with Mao Zedong’s time attracted scholarly interest, with particular attention paid to the reasons for this change and criticisms of it. Accounts often appear to stress the importance of legal reform in achieving economic development aims and its role in providing ‘stability’, both politically and socially, which is often seen as instrumental for achieving economic goals.⁹⁴ Scholars also critiqued Deng-era legal reforms, from both liberal and Marxist perspectives, in ways that challenge the CPC’s rule of law narrative.⁹⁵ Combining these scholarly accounts—both in their descriptions of the instrumental function of law in supporting policy goals and their critiques—supports the argument in Chapter Two regarding the three identified features: Party supremacy over law, an instrumentalist attitude to law and the reform–repression dualism.

A common theme in the literature is the importance of a formal legal system in achieving the ‘Four Modernizations’ and economic development in general.⁹⁶ Beginning in 1978 with the Third Plenary Session of the 11th Central Committee, the leadership of the CPC related economic reform with legal system development, basing successful economic reform on effective legal reform and considering it, in Donahoe’s words, ‘an essential ingredient in their process of modernization’.⁹⁷ Baum used similar language, stating that ‘legal development

⁹² The statistics provided by different sources for the number of lawyers in the first decade of reform vary greatly, but they all demonstrate a massive increase. For the sources of these figures, see Shen (n 37) 21; Ye (n 54) 83; Benjamin Liebman, ‘Legal Reform: China’s Law-Stability Paradox’ (2014) 143(2) *Daedalus* 96, 98 (‘Law-Stability’).

⁹³ Ren and Lu (n 91) 402–3; Bin Liang, ‘Changing’ (n 82) 66–7.

⁹⁴ Benjamin Liebman, ‘China’s Law and Stability Paradox’ in Jacques deLisle and Avery Goldstein (eds), *China’s Challenges* (University of Pennsylvania Press, 2015) 157, 159 (‘Paradox’); Foster (n 23) 295.

⁹⁵ See, eg, Foster (n 23) 408–10, 424–8; Brady (n 6) 240–2.

⁹⁶ Foster (n 23) 395; Brady (n 6) 240; Peerenboom, *Long March* (n 34) 55; Eileen Donahoe, ‘The Promise of Law for the Post-Mao Leadership of China’ (1988) 41(1) *Stanford Law Review* 171, 171.

⁹⁷ Donahoe (n 96) 171.

received new stress as a key link in the process of economic growth'⁹⁸ and quoted a Chinese source: '[d]evelopment of the productive forces in China will necessitate major changes in the relations of production as well as in the superstructure, of which laws ... form an important component'.⁹⁹ Peerenboom wrote that 'The success of the reforms ... hinged on improvements to the legal system and greater reliance on law'.¹⁰⁰ In terms of economic development, a new legal system was instrumental for two key purposes: to facilitate new kinds of production and commercial relations that had previously been incompatible with the socialist system, such as private ownership and market transactions, and to protect these relations against popular reaction or other changing political circumstances.

Economic reform in the context of Deng-era China was, in essence, a gradual process of diminishing the role of central planning and social ownership of the means of production. Lubman noted that the decline of economic planning meant the regular creation of more economic actors and that 'Chinese policy-makers and drafters of legislation were challenged ... to devise legal rules to govern commercial transactions that had previously been forbidden'.¹⁰¹ The phrase 'a market economy is an economy governed by law' grew in popularity among Chinese officials and scholars.¹⁰² This maxim implies that a properly functioning market economy requires, among other things, contract law, protection of property rights and mechanisms for resolving commercial disputes.¹⁰³ Dengist officials sought new legally binding employment contracts to impose greater 'market discipline' on labourers previously accustomed to the benefits of socialist relations of production.¹⁰⁴

Kellogg argued that 'authoritarian regimes might self-interestedly and selectively embrace certain elements of the rule of law' in an attempt to profit from the perceived advantages it may provide, such as the 'increased ability to attract international investment'.¹⁰⁵ Various authors have noted that attracting foreign investment, which was important for economic development plans, required a legal system conducive to such investments.¹⁰⁶ Investment can also take the form of technology transfers and the application of more advanced foreign production processes or equipment; however, 'China could not persuade foreign companies to deliver vitally needed technology without a system of intellectual property'.¹⁰⁷ Indeed, Brady reinforced the above points, commenting, 'China-bound corporate executives also appreciate these developments as they note new legal guarantees for foreign investors'.¹⁰⁸

In brief, the new kind of legal system envisaged by the Dengist reformers played an important role in facilitating the implementation of economic reforms by providing the legal

⁹⁸ Baum (n 24) 86.

⁹⁹ Ibid.

¹⁰⁰ Peerenboom, *Long March* (n 34) 55.

¹⁰¹ Stanley Lubman, *Bird in a Cage: Legal Reform in China After Mao* (Stanford University Press, 1999) 175.

¹⁰² Ibid 174. See also Peerenboom, *Long March* (n 34) 55.

¹⁰³ See Peerenboom, *Long March* (n 34) 55.

¹⁰⁴ See Mark Hager, 'Law and the Political Economy of Repression in Deng's China' (1990) 5(3) *American University International Law Review* 773, 814–15.

¹⁰⁵ Thomas Kellogg, 'Rule of Law in Asia: The Case of China' in Christopher May and Adam Winchester (eds), *Handbook on the Rule of Law* (Edward Elgar Publishing, 2018) 490, 490 ('The Case of China').

¹⁰⁶ See ibid 491; Peerenboom, *Long March* (n 34) 55; Liebman, 'Paradox' (n 94) 159.

¹⁰⁷ Peerenboom, *Long March* (n 34) 55.

¹⁰⁸ Brady (n 6) 222.

mechanisms that allow capitalism to function. The reformers saw the instrumental value of law in pursuing this policy goal.

Excluding the times when it was completely negated, PRC officials viewed law in an instrumentalist manner, seeing the value of law in how it can be used to implement Party policy.¹⁰⁹ In the post-Mao era, law was directly useful for facilitating new capitalist economic activity, but it was also useful for providing a stable environment for this activity to take place and for warding off challenges to the new state of affairs. Although budding capitalists and foreign investors required certain legal mechanisms, an important consideration in the Chinese context was an assurance that China was not only open for business but that it would remain open even when the political winds changed direction or a new leader came to power.¹¹⁰

Chinese officials considered this second factor, stability and order, an important reason for law reform. According to Lo, Deng Xiaoping saw law reform as important for achieving his larger goal of obtaining ‘long-term stability to ensure all-round social development’.¹¹¹ His development plans required stability, both in terms of politics and in the broader community sense, that he believed ‘depended on a sound legal system resting on a democratic foundation’.¹¹² In this regard, Deng stated, ‘Democracy without socialist legality, without Party leadership and without discipline and order is definitely not socialist democracy’.¹¹³ While Deng might not be considered an authority on democracy, what matters is he felt his reform project required the stability that legality provides. Peng Zhen, the key legal reformer of the Deng era, also stated that the legal system was intended to ‘consolidate and promote the lively political environment of stability and unity and ensure the smooth advance of socialist modernization’.¹¹⁴ These statements by national leaders show that stability and order were core national priorities that facilitated other Party goals and that law was seen as a tool for achieving them.

Stability and order also appear consistently in the literature as reasons why legal development was considered important in reform and opening era China.¹¹⁵ Writing in 1982, before the promulgation of the new Dengist constitution, Foster noted that ‘Law has been assigned a critical role in this [Four Modernizations] campaign as well – to guarantee the order and stability required for rapid national development’.¹¹⁶ Ten years later, Keith also emphasised the function of law in Deng’s China as providing ‘predictability’ that facilitated the ‘complexities of new economic transactions’, and in 2015, Liebman commented that legal reform represented that the new system was based on ‘rules and social stability’.¹¹⁷ While this theme is commonly advanced, few sources explain in detail how a legal system provides this

¹⁰⁹ See Liebman, ‘Paradox’ (n 94) 159.

¹¹⁰ Hager noted that a poll of Fortune 500 executives showed that ‘increased political stability’ beat ‘reduced bureaucracy’ as their most sought-after change to draw more foreign investment into China: see Hager (n 104) 812.

¹¹¹ Lo, ‘Legal Order’ (n 23) 650.

¹¹² *Ibid* 650.

¹¹³ *Ibid* 653.

¹¹⁴ Lo, *Legal Awakening* (n 94) 250.

¹¹⁵ See Foster (n 23) 395; Keith, ‘New Theory’ (n 23) 111; Peerenboom, *Long March* (n 34) 55; Hager (n 104) 818; Donahoe (n 96) 173–4.

¹¹⁶ Foster (n 23) 395.

¹¹⁷ Keith, ‘New Theory’ (n 23) 117; Liebman, ‘Paradox’ (n 94) 159.

stability. For the purpose of demonstrating the instrumentalist approach to law in the PRC, it is not necessary to unpack this point. What matters is that the Party considered stability to be a desirable end goal and saw law as a useful tool for achieving it.

Deng Xiaoping viewed laws and legal codes as a way of ensuring predictability and continuity of policies. He personally condemned the apparently common practice where ‘Very often, what leaders say is taken as the law and anyone who disagrees is called a law-breaker. That kind of law changes whenever a leader’s views change’.¹¹⁸ Instead, Deng sought a situation where ‘institutions and laws do not change whenever the leadership changes or whenever the leaders change their views or shift the focus of their attention’.¹¹⁹ This continuity would be welcomed by international financiers who may worry that their investments could be seized should the Party leader suddenly change their mind.

Scholarly treatments of Deng-era legal reform reveal the Party-state’s instrumentalist attitude towards law. Officials viewed a formal legal system as useful for facilitating economic reforms, both in terms of providing the rules and institutions necessary for capitalist market economies to function and ensuring the stability necessary to attract foreign investment and business confidence. In the following section, critical appraisals of Deng-era legal reform reveal that despite the reforms identified earlier, the Party retained its position of supremacy over the law; law remained useful but could be ignored when it interfered with official interests.

E. Critical Appraisal of Deng-Era Legal Reform

The legal reforms of the Deng era successfully grew a formal legal system out of the ashes of the Cultural Revolution. This impressive achievement, described earlier in this chapter, represents the reform side of the reform–repression dualism. However, critical appraisal of Deng-era law reform recognises that rule of law as understood in the Western liberal tradition did not exist in China. Law remained subordinate to a Party-state that viewed it as a tool to be applied in service of policy goals and ignored when its application clashed with said goals.

The scholarly critiques presented below fall into two categories. The liberal critiques of the first category focus on the dominant role of the CPC,¹²⁰ while the Maoist approach of the second category criticises the role of law in undoing the revolutionary gains of pre-Deng China and buttressing a new exploitative order against worker opposition.¹²¹

i. Liberal Critiques

Liberal critiques often note the supremacy of the CPC over law, demonstrating the Party’s unwillingness, despite its rhetoric about the supremacy of law, to submit to law, allow genuine judicial independence or meet other criteria of a liberal understanding of rule of

¹¹⁸ Deng Xiaoping, ‘Emancipate the Mind, Seek Truth From Facts and Unite as One in Looking to the Future’, *dengxiaopingworks.wordpress.com* (Website, 25 February 2013) <<https://dengxiaopingworks.wordpress.com/2013/02/25/emancipate-the-mind-seek-truth-from-facts-and-unite-as-one-in-looking-to-the-future/>>.

¹¹⁹ *Ibid.*

¹²⁰ For liberal critiques, see Foster (n 23) 408–10, 424–8; Shen (n 37) 28–30.

¹²¹ For Marxist/Maoist critiques, see Hager (n 104) 813; Brady (n 6) 240–2.

law.¹²² Sources differ in their appraisals of how much has been achieved and their prognosis for the future of law reform; however, the thread that binds them is their recognition that political considerations, especially the role of the CPC, are roadblocks for any who would seek a liberal rule of law.¹²³ This makes sense, considering this is not, nor has it ever been, the CPC's goal.

Critics question the extent to which legal principles, written laws and judicial processes in post-Mao China are enforced or enforceable due to the CPC's special position in China.¹²⁴ Foster's 1982 study claimed that Deng's government embarked on an ambitious project of 'codification', despite the traditional preference for the 'informal' model described previously, yet ultimately abandoned the process by 1981 out of political expediency.¹²⁵ This retreat from codification had already taken place by the time the 1982 constitution was introduced. Although amended multiple times, this constitution remains in effect in 2022.¹²⁶

As examined earlier, the 1982 constitution extends selected rights to Chinese citizens and includes provisions that would lead one to believe that China enjoys the rule of law. However, other articles of the constitution call this assumption into question. Article 51 of the 1982 constitution states: 'The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state'.¹²⁷ In essence, there are no legal rights in China: only privileges that the state can rescind at will.¹²⁸ This runs counter to the concept of rule of law as limiting state power. Other revisions included removing a provision from the previous constitution establishing courts as 'only answerable to the law' and wording another article guaranteeing the independence of the judiciary in such a way that it protected against 'interference from the executive branch of the government, social organizations, and individuals' but said nothing about political parties, leaving no formal prohibition against CPC intervention.¹²⁹

Even when the wording of the constitution appeared to enshrine the individual rights of Chinese citizens, without enforcement mechanisms, there is no way to hold the state accountable when it breaks its own laws.¹³⁰ During the Deng era, the constitution was not 'judicially actionable'.¹³¹ This was also true of the 1978 constitution, which, despite promising freedom of speech and the 'Four Big Freedoms', failed to protect Democracy Wall

¹²² See Zou (n 15) 59; Ling Li, 'The Chinese Communist Party and People's Courts: Judicial Dependence in China' (2016) 64(1) *American Journal of Comparative Law* 37, 48–50; Margaret Woo, 'Legal Reforms in the Aftermath of Tiananmen Square' (1991) 17(1) *Review of Socialist Law* 51, 52, 67.

¹²³ See Qianfan Zhang, 'The People's Court in Transition: The Prospects for Chinese Judicial Reform' in Suisheng Zhao (ed), *Debating Political Reform in China: Rule of Law vs. Democratization* (M.E. Sharpe, 2006) 138, 161–3 ('Transition'); Shen (n 37) 28–30; Young Nam Cho, 'China's "Rule of Law" Policy and Communist Party Reform' (2016) 40(4) *Asian Perspective* 675, 692 ('Communist Party Reform').

¹²⁴ Foster (n 23) 405, 408–9. See also Zou (n 15) 52; Li (n 122) 71.

¹²⁵ Foster (n 23) 396, 400, 408, 428.

¹²⁶ He Baogang, 'Socialist Constitutionalism in Contemporary China' in Michael Dowdle and Michael Wilkinson (eds), *Constitutionalism Beyond Liberalism* (Cambridge University Press, 2017) 176, 178.

¹²⁷ 《中华人民共和国宪法》 [Constitution of the People's Republic of China] art 51.

¹²⁸ Ann Kent, 'Waiting for Rights: China's Human Rights and China's Constitutions, 1949–1989' (1991) 13 *Human Rights Quarterly* 170, 179.

¹²⁹ Li (n 122) 48–9.

¹³⁰ Shen (n 37) 33; Kent (n 128) 178–9; Huangdah Chiu, 'China's Legal Reforms' (1985) 84(503) *Current History* 268, 270.

¹³¹ Kent (n 128) 178–9.

participants, who had been exercising their lawful rights, from government retribution.¹³² There is no constitutional court for citizens to challenge the constitutional validity of state actions. In theory, only the SCNPC, the top legislative body, may interpret the constitution, but this simply means that legislators have carte blanche to ignore the constitution.¹³³ Chiu noted, ‘The constitutional provisions, if they were substantially implemented, would certainly provide a degree of a “rule of law”’.¹³⁴ Instead, China has a ‘supreme’ legal document that claims to guarantee a generous set of rights but is unenforceable and ignored in practice. The ‘degree of a rule of law’ offered by the constitution is undermined by its own provisions and a political–legal system that refuses to subordinate itself to law.

Despite legislative efforts and institution building, a gap remained between law as written and the reality of law enforcement in the Deng era.¹³⁵ Woo described this problem as the government ‘selectively’ applying law (i.e., deciding whether to follow law or not) and highlighted the continuing ‘party influence over individual legal work, and with Party policy taking precedence over application of law’.¹³⁶ One example of these principles in action was the ‘Strike Hard’ campaign of 1983, where a politically motivated anti-crime campaign ‘quickly spun out of control, producing massive violations of human rights and Chinese law’.¹³⁷

To facilitate the anti-crime campaign, the SCNPC significantly weakened rights-protecting provisions in laws such as the CPL.¹³⁸ These changes included extending the death penalty as a punishment for a wider range of crimes; shortening each stage of the criminal justice process, such as by limiting the appeal window on death sentences to three days, and allowing local courts to try cases involving the death penalty.¹³⁹ These changes negatively affected the rights of defendants and are arguably unconstitutional since they violate the ‘basic principles’ of the CPL.¹⁴⁰ Bureaucratic changes also saw legal cadres sidelined in favour of ‘political’ cadres and the promotion of those who would zealously pursue Party objectives rather than those who wished to abide by procedural rules.¹⁴¹

In practice, even the watered-down legal rules were too much for local authorities to bother with.¹⁴² In some cases, courts completely ignored the three-day window for appealing death sentences and defendants were immediately executed following their trials.¹⁴³ Other defendants faced retroactive trial and punishment under provisions updated for the Strike

¹³² See 《中华人民共和国宪法》 [Constitution of the People’s Republic of China] 1975 art 45. See also Hager (n 104) 778; Ezra Vogel, *Deng Xiaoping and the Transformation of China* (Belknap Press of Harvard University Press, 2011) 256.

¹³³ See Chiu (n 130) 270.

¹³⁴ *Ibid* 269.

¹³⁵ Woo (n 122) 52.

¹³⁶ *Ibid* 52, 67.

¹³⁷ Murray Tanner, ‘Coercion and the Balance of Awe: The 1983–1986 “Stern Blows” Anti-Crime Campaign’ (2000) (44) *China Journal* 93, 94.

¹³⁸ *Ibid* 111; Chiu (n 130) 270–1.

¹³⁹ Tanner (n 137) 111; Chiu (n 130) 271.

¹⁴⁰ See Chiu (n 130) 271. The SCNPC has the power to amend laws as long as these amendments do not violate the basic principles of the law in question. What counts as a ‘basic principle’ and who gets to interpret the fact means that this ‘restriction’ on the SCNPC is, in practice, meaningless.

¹⁴¹ Tanner (n 137) 109.

¹⁴² Chiu (n 130) 271.

¹⁴³ *Ibid* 271.

Hard campaign—a breach of the Criminal Law.¹⁴⁴ Authorities employed public trials and, on occasion, public executions,¹⁴⁵ which the CPL arguably forbade.¹⁴⁶ These are only examples of blatant violations of law and do not include the myriad ways devious officials sought to conveniently meet the demands of their superiors while technically obeying the law. One example involved attempts to circumvent legal prohibitions on executing pregnant women by causing them to miscarry, hence making them eligible for capital punishment.¹⁴⁷

According to Tanner, the ‘excesses largely resulted from ... a deliberate shedding of the fledgling post-Mao legal checks against arbitrary arrest and punishment’.¹⁴⁸ It suited the political objectives of the Party-state to suspend protections in its own laws in pursuit of social order, and it suited local officials to break the law to meet the expectations of central authorities. In both cases, Party came before law, and an instrumentalist attitude towards law prevailed.

Although formal courts were revived after the Cultural Revolution and ‘special case investigating teams’ were no longer at work, the Party retained enormous influence over courts through a combination of methods.¹⁴⁹ An example of a micro control is the ability of Party Political Legal Committees (PPLC) to effectively instruct courts and other legal bodies to take specific actions, such as through the ‘case coordination’ system.¹⁵⁰ Li wrote that decisions by PPLCs are ‘often outcome-oriented and supported by no legal reasoning’ and ‘sometimes such instructions have the exact terms of the expected verdict specified’.¹⁵¹ Another form of control is Party discipline since the Party can exert its power over senior judges who are CPC members.¹⁵² The measures mentioned above undermine judicial independence and show that courts in China are a far cry from Lord Bingham’s ideal of politically independent courts that pass judgements solely based on legal reasoning.¹⁵³ It is worth restating that Western liberal rule of law concepts are presented here as comparators to the official Chinese paradigm, not as goals that the Party-state is pursuing.

ii. Maoist Critique

A Maoist critique of Deng-era law reform begins from the perspective of class analysis and focuses on the class interests embodied in government policies and laws.¹⁵⁴ According to this perspective, law is not a neutral entity that exists above and beyond politics but is, along with the agencies that enforce it, an instrument to be used in the service of the ruling class.¹⁵⁵ Judging law reform then is not simply a question of rules of evidence or improving predictability but is instead a question of whether changes serve the class interests of an exploiting minority who seek to entrench their favourable position or aid the formerly

¹⁴⁴ Bin Liang, ‘Severe Strike Campaign in Transitional China’ (2005) 33(4) *Journal of Criminal Justice* 387, 394 (‘Severe Strike’).

¹⁴⁵ *Ibid* 393; Tanner (n 137) 115; Chiu (n 130) 271.

¹⁴⁶ Chiu (n 130) 271.

¹⁴⁷ Tanner (n 137) 117.

¹⁴⁸ Tanner (n 137) 94.

¹⁴⁹ Li (n 122) 59, 67; Zou (n 15) 67. See also Qianfan Zhang, ‘Transition’ (n 123) 161; Tanner (n 137) 114.

¹⁵⁰ Zou (n 15) 59–60. For a discussion of case coordination, see Li, ‘People’s Courts’ (n 122) 67–8.

¹⁵¹ Li, ‘People’s Courts’ (n 122) 68.

¹⁵² Qianfan Zhang, ‘Transition’ (n 123) 161.

¹⁵³ See Tom Bingham, *The Rule of Law* (Penguin Books, 2011) 11–15.

¹⁵⁴ See, eg, Brady (n 6) 223, 236, 240–2.

¹⁵⁵ Leng (n 4) 363–4.

exploited classes in liberating themselves and building a truly equitable society. Applying a Maoist approach then keenly highlights the instrumentalist attitude of Chinese officials. My investigation has uncovered two, contemporary, scholarly proponents of this position, Brady and Hager, so it is their work that will be quoted at length for this section.¹⁵⁶

Writing when the 1982 constitution was promulgated, Brady offered a Maoist critique of Deng-era reforms by emphasising how these laws served elites.¹⁵⁷ To Brady, Dengist law reforms were harmful not only because they created the necessary conditions for exploitation but also because they nullified opportunities for mass resistance.¹⁵⁸ In his own words, he stated that the reforms:

lend permanence to existing uneven property relations (including limited capitalism), outlaw key forms of political dissent developed during the Cultural Revolution, weaken the power of workers and citizens in government and production centres, and impose a heavy dominance of specialised professionals in law enforcement and adjudication.¹⁵⁹

Hager made a similar argument and, with eight years of extra data to draw upon, confirmed many of Brady's points regarding the negative economic effects reform brought to working people and their diminished ability to lawfully voice their dissent.¹⁶⁰

Hager focused on the 'anti-democratic' features of the Chinese legal system of his time, commenting that they were 'harbingers' of 'autocratic state capitalism' and suggesting they 'may function to undermine labor power, security, and living standards and to stifle organized political resistance against these developments'.¹⁶¹ In his analysis, Hager concentrated on how the new constitution, criminal code and contract laws propagate anti-democratic policies and suppress the dissent caused by economic changes.¹⁶² In the Chinese context, legally binding labour contracts represented greater managerial control over workers who faced 'negative incentives, such as discharge, demotion or pay cuts'¹⁶³ where previously they enjoyed guaranteed jobs for life and greater involvement in management decisions.¹⁶⁴ Where 'Western observers' saw the development of legal codes as supporting citizens' rights, Hager and Brady saw instead a pattern of undermining previously protected ways to participate in politics and criticise people in power.¹⁶⁵ The outlawing of posters, wall newspapers and other methods used by common people to criticise those in power demonstrated that criticism from the masses was no longer welcome.¹⁶⁶ One particularly striking example of anti-popular law was the highly specific prohibition against wrecking means of production 'in order to give vent to spite'.¹⁶⁷ Hager sees in this a 'productivist anxiety' about dispossessed peasants and angry workers lashing out over the pain capitalist restoration has caused them, and criticises

¹⁵⁶ See Brady (n 6); Hager (n 104).

¹⁵⁷ Brady (n 6) 240.

¹⁵⁸ Brady (n 6) 240–2.

¹⁵⁹ *Ibid* 223.

¹⁶⁰ Hager (n 104) 813.

¹⁶¹ *Ibid*.

¹⁶² *Ibid* 814–27.

¹⁶³ *Ibid* 814.

¹⁶⁴ Brady (n 6) 241.

¹⁶⁵ Brady (n 6) 236–7. See also Hager (n 104) 811–12.

¹⁶⁶ See Brady (n 6) 223; Hager (n 104) 817.

¹⁶⁷ 《中华人民共和国刑法》 [Criminal Law of the People's Republic of China] (People's Republic of China) National People's Congress) 1 July 1979, art 125.

Dengists for the ‘diabolical way’ their criminal code ‘seems to anticipate and despise the suffering imposed by a new political economy’.¹⁶⁸

Brady regarded the law reforms of his time as the latest battle between two models of law that had been competing in China since long before Deng’s time. In comparing the Mao and Deng-era legal systems, Brady focused on the distinction between what he called the ‘bureaucratic’ and ‘popular’ models.¹⁶⁹ Before Mao’s death, bureaucratic law, with its emphasis on codified laws, legal personnel and formal processes, existed in an uneasy dialectical relationship with the popular concept of law, which, at least theoretically, emphasised mass participation and mediation over rigid state coercion.¹⁷⁰ For Brady, the popular model is preferable as it promoted mass involvement, especially in the supervision of officials, and prevented an ossified law from locking in unequal social relations.¹⁷¹ However, Deng’s ascendancy foretold the defeat of the popular model as the new leadership eagerly forged ahead with its bureaucratic law plans.

The Deng Xiaoping era represented a distinct break from the legal principles of Maoist China. Deng and his reformers saw a formal legal system as necessary for their modernisation project and dedicated time and energy to building a formal legal system that would facilitate that project. Law, in their eyes, was a tool for achieving Party goals, not something to be used by citizens to challenge the Party-state. Despite the steps taken towards establishing a formal legal system, rule of law as understood in the Western liberal sense did not exist in Deng-era China. Reformers viewed law as instrumental for achieving their economic goals and promoting political stability, but they were equally comfortable ignoring laws when it suited them. This can be seen in official ambivalence about legal standards in the Strike Hard campaign and extra-judicial meddling with courts. In this sense, the supremacy of the CPC over law, the Party-state’s instrumentalist attitude to law and the reform–repression dualism were extant features of China’s legal order in the Deng era.

The Deng-era reforms provided the foundation for future legal developments but also generated new problems for the incoming Party leadership under Jiang Zemin to solve. The following section of this chapter explores developments during the Jiang era, showing that ongoing reforms coexisted with extra-legal abuses, an instrumentalist attitude to law was maintained, and the Party’s supreme position above the law remained unchallenged.

III. Rule of Law in Jiang Zemin’s China

The 1990s presented new challenges for the Party, such as growing corruption, weakened central control over various state and non-state actors in a diversifying economy and rising discontent over the harsh consequences of economic reform. In this context, a key question cast a shadow over continuing and deepening legal reform: how to allow law to facilitate and regulate economic reform, the normalisation of administration and the implementation of Party policy without undermining the Party’s, or more accurately, the central Party

¹⁶⁸ Hager (n 104) 826.

¹⁶⁹ Brady (n 6) 231. These models have also been described as the ‘jural (formal)’ and ‘societal (informal)’ models: Leng (n 4) 356; Sarah Biddulph, *Legal Reform and Administrative Detention Powers in China* (Cambridge University Press, 2007) 44.

¹⁷⁰ Leng (n 4) 357.

¹⁷¹ Brady (n 6) 232.

leadership's, monopoly on power. The legal reform taking place in China during Jiang Zemin's tenure as general secretary of the CPC reflects this basic tension. Improvements to the law-making process, legislation, workings of the judiciary and continuing professionalisation of judicial staff coexisted with ongoing extra-judicial exercises of arbitrary state and Party power. It was among these developments that Jiang Zemin introduced the concept of *Yifa Zhiguo*.¹⁷²

This section focuses on law reform under Jiang Zemin's leadership, beginning with his introduction of *Yifa Zhiguo* into the national legal lexicon. Describing significant legal reforms of this period demonstrates the 'reform' side of the reform–repression dualism during the Jiang era, while the discussion presented below of ongoing Party supremacy over law and instrumentalism supports the claim in Chapter Two that these are characteristics of China's 'rule of law'.

A. Jiang Zemin Introduces *Yifa Zhiguo*

Jiang Zemin became general secretary of the CPC only months after the unrest at Tiananmen Square in 1989 and presided over a Party that considered stability to be paramount.¹⁷³ Yet under his reign, cronyism, nepotism and corruption grew and spread to become serious problems.¹⁷⁴ Political campaigns and bureaucratic means had thus far failed to solve the ongoing corruption issues that China faced.¹⁷⁵ Jiang Zemin considered corruption an existential threat serious enough that he claimed 'our Party and even state might even perish'.¹⁷⁶ The CPC leadership viewed further legal reforms as a potential solution to the problems of corruption, along with other issues such as how to provide fertile ground for market-based economic reforms.¹⁷⁷ In other words, just like under Deng Xiaoping, law could serve as a useful tool for facilitating Party-state policy. However, strengthening legal institutions to control corruption could also potentially allow those same institutions to limit the extra-legal application of the Party's will unless the Party developed a legal paradigm that protected its own supremacy over law.

It was in this context that the Jiang administration introduced 'Ruling the Country According to Law' (*Yifa Zhiguo*), sometimes translated simply as 'rule of law', as a slogan for legal reform. The phrase emerged as an official slogan following a speech given by Jiang Zemin in

¹⁷² Jianfu Chen, *Chinese Law: Context and Transformation* (Martinus Nijhoff Publishers 2008) 62 ('*Chinese Law*').

¹⁷³ Willy Lam, 'The Politicisation of China's Law-Enforcement and Judicial Apparatus' (2009) 78(2) *China Perspectives* 42; Lucian Pye, 'Jiang Zemin's Style of Rule: Go for Stability, Monopolize Power and Settled for Limited Effectiveness' (2001) (45) *China Journal* 45.

¹⁷⁴ Pye (n 173) 48. See also Xiaobing Li, 'The Dragon's Tale: China's Efforts Toward the Rule of Law' in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform: New Perspectives* (University Press of Kentucky, 2013) 83, 88 ('Dragon's Tale').

¹⁷⁵ Yufan Hao, 'From Rule of Man to Rule of Law: An Unintended Consequence of Corruption in China in the 1990s' (1999) 8(22) *Journal of Contemporary China* 405, 412 ('Unintended').

¹⁷⁶ Deba Mohanty, 'Power Struggle in China: The Post-Deng Scenario and Jiang Zemin as the "First Among Equals"' (1998) 22(2) *Strategic Analysis* 249, 254.

¹⁷⁷ Xiaobing Li, 'Dragon's Tale' (n 174) 88. See also Hao, 'Unintended' (n 175) 412; King-lun Ngok, 'Law-making and China's Market Transition: Legislative Activism at the Eighth National People's Congress' (2002) 49(2) *Problems of Post-Communism* 23, 24.

1996.¹⁷⁸ This speech came at the conclusion of a seminar hosted by leading Party and government officials where a legal expert from the Chinese Academy of Social Sciences spoke on the topic of building a ‘socialist rule of law state’ and *Yifa Zhiguo*.¹⁷⁹ Later that year, the Fourth Plenary Session of the 8th NPC included Jiang’s new phrase in the next Five Year Plan and its long-term strategy document.¹⁸⁰ Jiang later referred to *Yifa Zhiguo* at the 15th Party Congress in 1997, and the 1999 constitutional revision added *Yifa Zhiguo* to the constitution.¹⁸¹

Scholars contest the significance of the *Yifa Zhiguo* formulation. Peerenboom argues that it represents a linguistic shift from ‘rule by law’ to ‘implying that the government is also bound by law’.¹⁸² He also stated that Jiang’s rule of law thinking importantly included concepts such as ‘equality before the law’, ‘more judicial independence’ and ‘the legislative principle that all major policy decisions should be enacted in laws’.¹⁸³ By contrast, Chen Jianfu claimed that ‘there is little substance in the official documents, and technically it involved a mere linguistic change of terminology’.¹⁸⁴ However, Chen and other authors noted that the official phrase still sparked a wealth of academic legal debate in China.¹⁸⁵

As mentioned previously, the main challenge of the Jiang era in terms of legal reform appears to have been how best to use law to ensure the effective implementation of Party policies without diminishing the Party’s monopoly on power.¹⁸⁶ Scholars expressed this problem in slightly different ways by focusing on different elements of legal reform. For example, Potter contrasted ‘the regime’s apparent commitment to strengthening the role of law in economic transactions and its refusal to be bound by legal restraints in the management of political order’,¹⁸⁷ Peerenboom commented that ‘the dilemma facing the Party is how to strengthen the judiciary without allowing it to become too strong’¹⁸⁸ and Wu highlighted the ‘tangled relationship’ between ‘the supremacy of the CCP in the law-making process’ and the ‘increasing need for subjecting itself to a rules-based system in order to strengthen its regulatory capacity’.¹⁸⁹

In each of these cases, China’s leaders clearly appreciated that legal reform was potentially a double-edged sword that could help implement their policies and foster the economic development they desired, yet was also a potential threat to their unrestrained power. The CPC committed to maintaining its supremacy over law and treating the law as a tool to be

¹⁷⁸ Different scholars tell very similar versions of this *Yifa Zhiguo* genesis story: Albert Chen, ‘Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law’ (1999) 17(2–3) *UCLA Pacific Basin Law Journal* 125, 127; Jianfu Chen, *Chinese Law* (n 172) 62–3; Peerenboom, *Long March* (n 34) 59.

¹⁷⁹ Albert Chen (n 178) 127; Jianfu Chen, *Chinese Law* (n 172) 62–3.

¹⁸⁰ Albert Chen (n 178) 127; Jianfu Chen, *Chinese Law* (n 172) 63.

¹⁸¹ Albert Chen (n 178) 128; Jianfu Chen, *Chinese Law* (n 172) 63; Peerenboom, *Long March* (n 34) 60.

¹⁸² Peerenboom, *Long March* (n 34) 64.

¹⁸³ *Ibid* 60.

¹⁸⁴ Jianfu Chen, *Chinese Law* (n 172) 63.

¹⁸⁵ *Ibid* 63; Albert Chen (n 178) 128.

¹⁸⁶ See Peerenboom, *Long March* (n 34) 220–1; Hao, ‘Unintended’ (n 175) 422; Qianlan Wu (n 1) 289; Pitman Potter, ‘The Chinese Legal System: Continuing Commitment to the Primacy of State Power’ (1999) 159 (special issue) *China Quarterly* 673, 673; Cho, ‘Policy as Political Reform’ (n 52) 33.

¹⁸⁷ Potter (n 186) 678.

¹⁸⁸ Peerenboom, *Long March* (n 34) 220–1.

¹⁸⁹ Qianlan Wu (n 1) 289.

wielded in service of policy aims. It is in this light that the significant achievements in law reform of the Jiang era should be understood.

B. Achievements and Limitations of the Jiang Era

The reform–repression dualism of Chinese law reform was on full display in the Jiang era. Ground-breaking reforms offering citizens legal remedies for state violations of the law coexisted with ongoing extra-legal abuses. The following section focuses on describing this interplay of reform and repression in the Jiang era, showing how despite certain improvements, Party supremacy and instrumentalism remained key features.

During the Jiang era, the SCNPC played a growing role in the formulation and promulgation of legislation, forming specialised committees and soliciting the advice of scholars to produce more professional laws.¹⁹⁰ Although the NPC may be derided in the West as a ‘rubber stamp’ parliament,¹⁹¹ Hao claimed that it had evolved beyond that function.¹⁹² Under the stewardship of Qiao Shi, the NPC and the SCNPC ‘experienced a dramatic boost’¹⁹³ and had ‘gained in institutional capacity’ as law-making functions fell to the NPC rather than the Party itself.¹⁹⁴ In 2000, after years of careful drafting, the NPC adopted the Law on Legislation, which attempted to properly codify the law-making process in China.¹⁹⁵ The legislation helped to clarify, although not completely resolve, questions of law-making jurisdiction, such as that between the NPC and the State Council, preventing issues such as criminal law being delegated to the State Council.¹⁹⁶ The law also improved legal supervision procedures, with Chen commenting that ‘the Law on Law-Making [Legislation Law] does make the Chinese law-making processes much more democratic, transparent and accountable’.¹⁹⁷

Despite some important improvements and positive developments, Chinese law-making still suffered from serious flaws. In theory, Chinese law-making proceeds in a clear hierarchy, yet the actual legislative and regulatory powers were divided among so many organisations that it led to serious confusion over which rules should be legally binding and other consistency problems.¹⁹⁸ The NPC also produced ‘overly vague’ laws, requiring interpretation to be even remotely useful, yet the rules for interpreting statutes were also unclear, especially in regard to judicial interpretation.¹⁹⁹

While the NPC played a greater role in drafting and enacting law, it was still firmly under the control of the Party, a fact Potter believed was clearly demonstrated by Qiao Shi’s removal ‘in

¹⁹⁰ See Peerenboom, *Long March* (n 34) 239; Potter (n 186) 676; Hao, ‘Unintended’ (n 175) 413; Ngok (n 177) 24; Jianfu Chen, *Chinese Law* (n 172) 206.

¹⁹¹ See, eg, ‘China’s Rubber-Stamp Parliament at a Glance’, *France24* (Web Page, 5 March 2019) <<https://www.france24.com/en/20190305-chinas-rubber-stamp-parliament-glance>>.

¹⁹² Hao, ‘Unintended’ (n 175) 413.

¹⁹³ Ngok (n 177) 24.

¹⁹⁴ Peerenboom, *Long March* (n 34) 239.

¹⁹⁵ Bin Liang (n 82) 60; Jianfu Chen, *Chinese Law* (n 172) 179.

¹⁹⁶ Jianfu Chen, *Chinese Law* (n 172) 189.

¹⁹⁷ *Ibid* 206.

¹⁹⁸ *Ibid* 182–84, 188; Peerenboom, *Long March* (n 34) 241–2.

¹⁹⁹ Jianfu Chen, *Chinese Law* (n 172) 189, 201–2; Peerenboom, *Long March* (n 34) 251. See also James Friend, ‘The Rocky Road Toward the Rule of Law in China: 1979–2000’ (2000) 20(3) *Northwestern Journal of International Law & Business* 369, 379–80.

the wake of disagreements with Jiang Zemin over Party leadership of law-making'.²⁰⁰ Perhaps the clearest indication of the continuing domination of the CPC over law-making was a 1991 normative document that, if its elements were applied in practice, would make the Central Committee of the CPC 'the *de facto* legislature, while the NPC and the SCNPC remain the *de jure* legislatures'.²⁰¹ Ultimately, Chen and Peerenboom both concluded their separate analysis of law-making in the Jiang era with stark reminders that "integrity of law" in China will continue to be only an aspiration in the foreseeable future'²⁰² and 'China's legislative system falls short of the basic requirements of a thin theory of rule of law',²⁰³ respectively.

The Jiang era's improved, albeit still flawed, law-making apparatus created a series of laws that guided the dramatic economic and social changes of China's shift to a 'socialist market economy'. In the economic arena, this involved legislation such as the Company Law of 1993, which played a role in the conversion of state-owned enterprises into share-holding corporations competing in a mixed-ownership market economy;²⁰⁴ the Securities Law of 1998, which was the 'first step in legislating towards a modern securities market';²⁰⁵ and the Contract Law of 1999, which replaced three previous, concurrently effective, contract laws that 'had caused much inconvenience and confusion'.²⁰⁶ In the field of criminal law, the 1996 CPL and the 1997 revision of the Criminal Code appeared to provide procedural justice improvements, such as an end to the 'rule of analogy',²⁰⁷ implied presumption of innocence²⁰⁸ and reforms that could allow judges to 'become neutral arbiters'.²⁰⁹

Notwithstanding these achievements, the aforementioned laws failed to address continuing problems and attracted criticism. The Company Law was called a 'disaster' by critics who believed it was inferior to previous regulations,²¹⁰ while the Securities Law suffered from terminal vagueness, failing to list the meanings of vital terms.²¹¹ Lau described the seriousness of this problem, stating: 'In the absence of such provisions, one is left helpless because the PRC legal system lacks various tools, normally found in common law jurisdictions, to guide the reader in understanding statutory provisions'.²¹² Foreign investors seeking opportunities in China found the laws 'so unclear that a fair and predictable interpretation ... is nearly impossible'.²¹³ By failing to provide predictability, an important element of the liberal rule of law equation was missing.

²⁰⁰ Potter (n 186) 676.

²⁰¹ Jianfu Chen, *Chinese Law* (n 172) 194.

²⁰² *Ibid* 206.

²⁰³ Peerenboom, *Long March* (n 34) 268.

²⁰⁴ Roman Tomasic, 'Company Law Implementation in the PRC: The Rule of Law in the Shadow of the State' (2015) 15(2) *Journal of Corporate Law Studies* 285, 286; Preston Torbert, 'China's Evolving Company Legislation: A Status Report' (1993) 14(1) *Northwestern Journal of International Law & Business* 1, 5.

²⁰⁵ Alex Lau, 'The New PRC Securities Law: Quality Control on the Securities Market in China' (2000) 15(1/2) *Managerial Auditing Journal* 53, 57.

²⁰⁶ Wang Guiguo, 'The New Contract Law of China' (2000) 15(3) *Journal of Contract Law* 242, 242.

²⁰⁷ Potter (n 186) 682.

²⁰⁸ Yuchao Zhu, 'Legal Institution Building for the Rule of Law and Human Rights' in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform* (University Press of Kentucky, 2013) 215, 218.

²⁰⁹ Hua L Fu, 'Criminal Defence in China: The Possible Impact of the 1996 Criminal Procedural Law Reform' (1998) 15(3) *China Quarterly* 31, 44 ('Impact').

²¹⁰ Tomasic (n 204) 286.

²¹¹ Lau (n 205) 56.

²¹² *Ibid*.

²¹³ Friend (199) 380.

Improvements introduced by the aforementioned criminal laws also need to be viewed alongside unaddressed problems and harmful new additions. Although new rights existed on paper, there were few, if any, ways to enforce them since there were no remedies for rights breaches.²¹⁴ The removal of the crime of ‘counter-revolution’ might look like an improvement in political rights, but the reality is that the same powers were simply rebranded under new crimes against ‘state security’.²¹⁵ Further, seemingly innocuous additions can have far-reaching negative consequences. Article 38 of the CPL appears to be aimed at criminalising unethical behaviour by defendants and lawyers, such as intimidating witnesses, but the vague wording and undefined key terms mean that ‘the Article could have the chilling effect of stopping any assertive legal practice’.²¹⁶ These brief examples of selected economic and criminal laws show the contradiction in Chinese legislation between improvements, setbacks and continuing abuses. This tension is demonstrated well by examining in more depth the experience of the ALL.

The 1990s saw the promulgation of a series of laws that increased the accountability of administrative organs to the public. These laws included the ALL (1989), the State Compensation Law (1994), the Administrative Penalties Law (1996) and the Administrative Review Law (1999), among others.²¹⁷ The ALL is perhaps the most significant as it not only set ‘the institutional framework necessary to develop an administrative litigation system in China’²¹⁸ but also introduced a new paradigm in state–society relations: officials may be held legally accountable to the public for their actions.²¹⁹ In effect, the ALL allowed individuals and organisations the ability to take administrative bodies to court for breaches of their rights.²²⁰ This could be seen as a step towards a liberal rule of law where, as Bingham commented, official actions should be ‘amenable to legal challenge’.²²¹ The new law also empowered courts to enforce their judgements and ‘uphold, revoke, revise or compel administrative actions’.²²² This is particularly important given the traditional weakness of courts and the ‘not unusual’ trend for governments to ignore court decisions and seek revenge against plaintiffs.²²³

Despite these developments, the ALL suffered from serious limitations.²²⁴ The ALL only provided remedies for specific administrative acts against individuals and organisations rather than generally applicable acts and in Article 12 excluded certain areas of administrative

²¹⁴ Fu, ‘Impact’ (n 209) 45; Yuchao Zhu, ‘Institution’ (n 208) 218. For the lack of remedies in Chinese law in general, see Shen (n 37) 32.

²¹⁵ Potter (n 186) 682; Yuchao Zhu, ‘Institution’ (n 208) 218.

²¹⁶ Fu, ‘Impact’ (n 209) 45.

²¹⁷ Xiaodan Zhang chose these four laws as examples of ‘important measures [that] have been taken to push forward the political reform, especially to limit the power of the government’: Xiaodan Zhang, ‘Recent Tendencies’ (n 1) 386.

²¹⁸ Susan Finder, ‘Like Throwing an Egg Against a Stone: Administrative Litigation in the People’s Republic of China’ (1989) 3(1) *Journal of Chinese Law* 1, 10.

²¹⁹ *Ibid* 1; Yuchao Zhu, ‘Institution’ (n 208) 221; Randall Peerenboom, ‘What Have We Learned About Law and Development? Describing, Predicting and Assessing Legal Reforms in China’ (2006) 27(1) *Michigan Journal of International Law* 823, 851 (‘Legal Reforms’).

²²⁰ Finder (n 218) 11; Ji Li, ‘Suing the Leviathan: An Empirical Analysis of the Changing Rate of Administrative Litigation in China’ (2013) 10(4) *Journal of Empirical Legal Studies* 815, 815; Minxin Pei, ‘Citizens v. Mandarins: Administrative Litigation in China’ [1997] (152) *China Quarterly* 832, 835.

²²¹ Tom Bingham, *The Rule of Law* (Penguin Books, 2011) 57.

²²² Pei (n 220) 835; Finder (n 218) 27.

²²³ Finder (n 218) 26.

²²⁴ Pei (n 220) 859. See also Bin Liang, ‘Changing’ (n 82) 62; *Ibid* 10–26.

actions from the purview of judicial review, including questions of national defence and foreign affairs.²²⁵ Potter argued that governments could ‘legislate their own immunities from ALL review’ because, as previously mentioned, the ALL only covers specific acts and does not review the legality of the applied regulations. Finder noted that this focus on ‘concrete acts’ ignored the harm caused by ‘abstract acts’, which are also not covered by the ALL.²²⁶ Further problems included continuing official interference with courts²²⁷ and the exemption in practice of the actions of Party bodies from review.²²⁸

Although Finder suggested that locals considered challenging officials through lawsuits to be ‘like throwing an egg at a stone’ (i.e., ‘pointlessly self-destructive’),²²⁹ later research found that of the cases surveyed in 1995, 39% saw positive results for plaintiffs, suggesting that the ALL does offer a legitimate path to redress.²³⁰ The ALL may have been developed by authorities as part of handling the principal–agent problem rather than specifically for improving official accountability to the public²³¹ and may have been a ‘generally weak law plagued by many problems in theory and in practice’,²³² but it has provided a limited mechanism for otherwise powerless people to seek justice.

Legislative efforts in the Jiang era show the reform–repression dualism at play. Reforms extended the role of law and even extended to citizens limited rights to challenge the legality of government actions. However, these reforms were tempered by political realities that protected spheres of extra-legal action from scrutiny. As mentioned above, these developments fit the instrumentalist logic of reformers: law is a useful tool for facilitating economic activity and addressing the principal–agent problem.

Judicial independence, taken to mean a judiciary able to adjudicate solely based on law and free from political interference, still did not exist in the Jiang era. Despite reforms, judges remained subject to Party control and weak in the enforcement of their own decisions.²³³ A serious lack of judicial independence meant that judges were too often at the mercy of officials who sought to influence the outcomes of cases by threatening or punishing judges who failed to comply.²³⁴ The Party-state also interfered directly in the resolution of individual cases when it saw fit.²³⁵ This official dominance over courts manifested in rulings ‘favouring local parties whose interests often converge with those of the local government’.²³⁶ Judges

²²⁵ 《中华人民共和国行政诉讼法》 [Administrative Litigation Law] (People’s Republic of China) National People’s Congress, Order No 16, 4 May 1989, art 12. For a discussion of the consequences of these limitations see Pei (n 220) 835.

²²⁶ Potter (n 186) 676; Finder (n 218) 17.

²²⁷ Finder (n 218) 15.

²²⁸ Potter (n 186) 677; Jianfu Chen, *Chinese Law* (n 172) 249.

²²⁹ Finder (n 260) 10, 29.

²³⁰ Pei (n 262) 862.

²³¹ Yuchao Zhu, ‘Institution’ (n 19) 221; Ji Li (n 262) 818.

²³² Jianfu Chen, *Chinese Law* (n 172) 254.

²³³ See Friend (n 199) 379–80; Potter (n 186) 677; Albert Chen (n 178) 157; Jeremy Cooper, ‘Lawyers in China and the Rule of Law’ (1999) 6(1) *International Journal of the Legal Profession* 71, 81.

²³⁴ Yuwen Li, *The Judicial System and Reform in Post-Mao China: Stumbling Towards Justice* (Ashgate, 2014) 71–2.

²³⁵ Potter (n 186) 677; Cooper (n 233) 81.

²³⁶ Albert Chen (n 178) 157. See also Cooper (n 233) 81.

were also vulnerable to making career-ending decisions as they lacked clear statutory guidance on what constituted a ‘wrongly-handled’ case.²³⁷

Defence attorneys also faced difficulties, such as described earlier with Article 38 of the CPL, and struggled to see their client’s rights respected in a system where rights are already difficult to enforce and utterly moot where they conflict with Party interests. Politically motivated cases, such as the prosecution of Xu, Yao and Qin, offer excellent examples of how political objectives supersede the limited rights offered by Chinese law.²³⁸ Potter describes how these activists were denied their rights to hire their choice of lawyer and to defend themselves, then convicted on substandard evidence, ‘contrary to the requirements of the newly revised Criminal Law and Criminal Procedure Law’.²³⁹ This is a natural result of a situation where law is the instrument of the Party-state’s will, and the Party itself is above the law.

Analysis of the literature reveals that these ongoing problems are partly issues of poor law-making and a historical lack of formal law; however, the systemic factor of Party supremacy also plays a role. Jiang-era legal reform contended with the core problem of how to use law as a tool of governance, to achieve Party goals, without subjecting the Party to law. That this issue existed at all is a testament to the ongoing instrumentalist attitude of the Party-state to law. This trend was as true of the Jiang era as it was of the Deng era.

The following section will complete the historical analysis of *Yifa Zhiguo* in China by tracing its development under Hu Jintao’s leadership and showing how the features of Party supremacy over law, instrumentalism and the reform–repression dualism persisted in the Hu era.

IV. Rule of Law Rhetoric and Legal Reforms in the Hu Jintao Era

Hu Jintao succeeded Jiang Zemin as general secretary of the CPC in 2002, ushering in the Hu era. Hu inherited, and only slightly expanded, the *Yifa Zhiguo* concept while maintaining the three elements discussed in Chapter Two: the supremacy of the CPC, an instrumentalist approach to law and a reform–repression dualism. This section will focus on Hu’s contribution to *Yifa Zhiguo* and how supremacy of the CPC over law, instrumentalism and the reform–repression dualism manifested under his leadership. There was much overlap between the Jiang and Hu eras, including ongoing reforms to major legislation that extended procedural justice, representing the reform side of the reform–repression dualism. However, a key departure was the new focus on mediation over adjudication, an example of how political goals shaped judicial practice.

A. Hu’s Contribution to *Yifa Zhiguo*

It is hard to argue that Hu Jintao added much to the official concept of *Yifa Zhiguo*. Although Trevaskes described the usage of *Yifa Zhiguo* by Jiang Zemin and Hu Jintao as ‘essentially the same’,²⁴⁰ Hu did deploy a new slogan to represent his administration’s outlook: ‘The

²³⁷ Yuwen Li (n 234) 71.

²³⁸ Potter (n 186) 682.

²³⁹ Ibid 682–3.

²⁴⁰ Elisa Nesossi et al, ‘Interpreting the Rule of Law in China’ (2016) 1(2) *Made in China* 26, 29.

Three Supremes'.²⁴¹ The three 'supreme' elements referred to in the slogan are 'the cause of the CPC', 'the interests of the masses' and 'the constitution and the law'.²⁴² The slogan appears to suggest that the three components are considered equally important and that legal reform and the actions of judicial bodies should be guided not only by law as written but also by the interests of the Party and the masses, as defined by the Party, of course.²⁴³

It is possible to interpret the three contradictory elements as part of a Marxist 'unity of opposites', recognising that phenomena are comprised of temporarily balanced contradictions, the resolution of which led to the development of the phenomenon into a new quality.²⁴⁴ Hence, rather than being illogical in the sense that three separate phenomena cannot all be supreme at the same time, it is a dialectical understanding that ruling China involves the contradiction between the three 'supreme' elements. According to Wu, a key theme in Chinese scholarly discussions of the Three Supremes is that 'there are no conflicts of interests among the CCP, the NPC system and the law' since they share 'the same goal of representing and achieving the people's interests'.²⁴⁵ As there are supposedly no conflicts in these goals, then leadership by the Party, this approach unifies the rule of law and the interests of the masses with no opportunity for conflict.

Scholars approaching this argument from a critical perspective may consider Hu's formulation to be illogical²⁴⁶ and see Hu as essentially putting Party interests above the law in practice.²⁴⁷ Relaying the position of He Weifang, Yang wrote that since Chinese courts are 'under the guidance' of Party Legal Affairs Committees, they would naturally defer to Party interests should they ever need to choose between any of the 'Supremes'.²⁴⁸ Unfortunately, Hu Jintao never sufficiently explained the reasoning for the Three Supremes publicly beyond claiming at Politburo study sessions on the topic that the rule of law reforms would 'safeguard' Party leadership and the interests of the masses.²⁴⁹ Instead, he was willing to dismiss any contradictions by claiming the concepts had been 'organically unified'.²⁵⁰ Regardless of the actual reasoning behind the vague concept of the Three Supremes, it has been disseminated to judicial personnel as a guiding slogan for judicial work.²⁵¹

Yifa Zhiguo of the Hu era retains the three features identified in Chapter Two and supported by the historical analysis of the Deng and Jiang eras in this chapter. This analysis shows that the Party remains supreme over law in practice, despite the claimed co-equal supremacy of

²⁴¹ See Qianlan Wu (n 1) 289.

²⁴² Ibid; Dali Yang, 'China's Troubled Quest for Order: Leadership, Organization and the Contradictions of the Stability Maintenance Regime' (2017) 26(103) *Journal of Contemporary China* 35, 41; Shumei Hou and Ronald Keith, 'China's Supreme People's Court Within the "Political-Legal System"' in Bjorn Dressel (ed), *The Judicialization of Politics in Asia* (Routledge, 2012) 163, 171.

²⁴³ See Carl Minzner, 'China's Turn Against Law' (2011) 59 (4) *American Journal of Comparative Law* 935, 948 ('Turn').

²⁴⁴ See Ewan Smith, 'The Rule of Law Doctrine of the Politburo' (2017) 79 (1) *China Journal* 40, 53. For a simple explanation of Marxist dialectics Mao Zedong's 'On Contradiction' is a good place to begin. See Mao Zedong, 'On Contradiction' in *Selected Works of Mao Tse-Tung Volume 1* (Pergamon Press, 1975) 311.

²⁴⁵ Qianlan Wu (n 1) 290.

²⁴⁶ For example, for He Weifang's position on the Three Represents, see Dali Yang (n 242) 41.

²⁴⁷ Ibid 41. Minzner suggests that 'populist sentiment' as well as Party interests may trump the supremacy of law: See Minzner, 'Turn' (n 243) 948.

²⁴⁸ Dali Yang (n 242) 41.

²⁴⁹ Smith (n 244) 54–5.

²⁵⁰ Ibid 54.

²⁵¹ See Lam (n 173) 45.

the CPC's cause, popular interests and the law expressed in Hu's formulation. The next subsection identifies elements that comprise the reform side of the reform–repression dualism before discussing the growth in mediation, seeing in it both recognition of the weakness of Chinese courts in the face of Party-state dominance over law and an instrumentalist outlook.

B. The Growing Role of Mediation over Adjudication in China

In line with the Deng and Jiang eras, the Hu administration also promulgated new laws and reformed earlier ones. Reforms improved laws related to the function of market economies, including the 2009 revision to the Patent Law. This particular reform represented 'a signal that China's patent law is increasingly brought into line with international standards'.²⁵² The Property Law of 2007, although highly controversial and limited in terms of new protections, did 'reinforce and make explicit in much greater detail the rights of persons to own property and to be protected in their ownership of their personal wealth'.²⁵³ A 2012 update to the CPL provided improved, albeit still limited, procedural rights, such as the 'presumption of innocence, the right to silence and the rule against self-incrimination', and expanded the role of lawyers in both the pre-trial and trial processes.²⁵⁴ The Civil Procedure Law received similar improvements in 2007 and again in 2012, 'consolidating ad hoc reforms by Chinese courts at different levels'.²⁵⁵

These reforms hold a significant place within the reform–repression dualism in China; therefore, it is integral that they be understood. Solely focusing on repression, or failure to meet liberal rule of law standards, may lead observers to mistakenly deny that law has any meaningful function in China. Law has a role to play in China; the historical analysis in this chapter has emphasised that, from the Party-state's instrumentalist perspective, law is a useful instrument for pursuing policy goals. Law can be used, for example, to provide guarantees to foreign investors and, in the process, serve Party-state economic development goals. These same guarantees, however, could be undercut if new policy priorities required, for example, boosting local companies against foreign competitors. Law is a tool to be used, or ignored, when it serves the Party-state's interests.

Party supremacy over law, instrumentalism and the reform–repression dualism were common features of the Deng, Jiang and Hu eras. However, increased official emphasis on mediation, rather than adjudication by courts in dispute resolution, formed an important point of departure from the Jiang era.²⁵⁶ The Deng and Jiang Administrations elevated the role of formal law in resolving disputes and regulating society as China underwent what Benny referred to as a 'legalisation' process.²⁵⁷ Although mediation and other forms of alternative

²⁵² Jane Qiu, 'China Overhauls Patent Law' (2009) 27(3) *Nature* 214.

²⁵³ Daniel Chow, *The Legal System of the People's Republic of China in a Nutshell* (West, 2nd ed, 2009) 342.

²⁵⁴ Jianfu Chen, 'Efforts Towards' (n 64) 97. See also Liu Mei, 'A Brief Review of the Second Revision of China's Criminal Procedure Law' (2012) 33(4) *Social Sciences in China* 133, 141–2.

²⁵⁵ Jianfu Chen, 'Efforts Towards' (n 64) 98.

²⁵⁶ See Randall Peerenboom, 'The Battle Over Legal Reforms in China: Has there been a Turn against Law?' (2014) 2(2) *Chinese Journal of Comparative Law* 188, 205 ('Battle Over'); Randall Peerenboom, 'More Law, Less Courts: Legalized Governance, Judicialization and *Dejudicialization* in China' in Tom Ginsburg and Albert Chen (eds), *Administrative Law and Governance in Asia: Comparative Perspectives* (Routledge, 2009) 175, 192–3 ('More Law'); Jonathan Benney, 'Weiwen at the Grassroots: China's Stability Maintenance Apparatus as a Means of Conflict Resolution' (2016) 25(99) *Journal of Contemporary China* 389, 392; Dali Yang (n 242) 43.

²⁵⁷ Benney (n 256) 393.

dispute resolution have always held a place in Chinese society, they grew in importance during the Hu era.²⁵⁸ Social stability, always a major concern for post-Mao Chinese governments, assumed greater importance as unrest grew.²⁵⁹ Hu and Yang argued that officials realised they could not rely on judicial means alone to solve the myriad challenges to social stability²⁶⁰, and since there was a strong desire to avoid unrest, there was an interest among officials in pursuing non-judicial means of solving the disputes that lead to social conflicts.²⁶¹

The growth of popularity in mediation can be understood in part by the problems in China's judicial system raised earlier in this chapter during the discussion of the Jiang era: weak courts subject to political interference. Zhuang and Chen emphasised how litigants did not trust courts to resolve their disputes and doubted their competence and integrity.²⁶² Hu similarly described judicial options of dispute resolution as the 'second choice' among Chinese people 'because the cost of legal proceedings is high and time-consuming, and the results are uncertain'.²⁶³ Peerenboom noted that 'courts simply cannot come up with effective and enforceable remedies' and are, therefore, not the best venue for the resolution of some kinds of disputes.²⁶⁴ The accounts provided by these scholars show weak courts unable to reliably adjudicate according to law, hence failing one of Bingham's tests for rule of law.

In these complicated cases, mediation (and other forms of dispute resolution) 'provides greater flexibility to take account of non-legal factors and develop creative remedies'.²⁶⁵ In their survey of banking and financial disputes, Ali and Huang noted that arbitration was vastly more popular than litigation since arbitration was quicker and the results more easily enforced.²⁶⁶ It is in this context that the state promoted alternatives to litigation, with the Ministry of Justice and the SPC both advocating for mediation.²⁶⁷ These sources show that Chinese courts were unable to provide predictable adjudication and were too weak to enforce their decisions. The historical analysis presented in this chapter shows that Party-state bodies have the power to interfere with the work of courts, including individual cases, denying the judicial independence necessary for strong courts to make predictable decisions based solely on law. This also shows the continuing supremacy of the Party over law. In the following subsection, Party supremacy over law is shown through the increasing politicisation of Chinese courts.

²⁵⁸ See Jieren Hu and Yang Zheng, 'Breaking the Dilemma between Litigation and Non-Litigation: "Diversified Mechanisms of Dispute Resolution" in Contemporary China' [2016] (2) *China Perspectives* 47, 49; Shahla Ali and Hui Huang, 'Financial Dispute Resolution in China: Arbitration or Court Litigation' (2012) 28(1) *Arbitration International* 77, 79; Peerenboom, 'More Law' (n 256) 192–3; Wenjia Zhuang and Feng Chen, 'Mediate First: The Revival of Mediation in Labour Dispute Resolution in China' [2015] (222) *China Quarterly* 380, 381.

²⁵⁹ See Dali Yang (n 242) 36; Susan Trevaskes, 'The Ideology of Law and Order' in Geremie Barme (ed), *China Story Yearbook 2012: Red Rising Red Eclipse* (Australian Centre on China in the World, 2012) 66, 71, 74 ('Ideology of Law').

²⁶⁰ Hu and Zheng (n 258) 49.

²⁶¹ Wenjia Zhuang and Feng Chen (n 258) 381; Dali Yang (n 242) 43; Jieren Hu, 'Grand Mediation in China: Mechanism and Application' (2011) 51(6) *Asian Survey* 1065, 1070 ('Mediation').

²⁶² Wenjia Zhuang and Feng Chen (n 258) 381.

²⁶³ Jieren Hu, 'Mediation' (n 261) 1071–2.

²⁶⁴ Peerenboom, 'More Law' (n 256) 190.

²⁶⁵ Hu and Zheng (n 258) 49.

²⁶⁶ Huang and Ali (n 258) 78.

²⁶⁷ Peerenboom, 'More Law' (n 256) 192–3; Wenjia Zhuang and Feng Chen (n 258) 381.

C. Increasingly Politicised Judiciary

Bureaucratic controls on courts combined with populist pressure demonstrate the limitations of Hu-era courts. Liebman, in his study on medical dispute resolution in China, wrote that ‘the Chinese system continues to be one in which outcomes, not procedure, provide the primary external metric for evaluation of the courts and other institutions’.²⁶⁸ This quote hints at another feature of Hu-era legality: increased Party interference in the judiciary and a perceived tendency for courts to make politically motivated decisions, often to promote ‘stability’, rather than an impartial, procedurally correct application of the law as written.²⁶⁹ This increased Party interference further demonstrates its supremacy over law.

An example of how courts make politically motivated decisions is the influence of the media and public opinion on courts.²⁷⁰ The Xu Ting case, where a young man received a life sentence for taking advantage of a faulty ATM, showed how public uproar can influence appeals courts to reduce sentences.²⁷¹ In Xu’s case, the appeal court reduced his sentence from the original life in prison to only five years.²⁷² Public outrage can even mobilise the SPC, which, in the case of an organised crime boss, ordered a death sentence reinstated after a lower court reduced the sentence.²⁷³ The lower court reduced the sentence because it discovered that the original verdict relied on evidence obtained illegally through torture.²⁷⁴ The SPC undermined procedural justice by upholding a sentence tainted with inadmissible evidence, overriding a lower court that corrected for this procedural mistake. It was in the Party-state’s perceived interests to prevent potential public anger, so a politically expedient decision trumped lawful process. Indeed, courts are also sensitive to the possibility of protests or petitions resulting from their judgements,²⁷⁵ as can be seen in how court decisions in medical compensation cases exist ‘in the shadow of protest and violence’.²⁷⁶

The political imperatives of the Party-state play a role in the sensitivity of courts to public opinion. Wang Shenjun’s tenure as president of the SPC, which began in 2008, saw this phenomenon intensify and was a turning point for the overt politicisation of judicial bodies.²⁷⁷ According to Hou and Keith, the 17th Party Congress and Wang Shengjun’s leadership of the SPC saw ‘a palpable increase in the politicization of the SPC and the court system based on

²⁶⁸ Benjamin Liebman, ‘Malpractice Mobs: Medical Dispute Resolution in China’ (2013) 113(1) *Columbia Law Review* 181, 254 (‘Mobs’).

²⁶⁹ For discussion of perceived increases in interference, or ‘politicisation’ in general, see Hou and Keith (n 242) 163–4; Lam (n 173) 42, 44–6; Dali Yang (n 242) 41; Minzner, ‘Turn’ (n 243) 938. For discussion of politically motivated court decisions, see Hou and Keith (n 242) 171–3; Dali Yang (n 242) 47; Liebman, ‘Mobs’ (n 268) 181; Benjamin Liebman, ‘A Return to Populist Legality? Historical Legacies and Legal Reform’ in Sebastian Heilmann and Elizabeth Perry (eds), *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China* (Harvard University Press, 2011) 165, 176 (‘Return’).

²⁷⁰ See Benjamin Liebman, ‘Watchdog or Demagogue: The Media in the Chinese Legal System’ (2005) 105(1) *Columbia Law Review* 1, 6 (‘Watchdog’); Kaiju Chen and Xinhong Zhang, ‘Trial by Media: Overcorrection of the Inadequacy of the Right to Free Speech in Contemporary China’ (2011) 25(1) *Critical Arts: South-North Cultural Media Studies* 45, 49–50.

²⁷¹ See Chen and Zhang (n 270) 49.

²⁷² *Ibid* 49.

²⁷³ Hou and Keith (n 242) 172–3.

²⁷⁴ *Ibid* 172.

²⁷⁵ Liebman, ‘Return’ (n 269) 177; Minzner, ‘Turn’ (n 243) 938.

²⁷⁶ Liebman, ‘Mobs’ (n 268) 181.

²⁷⁷ See Lam (n 173) 48; Hou and Keith (n 242) 170.

party leadership’, while Lam noted a ‘drastic politicisation of the judiciary’.²⁷⁸ In the second half of Hu Jintao’s tenure as leader, unqualified Party apparatchiks were appointed to some of the top judicial positions in the country.²⁷⁹ Despite the Party-state’s access to a large pool of trained and experienced legal professionals, thanks to Deng and Jiang-era reforms, the new ‘top judge’ and the Minister of Justice both lacked formal legal training.²⁸⁰ Unsurprisingly, increasingly frequent public exhortations for the judiciary to serve the Party’s will followed the appointment of trusted political operatives in place of judicial professionals.²⁸¹ In his position as leader of the nation’s courts, Wang Shengjun stated that ‘judges are social workers as much as legal workers’²⁸² and claimed that judges should rule not just on the letter of the law but also on the ‘feeling of the masses’.²⁸³

The Party-state also exercised its influence over courts and encouraged judges to adjudicate based on political factors through its control over elements such as promotions, bonuses and punishments. According to Minzner, official propaganda related to ‘model judges’ in 2010 promoted judges who focused on mediation, whose cases did not result in petitions or appeals and who considered the ‘interests of the masses’.²⁸⁴ Material incentives and punishments also served to encourage the sort of judicial behaviour the Party wanted. The SPC stated that policies should be developed to ‘press judges to actively pursue mediation’,²⁸⁵ and Liebman noted that ‘Judges in many courts are now fined if cases they handle result in petitioning, even if the outcomes are substantively correct’.²⁸⁶

Courts also suffered from other forms of pressure to bend to Party-state whims. Local and regional officials willingly engaged in all manner of unethical and illegal acts to suppress unrest because allowing petitions and ‘mass incidents’ to take place risked their promotion chances under the ‘single item veto’ system.²⁸⁷ Under these conditions, official interference in courts may be inevitable. In politically sensitive cases, Party officials directly interfere with the judicial process.²⁸⁸ Zhou Yongkang, the former national leader of the Party’s ‘stability maintenance apparatus’, personal interference with the case of rights activist Cheng Guangcheng, is one such example.²⁸⁹

Analysis of the position of courts in the Hu era shows their serious lack of judicial independence and their weakness in the face of Party-state interference. Judges faced pressure to adjudicate based on non-legal factors, which undermined the supremacy of law in favour of the political imperatives of the Party-state. This is a manifestation of the supremacy of the Party over law in the Hu era and an indication of the instrumentalist approach the Party takes to law.

²⁷⁸ Lam (n 173) 48; Hou and Keith (n 242) 170.

²⁷⁹ See Lam (n 173) 46–7, 50.

²⁸⁰ *Ibid* 46–7.

²⁸¹ *Ibid* 48; Hou and Keith (n 242) 170–1.

²⁸² Lam (n 173) 48.

²⁸³ Liebman, ‘Return’ (n 269) 177.

²⁸⁴ Minzner, ‘Turn’ (n 243) 949–53, 955.

²⁸⁵ *Ibid* 596.

²⁸⁶ Liebman, ‘Return’ (n 269) 177.

²⁸⁷ Dali Yang (n 242) 44–6.

²⁸⁸ *Ibid* 43.

²⁸⁹ *Ibid*.

Despite ongoing reforms, the key features identified in Chapter Two—supremacy of the Party, instrumentalism and the reform–repression dualism—remained throughout the Hu era. The three features persisted under Hu’s leadership, as seen in Hu’s limited theoretical contributions to Jiang’s *Yifa Zhiguo* concept and the practice of courts during his tenure.

V. Conclusion

This chapter provides a historical account of law reform and the emergence of *Yifa Zhiguo* in China, with a particular emphasis on the opening and reform period that began with Deng Xiaoping. The analysis showed that supremacy of the CPC over law, instrumentalism and a reform–repression dualism remained consistent features of law in China despite the enormous changes and shifting priorities of each generation of CPC leaders. These features suggest that the Chinese Party-state views law as a tool for achieving its goals. Legal means are applied when they are useful, but they can also be ignored when they inhibit political objectives. This is the heart of *Yifa Zhiguo*: not ‘rule of law’ but ‘ruling the country by law’ with the unspoken caveat that law may be ignored when it suits the rulers.

To serve their economic reform goals, Deng-era reformers built a formal legal apparatus out of the ruins of the Cultural Revolution. They considered law a useful tool for facilitating and protecting reforms. In the Jiang and Hu eras, law further supported economic aims through ongoing amendments to economic laws and the creation of new one, such as the patent law.

Yet developments during each leader’s tenure showed that Party interests could also undermine the law. This chapter provided historical examples that showed the supremacy of the Party over law and its instrumentalist attitude, such as the unenforceable provisions of the constitution, blatant violations of criminal law during politically motivated campaigns and cases, as well as the perennial weakness of China’s judiciary to political influence.

Reform and repression existed together in the Chinese context: improvements to laws offering greater predictability or limited protection from official discretion coincided with brazen extra-legal official tyranny. Any analysis that omits one element of this dualism threatens to present a caricature of law in China.

The analysis in this chapter supports the use of Party supremacy, instrumentalism and reform–repression dualism in Chapter Two as key features. It also provides necessary context for understanding the nature of the *Yifa Zhiguo* that would be popularised by Xi Jinping and discussed in the following chapter.

Chapter Four will explore the *Yifa Zhiguo* of the Xi era in three sections. Section I discusses scholarly approaches to the meaning of *Yifa Zhiguo* in light of a historic Party-state meeting held early in Xi’s term on the topic of rule of law. Section II reveals the reform–repression dualism of the Xi era by comparing legal reforms against continuing extra-legal repression. Section III uses high-profile events from the early pandemic response in China to show the Party-state’s application of law as a tool for achieving policy goals.

Each of these sections will serve to advance the argument that *Yifa Zhiguo* is not a liberal rule of law. For the Party-state, law is a tool that can be applied to advance their policy goals and

discarded when it hinders those goals. The supremacy of the Party, instrumentalism and reform–repression dualism are all features of this dominant legal paradigm in China.

Chapter Four: *Yifa Zhiguo* in the Xi Era

If one accepted the ‘turn against law’ thesis and described the Hu era as a step back from the Jiang-era focus on strengthening formal legality,¹ then the Xi era is the negation of that trend. After Xi Jinping’s accession to the post of general secretary of the CPC, the Party-state paid greater attention to the role of law in the governance of China. *Yifa Zhiguo* gained prominence as an official slogan and was even the topic of a historic plenum meeting that firmly touted law as a means of regulating society and officialdom.

‘Rule of law’ in China is not a liberal rule of law. Instead, *Yifa Zhiguo* is a paradigm where law is a tool to be used by the Party-state when it suits their interests and ignored when it impedes those interests. The Party maintains its strict leadership in all affairs, and the *Yifa Zhiguo* of the Xi era more clearly expresses the supremacy of the Party over law. The reform–repression dualism of Chinese legal reform continues in the Xi era with the deepened attacks on lawyers, who use legal channels to defend the legal rights of clients when it is inconvenient for the Party-state, one of its clearest examples. So, while the Xi-era may differ from earlier periods of law reform due to the strengthened emphasis on *Yifa Zhiguo* messaging, it is also a time of greater, more explicit consolidation of Party power over law. Further discussion of the relative level of Party control over the state machinery under Xi compared with earlier periods, except where it is relevant to the function of courts, is beyond the scope of this thesis.

This chapter focuses on *Yifa Zhiguo* in the Xi era, discussing its greater prominence, development and features, as well as the use of law as a tool for serving policy goals. It contains three sections. Section I engages with contemporary scholarly critiques of the meaning of *Yifa Zhiguo* before analysing the historic Fourth Plenum meeting dedicated to rule of law. From this analysis emerge the three features identified and discussed at length in the preceding chapters: supremacy of the Party, instrumentalism and reform–repression dualism.

Section II contrasts successful legal reforms against partly successful changes and ongoing extra-legal abuses to show the reform–repression dualism in practice. Reform is demonstrated through discussing changes to the ALL, court reform and legal measures that restrict the use of torture against suspects, while failures to fully implement some legal reforms and the state-sanctioned, extra-legal attacks on rights lawyers are examples of the repression side of the dualism. Through exploring this dualism, the themes of Party supremacy and instrumentalism also emerge.

Section III examines selected high-profile events that took place in Wuhan early in the COVID-19 pandemic. This section shows how authorities applied law to the infamous case of Dr Li Wenliang, the lockdown of Wuhan and the quarantine of its residents. These practical examples demonstrate how the Party-state in the Xi era uses law as a tool for facilitating policy goals such as combating the spread of an infectious disease. This supports the analysis in Sections I and II concerning the function of law under the *Yifa Zhiguo* paradigm.

¹ See Carl Minzner, ‘China’s Turn Against Law’ (2011) 59 (4) *American Journal of Comparative Law* 935, 948 (‘Turn’).

I. The Ascendency of *Yifa Zhiguo* and the Xi Era

As Section III argues, Jiang Zemin deployed the concept of *Yifa Zhiguo* as a somewhat vague slogan in 1996. Politburo study sessions during the Hu era partially expanded the concept and theoretically reconciled it with Party leadership through the ‘Three Supremes’ doctrine. Under Xi Jinping, *Yifa Zhiguo* gained prominence and became a widely used official slogan even though Xi does not appear to have dramatically altered the concept.² Xi’s *Yifa Zhiguo* emphasises the supremacy of the Party and an instrumentalist approach to law. In other words, China’s ‘rule of law’ amounts to greater reliance on law as a tool of Party-state policy.

Agreement that Xi’s interpretation emphasises the supremacy of the Party, and law’s role as a tool wielded by the Party Centre in achieving its goals appears to be a common feature of scholarly analysis of Xi-era *Yifa Zhiguo*.³ Trevaskes claimed that Xi’s ‘emphasising the idea of Party leadership through the rule of law’ was a ‘new twist’ on the *Yifa Zhiguo* of the previous 20 years, and Smith agreed, noting how Xi appended an additional sentence onto the Party’s ‘authoritative account of the relationship between the Party leadership and rule of law’ that clarifies the Party’s supreme position.⁴

While it may be true that official documents carry wording that can be interpreted as emphasising the leadership, or supremacy, of the Party, it would be a mistake to assume that the Party did not always hold this position in relation to law, even if it was not directly expressed that way. As mentioned earlier in discussing Deng-era law reform, the CPC views law in a fundamentally instrumentalist way. This remains the attitude under Xi. Perhaps with this context in mind, Brodsgaard wrote that the ‘real meaning’ of *Yifa Zhiguo* is ‘that the party will continue to define the law and the Chinese constitutional order’ and not that ‘the country will be ruled according to abstract legal principles’.⁵ However, the doctrine is not simply an expression of Party dominance over law; it also stresses that law is an important tool. In this connection, Lee wrote that ‘Promoting “依法治国” [*Yifa Zhiguo*] is to promote a relatively higher degree of “rule by law,” meaning a greater use of the law in governing’.⁶

The early years of Xi’s tenure saw greater emphasis placed on law.⁷ One indication of a stronger focus was the Fourth Plenum of the 18th Central Committee in 2014, the first meeting

² Elisa Nesossi et al (ed), ‘Forum: Interpreting the Rule of Law in Xi Jinping’s China’ in Ivan Franceschini, Kevin Lin and Nicholas Loubere (eds), *Made in China Yearbook 201: Disturbances in Heaven* (ANU Press, 2017) 98, 101–2 (‘Interpreting’); Jacques deLisle, ‘Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping’ (2017) 26(10) *Journal of Contemporary China* 68 (‘China Model’).

³ Susan Trevaskes and Elisa Nesossi, ‘The Fog of Law’ in Gloria Davies, Jeremy Goldkorn and Luigi Tomba (eds), *Pollution: China Story Yearbook 2015* (ANU Press, 2016) 64, 68 (‘Fog’); Ewan Smith, ‘The Rule of Law Doctrine of the Politburo’ (2017) 79(1) 40, 58–59; Kjeld Brodsgaard, ‘Assessing the Fourth Plenum of the Chinese Communist Party: Personnel Management and Corruption’ [2015] (20) *Asia Policy* 30, 34–5 (‘Personnel’); Nathan Lee, ‘China: “Rule of Law” or “Rule by the Party?”’ [2015] (January/February) *Chinascopes* 6, 8 (‘Rule by Party’).

⁴ Nesossi, ‘Interpreting’ (n 2) 102; Smith (n 3) 59. This position can be compared with Peerenboom who claimed that major policy decisions of the time were a ‘public acknowledgment of the status quo’ instead of a major change: Randall Peerenboom, ‘Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!: What Does the 4th Plenum Decision Mean for Legal Reforms in China?’ (2015) 7(1) *Hague Journal on the Rule of Law* 49, 59 (‘Fly High’).

⁵ Brodsgaard (n 3) 34–5.

⁶ Nathan Lee (n 3) 8.

⁷ DeLisle, ‘China Model’ (n 2) 69.

of its kind to focus specifically on *Yifa Zhiguo*.⁸ At this session, the Central Committee adopted a resolution that described principles, objectives and proposed measures for legal reform in China.⁹ As a first of its kind, the plenum naturally attracted attention from various legal commentators who attempted to summarise its key points.¹⁰ These observers consistently mentioned the continuing domination of the Party, either noting that the status quo had been maintained¹¹ or that the Plenum's resolution placed greater emphasis on Party control.¹² This position is well-founded since Xi Jinping, in his explanation of the Plenum's resolution, took the relationship between the Party leadership and *Yifa Zhiguo* as 'the core issue'.¹³ He stated that 'Leadership by the Party is consistent with socialist rule of law: socialist rule of law must uphold the Party's leadership, while the Party's leadership must rely on socialist rule of law' and that 'The draft resolution makes it categorically clear that upholding the Party's leadership is fundamental to socialist rule of law'.¹⁴

Alongside acknowledging the enduring privileged position of the Communist Party, scholarly accounts of the Fourth Plenum also mention how proposed reforms can be seen as an attempt to address the principal-agent problem through the use of law.¹⁵ The problem of managing local officials, and how best to make them implement the leadership's will, has afflicted Chinese governments since before the founding of the PRC and is an issue that reforms raised at the Fourth Plenum seek to address.¹⁶ Clarke observed that 'obedience of officials to law is presented throughout [the Resolution] as a kind of internal party policy goal' and that officials will be assessed or punished based on this.¹⁷ Ling Li described the intent of some of the Fourth Plenum reforms as to 'help the central party leaders detect, punish, and reduce unwarranted and unauthorised interfering activities conducted by lower-level leaders' and to 'reduce the dependence of courts on local political power'—in other words, to check local protectionism.¹⁸ Changes to courts aimed at improving independence from local governments are an example of one such reform.¹⁹ Such reforms included, but were not limited to, the introduction of circuit and trans-jurisdictional courts; changes to how judges are appointed, assessed and paid; and new requirements to report improper interference by officials.²⁰

⁸ See Carl Minzner, 'Legal Reform in the Xi Jinping Era' [2015] (20) *Asia Policy* 4 ('Legal Reform'); Donald Clarke, 'China's Legal System and the Fourth Plenum' [2015] (20) *Asia Policy* 10 ('Fourth Plenum'); Peerenboom, 'Fly High' (n 4) 49.

⁹ Compilation and Translation Bureau of the Central Committee of the Communist Party of China (ed) *Documents of the Fourth Plenary Sessions of the 18th Central Committee of the Communist Party of China* (Central Compilation and Translation Press, 2015) 3.

¹⁰ See, eg, Minzner, 'Legal Reform' (n 8); Clarke (n 8).

¹¹ Peerenboom, 'Fly High' (n 4) 59; Minzner, 'Legal Reform' (n 8) 7. See also, Ling Li, 'Chinese Characteristics of the "Socialist Rule of Law": Will the Fourth Plenum Cure the Problems of the Chinese Judicial System?' [2015] (20) *Asia Policy* 17, 22 ('Cure').

¹² Brodsgaard (n 3) 34.

¹³ Compilation and Translation Bureau of the Central Committee of the Communist Party of China (n 9) 97.

¹⁴ *Ibid* 98.

¹⁵ See, eg, Minzner, 'Legal Reform' (n 8) 8; Peerenboom, 'Fly High' (n 4) 60. For related discussions that do not specifically use the term 'principal-agent' but are addressing related phenomena, see Clarke (n 8) 12; Anthony Li, 'Centralisation of Power in the Pursuit of Law-based Governance: Legal Reform in China under the Xi Administration' [2016] (2) *China Perspectives* 63, 68.

¹⁶ Minzner, 'Legal Reform' (n 8) 8. See also Peerenboom, 'Fly High' (n 4) 73.

¹⁷ Clarke (n 8) 11.

¹⁸ Li, 'Cure' (n 11) 21.

¹⁹ Clarke (n 8) 12; Minzner, 'Legal Reform' (n 8) 6–7, Brodsgaard (n 3) 33–4; Peerenboom, 'Fly high' (n 4) 70.

²⁰ See Vai Lo, *Law and Society in China* (Edward Elgar Publishing, 2020) 175; Brodsgaard (n 3) 33–4; Minzner, 'Legal Reform' (n 8) 7, Clarke (n 8) 12, 14; Li, 'Cure' (n 11) 21–2.

Although observers keenly criticised illiberal aspects of China's *Yifa Zhiguo* plans, they also recognised that the Fourth Plenum offered significant reforms that, should they be implemented, would mean real improvements for China's legal system. Offering strong praise, Ling Li commented that 'the Fourth Plenum initiative is by far the most comprehensive and ambitious judicial reform plan that the party has ever conceived'.²¹ Clarke offered more muted praise, calling the reforms 'modest progress' towards rule by law.²² Unlike many other Western observers, Peerenboom, who previously criticised the legal reforms of the Third Plenum as 'old wine in new bottles',²³ saw the Fourth Plenum reforms as a major and much-needed step forward in the development of rule of law since they did not simply focus on institution building but also addressed the problem of developing a 'rule of law culture', where officials and legal professionals internalise legal norms.²⁴ He claimed that 'if even 75 per cent of the contemplated reforms were implemented, China would be a much more orderly, efficient, rule-based place – and on the whole more fair and just'.²⁵ The contrast in the Fourth Plenum Decision between a greater emphasis on Party supremacy and control on the one hand, with meaningful improvements to the functioning of the judiciary that may promote greater fairness, reflects a reform–repression dualism in the Xi era.

These observations about the Fourth Plenum point to the three features of China's 'rule of law', identified in Chapter Two and supported by the historical analysis in Chapter Three: supremacy of the Party, instrumentalism and reform–repression dualism. Clear statements about the supremacy of the Party combined with the instrumentalist approach of applying law as a tool for addressing the principal–agent problem show the first two features. The juxtaposition of proposed reforms with ongoing oppression, both legal and extra-legal, reveals the reform–repression dualism.

The next section considers a selection of successful and partially successful reforms; these contrast with failures and ongoing extra-legal activities, demonstrating that the three features identified above—supremacy of the Party, instrumentalism and reform–repression dualism—continue to influence the legal practice of the Xi era. Analysis of new legislation and new crackdowns shows the role that Party supremacy, instrumentalism and reform–repression dualism continue to play.

II. Achievements and Limitations of the Xi Era

Recognition of reform–repression dualism is part of a nuanced approach to understanding the legal order in China. Focusing solely on extra-legal abuses may lead observers to discount the role that law plays, while overemphasis on successful reforms may lead to unrealistic predictions of liberal political and legal reform. In this section, reforms of the ALL, changes to how courts work and successes in limiting police use of torture against suspects will represent Xi-era reform, while the structural factors that hamper the successful implementation of these reforms, combined with crackdowns on rights lawyers, will serve to

²¹ Li, 'Cure' (n 11) 22.

²² Clarke (n 8) 10.

²³ Randall Peerenboom, 'The Battle Over Legal Reforms in China: Has there been a Turn against Law?' (2014) 2(20) *Chinese Journal of Comparative Law* 188, 195 ('Battle Over').

²⁴ Peerenboom, 'Fly High' (n 4) 49, 58, 61, 72–3.

²⁵ *Ibid* 72.

demonstrate the repression aspect of the dualism. In the process of showing this dualism, the enduring supremacy of the Party and its instrumentalist approach also emerges.

Just as in previous eras, the NPC produced new laws and amended old ones to suit contemporary circumstances. Despite delays and difficulties caused by the COVID-19 pandemic, the SCNPC produced and revised more laws in 2020 than in any other year since 2013.²⁶ The flurry of law-making since 2012 included numerous amendments to important laws that control the workings of the justice system, including updates to the Legislation Law (2015), the Civil Procedure Law (2017), the ALL (2017), the Lawyer's Law (2017) and three amendments to the Criminal Law (2015, 2017 and 2020). The ALL will be discussed below as a prime example of positive Xi-era legal reform.

The ALL of 1989 was a radical development for its time that allowed common people to challenge official wrongdoing in court.²⁷ Although it was a major step forward for the 1980s, it was, as has already been mentioned, 'a weak law plagued by many problems in both theory and practice'.²⁸ These issues, referred to as the 'three difficulties', included problems with 'filing a case, of adjudicating a case and of enforcing a decision rendered'.²⁹ A contemporary Chinese source claimed that the number of successful cases fell from 30 per cent to 10 per cent from 2008 to 2013 and that official obstruction of the enforcement of judgements rendered the law 'empty words'.³⁰ Although official consideration of a revised ALL began in 2003, the SCNPC took 10 years to propose a draft.³¹ Official inertia on this issue dissipated following the Fourth Plenum with the adoption of an expanded draft in 2014.

The revised ALL represented significant improvements over the 1989 original, allowing scrutiny of more government actions and making it harder for local officials to interfere with administrative cases.³² The ALL empowered courts to hear cases on a broader range of government actions through the removal of the original limit to 'concrete administrative acts'; precisely defined specific kinds of disputes, such as official refusal to pay agreed-upon compensation for land seizures; and allowed plaintiffs to challenge a broader range of 'normative documents'.³³ Although some of the improvements above are more limited than they first appear,³⁴ the 2015 revision now also covers the activities of bodies with delegated administrative authority, such as universities, which represents a significant step forward in holding administrators accountable.³⁵

²⁶ Changhao Wei and Taige Hu, '2020 in Review: A Norm-Breaking Year at the NPC', *NPC Observer* (Blog, 31 December 2020) <<https://npcobserver.com/2020/12/31/2020-in-review-a-norm-breaking-year-at-the-npc/#more-14894>>.

²⁷ See Susan Finder, 'Like Throwing an Egg Against a Stone: Administrative Litigation in the People's Republic of China' (1989) 3(1) *Journal of Chinese Law* 1, 1, 10–11.

²⁸ Jianfu Chen, 'Efforts Towards Procedural Justice in Post-Mao China' in John Garrick and Yan Bennett (eds), *China's Socialist Rule of Law Reforms Under Xi Jinping* (Routledge, 2016) 94, 100 ('Efforts Towards').

²⁹ Ibid; Wei Cui, Jie Cheng and Dominika Wiesner, 'Judicial Review of Government Actions in China' (Working Paper, Peter A. Allard School of Law, 31 May 2018) 1, 4.

³⁰ Jianfu Chen 'Efforts Towards' (n 28) 100.

³¹ Cui, Cheng and Wiesner (n 29) 4.

³² See *ibid* 37–8; DeLisle (n 2) 75; Jianfu Chen, 'Efforts Towards' (n 28) 101–4.

³³ Cui, Cheng and Wiesner (n 29) 5; DeLisle (n 2) 75; Jianfu Chen, 'Efforts Towards' (n 28) 102.

³⁴ Cui, Cheng and Wiesner (n 29) 5; Jianfu Chen, 'Efforts Towards' (n 28) 102.

³⁵ Cui, Cheng and Wiesner (n 29) 5.

Aside from allowing common people to seek accountability over a greater range of government actions and administrative actors, changes to the way cases are accepted and reported make it easier for people to bring cases.³⁶ Such changes include reducing the pre-trial review necessary to file a case and other procedural developments that make it harder for courts to refuse cases.³⁷ Other additions to the 2015 revision attempt to limit government interference in administrative cases. One way the revision does this is by allowing intermediate courts to handle county-level cases, putting the court beyond the direct control of the respondent.³⁸ Cross-jurisdiction courts are also possible under the revised law.³⁹ Plaintiffs are now unable to withdraw cases without court approval, reducing the ability of government agents to intimidate them into abandoning their quest for justice.⁴⁰

Finally, reform efforts are resolving the third difficulty: the inability to enforce judgements. The 2015 revision grants courts increased powers to compel officials to comply with judgements.⁴¹ These powers include the ability to fine and detain recalcitrant officials or even charge them with criminal offences.⁴² Although structural issues with the Chinese political and legal system ensure that abuses continue to take place, the measures introduced in the 2015 revision of the ALL are a clear example of a genuine attempt to introduce a more effective legal mechanism for holding law-breaking officials to account. It is an example of reform that, without the context of the reform–repression dualism, could lead one to believe that China is pursuing rule of law reforms that would make A. V. Dicey or Lord Bingham proud.⁴³

Procedural justice improved in other ways beyond judicial review of administrative actions. In a promising move, which received limited attention, the SPC introduced measures to record and publish court proceedings in an ‘open-access database’.⁴⁴ Although there are still compliance issues, with only 50 per cent of trials on average being recorded, the ability of the public, judicial professionals and high-level government officials to check the growing database of recorded trials potentially offers a range of benefits, including greater judicial professionalism, protection from local protectionism and greater transparency.⁴⁵

Attempts to end the pervasive use of torture by police to coerce suspects into making confessions, through rules that exclude evidence gathered in this fashion, are another example of efforts to improve procedural justice. Despite official condemnation of torture since the Jiang era and official prohibitions against the use of ‘unlawful evidence’ in the 1979 and 1996 versions of the CPL, a lack of clear definitions or mechanisms for enforcement meant there

³⁶ Ibid 5; DeLisle (n 2) 75; Jianfu Chen, ‘Efforts Towards’ (n 28) 102, 104.

³⁷ For pre-trial review changes: Cui, Cheng and Wiesner (n 29) 5. For the increased difficulty in refusing cases: deLisle (n 2) 75; Jianfu Chen, ‘Efforts Towards’ (n 28) 102.

³⁸ Jianfu Chen, ‘Efforts Towards’ (n 28) 104; Cui, Cheng and Wiesner (n 29) 5.

³⁹ Jianfu Chen, ‘Efforts Towards’ (n 28) 104.

⁴⁰ Ibid 103.

⁴¹ Cui, Cheng and Wiesner (n 29) 6; deLisle (n 2) 75; Jianfu Chen, ‘Efforts Towards’ (n 28) 105.

⁴² Cui, Cheng and Wiesner (n 29) 6.

⁴³ Refer to Chapter Two, Section II of this thesis.

⁴⁴ Bjorn Ahl and Daniel Sprick, ‘Towards Judicial Transparency in China: The New Public Access Database for Court Decisions’ (2018) 32(1) *China Information* 3, 4–7.

⁴⁵ Ibid 6–7, 10–11, 14.

was little that courts could do when defendants brought accusations.⁴⁶ The 2012 amendment to the CPL integrated a 2010 set of rules for dealing with illegally obtained evidence.⁴⁷ The additions to the 2012 CPL improved the definition of evidence gathered via illegal means, provided a mechanism for excluding evidence and described the burden of proof required in hearings to exclude evidence.⁴⁸

According to Biddulph, Nesossi and Trevaskes, ‘The Xi leadership has been engaged in a battle against wrongful convictions since mid-2013’,⁴⁹ part of which was an ‘absolute ban on extracting confessions through torture during the investigation stage of the criminal trial’.⁵⁰ Party political–legal committees and judicial bodies such as the SPC released documents with improved provisions. For example, the SPC deemed confessions not fully recorded or taking place at legally designated detention centres as illegally obtained and, therefore, must be excluded.⁵¹ These efforts were reinforced by a 2017 joint notice clarifying how to exclude illegally obtained evidence and protect the rights of the accused.⁵² According to Guo, despite lasting problems with implementation, ‘the typical confession extorted by torture has nearly vanished with the implementation of the exclusionary rule across the country’.⁵³ If Guo’s claim is correct, this is a meaningful advance for China’s justice system and a welcome development.

These reforms, which undoubtedly contributed to a fairer and more just legal system, represent the reform side of the reform–repression dualism of the Xi era. They are examples of developments that promote procedural justice and official accountability to the law. However, the story of Chinese legal development is one of ongoing abuses coexisting with promising developments. Problems persist in part because of failures to fully implement positive reforms and partly because of structural factors, the Party’s supremacy over law being one of them, which may be impossible to resolve without a fundamental shift in how China is governed.⁵⁴

Attempts to develop and apply exclusionary rules are an excellent example of partially implemented reforms as, despite successes in reducing confessions extracted through torture, police continue to collect evidence illegally, and judges still fail to exclude that evidence.⁵⁵

⁴⁶ See Sarah Biddulph, Elisa Nesossi and Susan Trevaskes, ‘Criminal Justice Reform in the Xi Jinping Era’ (2017) 2(1) *China Law and Society Review* 63, 105–6 (‘Justice Reform’). See also Guo Zhiyuan, ‘Torture and Exclusion of Evidence in China’ [2019] (1) *China Perspectives* 45, 45–6 (‘Torture’).

⁴⁷ Alexander Shytov and Peter Duff, ‘Truth and Procedural Fairness in Chinese Criminal Procedure Law’ (2019) 23(2) *International Journal of Evidence & Proof* 299, 303; Guo Zhiyuan, ‘Exclusion of Illegally Obtained Confessions in China: An Empirical Perspective’ (2017) 21(1–2) *International Journal of Evidence & Proof* 30, 31 (‘Confessions’).

⁴⁸ Guo, ‘Confessions’ (n 47) 31–2.

⁴⁹ Biddulph, Nesossi and Trevaskes (n 46) 99.

⁵⁰ *Ibid.* 100.

⁵¹ *Ibid.*

⁵² Shytov and Duff (n 47) 304.

⁵³ Guo, ‘Confessions’ (n 47) 34.

⁵⁴ For an example of partially implemented reforms, see, eg, Guo Zhiyuan, ‘Confessions’ (n 47) 33. For an example of politically linked structural problems, see, eg, Fu Hualing, ‘Lawyers for Human Rights Protection: From Legal Aid to Political Lawyering’ in Sarah Biddulph and Joshua Rosenzweig (eds), *Handbook on Human Rights in China* (Edward Elgar Publishing, 2019) 472–92 (‘Lawyers’).

⁵⁵ Guo Zhiyuan, ‘Confessions’ (n 47) 33–4, 50. For a more sceptical account of progress in this field, see, Jeremy Daum, ‘Exclusive focus: Why China’s Exclusionary Rules Won’t Stop Police Torture’, *China Law Translate* (Blog, 1 July 2017) <<https://www.chinalawtranslate.com/en/exclusion-china/>>.

Guo claimed that although ‘violent’ torture is rarely used anymore, ‘interrogators often use sleep deprivation, hunger, heat, cold or stress positions’.⁵⁶ There is also no ‘fruit from the poisonous tree’ doctrine in China, so evidence gathered following an illegally extracted confession or even other confessions extracted legally after the first illegal one are still admissible in court.⁵⁷ Daum observed that any legally obtained confession following a coerced confession is necessarily tainted as the threat of repeat violence will remain in the victim’s mind.⁵⁸ Defence lawyers, who could play a valuable role in identifying and helping exclude illegally obtained evidence, are themselves excluded from this process by official hurdles to accessing necessary evidence of abuse, such as the medical records of defendants.⁵⁹

Compounding these procedural problems are ingrained structural issues. Since courts are the weakest element of a court–Procuratorate–police trinity, it can be difficult for judges to risk the ire of more powerful institutions.⁶⁰ In some cases, courts worked together with police and procurators to shut down plaintiff attempts to seek a hearing that would potentially exclude illegally obtained evidence.⁶¹ Structural issues also influenced the success or failure of other court-related reforms. He Xin argued that the swift establishment of circuit courts following the Fourth Plenum occurred because it favoured the institutional interests of judges who saw it as an opportunity to secure promotions.⁶² Meanwhile, the system of ‘guiding cases’ failed as ‘few lower-level courts are interested in citing guiding cases in their judgements’.⁶³ Similarly, attempts to insulate judges from local government interference by transferring responsibility for funding courts to the provincial level also failed, as, by 2016, no provinces had successfully implemented the changes, potentially out of judges’ fear that their salaries would be affected.⁶⁴

A key structural problem for the Chinese legal system in the Xi era is the supremacy of the CPC over the law. Despite the Party-state’s emphasis on the role of law in governance, authorities still actively intervene to deny citizens the opportunity to exercise their legal rights through legal channels. This is most plainly visible in the situation of rights defence lawyers: legal professionals who vigorously defend their clients’ rights, both inside and outside the courtroom.⁶⁵ To the Party-state, lawyers ‘causing trouble’ in court by offering too robust a defence of their clients⁶⁶ or by taking on ‘sensitive cases’ (i.e., ones in which the Party’s

⁵⁶ Guo Zhiyuan, ‘Confessions’ (n 47) 34.

⁵⁷ Biddulph, Nesossi and Trevaskes (n 46) 107; Shytov and Duff (n 47) 303–4; Daum (n 55). Guo claims that a ‘fruit of the poisonous tree’ doctrine was added in the 2017 joint notice, but Daum described the new addition as a ‘very narrow rule blocking the use of some derivative evidence’; see Guo, ‘Torture’ (n 46) 51; Daum (n 55).

⁵⁸ Daum (n 55).

⁵⁹ Ibid. Biddulph et al noted that defence lawyers, despite their overall lack of access to evidence, do have access to medical records, see Biddulph, Nesossi and Trevaskes (n 46) 107.

⁶⁰ See Biddulph, Nesossi and Trevaskes (n 46) 107–8; Shytov and Duff (n 47) 305.

⁶¹ Guo, ‘Confessions’ (n 47) 50.

⁶² Xin He, ‘The Politics of Courts in China’ (2017) 2(1) *China Law and Society Review* 129, 138 (‘Politics of Courts’).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ For a description of rights lawyers and their situation, see Fu Hualing, ‘The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State’ (2018) 27(112) *Journal of Contemporary China* 554, 557 (‘709’); Eva Pils, *China’s Human Rights Lawyers: Advocacy and Resistance* (Routledge, 2015) 2–10 (‘Advocacy’). See also Sida Liu, Ching-Fang Hsu and Terrence Halliday, ‘Law as a Sword, Law as a Shield: Politically Liberal Lawyers and the Rule of Law in China’ [2019] (1) *China Perspectives* 65, 67 (‘Shield’).

⁶⁶ Pils, *Advocacy* (n 65) 106.

direct interests are challenged) unacceptably cross a red line.⁶⁷ Party and government bodies retaliate against these lawyers who dare to imagine that law should be applied in any way except in the interests of the authorities. Rights lawyers are the target of a range of legal and extra-legal measures, including, but not limited to, verbal intimidation, arrest under extraordinarily vague ‘pocket crimes’ and extra-legal disappearance.⁶⁸ Rights lawyers have been the target of state repression since at least the Hu era; however, ‘the Xi Administration has shown less tolerance for *weiquan* [rights] lawyers’.⁶⁹

The most striking Xi-era attack on rights defence lawyers was the ‘709 Crackdown’ in July 2015, where, in an unparalleled attack, police arrested hundreds of lawyers and their supporters.⁷⁰ Charges for some of the lawyers swept up in the crackdown included ‘picking quarrels and provoking troubles’ and ‘endangering state security’.⁷¹ Many rights lawyers, including those arrested during the 709 crackdown, are subjected to the benign sounding ‘residential surveillance at a designated residence’ (RSDR), which contrary to the name, means up to six months detention in a secret location without legal representation or, in some cases, the knowledge of family members.⁷² Although the relevant laws and regulations provide assurances for suspects, such as that RSDR should only be used where suspects do not have a legal residence in the county jurisdiction, authorities have developed ingenious workarounds that allow them to follow the letter of the law while grossly abusing its spirit.⁷³ One such trick is to raise the jurisdiction of the case to a city outside the suspect’s home county, meaning that they do not have a legal residence in the county of the new jurisdiction and can therefore be taken away to a secret not-prison.⁷⁴

According to Liu et al, ‘criminal defence lawyers and public interest lawyers who frequently challenge the authoritarian state in their work’ also face losing their lawful rights.⁷⁵ In Liu et al, interviews of practising lawyers revealed that lawyers were sometimes illegally denied access to hearings and their own clients, while Pils recounted how judges purposely interrupt lawyers and threaten them with administrative punishments to prevent lawyers from raising inconvenient motions or facts.⁷⁶ Defence lawyers may also be threatened with a charge of ‘fabricating evidence’ under an article in the Criminal Law for daring to present ‘evidence in discrepancy with that of the police or procuracy’.⁷⁷

⁶⁷ Fu Hualing, ‘Lawyers’ (n 54) 483; Elisa Nesossi, ‘Political Opportunities in Non-Democracies: The Case of Chinese *Weiquan* Lawyers’ (2015) 19(7) *International Journal of Human Rights* 961, 965 (‘Opportunities’).

⁶⁸ See Nesossi, ‘Opportunities’ (n 67) 965–6. For a highly detailed and harrowing account of the diverse ways both lawful and extra-legal repression is applied to lawyers, see Pils, *Advocacy* (n 65).

⁶⁹ See Anthony Li (n 15) 65.

⁷⁰ See Fu Hualing, ‘709’ (n 65) 554; Trevaskes and Nesossi, ‘Fog’ (n 3) 80.

⁷¹ Trevaskes and Nesossi, ‘Fog’ (n 3) 82.

⁷² Zunyou Zhou, ‘“Residential Surveillance at a Designated Residence”: A special Form of Pre-Trial Detention in China’s Criminal Procedure’ (2021) 30(127) *Journal of Contemporary China* 102, 110. See also Susan Trevaskes and Elisa Nesossi, ‘The Sword of Discipline and the Dagger of Justice’ in Geremie Barme, Linda Jaivin and Jeremy Goldkorn (eds), *China Story Yearbook 2014: Shared Destiny* (ANU Press, 2015) 262, 275 (‘Sword’).

⁷³ See Zunyou Zhou (n 72) 106–9.

⁷⁴ *Ibid* 109.

⁷⁵ Liu, Hsu and Halliday, ‘Shield’ (n 65) 67.

⁷⁶ Pils, *Advocacy* (n 65) 112–13.

⁷⁷ *Ibid* 107.

The contradiction between claiming to govern according to the law and abusing, or sometimes breaking, the law to punish lawyers attempting to uphold the very letter of the law is a powerful representation of the reform–repression dualism that continues at the heart of Chinese law reform. As the ‘repression’ side of the reform–repression dualism, it serves not only to support the existence of said dualism but also shows Party supremacy and the instrumentalist approach to law in action. It is a clear expression of what rule of law actually means in China: law is the Party-state’s tool to be applied in achieving its aims. Law can allow citizens to help upper levels of the government to control local cadres, ensure the steady functioning of markets or resolve inter-citizen disputes, but it may never be used to oppose the designs of upper Party-state leaders.

Law reform in the Xi era is fundamentally about increasing the governance capacity of the Party by means of a strengthened legal apparatus to resolve the principal–agent problem. A more reliable legal system, with greater adjudicative independence and enhanced procedural justice in routine cases that holds local officials to account, could potentially improve the lives of ordinary Chinese people. However, viewing these developments as an unqualified good fails to account for Chinese conditions. This more efficient judicial machine can be applied just as swiftly to crush citizens whose views, goals or actions do not align with those of the Party-state. More importantly for the rule of law, the Party-state subverts achievements in promoting judicial review and procedural justice when these factors inhibit Party-state interests.

Sections I and II of this chapter explored the new emphasis on *Yifa Zhiguo* in the Xi era and the ongoing reform–repression dualism as shown by selected reforms and continuing extra-legal activity. The dualism between reforms that promote procedural justice, expand the roles of courts and improve government accountability, with functionally unchecked Party supremacy and extra-legal exercises of power, persists in China and should be seen as part of the practice of ‘ruling the country according to law’. The examples in these sections show that the supremacy of the Party over law, an instrumentalist approach to law and reform–repression dualism remain features of law in the Xi era. Law in China, as applied through the *Yifa Zhiguo* paradigm, is a tool of the Party-state for achieving its goals. It will be applied where it serves Party-state interests and discarded when it is seen as a hindrance.

The following section of this chapter examines the legality of Chinese Government responses to selected key events during the early COVID-19 pandemic in Wuhan as a practical demonstration of how the Party-state responds through law to a health crisis. The government response in the case of COVID whistleblower Dr Li Wenliang, the quarantine of Wuhan and the lockdown of millions of residents shows how law can serve as a tool for achieving policy goals such as containing an infectious disease or suppressing inconvenient speech.

III. The COVID-19 Crisis in Wuhan and the Legal Basis for the State’s Response⁷⁸

The COVID-19 pandemic, China’s response and the controversies surrounding it crashed into the ongoing debate about the nature of Chinese ‘rule of law’. As such, it provides a timely

⁷⁸ The following section has been adapted from an article published by the author of this thesis. See Michael Hooper, ‘Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China’s Early

opportunity to explore the operation of law in the Party-state's response to a major public health crisis, both in terms of how much law is relied upon and how law is applied. This allows scholars to further extrapolate to other situations where the Party-state uses law to achieve policy goals. This section presents selected key events, the government response and the legality of the actions that took place between January and February of 2020 in Wuhan. The selected events include the infamous case of Dr Li Wenliang; the lockdown of Wuhan, including the closed community system; and specific legal responses to selected cases of pandemic-related law-breaking. By analysing these events, a picture of an imperfect yet largely law-based response to the pandemic emerges. As mentioned throughout Chapters Two and Three, law has a role to play as a useful tool for the Party-state. The examples in this section show the tool of law applied in pursuit of Party-state objectives, such as successfully limiting the spread of a highly contagious disease and intimidating citizens attempting to disseminate inconvenient speech.

Dr Li Wenliang was an ophthalmologist at Wuhan Central Hospital whose attempt to warn his colleagues about a potential pandemic, the state's response to that attempt and his ultimate death sparked outrage within China and abroad. The events surrounding Dr Li provide a case study of how local police enforce laws regarding rumours and pandemics and how higher authorities react to that enforcement.

Li became aware of a spate of unexplained pneumonia cases in December 2019 through colleagues at Wuhan Central Hospital. On 30 December, he shared his concerns with a private WeChat group comprised of his medical school friends, claiming that 'seven cases of SARS [have been] confirmed'⁷⁹ and that his colleagues should take appropriate precautions to protect themselves and their families. Despite asking people in the group not to share this information, his posts were leaked and found their way onto the wider internet. On 3 January, police summoned Dr Li and forced him to sign a document accusing him of illegally spreading untrue information and threatening him with legal sanction if he continued with his 'illegal behaviour'.⁸⁰ Two days earlier, Wuhan police announced through their official Weibo account that they had punished eight people for spreading rumours related to the pneumonia outbreak.⁸¹ In the early morning of 7 February, Li Wenliang died from the illness that would come to be known as COVID-19.⁸²

Li's death led to nationwide outpouring of grief and anger at the actions of government officials seemingly more interested in covering up bad news than warning and preparing the

COVID-19 Response in Wuhan' (2021) 48(2) *University of Western Australia Law Review* 330. This also applies to other parts of the thesis, see page v for details.

⁷⁹ Wang Lianzhang, "'Rumormonger' Doctor Who Raised the Alarm Says He Has Coronavirus', *Sixth Tone* (Website, 1 February 2020) [7]–[8] <<https://www.sixthtone.com/news/1005150/rumormonger-doctor-who-raised-the-alarm-says-he-has-coronavirus>>.

⁸⁰ *Ibid* [6].

⁸¹ Mary Hui and Jane Li, 'China's Coronavirus Outbreak is Unfolding in a New Age of Information—And Surveillance', *Quartz* (Website, 26 January 2020) [17] <<https://qz.com/1790719/china-coronavirus-outbreak-unfolds-in-a-new-age-of-information/>>.

⁸² 新华社 [*Xinhua News*], '关于群众反映的涉及李文亮医生有关情况调查的通报' ['Notice on the Situation of Li Wenliang which the Masses Reported On'], 《新华社》 [*Xinhua News*] (News, 19 March 2020) [8] <<https://xhpfmapi.zhongguowangshi.com/vh512/share/8971292>> ('Situation').

public.⁸³ Although the actions of Wuhan police were unpopular and morally questionable, were they illegal? How did higher authorities react to the Wuhan police's interpretation and implementation of the law?

According to the Public Security and Administrative Punishment Law of the PRC ('Administrative Punishment Law'), police have the legal authority to issue warnings and fines and even detain people for up to 14 days without trial as punishment for a variety of illegal behaviours.⁸⁴ In these cases, police are able to enforce the aforementioned punishments in accordance with the procedural rules outlined in the law. Article 25 of the same law states that spreading rumours or falsely reporting on epidemic situations is punishable by between five and 10 days' administrative detention or a fine of less than ¥500.⁸⁵ This seems to be the article that relates most closely to Dr Li and others punished for spreading pandemic-related rumours.

The police were technically correct, in the narrowest possible sense, to charge Dr Li because the SARS-CoV-2 virus that causes COVID-19 is a different strain of virus to SARS-CoV, which caused the 2003 SARS outbreak.⁸⁶ It can also be argued that, as the virus had not been confirmed as SARS, people claiming a SARS outbreak were spreading false information. So, according to the letter of the law, Wuhan police had the legal authority to officially warn people not to spread technically incorrect information and could have lawfully imprisoned them for 10 days without trial.

However, the situation is more complex than it first seems. The Administrative Punishment Law does indeed grant police the authority to 警告 [warn] people, but it does not explicitly grant the right to 训诫 [reprimand] people.⁸⁷ Since the police issued a 'reprimand' letter, rather than a 'warning' letter, it can be argued that they acted unlawfully.⁸⁸ Chinese scholars have debated the issue of police authority to issue reprimand letters,⁸⁹ with some arguing that reprimands are a kind of warning and, therefore, police may lawfully issue them.⁹⁰

⁸³ See, eg, James Gallagher, 'Li Wenliang: Coronavirus Death of Wuhan Doctor Sparks Anger', *BBC News* (online, 7 February 2020) <<https://www.bbc.com/news/world-asia-china-51409801>>.

⁸⁴ 《中华人民共和国治安管理处罚法(2012修正)》 [*Public Security and Administrative Punishment Law of the People's Republic of China (2012 Revision)*] (People's Republic of China) National People's Congress, Order No. 67, 26 October 2012, art 10 ('*Public Security and Administrative Punishment Law*').

⁸⁵ *Ibid* art 25.

⁸⁶ For a full discussion of the difference between the two viruses, see Eskild Petersen et al, 'Comparing SARS-CoV-2 with SARS-CoV and Influenza Pandemics' (2020) 20 (9) *Lancet Infectious Diseases* 238.

⁸⁷ For a discussion of this issue, see Zhiqiong June Wang, 'Law in Crisis: A Critical Analysis of the Role of Law in China's Fight Against COVID-19' (2020) 29(2) *Griffith Law Review* 253, 262–3.

⁸⁸ For a copy of the reprimand letter issued to Li Wenliang, see Wang Lianzhang (n 79).

⁸⁹ For mentions of the debate surrounding police use of reprimands, see 王学辉 [Wang Xuehui], '公安机关对李文亮的“训诫”行为的行政法分析' ['An Administrative Law Analysis of the Reprimand of Li Wenliang by Public Security Organs'], 《晋中政法》 [*Jinzhong Politics and Law*] (Website, 9 February 2020)

<<https://www.yidianzixun.com/article/00aK5A6H>>. See also 杨解君 [Yang Jiejun], '受罚性行为与行政处罚的判断及其适用——关于李文亮“训诫”案中的行为及相关争论问题的分析' ['The Judgement and Application of Punishable Behaviour and Administrative Punishment: An Analysis of the Behaviour in Li Wenliang's "Reprimand" Case and the Related Controversial Issues'] (2020) 6, 《行政法学研究》 [*Administrative Law Research*] (Web Page, 21 December 2020)

<<http://fzzfyjy.cupl.edu.cn/info/1042/12583.htm>>.

⁹⁰ 王学辉 [Wang Xuehui] (n 89).

Ultimately, whether the police acted lawfully in this situation at least partly depends on what side of the reprimand/warning debate one falls.

Regardless of whether the police technically had the authority to warn people like Li Wenliang, they may have violated the spirit and intent of the law. On 28 January, the SPC, through their official WeChat public account, posted a short article about what kind of rumours police should act against and which should be ignored.⁹¹ The article argued that attempting to prosecute all inaccurate information was not only impossible but also counterproductive as it would turn people against the government and the Party.⁹² Instead, the court proposed that ‘As long as the information is basically true, the publishers and disseminators are not subjectively malicious, and their behaviour does not cause serious harm objectively. We should maintain a tolerant attitude towards such “false information”’.⁹³ This sort of test could have protected people like Li Wenliang and, by the court’s own admission, could have helped better control the outbreak.⁹⁴ It should be noted that the article is not a normative document or an official ruling, so it carries no official legal weight.

Following Li Wenliang’s death, the National Supervision Commission (NSC) sent a team to Wuhan to investigate Dr Li’s case. In a short public report released through Xinhua, the Commission found that Wuhan police ‘issued an improper admonition letter’ and carried out ‘irregular law enforcement procedures’.⁹⁵ According to the report, a police officer who interviewed Li Wenliang wrote the signature of a fellow police officer who was not present, but presumably was supposed to be, on the admonition letter.⁹⁶ This is the only mistake or irregularity identified in the report. Nevertheless, the report recommended that city and provincial authorities ‘urge the public security agency [police] to revoke the admonition letter and hold relevant personnel accountable’.⁹⁷ Unlike the SPC, the NSC does not appear to have found fault with the application of the law beyond that single procedural question and, it could be argued, tacitly approves of police punishing people for sharing technically incorrect information in private groups without malicious intent. This apparent disagreement between two major state organs may warrant further investigation by scholars interested in Chinese law.

Since law is a tool of Party-state policy, as shown in Chapters Two and Three, the analysis of the essay shared by the SPC’s social media, and the Administrative Punishment Law itself, can be interpreted as showing an instrumentalist approach to law. The commentary released through the SPC’s social media was explicitly concerned with the harm that a broad application of the law would cause to public support and trust in the Party-state, not with the legality of the actions. This implies that the purpose of law is, in the first instance, to support the position of the Party-state.

⁹¹ 唐兴华 [Tang Xinghua], ‘治理有关新型肺炎的谣言问题，这篇文章说清楚了!’ [‘Handling the Problem of Rumours Related to Novel Coronavirus, This Essay Speaks Clearly!’], *Weixin* (Web Page, 28 January 2020) <<https://mp.weixin.qq.com/s/ETgXN6HInzlC8cxzhDdU9g>>.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ 新华社 [*Xinhua News*] (n 82) [20].

⁹⁶ *Ibid* [5].

⁹⁷ *Ibid* [20].

The Administrative Punishment Law is itself a convenient tool for controlling public order in various ways, including the suppression of ‘rumours’. What counts as a rumour? And who gets to decide if a piece of information is false? Which kinds of rumours will police act against? In the case of Li Wenliang, police chose to intimidate a doctor after his privately shared warning blew up on social media. I have failed to uncover any evidence that police extended the same treatment to a Chinese diplomat who used social media to share anti-American COVID conspiracy theories.⁹⁸ The power to interpret what is ‘rumour’ and which rumours to prosecute lies entirely with the police, who act within a system where Party interests are supreme. The Party-state furnished its police with this useful tool granting them enormous discretion to protect the Party-state’s interests.

Perhaps the most famous aspect of China’s response to COVID-19 was the lockdown of Wuhan, the city where the first cases were detected. Although Chinese authorities have implemented numerous lockdowns since, Wuhan is famous for being first and having some of the strictest measures. What did the lockdown and closed management of Wuhan involve, and were the actions taken by authorities lawful or arbitrary?

At 2 am on 23 January, the ‘Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia’ announced that effective 10 am that day, residents of Wuhan were prohibited from leaving the city.⁹⁹ Authorities closed all means of leaving the city, such as airports, train stations and long-distance bus services, and cancelled all public transport within the city, such as subways.¹⁰⁰ From this moment, Wuhan attracted international attention as the closed city at the centre of the pandemic. Within the city itself, non-essential businesses, services and public spaces were ordered closed, and citizens were subjected to restrictions on where, how and when they could travel within the city.¹⁰¹ This culminated in the closed management of communities where individual apartment complexes became at once sealed fortresses against outside intruders and prisons for their residents who were only allowed to leave for medical treatment or to perform essential work.¹⁰²

The legal authority to deprive almost 10 million people of their freedom of movement and shut down economic life in a city can be traced back to the Prevention and Control of Infectious Diseases Law of the People’s Republic of China (‘Infectious Diseases Law’).¹⁰³ Article 42 of the aforementioned law allows local governments to take ‘emergency measures’,

⁹⁸ See Ben Westcott and Steven Jiang, ‘Chinese Diplomat Promotes Conspiracy Theory that US Military Brought Coronavirus to Wuhan’, *CNN* (Web Page, 14 March 2020) <<https://edition.cnn.com/2020/03/13/asia/china-coronavirus-us-lijian-zhao-intl-hnk/index.html>>.

⁹⁹ 《武汉市新型冠状病毒感染的肺炎疫情防控指挥部通告》 [‘Notice of Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia’] (People’s Republic of China) Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia, Notice No. 1, 23 January 2020.

¹⁰⁰ *Ibid.*

¹⁰¹ For examples of movement restrictions, see 《武汉市新型肺炎防控指挥部通告（第9号）》 [Notice No. 9 of Wuhan Prevention and Control Command for New-Type Pneumonia] (People’s Republic of China) Wuhan Prevention and Control Command for New-Type Pneumonia, Notice No. 9, 25 January 2020.

¹⁰² 梁唯雅 [Liang Weiya], ‘武汉市防控指挥部明确住宅小区封闭管理主要措施’ [‘Wuhan Prevention and Control Headquarters to Clarify the Main Measures for the Closed Management of Residential Communities’], 《湖北省人民政府》 [Hubei Provincial People’s Government] (Web Page, 15 February 2020) <http://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202002/t20200215_2028492.shtml>.

¹⁰³ 《中华人民共和国传染病防治法(2013修正)》 [Prevention and Control of Infectious Diseases Law of the People’s Republic of China (2013 Revision)] (People’s Republic of China) National People’s Congress, Order No. 5, 29 June 2013 (‘*Infectious Diseases Law*’).

such as closing schools and businesses and ‘restricting or suspending fairs, assemblies, cinema shows, theatrical performances and other types of mass congregation’.¹⁰⁴ The Wuhan Command was able to use this legal justification to announce in Article 27 of the Wuhan City Interim Measures for Preventing and Controlling the Novel Coronavirus Induced Viral Pneumonia Pandemic the closure of a long list of non-essential public places and activities and to require that anyone entering any public place wear a mask.¹⁰⁵ In Article 28, the Wuhan Command further reserved the right to suspend any business ‘according to the needs of epidemic control’.¹⁰⁶

This accounts for the restrictions on normal economic activity and public life in Wuhan but does not account for the blockade. There are two legal mechanisms that could allow for the blockade. First, according to Article 43 of the Infectious Diseases Law, only a province, an autonomous region, a municipality directly under the Central Government (i.e., Beijing, Tianjin, Shanghai and Chongqing) or the Central Government itself may decide to blockade an ‘epidemic area’.¹⁰⁷ However, when this epidemic area is a medium to large city or there is the possibility of ‘interruption of traffic along a main line of communication’, only the State Council can decide to blockade the area.¹⁰⁸ Wuhan is a large city at the crossroads of China’s vast rail infrastructure, so it counts as an area that can only be lawfully blockaded by the will of the State Council. However, cities cannot be blockaded for just any old virus. Article 43 of the Infectious Diseases Law states that only epidemic areas of Class A diseases may be blockaded.¹⁰⁹ On 20 January, the National Health Commission declared the novel coronavirus a ‘Class B disease to be treated by Class A measures’ and authorised governments at all levels to begin isolating patients and their close contacts for treatment.¹¹⁰

The declaration also opened the possibility of blockading Wuhan. Now Wuhan authorities only needed orders from the national leadership to act. According to a State Information Office press conference held on 20 February, this order came from Vice-Premier of the State Council Sun Chunlan, who, during a visit to Wuhan on 22 January, required that Wuhan be ‘isolated from traffic’.¹¹¹ Despite the gravity of the decision, there does not seem to be a formal, written order from the State Council requiring Wuhan to implement a blockade. However, the law does not specify that a public announcement be made, merely that the State Council has the right to make such decisions.

¹⁰⁴ Ibid art 42.

¹⁰⁵ 《武汉市新型冠状病毒感染的肺炎疫情防控暂行办法》 [Interim Measures for Novel Coronavirus Infection Control and Prevention in Wuhan] (People’s Republic of China) Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia, 30 January 2020.

¹⁰⁶ Ibid.

¹⁰⁷ *Infectious Disease Law* (n 103) art 43.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ 《中华人民共和国国家卫生健康委员会公告》 [Announcement of the National Health Commission of the People’s Republic of China] (People’s Republic of China) National Health Commission, Notice No. 1, 20 January 2020.

¹¹¹ 张兴华 [Zhang Xinghua] (ed), ‘国务院新闻办就中央赴湖北指导组组织开展疫情防控工作情况举行新闻发布会’ [‘The Information Office of the State Council Held a Press Conference on the Work of Epidemic Prevention and Control Organized by the Central Leading Group to Hubei Province’], 《中华人民共和国中央人民政府》 [Central People’s Government of the People’s Republic of China] (Web Page, 20 January 2020) <http://www.gov.cn/xinwen/2020-02/20/content_5481420.htm>.

Aside from this method, local officials could have applied Article 49 of the Emergency Response Law, which states that during an emergency, which includes ‘public health incidents’, local authorities may ‘block access to dangerous places’ and ‘implement traffic controls and other control measures’.¹¹² Shutting down airports, railway stations and closing highways, effectively blocking access to the city, are all traffic control measures that were taken in response to a public health incident.

Local authorities lawfully limited access to Wuhan and can derive their legal authority for these actions from either Article 49 of the Emergency Response Law or, more tenuously, from the verbal authorisation of a representative of the State Council under Article 43 of the Infectious Diseases Law. In this case, law served as a useful tool for managing a major health crisis and presented lawful powers to local authorities to quarantine Wuhan. As will be seen below, law also provided authorities with the power to lock down individual communities and prevent citizens from leaving their homes.

On 10 February, the Wuhan Command issued a notice stating that every community in Wuhan would be put under closed management and that those responsible for implementing the closed management could count on police assistance in performing their duties.¹¹³ However, the notice in question did not state which specific measures should be taken, and extensive searches of both Wuhan and Hubei Government sources failed to uncover a publicly available official document from the Wuhan Command outlining those measures. Instead, the Hubei Government republished on their website a newspaper summary of detailed measures allegedly released by the Wuhan Command four days after the original notice.¹¹⁴ The summary claims Wuhan Command’s measures included: blocking all but one entrance into communities and staffing them 24 hours a day; requiring all people entering and leaving communities to register their details and submit to temperature checks; preventing residents from leaving their community unless they are essential workers, for pandemic control reasons or medical treatment; and a ban on non-residents entering communities.¹¹⁵ Hubei Province’s coronavirus prevention and control command announced their own strengthened closed management measures on 16 February, further restricting the movement of citizens by only allowing one family member to leave their community once every three days to purchase essentials.¹¹⁶

Between the Infectious Diseases Law, the Emergency Response Law and related regulations, there is a legal framework underlying the sweeping measures taken to control China’s COVID-19 outbreak. While the measures received praise from the World Health

¹¹² 《中华人民共和国突发事件应对法》 [Emergency Response Law of the People’s Republic of China] (People’s Republic of China) National People’s Congress, Order No 69, 30 August 2007, art 49.

¹¹³ 《武汉市新冠肺炎疫情防控指挥部通告》 [Announcement of Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia] (People’s Republic of China) Wuhan Prevention and Control Command for Novel Coronavirus Caused Pneumonia, Notice No. 12, 10 February 2020.

¹¹⁴ See 梁唯雅 [Liang Weiya] (n 102).

¹¹⁵ Ibid.

¹¹⁶ 《湖北省人民政府关于进一步强化新冠肺炎疫情防控的通告》 [Notice of the Hubei People’s Government Regarding Further Strengthening Novel Coronavirus Pneumonia Epidemic Prevention and Control] (People’s Republic of China) Hubei Province Novel Coronavirus Pneumonia Epidemic Prevention and Control Headquarters, 16 February 2020.

Organization, not all Chinese residents willingly complied.¹¹⁷ The Chinese state accounted for this and applied laws that identified pandemic-related crimes and the punishments perpetrators should receive.

The Infectious Diseases Law, the Criminal Law and the Administrative Punishment Law are the most relevant laws governing the identification and punishment of pandemic-related crimes. On 10 February, the SPC, the Ministry of Public Security and other organisations released a joint normative document that identified nine types of crimes that ‘hinder the prevention and control of the epidemic’,¹¹⁸ highlighted which sections of which laws covered these crimes and made recommendations regarding sentencing.¹¹⁹ For example, the document advises that people who purposely endanger medical staff by damaging their protective equipment or spitting at them, causing them to become infected with COVID-19, should be charged under Article 234 of the Criminal Law, which states ‘Whoever intentionally injures the person of another is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control’. It allows for sentences of up to 10 years if individuals are seriously injured.¹²⁰ The document further states that other minor offences should be handled according to the Administrative Punishment Law, which is a law that grants sweeping powers to police to issue summary punishments for offences without the need for a trial.¹²¹

An example of a minor offence took place on 17 February when a man was confronted by officials for not wearing a mask in public. When ordered to wear a mask, he refused, stating: ‘I will wear handcuffs before I wear a mask’.¹²² After failing to convince the man to comply, police proved his prediction true and held him in administrative detention for five days.¹²³ On the same day, another man received a ¥200 fine for ignoring orders to remain inside his community and instead leaving to go shopping.¹²⁴ Both of these individuals were punished under Article 50 of the Administrative Punishment Law for ‘refusing to carry out the decisions or orders issued by the People’s government according to law under a state of emergency’.¹²⁵

¹¹⁷ See, eg, Alice Yan, ‘Chinese Man Jailed for Breaking Quarantine Rules and Lying about Travel History’, *South China Morning Post* (online, 3 April 2020) <<https://www.scmp.com/news/china/society/article/3078388/chinese-man-jailed-breaking-quarantine-rules-and-lying-about>> (Chinese Man Jailed).

¹¹⁸ 《印发《关于依法惩治妨害新型冠状病毒感染肺炎疫情防控违法犯罪的意见》的通知》 [Notice on Publishing the Opinions Regarding Punishing According to Law Crimes that Hamper Novel Coronavirus Caused Pneumonia Prevention and Control] (People’s Republic of China) Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security and Ministry of Justice, Notice No. 7, 6 February 2020 (‘*Opinion Regarding Punishing*’).

¹¹⁹ *Ibid.*

¹²⁰ *Ibid* [6]; 《中华人民共和国刑法》 [Criminal Law of the People’s Republic of China] (People’s Republic of China) National People’s Congress, Order No 80, 4 November 2017 art 234 (‘*Criminal Law*’).

¹²¹ See *Opinion Regarding Punishing* (n 118) [14].

¹²² 谢冰林 [Xie Binglin] et al, ‘武汉警方快速查处违反疫情管控规定人员：拒戴口罩行拘 5 日’ [‘Wuhan Police Quickly Investigate and Punish Those Who Violate Epidemic Control Regulations: Refuse to Wear Masks and be Detained for 5 days’], 《澎湃》 [*The Paper*] (Web Page, 21 February 2020) [2] <http://www.thepaper.cn/newsDetail_forward_6063335>.

¹²³ *Ibid.*

¹²⁴ *Ibid* [11].

¹²⁵ See *ibid* [3], [12]; *Public Security and Administrative Punishment Law* art 50.

The treatment of the previous two cases differs greatly from that of Guo Weipeng. He returned to China on 7 March after a short visit to Italy and France but reportedly lied to officials about where he had been and failed to observe a two-week quarantine on his return to his home province.¹²⁶ Guo developed COVID-19 symptoms and was eventually diagnosed with the disease.¹²⁷ He was sentenced by a Zhengzhou court to 18 months in prison for refusing to comply with virus control and containment measures.¹²⁸ In another serious case, Li Dong, the chairman of a pharmacy chain, was sentenced to 15 years in prison for selling almost 600,000 counterfeit masks through his stores.¹²⁹ In Guo's case, his crime fell under Article 330 of the Criminal Law, which criminalises a host of activities that interfere with pandemic control measures, while Li's was covered by Article 140 of the Criminal Law, which mandates that vendors selling fake or unqualified goods with a sale value of not less than ¥2 million may be sentenced to 15 years or life in prison.¹³⁰

In each of the above cases, laws existed to identify illegal behaviour and guide sentencing decisions. In minor cases, police applied the Administrative Punishment Law, while in more serious cases, suspects were tried in courts according to the Criminal Law. The cases and the related laws indicate that there is an established legal process for handling citizens who refuse to cooperate with state pandemic control measures or undermine them for personal gain, making these laws useful tools for achieving the Party-state goal of pandemic control.

The high-profile events from the early months of the COVID-19 outbreak in Wuhan examined here demonstrate the way in which the Party-state uses law in each case. The government responses to these events show law as a tool applied by the Party-state in service of policy goals. Wuhan police applied provisions in the Administrative Punishment Law to intimidate Dr Li and other COVID whistleblowers. Meanwhile, authorities made use of infectious disease and emergency laws to quarantine Wuhan and lock millions of people in their homes. The Criminal Law and Administrative Punishment Law provided legal sanctions to people who refused to cooperate with pandemic measures. There are some cases where law was not applied¹³¹ or applied improperly, but the analysis in this chapter demonstrates that lawful processes form the matrix through which the Party-state addressed significant events in Wuhan's struggle with COVID-19.

As mentioned throughout Chapters Two and Three, law plays the role of a useful tool for the Party-state. The examples in this section show the tool of law being applied in pursuit of Party-state objectives, such as successfully limiting the spread of a highly contagious disease and intimidating citizens attempting to disseminate inconvenient speech. Examining how the

¹²⁶ Alice Yan (n 117) [7], [10].

¹²⁷ *Ibid* [9], [11].

¹²⁸ 《郭某鹏妨害传染病防治案》[Guo Mou Peng Interfering with Infectious Disease Prevention and Control Case], 郑州市二七区人民法院 [Zhengzhou Twenty Seventh District Court] (Web Page, 3 April 2020) <<http://eqqfy.hncourt.gov.cn/public/detail.php?id=2642>>.

¹²⁹ Echo Xie, 'Coronavirus: Boss of Chinese Pharmacy Chain Gets 15 Years for Selling Counterfeit Face masks', *South China Morning Post* (online, 21 June 2020) <<https://www.scmp.com/coronavirus/greater-china/article/3089977/coronavirus-boss-chinese-pharmacy-chain-gets-15-years>>.

¹³⁰ *Criminal Law* (n 120) art 140.

¹³¹ Zhiqiong Wang (n 87) 254.

Party-state wielded the tool of law during the COVID-19 pandemic should help scholars to better understand Party-state application of law in other fields.¹³²

IV. Conclusion

This chapter examined the emergence of *Yifa Zhiguo* in the Xi era. Although *Yifa Zhiguo* was first popularised during Jiang Zemin's time as national leader, it received greater emphasis in the Xi era, including major attention for the first time as the topic of a plenum meeting, and became a major slogan representing the renewed focus on law as a tool for achieving Party-state policy goals.

The *Yifa Zhiguo* paradigm of the Xi era retains the three key features identified in Chapters Two and Three: the supremacy of the Party, an instrumentalist approach to law and a reform–repression dualism. These features emerged in this chapter's analysis of the Fourth Plenum and in the contrast between reforms that improved procedural justice and the ability of citizens to hold officials legally accountable, with the extra-legal repression of rights lawyers. Finally, this chapter examined the legality of Party-state responses to high-profile events in Wuhan at the beginning of the COVID-19 pandemic. This analysis showed that in each case, the Party-state deployed a lawful response, indicating that law is a tool used by the Party-state to pursue policy goals.

Chapters Two, Three and Four focused on the question of *Yifa Zhiguo* and what it means in the Chinese context. Chapter Two explored the scholarly debates about rule of law in China and produced a simple consensus definition of liberal rule of law for the sake of comparison. This definition based on the supremacy of law, judicial independence and formal legality was then compared with three common features of the legal order in China: supremacy of the Party, instrumentalism and reform–repression dualism. Chapter Two's analysis shows that China's 'rule of law' is incompatible with Western liberal style rule of law.

Chapter Three took a historical approach to demonstrate that the three features identified above—supremacy of the Party, instrumentalism and reform–repression dualism—were consistent features in China during the reform and opening era. Analysis of legal reform during the tenures of Deng Xiaoping, Jiang Zemin and Hu Jintao showed that three elements were consistent across the reform epoch. Regardless of the changes that took place, law was always a tool of the Party-state, to be applied when it is deemed useful and ignored when it hampers Party-state goals.

It appears, then, that *Yifa Zhiguo*, sometimes translated as 'ruling the country according to law' or 'rule of law', is a legal paradigm where law is seen as a tool to be applied by the Party-state in pursuit of its policy goals. It is not a vague set of legal principles intended to bind China's rulers or guide the conduct of rational individuals in a liberal society. In the *Yifa Zhiguo* paradigm, the Party-state, or more specifically, the CPC, holds a supreme position above the law. Law is not placed on a pedestal above society but is instead a tool of governance wielded by the Party-state. A reform–repression dualism is produced since certain

¹³² The section was adapted from an article published by the author of this thesis. See Michael Hooper, 'Fighting a Pandemic According to Law: Examining the Legality of Key Elements of China's Early COVID-19 Response in Wuhan' (2021) 48(2) *University of Western Australia Law Review* 330. This also applies to other parts of the thesis, see page v for details.

reforms that serve the interests of the country's leaders can also coincide with the interests of the masses. For example, Xi-era expansions of the ALL expanded the ability of citizens to sue government officials who break the law. This helps citizens defend their lawful rights while also helping central Party leaders to mitigate the principal-agent problem. However, since law may also be ignored when it hinders Party-state interests, this manifests in extra-legal abuses: the repression side of the dualism.

The analysis here makes clear that *Yifa Zhiguo* is not a Western liberal rule of law. Rather, the Party-state utilises it as a tool to achieve policy goals, such as stifling whistleblowers or controlling a pandemic, and ignores it when it becomes a fetter to Party-state interests. Supremacy of the Party, instrumentalism and reform-repression dualism are its key features.

With this understanding of *Yifa Zhiguo*, we can turn to examining ideo-political education as a channel for the Party-state's interpretation of rule of law. Ideo-political education, a kindergarten to graduate school process, exists to explain and justify Party-state narratives on a wide range of topics, including *Yifa Zhiguo* as China's 'rule of law', to young Chinese citizens. An understanding of the nexus between *Yifa Zhiguo* and ideo-political education reveals the connection between the official version of rule of law in China and a medium the Party-state uses to inculcate citizens with this interpretation. It is through this connection that this thesis argues that ideo-political education ought to form a subject of inquiry for scholars interested in rule of law in the Chinese context. We turn, first, to a definition of ideo-political education and its underlying purpose, before focusing on its content and the way in which it is implemented at the undergraduate level of education.

Part II

Chapter Five: Ideo-Political Education as a Subject of Legal Study

Part I of this thesis engaged with the debates surrounding the meaning of rule of law in the Chinese context, arguing that China under the *Yifa Zhiguo* paradigm does not have a Western-style liberal rule of law. Instead, law is viewed as a tool for achieving Party-state policy goals and is discarded when its operation hinders official plans. The historical analysis in Part I showed that the dominant features of Party supremacy, instrumentalism and a reform–repression dualism constitute hallmarks of law in China. This is the ‘rule of law’ order that *Yifa Zhiguo* represents.

Part II shifts the focus from the content of *Yifa Zhiguo* to the Party-state’s efforts to popularise its interpretation of rule of law through ideo-political education, and for this reason, ideo-political education should be treated by legal scholars as a legitimate subject of legal study. This part, which contains three chapters, investigates what Chinese undergraduates are taught about law, including rule of law, how they are taught and the role of quasi-legal normative documents in guiding this process.

This chapter argues that ‘ideo-political education’, a kindergarten to postgraduate process that involves not only classroom teaching but also extracurricular activities beyond the campus, should be regarded as a subject of legal study because it plays a role in justifying and advocating for the hegemonic legal paradigm, including *Yifa Zhiguo*, to young Chinese people. Following this, Chapter Six takes ideo-political education as a subject of legal study and investigates how normative documents shape its implementation. The chapter introduces a category of quasi-legal instruments called ‘normative documents’ and, by analysing key policies from the Hu and Xi eras, shows how these set the guidelines for ideo-political education, with a specific focus on teaching methodology. Finally, Chapter Seven takes this investigation a step further by exploring how ideo-political education subject teachers engage with normative documents in regard to classroom teaching methodologies. Through semi-structured interviews with current teachers of undergraduate ideo-political education classes at Chinese universities, this investigation will show that normative documents provide insight into how the Party-state attempts to inculcate students with official rule of law narratives.

Part II focuses exclusively on undergraduate ideo-political education, ignoring similar forms of education that take place from the kindergarten level through to graduate schools in China. While the wider scope of ideo-political education, from kindergarten through graduate school, could be analysed in the same way as this thesis considers its undergraduate form, doing so is beyond the scope of this thesis. The narrow focus on undergraduate education is sufficient for the purpose of making the point advanced here: that ideo-political education represents a vehicle through which the Chinese Party-state advances *Yifa Zhiguo*, thus educating its citizens as to the scope of rule of law as understood within the Chinese system.

As mentioned above, Chapter Five focuses on the argument that ideo-political education should be regarded as a subject of study relevant to law scholars. Chapter Five will address this question in two steps. It begins with a description of the Marxist–Leninist roots of ideo-

political education and its form in the Soviet Union. In the interests of clarity, the term ‘Marxist–Leninist’, as used in this thesis, describes ideas from the Bolshevik tradition and the parties/movements they influenced. This includes the works of Marx and Engels as they have been filtered and interpreted through a Soviet lens. Hence, as will be seen in the next section, how isolated lines by Marx and Engels on education have been incorporated into a broader Soviet canon on how education should be conducted in a socialist society. The Soviet Union under different leaderships and the CPC, at least up until the Sino–Soviet split, are both included in the Marxist–Leninist category for the purposes of this thesis. As will be seen in the last section of the chapter, many Marxist–Leninist concepts have been retained even to the present day and continue to be taught to young people as justification for current policies.

Next, the chapter describes ideo-political education in China as a system for disseminating official Party-state narratives to students, demonstrates the emergence of this system from earlier Soviet *vospitanie* and compares the shared goals, values and methods of the Soviet and Chinese systems. Scholarly accounts of the goals of Chinese ideo-political education further solidify this chapter’s account of ideo-political education in China as a product of the country’s Marxist–Leninist past that has been made to serve the policy imperatives of each new generation of Party leaders. The first section of this chapter explains these origins as context for the present form and content of ideo-political education.

After discussing the historical background and establishing context, the chapter turns to exploring the legal content of ideo-political theory classes at the undergraduate level through an analysis of the four official ideo-political education textbooks for undergraduate students. The ideo-political education system is broad and complex, involving classroom and extracurricular methods of work. However, this chapter focuses on what policy documents call the ‘main channel’ of ideo-political education work: ‘ideo-political theory classes’.¹ Here, then, the core textbooks for undergraduate ideo-political theory classes will be examined for concepts relating to law, especially references to *Yifa Zhiguo*. The four identified textbooks are the only officially sanctioned books allowed to be used for undergraduate ideo-political subject classes² and represent the official narrative the Party-state wishes students to receive. Hence, analysis of their content accurately uncovers the legal content of undergraduate ideo-political education.

Chapter Five’s analysis shows that while three out of four core ideo-political theory class textbooks mention China’s rule of law and legal system in passing, one textbook in particular, *Cultivation of Ideo-morality and Fundamentals of Law*, focuses extensively on this topic. Among the book’s focuses are explaining and justifying the legal principles and concepts of China, such as *Yifa Zhiguo* and the responsibilities of citizens to obey, respect and support the law. The analysis in this chapter synthesises the law-related content through the themes of description, justification and how students are expected to engage with law. These themes,

¹ See, eg, 《中共中央宣传部，教育部关于进一步加强和改进高等学校思想政治理论课的意见》 [Propaganda Department of the CPC Central Committee and Ministry of Education, Notice Regarding Further Strengthening and Improving Ideo-Political Theory Classes in Higher Education] (People’s Republic of China) Propaganda Department of the CPC Central Committee and Ministry of Education, Notice No. 5, 7 February 2005 (‘2005 Opinions’).

² 王小兵[Wang Xiaobing], ‘高校思政课“05 方案”与“98 方案”比较’ [‘Comparison of Ideo-Political Classes in Plan 05 and Plan 98’] [2006] (S1) 《重庆科技学院学报（社会科学版）》 *Chongqing School of Technology School Journal (Social Sciences Edition)* 25, 28.

taken together, reveal that the legal content of ideo-political education is an uncritical presentation of Party-state narratives on law, justifications for the legal status quo and messaging to students encouraging them to obey the law and perform their duties to the state. Despite what the textbook claims, the course is not designed to help students understand and navigate the legal system to apply the law in the protection of their own legal rights but rather to ensure that they have internalised the Party-state's expectations of them. This is to be expected since ideo-political education is about transmitting official discourse to impressionable youths. This also accurately reflects the Party-state's interpretation of rule of law as a system where law serves Party goals, not as a fetter on Party-state power.

I. Ideo-Political Education – The Soviet Experience

A 1988 quote from a Chinese policy document stated: 'Moral education is ideological and political education'.³ China's moral education conforms to the Marxist–Leninist concept of morality and education having class characteristics; hence its treatment as political education and the need for schools to incorporate a socialist character.⁴ The Marxism–Leninist influence on Chinese ideo-political education is one of the principal differences that set it apart from the morality or citizenship education that takes place in almost any other country today. To meaningfully explore the aims, content and methodology of Chinese ideo-political education, it is necessary to understand the origins of ideo-political education in Marxist–Leninist thought, as developed in the former Soviet Union.

The founders of Marxism said little about education, leaving Soviet thinkers to extrapolate broad theories from Marx and Engels' works. Lenin supported Engels' comments on the class nature of morality, and influential Bolsheviks such as Bukharin, Preobrazhensky and Lunacharsky extended this concept to education.⁵ Soviet educators also adopted Marx's comment about the need to combine instruction with productive labour and applied it as a core principle of their socialist education project.⁶

The scant advice provided by Marx and Engels meant that the victorious Bolsheviks in 1917 faced the challenge of applying in practice a new kind of education necessary for a socialist society. Anatoli Lunacharsky, who was partly responsible for this task as the Soviet equivalent of an education minister from 1918 to 1929,⁷ commented: 'It was necessary from the very beginning to open up entirely new paths, on the basis of the fundamental principles

³ 《中共中央关于改革和加强中小学德育工作的通知》 [CPC Central Committee Notice on Reforming and Strengthening Moral Education Work in Primary and Secondary Schools] (People's Republic of China) CPC Central Committee, 25 December 1988 ('1988 Notice').

⁴ Ibid.

⁵ Frederick Engels, *Anti-Duhring: Herr Eugene Duhring's Revolution in Science*, tr Emile Burns (Progress Publishers, 1977) 117; V.I. Lenin, *Collected Works Volume 31*, tr Julius Katzer (Progress Publishers, 1974) 291 ('Vol 31'); N Bukharin and E Preobrazhensky, *The ABC of Communism: A Popular Explanation of the Program of the Communist Party of Russia*, tr Eden and Cedar Paul (Communist Party of Great Britain, 1922) 228; Elisabeth Koutaissoff, 'Soviet Education and the New Man' (1953) 5(2) *Soviet Studies* 103, 104; Anatoli Lunacharsky, *On Education: Selected Articles and Speeches* (Progress Publishers, 1981) 229–30.

⁶ Karl Marx and Friedrich Engels, *The Communist Manifesto* (Pluto Press, 2017) 65 ('Manifesto'); Karl Marx, *Capital Volume 1*, tr Ben Fowkes (Penguin Books, 1990) 614 ('Capital'); Bukharin and Preobrazhensky (n 5) 235–6; See Koutaissoff (n 5) 128–9.

⁷ Sheila Fitzpatrick, *Education and Social Mobility in the Soviet Union 1921–1934* (Cambridge University Press, 1979) 10 ('Social Mobility').

and aims of Communist moral education as formulated in the classics of Marxism'.⁸ The themes of this entirely new path explored by Lunacharsky and his successors in the Soviet Union include the development of a new kind of socialist person with specific socialist values and the combination of instruction with productive labour, cross-curricular education and extracurricular education as methodologies.

At a congress of the Russian Young Communist League in 1920, Lenin stated that the task of building Communism would fall to a new generation of people.⁹ Accordingly, the achievement of Communism falls to later generations raised under progressively less exploitative social relations.¹⁰ Lenin further believed that Communism could only be achieved through the efforts of the young if their education, organisation and training were radically altered.¹¹ To this end, one of the key goals of Soviet education was to raise this 'New Soviet Man'.¹² This successor of the revolution would need to possess the characteristics that its forebears lacked and would continue the process of socialist construction from the basis of working-class power. While different scholars and Soviet thinkers emphasised different qualities that the 'New Soviet Man' needed, the following four traits regularly appear in the scholarly literature: collectivism, humanism, love of labour and socialist patriotism/internationalism.¹³

Patriotism is so commonly included in education curricula internationally that to claim a similarity between Soviet and Chinese ideo-political education based solely on patriotic character is meaningless. Instead, it is the 'socialist' element of patriotism in Soviet and Chinese ideo-political education that connects the two. If we define patriotism to mean a love for and identification with a particular nation, then 'socialist' patriotism involves further commitments. According to Halstead, Soviet patriotism was not simply about loving one's country but involved pride in the socialist character of the country and active participation in the cause of Communism.¹⁴ Soviet patriotism was also supra-national, rejecting what Stalin called 'Great Russian chauvinism',¹⁵ and attempted to unite the component nations of the Soviet Union along with their differing national customs into a single entity based on the interests of the Soviet working class, which was considered necessary for the building of socialism.¹⁶

⁸ Lunacharsky (n 5) 318.

⁹ Lenin, *Vol 31* (n 5) 283.

¹⁰ Ibid.

¹¹ Lenin, *Vol 31* (n 5) 284.

¹² J Mark Halstead, 'Moral and Spiritual Education in Russia' (1994) 24(3) *Cambridge Journal of Education* 423, 426. See also Anna Sidorovitch, 'Moral Education in Contemporary Belarus: Return to a Soviet Past?' (2005) 34(4) *Journal of Moral Education* 479, 482.

¹³ Halstead (n 12) 426–7; Koutaissoff (n 5) 134–5; Sidorovitch (n 12) 484; Jonathan Tudge, 'Education of Young Children in the Soviet Union: Current Practice in Historical Perspective' (1991) 92(1) *Elementary School Journal* 121, 128.

¹⁴ Halstead (n 12) 427.

¹⁵ JV Stalin, *Works Volume 5* (Foreign Languages Publishing House, 1953) 29, 272.

¹⁶ See Benjamin Tromly, 'Soviet Patriotism and its Discontents among Higher Education Students in Khrushchev-Era Russia and Ukraine' (2009) 37(3) *Nationalities Papers* 299; Stalin (n 15) 243–7; 林芳 [Lin Fang], '当代苏联青少年的爱国主义教育' ['Contemporary Patriotic Education for Youths in the Soviet Union'] [1987] (2) 《苏联问题》 *Soviet Issues* 35, 36.

To understand the emphases of Soviet education, it is sufficient for comparative purposes to consider the themes developed in relation to primary and secondary education rather than solely rely on higher education resources, which are more difficult to source.

From its foundation, Soviet education placed a strong emphasis on character development.¹⁷ The Russian word for education can be expressed as *obrazovanie*, which translates as ‘academic instruction’, and *vospitanie*, meaning ‘upbringing, character development or moral training’.¹⁸ While scholars recognise the dual roles of academic and moral instruction, Frolov identified ‘upbringing’ as the ‘primary focus’ of education rather than the simple accumulation of academic knowledge.¹⁹ Frolov’s comment is supported by Lenin’s statement that ‘The entire purpose of training, educating and teaching the youth of today should be to imbue them with communist ethics’.²⁰ In the foreword to *Problems of Soviet Education*, the editors described the Marxist theory on education as ‘the unity of physical, mental, moral and aesthetic education’.²¹

The Soviets conducted ideo-political education among children and young adults through a multifaceted approach that included cross-curricular²² and extracurricular means.²³ They also extensively employed a combination of instruction and socially useful productive labour, with students engaging in work in farm and workshop settings.²⁴

Soviet character development permeated the whole curriculum to different extents instead of confining itself to specific ideo-political subjects.²⁵ This can be seen in Lenin’s call for teachers to become agents of communist education, not just educators of their specific subject.²⁶ In describing the cross-curricular nature of *vospitanie*, Halstead commented, ‘All school subjects were considered to lend themselves to *vospitanie* and no teacher could escape the obligation to develop children’s political and moral attitudes and values’.²⁷ Grant noted that ‘Directly and in-directly, the communist viewpoint is put over at every stage of schooling’ and ‘the curriculum is saturated with Soviet principles’.²⁸

Since ‘all subjects, wherever possible, are presented from the Marxist point of view and used to make political points’,²⁹ even subjects that appear to have no relation to morality or politics

¹⁷ See Anton A Frolov, ‘Social Education and the Legacy of A. S. Makarenko’ (2003) 45(11) *Russian Education and Society* 79, 81; Perry Glanzer, ‘Exit Interviews: Learning About Character Education from Post-Soviet Educators’ (2001) 82(9) *Phi Delta Kappan* 691; Sidorovitch (n 12) 484; Tudge (n 13) 121.

¹⁸ Halstead (n 12) 424. See also Perry Glanzer, ‘Did the Moral Education Establishment Kill Character? An Autopsy of the Death of Character’ (2003) 32(3) *Journal of Moral Education* 291, 296 (‘Character’).

¹⁹ Frolov (n 17) 81.

²⁰ Lenin, *Vol 31* (n 5) 291.

²¹ V Aransky and A Piskunov (eds), *Problems of Soviet Education*, tr O Shartse (Progress Publishers, 1965) 9.

²² Halstead (n 12) 428; Jean Macintyre, ‘Political Socialization of Youth in the Soviet Union: Its Theory, Use and Results’ (Master’s Thesis, Naval Postgraduate School, 1993) 16–17; Leslie Ross, ‘Some Aspects of Soviet Education’ (1960) 11(4) *Journal of Teacher Education* 539, 545.

²³ Halstead (n 12) 428–9; Nigel Grant, *Soviet Education* (Penguin Books, 1970) 26, 63; Glanzer, ‘Character’ (n 18) 298.

²⁴ See Sheila Fitzpatrick, *The Commissariat of Enlightenment: Soviet Organization of Education and the Arts Under Lunacharsky, October 1917–1921* (Cambridge University Press 2002) 33 (‘Enlightenment’); Tudge (n 13) 131.

²⁵ Halstead (n 12) 428; Macintyre (n 22) 16–17; Ross (n 22) 545. Grant (n 23) 24–5.

²⁶ Koutaissoff (n 5) 105.

²⁷ Halstead (n 12) 429.

²⁸ Grant (n 23) 24–5.

²⁹ *Ibid* 25.

were used to convey moral and political messages. Examples include the perceived potential for physical education to inculcate psychological traits, such as discipline, courage and willingness to work for the country, and the role of science subjects in reinforcing the materialist world outlook and combating superstition.³⁰ Grant further commented on the practice of ‘judicious selection of reading material’ in subjects such as literature, history, geography and language.³¹

Not only was Soviet *vospitanie* cross-curricular, but it also reached beyond the classroom and engaged students through extracurricular activities.³² One major aspect of extracurricular *vospitanie* was the role of youth organisations such as the Young Communist League. The Young Communist League, typically known by its Russian contraction *Komsomol*, played an important role in Soviet extracurricular ideo-political education.³³ At the Third All-Russia Congress of the Russian Young Communist League, Lenin set the *Komsomol* their fundamental task, stating:

You must train yourselves to be Communists. It is the task of the Youth League to organize its practical activities in such a way that, by learning, organising, uniting and fighting, its members shall train both themselves and all those who look to it for leadership; it should train Communists.³⁴

Lenin’s directive to the *Komsomol* echoed through history as later Soviet leaders, policy documents and media repeated his call.³⁵ Kalinin, Soviet head of state from 1919 until 1946, stated that linking the mass movement surrounding physical culture with the ‘ideological content of revolutionary Marxism’ was a *Komsomol* task.³⁶ In 1959, Khrushchev stated, ‘It is the noble duty of the Young Communist League to educate the Soviet youth in the spirit of proletarian internationalism’,³⁷ one of the commonly advocated values of Soviet ideo-political education. Brezhnev, Khrushchev’s successor as leader of the Soviet Union, claimed that ‘one of the most important tasks in the *Komsomol*’s work is raising young people in the spirit of the new communist morality’.³⁸

Soviet policy documents supported the public statements of Party leaders. The program of the Communist Party of the Soviet Union (CPSU), adopted at its 22nd Congress in 1961, called the *Komsomol* an organisation that ‘helps the Party to educate young people in a Communist spirit’³⁹ Even the 27th Congress of the CPSU in 1986, the CPSU’s penultimate congress,

³⁰ Halstead (n 12) 429. See also Barbara Keys, ‘The Body as a Political Space: Comparing Physical Education under Nazism and Stalinism’ (2009) 27 (3) *German History* 395, 396.

³¹ Grant (n 23) 25.

³² Halstead (n 12) 428–9; Grant (n 23) 26, 63; Glanzer, ‘Character’ (n 18) 298.

³³ MacIntyre (n 22) 42. See also Grant (n 23) 63; Glanzer, ‘Character’ (n 18) 298.

³⁴ Lenin (n 5) 290.

³⁵ For a discussion of this work in the decade following the Great Patriotic War, see SI Ploss, ‘Political Education in the Postwar Komsomol’ (1956) 5(4) *American Slavic and East European Review* 489.

³⁶ MI Kalinin, *On Communist Education: Selected Speeches and Articles* (Foreign Languages Publishing House, 1950) 48.

³⁷ Nikita Khrushchev, ‘Speech at the Thirteenth Congress of the Komsomol’ in N Bychkova, R Lavrov and V Lubisheva (eds) *Communist Morality* (Progress Publishers, 1962) 178.

³⁸ Leonid Brezhnev, ‘Speech by the General Secretary of the CPSU Central Committee L. I. Brezhnev at the 17th Congress of the All Union Leninist Komsomol’ in V Krivoruchenko (ed) *Youth and the Party: Documents*, tr Y Shirokov (Progress Publishers, 1976) 236.

³⁹ 22nd Congress of the CPSU, *Program of the Communist Party of the Soviet Union* (International Publishers, 1963) 111.

taking place at a time of repudiation for many Party traditions, confirmed the role of the *Komsomol* as educator of the youth in the spirit of socialism and reserve of the Party.⁴⁰

The Soviets saw ‘socially useful’ or productive labour as an element of ideological education. Lenin advocated the principle of combining education with labour as early as 1897, stating: ‘The correct idea is that an ideal future society cannot, be conceived without the combination of education with the productive labour of the younger generation’.⁴¹ Ultimately, Lenin’s principle became part of the education policy of the Soviet Union.⁴² In the Party’s 1919 draft program, Lenin identified ‘The closest connection between schooling and productive social labour’ as one of the ‘immediate tasks’ in the education field.⁴³ Pozner advanced this principle at the First All-Russian Congress of Education and the State Education Commission in his *Statement on the United Labour School*, where he said: ‘Productive labour must serve as the basis of school life, not as a means of paying for the maintenance of the child, and not only as a method of teaching, but as socially-necessary productive labour’.⁴⁴

The calls to unite education and socially useful productive labour were not empty slogans; they were principles that guided education practice in the Soviet Union.⁴⁵ Zajda described the Soviet Union as: ‘one of the few countries where, to use Lenin’s words, universal productive labour has been wedded to universal education’.⁴⁶ Combining vocational training with more typical classroom subjects allowed for the realisation of Lenin’s principle in practice. According to Tudge, children took part in socially useful labour from grade 2 of primary school and dedicated two out of the 24 school hours each week to ‘workshop training’.⁴⁷ Reforms in 1984 increased the amount of time children spent engaged in productive labour, with grade 9 and 10 children spending up to a month in industry or agriculture.⁴⁸ The *Komsomol* also organised socially useful labour, such as ‘assisting with the harvest on collective farms’ and ‘working on building sites for community projects’.⁴⁹

This section does not aim to explore the ways that Soviet education changed over the course of the Soviet Union’s existence. Sources used in this section span the gamut of Soviet history, from early speeches by revolutionary leaders such as Lenin, to Party Congresses of the Khrushchev and Brezhnev eras, showing that the concepts and methods expressed in this section received official support throughout Soviet history.

Instead, the aim is to show that the Soviet Union viewed the formation of citizens with an officially sanctioned outlook (i.e., New Soviet Men) as necessary for building socialism. It also identifies elements of the content and practice of *vospitanie* that were later replicated in China. Collectivism, humanism, love of labour and socialist patriotism/internationalism are

⁴⁰ 27th Congress of the CPSU, ‘Political Program of the CPSU’, *Marxists.org* (Web Page) <<https://www.marxists.org/history/ussr/cpsu/1986/1986-cpsu-program.htm>>.

⁴¹ Vladimir Lenin, *Collected Works Volume 2*, tr George Hanna (Progress Publishers, 1972) 472 (‘Vol 2’).

⁴² See Grant (n 23) 40–1.

⁴³ Vladimir Lenin, *Collected Works Volume 29*, tr George Hanna (Progress Publishers, 1974) 132–3 (‘Vol 29’).

⁴⁴ Fitzpatrick, *Enlightenment* (n 24) 33.

⁴⁵ Joseph Zajda, *Education in the USSR: International Studies in Education and Social Change* (Pergamon Press, 1980) 56. See also Valery Polyakov, ‘The Generalization of Vocational Education in the USSR’ (1987) 17(1) *Prospects* 115, 117–120.

⁴⁶ Zajda (n 45) 56.

⁴⁷ Tudge (n 13) 131.

⁴⁸ *Ibid* 131.

⁴⁹ Tudge (n 13) 71.

four traits *vospitanie* attempted to promote in students. Soviet educators applied cross-curricular and extracurricular learning, especially through the role of the Young Communist League and the combination of instruction with socially useful productive labour, as methods of *vospitanie*.

One limitation of the above analysis is that many of the sources discuss methods of *vospitanie* practised in primary and middle schools rather than in higher education. Investigations conducted to support this thesis uncovered few accessible sources that discussed *vospitanie* content and methods in higher education. As will be seen in the following section, these principles and methods appear in Chinese primary, secondary and higher education, so the point I am making still stands.

The following section shows Soviet influence on Chinese ideo-political education before the Sino–Soviet split and demonstrates that the purpose and values identified above also exist, with some exceptions, in the Chinese version of *vospitanie*. China, too, developed ideo-political education to shape citizens in an officially approved mould with officially sanctioned values. Section III expands this analysis to include methodological similarities between the Soviet and Chinese systems of ideo-political education.

II. Chinese Ideo-Political Education as Inheritor of Soviet Theory

The term ‘ideo-political education’ is the English translation of the Chinese term 思想政治教育 (*sixiang zhengzhi jiaoyu*), which, as was mentioned in the introduction to this thesis, represents a broad term that includes ‘morality, citizenship, patriotic, political and psychological education’.⁵⁰ Different scholars argue that the terms moral education and ideo-political education are interchangeable.⁵¹ Arguably, the reason for this interchangeability is the strong link between politics and morality in China, where moral education ‘includes not only teaching ethical principles and cultivating moral behaviour, but also indoctrinating the learners with communist political and ideological views’.⁵² The use of the term ‘indoctrinating’ in the previous quote may be seen as a liberal reaction to young people being presented specific political positions, without the opportunity to oppose them, as part of a compulsory subject. This thesis uses more neutral terms, as the issue of indoctrination is beyond the scope of the current investigation.

Citizenship education in China likewise fits this mould as it is also conducted as part of ideo-political education.⁵³ Official policy states the link between these different kinds of education very clearly, such as in a 1988 policy, which reads, ‘Moral education is ideological and

⁵⁰ See Rui Yang, ‘Ideo-Political Education in China’s Universities: A Study of the Challenges Since the 1990s’ (Conference Paper, Annual Conference of the Australian Association for Research, 1–5 December 2002); Cheung Yupang, ‘Changes in the Conception of Moral Education in China in the Post-Mao Period’ (Master’s Thesis, The University of Hong Kong, 1994) (‘Thesis’) 1–2; Lei Yu, ‘The Transformation of Citizenship Education at Universities in the People’s Republic of China from 1998–2006’ (PhD Thesis, Columbia University, 2010) 4.

⁵¹ Cheung, ‘Thesis’ (n 50) 1–2; Wing On Lee and Chi Hang Ho, ‘Ideopolitical Shifts and Changes in Moral Education Policy in China’ (2005) 34(4) *Journal of Moral Education* 413.

⁵² Cheung (n 50) 1. See also Li Maosen, ‘Moral Education in the People’s Republic of China’ (1990) 19(3) *Journal of Moral Education* 159.

⁵³ Lei (n 50) 4–5; Minghua Zhong and Jiang Zhang, ‘Analysis of the Citizenship Education of China’s Junior High School Stage’ (2015) 4(2) *Asian Education and Development Studies* 190, 191.

political education. It plays an important role in upholding the socialist nature of the school'.⁵⁴ This education in the Party-state's values, and its attempts to form ideal citizens, is carried out through ideo-political theory subjects but also, as will be shown in this chapter, through extracurricular means, such as participation in the Communist Youth League and 'social practice'.

In other words, ideo-political education is a system of education that presents Chinese youths with official Party-state narratives regarding a wide range of subjects, both in a classroom setting and beyond. Section A briefly introduces the context of the Soviet influence on China's ideo-political education, especially in higher education, before turning in Section B to draw connections between the common goals and values shared by the two ideological education systems.

A. Learning from the Soviet Union

The theories of Soviet thinkers regarding education in a socialist society and how to apply this theory in practice exerted an influence on Chinese ideo-political education.⁵⁵ Chinese ideo-political education shares a key aim, concepts, values and methodology with Soviet character education. Officially, it aims to raise a new socialist person for the purpose of building socialism, advocates common values this person should hold and calls for the application of methods commonly used in the Soviet Union, such as the combination of instruction with productive labour and cross-curricular/extracurricular ideo-political education.

Following the establishment of the PRC, the new government turned to the Soviet Union as a model for developing institutions and practices for their own higher education system.⁵⁶ The Soviet Union was a natural source of inspiration for the newly liberated China since it offered 30 years of experience in socialist construction and, in contrast to US hostility towards the PRC, willingly provided help to their new comrades on the socialist path.⁵⁷ Soviet educators toured the country, speaking on Soviet education theory and practice, while Chinese delegations visited Moscow to learn from their Soviet counterparts.⁵⁸ Soviet advisers were particularly influential in higher education, where their plans for reform replaced earlier American ideas.⁵⁹

⁵⁴ 1988 Notice (n 3).

⁵⁵ See Rui Yang (n 50) 1–2, 6–7.

⁵⁶ 胡娟娟 [Hu Juanjuan], '建国后高等教育学习苏联模式的回顾和历史教训' ['Looking Back on the Lessons of Higher Education Learning from the Soviet Model after the Founding of the PRC'] (2009) 12 《改革与开放》 *Reform and Opening* 193, 193–4; Theodore Chen, *The Maoist Educational Revolution* (Praeger Publishers, 1974) 24–25; Li Lixu, 'The Influences of the Soviet Educational Model on the Education of the P.R. China' (2001) 2(2) *Asia Pacific Education Review* 106–7; 育林 [Yu Lin], '我国五十年代学习苏联教育经验是“全盘苏化”吗?' [Was China's 1950's Experience of Studying Soviet Education a 'Total Sovietization'?] [1979] (2) 《安徽师大学报（哲学社会科学版）》 *Anhui Normal University Report (Philosophy and Social Science Edition)* 37.

⁵⁷ 王雯 [Wang Wen], '中国大学学习苏联教育经验开展教学改革的历史回顾:以清华大学为案例' ['Historical Reflections on Chinese University Teaching Reform Based on Studying the Experience of Soviet Education: Qinghua University Case Study'] (2003) 24(4) *Tsinghua Journal of Education* 79. See also 胡娟娟 [Hu Juanjuan] (n 56) 193.

⁵⁸ Theodore Chen (n 56) 24.

⁵⁹ *Ibid* 24.

In the spirit of ‘studying from the Soviet Union’, China invited 861 Soviet experts to aid the work of Chinese higher education institutions between 1949 and 1959,⁶⁰ with 98 working at Renmin University over a similar period.⁶¹ Staff at Renmin University, a school established ‘as a model of Soviet higher education and exemplar for learning from the Soviet experience’, applied Soviet teaching methodologies and forms of organisation.⁶² Over seven years, Soviet experts at Renmin produced 101 textbooks and taught 2,574 postgraduate students, most of whom majored in Marxism-related subjects.⁶³ A Chinese Government source from 1957 showed that learning from the Soviet Union in higher education extended far beyond the classrooms of Renmin University.⁶⁴ It noted that 700 Soviet experts trained 8,285 ‘graduate students and teachers, inaugurated 889 new courses, and provided guidance for 443 courses taught by Chinese teachers’.⁶⁵ These already impressive figures do not include the thousands of students who studied in the Soviet Union and later returned to hold influential positions in the Chinese system.⁶⁶

Given the attraction of the Soviet model to Chinese decision-makers, and the vast human resources provided by the Soviet Union, it should come as no surprise that the Chinese education system absorbed Soviet theory and practice related to ideo-political education, adapting it to Chinese conditions. One example of a concept shared by both Soviet and Chinese ideo-political education theory was the necessity of raising a new kind of person capable of building socialism and continuing the communist cause.

B. ‘Four Haves New Communist Person’ and Shared Communist Values

Just as the victorious Bolsheviks set about raising a new generation of people capable of building socialism, so too have successive generations of Chinese Communists. Lenin’s theory of the new socialist person and how to raise them influenced the direction of modern Chinese ideo-political education and Chinese thinkers, including Deng Xiaoping.⁶⁷ The opening and reform-era version of the New Soviet Man was the ‘Four Haves New Person’, also known as the ‘Four Haves New Socialist/Communist Person’. An early example of the ‘four haves’ theme appeared in 1980 when *China Children’s Journal* and *Tutor* magazine published a work of calligraphy by Deng Xiaoping exhorting young people to become a new kind of person with ‘ideals, morals, culture and discipline’.⁶⁸

While the phrase ‘ideals, morals, culture and discipline’ is vague, leaving readers to ponder precisely which values Deng desired, the context of Deng’s writing clearly implies he sought communist ideals. Deng stated this explicitly in a 1983 conversation with representatives of

⁶⁰ 胡娟娟 [Hu Juanjuan] (n 56) 193.

⁶¹ Rui Yang (n 50) 5.

⁶² Theodore Chen (n 56) 25.

⁶³ Rui Yang (n 50) 5–6.

⁶⁴ See Theodore Chen (n 56) 25.

⁶⁵ Ibid 25.

⁶⁶ Li Lixu (n 56) 110.

⁶⁷ 袁雷[Yuan Lei], ‘试论列宁社会主义新人学说’ [Attempting to Study Lenin’s New Socialist Person] (2014) 28(1) 《山西行政学院报》 *Journal of Shaanxi Academy of Governance* 14.

⁶⁸ See 呼中陶 [Hu Zhongtao] and 李春秋 [Li Chunqiu], ‘邓小平“四有”新人思想的当代价值’ [The Contemporary Values of Deng Xiaoping’s ‘Four Haves’ New Person Thought] [2015] (2) 《邓小平研究》 *Deng Xiaoping Research* 79, 82.

the Communist Party of India (Marxist–Leninist), where he mentioned the four havees but added ‘communist’ in front of the word ‘ideals’.⁶⁹

This modern Chinese iteration of the New Soviet Man emerged from Deng’s personal calligraphy to join the official vocabulary of government phrases and ideo-political education policy documents. The phrase appears in policy documents aimed at influencing all levels of education, including higher education, such as the *Outline for the Implementation of Education in Patriotism* (‘1994 Outline’) and the *Action Plan for the Development of Civic Morality on the Educational Front* (‘2001 Action Plan’).⁷⁰ The 2015 version of the textbook used in ‘Cultivation of Ideo-Morality and Principles of Law’, one of the four compulsory core subjects of ideo-political education at the university level, calls cultivating the ‘four havees’ new person the ‘fundamental task’ of ‘the construction of socialist spiritual civilisation’.⁷¹

Chinese ideo-political education not only inherited the Soviet theory of raising a new kind of person to build socialism but also incorporated the values proposed by early Soviet thinkers. Major values identified as essential for Soviet moral education—love of labour, collectivism and patriotism—also appear as recurring themes in Chinese ideo-political education. According to Wang and Cao, collectivism, patriotism and socialism are, at least in theory, combined into one system of moral theory in China,⁷² while these terms and other values identified in Soviet moral education feature in Chinese policy documents and leaders’ speeches.⁷³

Love of labour, and a ‘correct’ attitude towards it, are common values extolled in both Soviet and Chinese ideo-political education. Scholars identified ‘loving labour’ as one of the aspects of Chinese moral education,⁷⁴ most notably as a component part of the ‘Five Loves’.⁷⁵ The Five Loves are basic concepts of Chinese socialist morality expressed by the newly established PRC government as early as the 1949 *Common Program*.⁷⁶ They require citizens to: ‘Love the motherland, love the people, love labour, love science and love public property’,⁷⁷ with ‘public property’ becoming ‘socialism’ in later iterations of the Five Loves

⁶⁹ Deng Xiaoping, ‘We are Building a Socialist Society with Both High Material Standards and High Cultural and Ethical Standards’, *Marxists.org* (Web Page) <<https://www.marxists.org/reference/archive/deng-xiaoping/1983/149.htm>>.

⁷⁰ ‘Action Plan for Patriotic Education’, tr Ming Qiang and Gregory Fairbrother (2006) 39(2) *Chinese Education and Society* 7, 12 (‘1994 Outline’); Chinese Communist Party Committee of the Ministry of Education, ‘Notice on Studying and Carrying Out the “Action Plan for the Development of Civic Morality” on the Educational Front’, tr Ming Qiang and Gregory Fairbrother (2006) 39(2) *Chinese Education and Society* 69, 71 (‘2001 Action Plan’).

⁷¹ 姚都卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (eds), 《思想道德修养与法律基础》 [Cultivation of Ideo-Morality and Fundamental Concepts of Law] (Higher Education Press, 7th edition, 2015) 39.

⁷² 王兴权 [Wang Xingquan] and 曹延涵 [Cao Yanxiong], 当代中国的爱国主义教育及特点 [Contemporary Patriotic Education and Its Specialities] [2010] (3) 《商业经济》 *Business and Economics* 120, 120–1.

⁷³ See *ibid* 120–1.

⁷⁴ 陈静 [Chen Jing] and 黄忠敬 [Huang Zhongjing], ‘从“体力教育”到“能力教育”:我国劳动教育政策的发展与变迁’ [‘From “Physical Education” to “Ability Education”: China’s Labour Education Policy Development and Changes’] [2015] (16) 《中国德育》 *China Moral Education* 33, 33–5; Kwok Cheung and Suyan Pan, ‘Transition of Moral Education in China: Towards Regulated Individualism’ (2006) 2(2) *Citizenship Teaching and Learning* 37, 41; *Lei* (n 50) 5.

⁷⁵ *Lei* Yu (n 50) 5. Cheung and Pan (n 74) 41.

⁷⁶ 《中国人民政治协商会议共同纲领》 [Common Program of the Chinese People’s Political Consultative Conference] (People’s Republic of China) Chinese People’s Political Consultative Conference, 29 September 1949, art 42 (‘*Common Program*’).

⁷⁷ *Ibid* art 42.

slogan. By the following year, the Ministry of Education released a notice calling for the inclusion of love of labour, as part of the Five Loves, in university-level politics lessons.⁷⁸

Mentions of the need to teach students to love labour are not restricted to the Five Loves. A 1999 CPC Central Committee and State Council decision called for the cultivation of a love of labour and a spirit of arduous struggle among students.⁷⁹ The *Opinions on Further Strengthening and Improving the Ideo-political Education of University Students* ('2004 Opinions'), a central-level document from 2004 which remained an influential policy document during Xi Jinping's tenure, did not specifically mention love of labour, although it did identify the need to cultivate student attitudes towards labour.⁸⁰ The year 2013 saw another attempt to encourage a love of labour among students through the 'Love Study, Love Labour, Love the Motherland' principle.⁸¹ During the same year, the Ministry of Education promulgated its *Opinions on Implementing 'Three Loves' Education*, formally implementing the teaching of this slogan in Chinese schools.⁸² So just as in the Soviet Union, promoting a love for, or at least a 'correct' attitude to labour, is one of the tasks of Chinese ideo-political education.

Collectivism has been a core component of Chinese ideo-political education since its inception and continues to occupy an important position in the 21st century.⁸³ Ding and Wang wrote that '[e]ducation in collectivism is the fine tradition of Chinese ideo-political education',⁸⁴ while Jiang claimed that, since the revolutionary war period, ideo-political education in China has always included collectivism.⁸⁵ Yet despite this claim, social changes and the infiltration of ideas from the West brought about by the opening and reform process and the establishment of a market economy presented new challenges for education in

⁷⁸ Ministry of Education, 《教育部关于全国高等学校暑期政治课教学讨论会情况及下学期政治课应注意事项的通报（节录）》 [Ministry of Education Notice Regarding the Situation of the National Higher Education Institutions Summer Politics Teaching Seminar and Matters for Attention in the Following Semester's Politics Classes] in 教育部社会科学司 [Ministry of Education Social Science Bureau] (ed), 《普通高校思想政治理论课文献选编(1949-2008)》 [Anthology of Ordinary Higher Education Ideo-Political Theory Class Literature] (China Renmin University Publishers, 3rd ed, 2008) 5, 7 ('*Summer Politics Notice*').

⁷⁹ 《中共中央国务院关于深化教育改革，全面推进素质教育的决定》 [CPC Central Committee and State Council Decision Regarding Deepening Education Reform, Comprehensively Advancing Moral Quality Education] (People's Republic of China) State Council and CPC Central Committee, 13 June 1999, sub-s 7 ('*1999 Decision*').

⁸⁰ 《关于进一步加强和改进大学生思想政治教育的意见》 [*Opinions on Further Strengthening and Improving the Ideo-Political Education of University Students*] (People's Republic of China) State Council and CPC Central Committee, Order No 16, 26 August 2004, sub-s 15 ('*2004 Opinions*').

⁸¹ See 陈安琪 [Chen Anqi], '“三爱”教育视野下提高大学生综合素质的路径研究' ['Research on Ways to Improve College Student's Comprehensive Quality from the Perspective of 'Three Loves' Education'] [2015] (30) 《课程教育研究》 *Course Education Research* 67 ('Quality').

⁸² 陈安琪 [Chen Anqi], '论高校开展“爱学习、爱劳动、爱祖国”教育的重要地位' ['Discussion of the Important Place of Higher Education 'Love Study, Love Labour, Love the Motherland' Education'] [2015] (3) 《传承》 *Inheritance* 54 ('Three Loves').

⁸³ 丁绍宏 [Ding Shaohong] and 王平 [Wang Ping], '两年集体主义教育的内涵' [Connotations of Two Years of Collectivism Education] (2014) 47(1) 《延边大学学报（社会科学版）》 *Journal of Yanbian University (Social Science Edition)* 129, 134.

⁸⁴ *Ibid* 134.

⁸⁵ 蒋朝林 [Jiang Chaolin], '加强大学生集体主义教育研究' [Strengthen the Research of University Student Collectivism Education] (Master's Thesis, Southwest University, 2008) 12.

collectivism.⁸⁶ Faced with these issues, the *2004 Opinions* persisted in calling for the strengthening of education in the spirit of collectivism.⁸⁷

Chinese patriotism, as taught through ideo-political education, is similar to the Soviet tradition of socialist patriotism within a multi-ethnic country. It recognises the historical nature of patriotism and the changing character of Chinese patriotism throughout history.⁸⁸ Guo and Wen provide an example of this perspective when they claimed that the patriotism of the pre-PRC period consisted of ‘opposing the reactionary ruling class which colluded with big powers and betrayed the motherland’ and ‘opposing the imperialist power’s aggression’, while post-1949 ‘building and safeguarding the socialist system’ were patriotic.⁸⁹ In a similar vein to Soviet expressions of patriotism, Chinese official discourse and academic writing typically conflates socialism and patriotism.⁹⁰ Deng Xiaoping and Jiang Zemin both linked patriotism with socialism, or the process of building socialism, in their works,⁹¹ so naturally, these sentiments inevitably appeared in the ideo-political education curriculum. An example appears in the *Cultivation of Ideo-Morality and Basic Principles of Law* textbook for first-year university students, which states, ‘persist in unifying patriotism and socialism’.⁹² By ‘unifying’, or to put it another way, conflating the concept of patriotism and socialism in this way, students are being taught that to love one’s country means to support the Party-state that claims to represent socialism.

Just as Soviet patriotism united diverse ethnic minorities into a single supra-national Soviet people and opposed Great Russian chauvinism, Chinese patriotic education also attempts to unite a multi-ethnic population as a single citizenry. Just as Stalin denounced Russian chauvinism, Mao Zedong criticised Han chauvinism, calling for its eradication through education.⁹³ Doughty, in his examination of Chinese nationalism, claimed that national minorities are classified in the same way as they were in the Soviet Union.⁹⁴ He wrote, ‘In this historical formulation, each of the fifty-six nationalities descends from a transcendent and unified motherland, together establishing a supra-ethnic Chinese nation’.⁹⁵ The *1994 Outline*

⁸⁶ Ibid 28–9. See also 丁绍宏 [Ding Shaohong] and 王平 [Wang Ping] (n 83) 134.

⁸⁷ *2004 Opinions* (n 80) sub-s 10.

⁸⁸ Wen Nuan and Guo Xin, ‘How to Strengthen the Patriotism Education of College Students During the New Period’ (2012) 8(5) *Cross-Cultural Communication* 123, 123; Jonathan Doughty, ‘Maintaining a Chinese Nationalism: Patriotic Education, Second-Hand Rose and the Politics of “National Conditions”’ (2009) 9(2) *Studies in Ethnicity and Nationalism* 198, 202. See also 刘玉标 [Liu Yubiao] ‘当代中国爱国主义教育研究’ [‘A Study on Patriotic Education in Contemporary China’] (PhD Thesis, Wuhan University, 2010) 1, 3–4.

⁸⁹ Wen Nuan and Guo Xin (n 88) 123.

⁹⁰ Limin Bai, ‘Monetary Reward Versus the National ideological Agenda: Career Choice Among Chinese University Students’ (1998) 27(4) *Journal of Moral Education* 525, 525–6; Doughty (n 648) 202. See 王兴权 [Wang Xingquan] and 曹延涵 [Cao Yanxiong] (n 72) 121.

⁹¹ Deng Xiaoping, ‘Concerning Problems on the Ideological Front’, *Marxists.org* (Web Page)

<<https://www.marxists.org/reference/archive/deng-xiaoping/1981/129.htm>>; 江泽民 [Jiang Zemin], ‘江泽民：爱国主义和我国知识分子的使命’ [‘Jiang Zeming: Patriotism and the Mission of Chinese Intellectuals’], *China Social Science Web* (Web Page)

<http://ex.cssn.cn/lxx/lishixuezhuan/bwxc/ljxm/lxzy/ljzm/201801/t20180104_3804433.shtml>.

⁹² 姚都卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (eds) (n 71) 48.

⁹³ Mao Zedong, ‘Criticize Han Chauvinism’ in *Selected Works of Mao Tse-Tung Volume V* (Pergamon Press, 1st ed, 1977) 87, 87–8 (‘Criticize’).

⁹⁴ Doughty (n 88) 205.

⁹⁵ Ibid 205–6.

states: ‘The Chinese are a multinational family’. It stresses that the different ethnic groups that make up the population of China are inseparable.⁹⁶

Patriotic education in China descends from the link between the Leninist tradition of socialist patriotism and internationalism. Mao Zedong applied this doctrine to Chinese conditions, saying: ‘Chinese Communists must therefore combine patriotism with internationalism. We are at once internationalists and patriots’.⁹⁷ Even after his death, policy documents continued to respond to Mao’s demand for patriots and internationalists. In 1987, the Central Committee of the CPC released a policy on improving ideological and political work in colleges and universities that called for the principles of patriotism and internationalism to be taught.⁹⁸ The *1994 Outline* continues this theme by explicitly denying that patriotism is ‘narrow nationalism’ and urging students to ‘learn from and absorb’ the ‘civilised achievements ... of the world’s nations’ and to promote ‘world peace’.⁹⁹

What we see, then, is that the core values of Soviet *vospitanie* also comprise part of China’s ideo-political education, and Chinese policy documents and ideo-political textbooks continue to advocate these values well into the Xi era. The following section expands this analysis to include teaching methods, showing that Chinese and Soviet ideo-political education both applied cross-curricular and extracurricular methods, especially in the form of youth league involvement and the combination of instruction with productive labour.

III. Methodological Similarities of Soviet and Chinese Ideo-Political Education

The parallels between the methodologies of Soviet and Chinese ideo-political education are as striking as those existing between the values they attempted to instil in their students. Chinese policymakers and educators have advocated similar methods to their Soviet counterparts, including cross-curricular moral education, extracurricular education and the use of productive labour.

Chinese ideo-political education inherited the theory of uniting education and productive labour from the Marxist–Leninist tradition. In his speech to the 1978 National Conference on Education, Deng Xiaoping stated: ‘Marx, Engels, Lenin and Comrade Mao Zedong all laid great stress on combining education with productive labour’.¹⁰⁰ Marxist philosophy formed a major part of the theoretical foundation of Mao Zedong’s education doctrine, with Marx’s dialectical materialism and its theories of the unity of theory and practice, contradiction, and theory of cognition forming important elements of Mao’s thought.¹⁰¹

⁹⁶ Qiang and Fairbrother (tr), ‘1994 Outline’ (n 70) 10.

⁹⁷ Mao Zedong, ‘Patriotism and Internationalism’ in *Selected Works of Mao Tse-Tung Volume II* (Pergamon Press, 1975) 196. 196 (‘Patriotism’).

⁹⁸ 《中共中央做出关于改进和加强高等学校思想政治工作的决定》 [Decision of the CPC Central Committee Regarding Improving and Strengthening Ideological and Political Work in Colleges and Universities] (People’s Republic of China) CPC Central Committee, Notice No 18, 29 May 1987 s 2 (‘1987 Decision’).

⁹⁹ Qiang and Fairbrother (tr), ‘1994 Outline’ (n 70) 8.

¹⁰⁰ Deng Xiaoping, ‘Speech at the National Conference on Education’, *Marxists.org* (Web Page) <<https://www.marxists.org/reference/archive/deng-xiaoping/1978/180.htm>>.

¹⁰¹ Julia Kwong, *Chinese Education in Transition: Prelude to the Cultural Revolution* (McGill – Queen’s University Press, 1979) 41, 46–7, 50; RF Price, *Education in Modern China* (Routledge and Kegan Paul, 2nd edition, 1979) 12, 18; Zhuo Qingjun, ‘Mao Zedong’ (1994) 24(1/2) *Prospects* 93, 94–5.

The influence of this theory can be seen in Mao's writings, even before the foundation of the PRC; this is clear in a 1934 report where he stated that to 'unite education with labour' was part of the 'general line of our Soviet culture and education'.¹⁰² Following the establishment of the PRC, the *Common Programme* of 1949 adopted Mao's ideas on combining theory and practice, such as in the 1941 article 'Reform our Study',¹⁰³ as official education policy.¹⁰⁴ Likewise, the revolutionary experience of combining labour and education in base areas was evident in the principles for education announced by the Central Committee in 1958 at a meeting on education and in concurrent practical actions.¹⁰⁵

The 1958 *Central Committee of the CPC and State Council Directive on Education Work* ('1958 Directive'), released by the CPC Central Committee and the State Council, confirmed combining education with productive labour as one of the three principles of all education work.¹⁰⁶ The directive called for schools to establish factories and farms, while farms and factories should establish on-site schools.¹⁰⁷ Following the promulgation of the directive, education emphasised productive labour and production and instruction were vigorously linked in practice.¹⁰⁸

China's post-Mao opening and reform policies did not lead, at least in theory, to a rejection of combining education and production, although Price, writing in 1979, predicted that 'the peculiarly Marx-Mao, moral-political aspect of combining education with productive labour will probably fail to be developed'.¹⁰⁹ In 1978, Deng Xiaoping commented: 'To train qualified personnel for socialist construction, we must try to find improved ways of combining education with productive labour, ways that are suited to our new conditions'.¹¹⁰ In the same year, Liu Xiyao, Minister of Education, addressed the National Education Conference, stating the need for education to be combined with productive labour for all levels of students.¹¹¹

This core principle of Marx, Lenin and Mao Zedong's education theory manifested through the content of central policy documents from the 1980s to the 2000s, such as the 1987 *Decision of the CPC Central Committee Regarding Improving and Strengthening Ideological and Political Work in Colleges and Universities* ('1987 Decision') and the 2001 *Action Plan*.¹¹² However, unlike earlier policies, such as the *1958 Directive*, none of these documents explore ways to realise the principle in practice. The *2004 Opinions* even reduces productive labour to a form of social practice instead of emphasising its role as a necessary component of

¹⁰² Kwong (n 101) 45.

¹⁰³ Mao Zedong, 'Reform Our Study' in *Selected Works of Mao Tse-Tung Volume III* (Foreign Languages Press, 1965) 17, 21–3 ('Reform').

¹⁰⁴ *Common Programme* (n 76) art 46.

¹⁰⁵ See Theodore Chen (n 56) 30.

¹⁰⁶ 中共中央 [Central Committee of the CPC] and 国务院 [State Council], '中共中央国务院关于教育工作的指示' [CPC Central Committee and State Council Directive on Education Work] in 教育部社会科学司 [Ministry of Education Social Science Bureau] (ed), 《普通高校思想政治理论课文献选编(1949–2008)》 [Anthology of Ordinary Higher Education Ideo-Political Theory Class Literature] (China Renmin University Publishers, 3rd ed, 2008) 37, 38 ('1957 Directive').

¹⁰⁷ *Ibid* 38.

¹⁰⁸ Theodore Chen (n 56) 81; Price (n 101) 35; Zhuo Qingjun (n 101) 100–1.

¹⁰⁹ Price (n 101) 302–3.

¹¹⁰ Deng Xiaoping (n 100).

¹¹¹ Price (n 101) 303.

¹¹² See Qiang and Fairbrother (tr), '2001 Action Plan' (n 70) 73; *1987 Decision* (n 98) s 2(2).

the productive labour/instruction dialectic.¹¹³ At this point, the position of social practice, as a key methodology of Chinese ideo-political education and the formation of new Socialist people, takes priority over the unity of education and productive labour in Chinese education discourse.

According to Waite, ‘the practice of social practice and social investigation in the Chinese university has its roots to some degree in the philosophies of Marx and Mao Zedong’.¹¹⁴ The Marxist conception of cognition influenced Mao Zedong’s thinking, as demonstrated in his 1937 lecture *On Practice*, where he called upon comrades to understand the place of practice in cognition.¹¹⁵ Mao wrote: ‘Marxists hold that man’s social practice alone is the criterion of the truth of his knowledge of the external world’.¹¹⁶ This role of social practice in Chinese university-level ideo-political education is also enshrined in policy and can be found in a variety of national-level policy documents, including the *1987 Decision* and the *2001 Action Plan* mentioned previously.¹¹⁷

The *1994 Outline* stated that universities ‘should organize students to participate in appropriate productive labor, social practice, and military training activities’,¹¹⁸ while the programmatic *2004 Opinions* expressed the following in regard to social practice:

Social practice is an important part of the ideological and political education of college students. It plays an irreplaceable role in promoting understanding of the community, understanding of the country, increasing abilities, contributing to society, exercising perseverance, cultivating character and enhancing social responsibility.¹¹⁹

The above analysis of education policy documents supports Price’s prediction and hints at the steady shift in emphasis from productive labour to social practice as an element of China’s ideo-political education practice. Despite the ongoing downgrade in status, productive labour held a place in Chinese ideo-political education and was succeeded by a renewed focus on social practice, a Chinese application of Marxist philosophy to education.

A common feature of both Soviet and Chinese ideo-political education is their cross-curricular character. The themes, values and content of ideo-political education are intended to pervade the entire curriculum rather than be constrained to their own specific subjects.¹²⁰ This principle has existed in policy documents from the CPC Central Committee for decades and also existed in practice during the Cultural Revolution.¹²¹

¹¹³ *2004 Opinions* (n 80) sub-s 15.

¹¹⁴ Paul Waite, ‘Try to Be a Hero: Community Service Learning as a Pedagogy for Moral-Political Education and Leadership Development in the Chinese University’ (PhD Thesis, University of California Los Angeles, 2009) 95.

¹¹⁵ Mao Zedong, ‘On Practice’ in *Selected Works of Mao Tse-Tung Volume I* (Pergamon Press, 1975) 295, 296–8. See also Price (n 101) 12–13.

¹¹⁶ Mao Zedong (n 115) 296.

¹¹⁷ *1987 Decision* (n 98) s 2(2); Qiang and Fairbrother (tr), ‘2001 Action Plan’ (n 70) 73.

¹¹⁸ Qiang and Fairbrother (tr), ‘1994 Outline’ (n 70) 11.

¹¹⁹ *2004 Opinions* (n 80) sub-s 15.

¹²⁰ Theodore Chen (n 56) 67; See also Lei (n 50) 210; Shuqin Xu and Wing-Wah Law, ‘School Leadership and Citizenship Education: The Experiences and Struggles of School Party Secretaries in China’ (2015) 14(1) *Educational Research for Policy and Practice* 33, 41.

¹²¹ See Theodore Chen (n 56) 67. See, eg, 中共中央 [CPC Central Committee], ‘中共中央关于改革学校思想品德和政治理论课程教学的通知’ [‘CPC Central Committee Notice Regarding Reforming the Teaching of Ideo-Character and Political Theory Courses in Schools’] in 教育部社会科学司 [Ministry of Education Social

In 1985, the CPC Central Committee published its *Notice on Reforming the Curriculum and Teaching of Courses on Ideological Character and Political Theory* ('1985 Reform Notice'), which identified the role of literature, history, language, art and current affairs in ideological education.¹²² The policy claimed that the aforementioned subjects, when combined with education in the 'theories, policy and practical knowledge of the socialist construction reform in China', would stimulate 'a spirit of dedication and self-sacrifice for the sake of the struggle for the great cause of socialism'.¹²³

The Central Committee developed this principle further in its 1987 *Resolution Regarding Improving and Strengthening the Ideological and Political Work in the Colleges and Universities* ('1987 Resolution'), calling for the 'integration of ideological and political education with the work of teaching professional knowledge' and for 'Marxism to be our guide' in social science, philosophy, literature and art.¹²⁴ The resolution further recommended that natural science subjects emphasise the achievements of that specific subject in contributing to China's socialist construction and suggested combining the explanation of scientific theories with the teaching of dialectical and historical materialism.¹²⁵ Point 16 of the *1994 Outline* required education officials below the central-level to prepare 'patriotic education plan[s]' for all subjects, not just ideological-political ones, 'including the natural sciences', with the expectation that these would be implemented 'within the context of classroom teaching for each course'.¹²⁶ This can be seen in the *2001 Action Plan* too, which required moral education to permeate every aspect of work in schools, and specifically required a strengthening of moral education content in humanities and social science electives.¹²⁷

Almost 20 years after the *1985 Notice*, the *2004 Opinions*, the programmatic policy document underpinning China's current ideological-political education in universities, developed and broadened the tradition of cross-curricular ideological-political work. The *2004 Opinions* state that philosophy and social science classes bear a very important ideological-political educative task and help students to form a 'correct' political orientation, understanding and analysis of complex social phenomena.¹²⁸ It called for the unearthing of ideological-political resources in every kind of subject, assimilating ideological-political education into every part of a student's study, and for the process of teaching professional knowledge to strengthen ideological-political education and raise the political consciousness of students.¹²⁹ More recently, this principle, and its place in policy, was reaffirmed through comments made by Xi Jinping at the National Higher Education Ideological and Political Work Conference held in December 2016.¹³⁰ In his speech, Xi stated

Science Bureau] (ed), 《普通高校思想政治理论课文献选编(1949–2008)》 [*Anthology of Ordinary Higher Education Ideo-Political Theory Class Literature*] (China Renmin University Publishers, 3rd ed, 2008) 106, 106–7 ('1985 Reform Notice').

¹²² *1985 Reform Notice* (n 121) 106–7.

¹²³ *Ibid* 107.

¹²⁴ *1987 Decision* (n 98) sub-s 3.

¹²⁵ *Ibid*.

¹²⁶ Qiang and Fairbrother (tr), '1994 Outline' (n 70) 11.

¹²⁷ Qiang and Fairbrother (tr), '2001 Action Plan' (n 70) 71–2.

¹²⁸ *2004 Opinions* (n 80) sub-s 13.

¹²⁹ *Ibid* sub-s 14.

¹³⁰ See 吴晶 [Wu Jing] and 胡浩 [Hu Hao], '习近平：把思想政治工作贯穿教育教学全过程', 《中国共产党新闻网》 [*CPC News Online*] (Web Page, 8 December 2016) <<http://cpc.people.com.cn/n1/2016/1208/c64094-28935836.html>>.

that teachers at colleges should be staunch supporters of the ruling party, that all kinds of courses and ideo-political education courses have the same goal and: ‘let ideo-political education permeate the entire process of education’.¹³¹

Ideo-political education in the Soviet Union and China extended beyond the classroom. Chen commented that:

A noteworthy feature of contemporary Chinese education is the breakdown of the isolation of the classroom and the recognition that much education goes on outside the classroom and that it is often even more effective than classroom instruction. Education beyond the classroom is especially important for ideological remodelling.¹³²

Chen’s commentary applies equally to ideo-political education at Chinese universities today, where extracurricular activities, often organised by the Communist Youth League, play an important role.¹³³

Just as the *Komsomol* engaged in the political education of Soviet youth, so too does the Communist Youth League of China (CYL) carry out ideo-political education among Chinese students. The Youth League was founded with the purpose of, among other tasks, carrying out propaganda work among young people and developing their ideological outlook.¹³⁴ The Youth League, according to its 1953 constitution, is ‘led by the Communist Party of China’ and is its ‘lieutenant and reserve force’.¹³⁵ The current constitution of the CYL states in its opening sentence that the league is the ‘helper and reserve of the Communist Party of China’,¹³⁶ maintaining the traditional Soviet form of Party–League relations.

A comparison of scholarly sources published in the 1970s with sources published in the 2010s demonstrated a consistent appraisal of the ideo-political education function of the CYL. Commenting on the pre-reform and opening period, Price described the Youth League’s job as to ‘assist the Party in moral-political education among the youth’, while Chen noted the role of the Youth League in the ideological training of youth people.¹³⁷ Thirty years later, Chinese scholars characterise the role of the CYL today in the same way, identifying ideo-political work as the ‘fundamental’ or ‘main’ task of the organisation, with the organisation playing an ‘irreplaceable’ role in the overall ideo-political education system in higher

¹³¹ Ibid.

¹³² Theodore Chen (n 56) 67.

¹³³ See 张健 [Zhang Jian], ‘高校共青团组织思想政治教育功能的理论考察’ [‘Investigation into the Function of Higher Education Young Communist League Organisation Ideo-Political Education’] (2010) 27(5) 《安徽工业大学学报 (社会科学版)》 *Journal of Anhui University of Technology (Social Science Edition)* 133, 133–5 (‘Kao Cha’); 张馨 [Zhang Qin], ‘高效共青团校外思想政治教育大课堂初探’ [‘Initial Investigation into Higher Education Communist Youth League Extra-Curricula Ideo-Political Education Big Classroom’] [2016] (May) 《课程教育研究》 *Course Education Research* 59, 59; 张果 [Zhang Guo] and 崔健 [Cui Jian], ‘改革开放以来高校共青团思想政治教育工作回顾与展望’ [Review and Prospects of Communist Youth League Ideo-political Education in Higher Education since Opening and Reform] [2010] (April) 《中国青年研究》 *China Youth Research* 84, 84.

¹³⁴ Cheung, ‘Thesis’ (n 50) 6–7. Price (n 101) 248.

¹³⁵ Price (n 101) 247.

¹³⁶ ‘总则’ [Preamble], *Young Communist League* (Web Page, 2 July 2018)

<https://www.gqt.org.cn/ccylmaterial/regulation/200612/t20061224_12147.htm>.

¹³⁷ Theodore Chen (n 56) 70–3; Price (n 101) 248.

education.¹³⁸ The preamble of the 2018 constitution of the CYL dedicates a paragraph to outlining the ideo-political education role of the CYL with a long list of the types of education to conduct, including education in patriotism, collectivism and socialism.¹³⁹

The CYL primarily conducts ideo-political work through extracurricular activities, both on and off campus.¹⁴⁰ The CYL, in cooperation with schools, offers a wide range of practical and academic activities. On-campus activities may include essay or speech competitions, guest lectures on novel topics and campus cultural events, while off-campus activities involve activities under the umbrella concept of ‘social practice’, including excursions to farms and factories.¹⁴¹ The *2004 Opinions* specifically calls for students to leave the campus and ‘go amongst the worker and peasant masses’ to take part in volunteering, productive labour, technical and other activities for the public good.¹⁴² Possible off-campus activities include visits to factories, farms, museums or other ‘base areas’ of ideo-political education, where peasants, soldiers and technicians can provide ideological lessons.¹⁴³

Through the historical perspective presented here, we can see that while Chinese policymakers continue to emphasise their own brand of socialism based on specific national conditions, Chinese ideo-political education theory is still deeply influenced by basic Marxist–Leninist education concepts, particularly their early Soviet derivatives. Notwithstanding decades of unique Chinese formulations, slogans and innovations in the sphere of ideo-political education, Chinese and Soviet ideo-political education theories hold in common the same professed aim of raising people suitable for the construction of a socialist society, many of the fundamental characteristics these people should embody and many of the methods for educating these successors.

Section IV critically approaches the goals of Chinese ideo-political education by engaging with the literature surrounding the unstated goals of this form of education. The section divides the literature into two categories. The first views the goals of ideo-political education in terms of regime survival, while the second views the process as one that benefits society and individuals.

IV. Critical Analysis of the Goals of Chinese Ideo-Political Education

The common theme shared by scholars from both the West and China is that ideo-political education in China is based, to a greater or lesser extent, on the goals of the CPC. Where accounts begin to differ is in their description of the purpose and motives of this education. These descriptions may be roughly divided between scholars who largely ascribe selfish motives of domination, regime survival and similar negative concepts to the CPC and scholars

¹³⁸ 毕晓敏 [Bi Xiaomin], ‘浅谈高效共青团的思想政治教育工作’ [‘Initial Discussion of University Communist Youth League Ideo-Political Education Work’] [2012] 《思想政治教育研究》 *Ideo-Political Education Research* 291, 291; 张果[Zhang Guo] and 崔健[Cui Jian] (n 133) 84.

¹³⁹ ‘总则’[Preamble] (n 136).

¹⁴⁰ See 孙体楠 [Sun Tinan], ‘共青团组织在大学生思想政治教育中作用状况的调查与思考’ [‘Investigation and Reflection on the Function of the Communist Youth League Organisation in the Ideo-political Education of College Students’] (2009) (9) 《思想教育研究》 *Studies in Ideological Education* 59, 59–60; 张馨 [Zhang Qin] (n 133) 59.

¹⁴¹ Lei (n 50) 204–5; 孙体楠 [Sun Tinan] (n 140) 59–60; 张馨 [Zhang Qin] (n 133) 59.

¹⁴² *2004 Opinions* (n 80) sub-s 15.

¹⁴³ 张馨 [Zhang Qin] (n 133) 59.

who instead highlight the motives of the CPC in positive terms of improving people and laying the foundations for bettering society, a view that coincides with the Marxist–Leninist foundations discussed earlier.

The first group of scholars view the purpose and aims of ideo-political education in China as political indoctrination. Murray demonstrated this inclination when he attempted to distance traditional Confucian moral education from modern ideo-political education, which he associated with ‘bolstering an autocracy and political indoctrination’.¹⁴⁴ Lai and Lo claimed that ideo-political courses at the university level ‘aim to safeguard university students’ political loyalty to the Communist Party’.¹⁴⁵ Wing asserted that the collection of subjects generally referred to as moral education in China, which includes patriotic, ideo-political and citizenship lessons, serve the purpose of ‘transmitting’ state ideology and doctrine.¹⁴⁶

Not only does this group of scholars frame modern Chinese moral education as a tool of political indoctrination, it also denies potential benefits to individuals or society resulting from this education. Li Maosen wrote, ‘Education itself is at the service of the government instead of the development of the individual and society’.¹⁴⁷ Qi and Tang suggested that the aim of a hierarchical and authoritarian society was to ‘cultivate a mechanically obedient and authority-oriented person’, so moral education was used to serve this purpose.¹⁴⁸ They further claimed that without respect for personal interests, it is impossible for people to innovate and play a creative role in economic activity.¹⁴⁹ However, Qi and Tang’s claim differs slightly from others in this category because they believe that the aforementioned points only relate to Chinese ideo-political education before the opening and reform process began, and since that time, it has changed to represent a different set of values.¹⁵⁰

The second category of scholars views the stated goals of the CPC for ideo-political education in modern China in a more positive manner. Instead of the selfish goals of survival, domination and legitimation implied by the first group, the second group of scholars focus on the claimed altruistic results of the CPC’s aims.¹⁵¹ The aim of raising the successors of socialist construction requires that university students have certain values and skills, which are not only useful for this explicit purpose but also for individuals in their daily lives and to the wider society.

Among the benefits to individuals, scholars have identified a range of values and skills that students could apply to their daily lives. Ma argued that one of the requirements of ideological

¹⁴⁴ Judson Murray, ‘Educating Human Nature: “Nature” and “Nurture” in Early Confucian Moral Education’ (2012) 41(4) *Journal of Moral Education* 509, 510. It should be noted that Murray uses the term ‘moral education’ rather than the official term ‘ideo-political education’.

¹⁴⁵ Manhong Lai and Leslie Lo, ‘Struggling to Balance Various Stakeholders’ Perceptions: The Work Life of Ideo-Political Education Teachers in China’ (2011) 62(3) *Higher Education* 333, 333.

¹⁴⁶ Wing-Wah Law, ‘Citizenship, Citizenship Education and the State in China in a Global Age’ (2006) 36(4) *Cambridge Journal of Education* 597, 606–7.

¹⁴⁷ Li Maosen (n 52) 170.

¹⁴⁸ Qi Wanxue and Tang Hanwei, ‘The Social and Cultural Background of Contemporary Moral Education in China’ (2004) 33(4) *Journal of Moral Education* 465, 466.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid* 476–8.

¹⁵¹ See Ping Xiao and Huasheng Tong, ‘Aims and Methods of Civic Education in Today’s Universities of China’ (2010) 6(4) *Asian Social Science* 44, 44; Qi Wanxue and Tang Hanwei (n 148) 471; Wen Nuan and Guo Xin, ‘How to Strengthen the Patriotism Education of College Students During the New Period’ (2012) 8(5) *Cross-Cultural Communication* 123, 124.

and political work at universities is to aid the development of world-class scientists capable of, as mentioned earlier, independent innovation.¹⁵² To become world-class scientists, students would need to learn a range of skills that are inherently valuable to individuals beyond their workplace application, including the ability to think critically and independently. This assessment is supported by Xiao and Tong, who wrote that moral education helped students to learn how to think independently and develop self-control, while Qi and Tang found that students learned how to analyse and think.¹⁵³ In a similar vein, Zhou et al quoted Hu Jintao as saying that moral education played a part in the comprehensive development of university students.¹⁵⁴ Critical thinking, independent decision-making and self-control are all personal qualities that are not only useful to individuals but also valuable to society as a whole.¹⁵⁵ Unfortunately, these sources do not clarify how presenting a single, hegemonic, overtly political worldview aids students in developing critical thinking skills.

Beyond certain improved personal qualities, there are also perceived social benefits. Misco, for instance, writes that the educational emphasis on personal moral qualities shares a close relationship with the well-being of society as a whole.¹⁵⁶ According to Guo and Wen, students expressed their patriotism, which is a value supported by Chinese ideo-political education, through volunteering.¹⁵⁷ Students eagerly volunteered to support national events, such as the Beijing Olympic Games, and also responded quickly to national emergencies, such as the Wenchuan earthquake, by organising activities to donate blood and money.¹⁵⁸ Li wrote that patriotic sentiments among young people can be turned into practical action that serves communities, while Ma suggested that economic and social development relies on the cultivation of ‘qualified constructors and reliable successors’.¹⁵⁹ These social benefits, indirectly drawn from ideo-political education, could be considered unstated aims of the CPC and a result of its moral education policy.

With this context for understanding what ideo-political education is, its origins and its purpose, one can better understand the nature of ideo-political education as a kindergarten to postgraduate process of inculcating students with the Party-state’s worldview that takes place both in the classroom and beyond. This is founded upon the influence of the earlier Soviet *vospitanie*, which shares some similar tasks, values and methods. The analysis in this section serves to confirm the purpose of ideo-political education through examination of the scholarly literature.

The following section focuses on broadly describing the kinds of legal content found in classroom ideo-political education at the undergraduate level in China. Analysing the content of the official textbooks used nationwide for ideo-political subject classes shows what

¹⁵² Zhanjun Ma, ‘Explore the Ideological and Political Work of University Teachers and Students in the New Era’ (2010) 6(5) *Asian Social Science* 118, 119.

¹⁵³ Ping Xiao and Huasheng Tong (n 151) 44; Qi Wanxue and Tang Hanwei (n 148) 471.

¹⁵⁴ Yongzheng Zhou et al, ‘Study on Three-Dimensional Moral Education in Universities and Its Practical Approaches’ (2011) 7(9) *Asian Social Science* 189, 189.

¹⁵⁵ Qi and Tang (n 148) 471.

¹⁵⁶ Thomas Misco, ‘Deontological Reconceptualization: A Study of Moral Education in Beijing’ (2011) 39(4) *Theory and Research in Social Education* 464, 470.

¹⁵⁷ Wen Nuan and Guo Xin (n 151) 124.

¹⁵⁸ *Ibid.*

¹⁵⁹ Li Changsong, ‘Experience and Revelation of China’s Youth Patriotism Education Since Reform and Opening Up’ (2013) 9(6) *Cross-Cultural Communication* 22, 23; Zhanjun Ma (n 152) 119.

students are taught about law. What emerges from these texts is a better understanding of the Party-state's attempt to describe and justify its legal paradigm and impress upon students how they should interact with law.

V. Legal Content of Ideo-Political Theory Classes

As a tool for shaping the worldview of young people, ideo-political education plays a role in advocating for the *Yifa Zhiguo* paradigm described in Part I of this thesis. It promotes and justifies this official interpretation of rule of law, the place of law in society and the approved relationship between citizens, the state and the law. This section focuses on broadly describing the kinds of legal content present in ideo-political education at the undergraduate level by synthesising the contents of ideo-political theory subject textbooks and analysing the emerging themes. Uncovering whether this Party-state project is successful in causing students to believe what they have been taught about rule of law is not one of the objectives of this analysis. Instead of attempting to exhaustively describe the content of the textbooks, this section instead provides examples to show how certain themes emerge from the content.

Subject textbooks show the legal content of ideo-political education because, at the undergraduate level, they are nationally standardised.¹⁶⁰ Chapter Six considers in greater detail the standardisation of textbooks; here, it remains sufficient to note that a national body was responsible for their creation, and then national regulations set these textbooks as the only acceptable texts for classroom use.¹⁶¹ Every undergraduate student in the PRC, regardless of their major, must take compulsory ideo-political classes and study these Party-state-approved textbooks. A Party-state body produced these books specifically for use in classes aimed at spreading and justifying official narratives, so analysing the content of these books provides insight into, and reflects, what the Party-state wants students to be taught about its official position on law in general, and rule of law in particular.

The analysis in this section focuses on one of the four textbooks used for compulsory ideo-political education classes at the undergraduate level. This is because three out of the four textbooks mention *Yifa Zhiguo*, but only one, *Cultivation of Ideo-Morality and Fundamental Concepts of Law*, dedicates significant attention to questions of law.¹⁶² The textbook for 'Contemporary Chinese History' mentions *Yifa Zhiguo* in passing, with a page spent outlining the concept in the context of the 'Four Comprehensives', a guiding slogan that represents political goals of the Xi administration.¹⁶³ Legal reform and *Yifa Zhiguo* receive greater attention in the 'Concepts of Mao Zedong Thought and the Theoretical System of Socialism with Chinese Characteristics' textbook, where it is taken as part of understanding the politics

¹⁶⁰ 王小兵 [Wang Xiaobing] (n 2) 27–8.

¹⁶¹ See *ibid.*

¹⁶² 高英 [Gao Ying] and 侯良建 [Hou Liangjian] (eds), 《毛泽东思想和中国特色社会主义理论体系概论》 [Introduction to Mao Zedong Thought and the Theoretical System of Socialism with Chinese Characteristics] (Higher Education Press, 5th ed, 2015) 183–9; 杨晓娟 [Wang Xiaojuan] and 曹培庚 [Cao Peigeng] (eds), 《中国近现代史纲要》 [Outline of Contemporary and Modern Chinese History] (Higher Education Press, 6th ed, 2015) 321–2; 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan], 《思想道德修养与法律基础》 [Cultivation of Ideo-Morality and Fundamental of Law] (Higher Education Press, 8th ed, 2018) 137–95.

¹⁶³ 杨晓娟 [Wang Xiaojuan] and 曹培庚 [Cao Peigeng] (n 162) 321–2. The Four Comprehensives [四个全面] include the need to comprehensively build a moderately prosperous society, deepen reform, *Yifa Zhiguo* and, strictly govern the Party. See 杨晓娟 [Wang Xiaojuan] and 曹培庚 [Cao Peigeng] (n 162) 319.

of socialist construction in China.¹⁶⁴ Despite mentioning legal reform and *Yifa Zhiguo*, neither of the aforementioned textbooks focuses on either topic. For a significant treatment of legal questions such as rule of law, one must turn to *Cultivation of Ideo-Morality and Fundamental Concepts of Law*, known as ‘Sixiu’ for short.¹⁶⁵ Given the title of the book, it is unsurprising that the largest chapter of the text, and over a third of the content taken as a whole, covers law in general and *Yifa Zhiguo* specifically.¹⁶⁶

Over the course of a chapter titled ‘Respect, Study, Abide By and Apply the Law’,¹⁶⁷ the *Sixiu* textbook attempts the ambitious task of presenting in broad strokes an officially sanctioned narrative on what law is, its concepts and implementation in China and the relationship between citizens and law. It does not attempt to present a selection of theories and debate their merits; rather, as part of a course designed to cultivate a specific world outlook among students, it exclusively presents the Party-state’s worldview. Analysing each section of the chapter on law in the *Sixiu* textbook shows the Party-state’s position emerging, whether it be on the character of law, how law develops, the role of the Party in a rule of law system or the role of citizens within China’s legal system. For the purpose of this analysis, the legal content is synthesised into three categories or themes: descriptions based on the Party-state’s worldview, justifications of the legal status quo and exposition on the responsibilities of students and how they should act as citizens.

The first theme is description. The *Sixiu* textbook describes an official perspective on law, beginning with what law is, discussing its character, and then describing the historical development of law.¹⁶⁸ It states that law is part of the superstructure of society, that material factors such as the productive forces and the relations of production exert a ‘decisive influence’ on it and that law is a reflection of the will of the ruling class.¹⁶⁹ Accordingly, law is defined as ‘a system of norms which is made or approved by the state and implemented by the state’s coercive force, reflecting the will of the ruling class determined by the specific social material living conditions’.¹⁷⁰

If this definition sounds familiar, that is because it is a quintessentially Marxist–Leninist definition that would not look out of place in a Soviet law textbook.¹⁷¹ In fact, Soviet authors Chuikin, Yudin and Zhidkov mentioned these common features when describing the character of law in their 1979 text *Fundamentals of the Socialist Theory of the State and Law*.¹⁷² The similarity between Soviet and Chinese definitions is striking and further shows that, regardless of the content of modern Chinese political practice, ideo-political education still

¹⁶⁴ 高英 [Gao Ying] and 侯良建 [Hou Liangjian] (n 162) 183–9.

¹⁶⁵ 思修 [*Sixiu*] comes from combining the first character of 思想道德 [Ideo-Moral] with the first character of 修养 [Cultivation] in the title of the book 思想道德修养与法律基础 [*Cultivation of Ideo-Morality and Fundamental Concepts of Law*].

¹⁶⁶ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 137–96.

¹⁶⁷ *Ibid* 137.

¹⁶⁸ *Ibid* 138–40.

¹⁶⁹ *Ibid* 138.

¹⁷⁰ *Ibid* 139.

¹⁷¹ That is not to say that there are not competing Marxist theories of law. See, eg, Evgenii Pashukanis, *Law and Marxism: A General Theory* (Pluto Press, 1989); Lon Fuller, ‘Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory’ (1949) 47 *Michigan Law Review* 1157, 1162–4.

¹⁷² Veniamin Chuirkin, Yuri Yudin and Oleg Zhidkov, *Fundamentals of the Socialist Theory of the State and Law*, tr Jane Sayer (Progress Publishers, 1979) 239.

retains much of its Marxist and Soviet roots. It is again worth noting that no competing concepts of law were presented, which supports the argument that the purpose here is to describe the Party-state's official narrative.

This trend continues when the *Sixiu* textbook describes the historical development of law from slave-owning to feudal and then capitalist societies (i.e., based on different relations of production).¹⁷³ This is a historical materialist approach: a Marxist theory for understanding historical development, which can also be found in the aforementioned Soviet law textbook.¹⁷⁴ The textbook introduces the new kind of law that exists under socialism. Socialist law is taken to be distinct as it is based on new non-exploitative relations of production and protecting the labouring people's access to that means.¹⁷⁵ It portrays law under socialism as the expression of the will of the masses as the 'masters of society' and a guarantee of the 'People's Democratic Dictatorship',¹⁷⁶ with socialist law described as surpassing all previous forms of law.¹⁷⁷ No critiques of these assertions are offered, nor are any alternative positions provided. The official textbook transmits the official narrative uncritically.

One finds another example of the faithful description of the Party-state's position in the 'Essential Characteristics of China's Socialist Law' subsection.¹⁷⁸ According to the textbook, China's socialist law reflects three essential characteristics: 'the unity of the people's will and the Party's stand'; 'a scientific and progressive character'; and 'an important guarantee for the construction of Socialism with Chinese Characteristics'.¹⁷⁹ The CPC is described as the vanguard of the proletariat and the Chinese people,¹⁸⁰ which leads the people, who are masters of society, to make and enforce laws.¹⁸¹ The text claims law in China is guided by the 'Marxist world outlook and method', is based on the 'objective laws of social development' and 'represents the interests of the overwhelming majority of people' – rather than the tiny minority it does in exploiter societies.¹⁸²

Once again, the Soviet authors cited above would have found little to fault in these descriptions. Despite attempts to claim a special character for Chinese socialist law, the features listed in this section largely fit within orthodox Soviet standards and the book's own definition of law in the socialist stage. The one clear example to the contrary was the passing mention of law facilitating the 'healthy development' of China's socialist market economy, which given the centrally planned economy of the Soviet Union and the traditional Marxist emphasis on eliminating, not encouraging, capitalist relations of production, would have been

¹⁷³ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 139–40.

¹⁷⁴ See Chuirkin et al (n 172) 281–97.

¹⁷⁵ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 140.

¹⁷⁶ *Ibid* 140.

¹⁷⁷ *Ibid*.

¹⁷⁸ *Ibid*. Throughout the text, the term '我国' [woguo], literally meaning 'my/our country', is regularly used. To avoid confusion, 我国 will be translated as 'China'.

¹⁷⁹ *Ibid* 140–1.

¹⁸⁰ '民族' [Minzu] can be translated as 'nationality' or 'ethnicity' but when written as 中华民族 [Zhonghua Minzu] it can be translated as 'the Chinese people', but it carries an ethnic emphasis rather than the more ethnically agnostic and political term '人民' [Renmin], which is also translated as 'the people'.

¹⁸¹ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 141.

¹⁸² *Ibid*.

considered controversial, to say the least.¹⁸³ Here, we can see Marxist–Leninist maxims stretched to support current Chinese policy priorities.

The textbook’s description of how the legal system functions also demonstrates the emphasis on official narratives rather than critical analysis or empowering of citizens to interact with the legal system. It focuses on recounting the historical development of China’s constitution from the 1949 Common Programme up to the current 1982 constitution and its many amendments,¹⁸⁴ yet curiously ignores the short-lived 1975 and 1978 constitutions that more closely embodied the spirit of the Cultural Revolution. This absence may imply a desire to portray a teleological grand narrative of uninterrupted, socialist legal development rather than the messy reality of competing popular versus formal law concepts that were described in Chapter Two of this thesis. If true, it certainly fits the theme of ideo-political education presenting grand Party narratives.

Even the description of the constitution offered in the textbook fits the pattern of bold statements of Party-state orthodoxy. The *Sixiu* text describes the constitution as the ‘foundation law of the country’; the ‘guarantee of national stability’; the ‘common will of the Communist Party and the people’; the ‘foundation of the nation’s systems, laws and regulations’; and the ‘basic determiner of the nation’s basic system’.¹⁸⁵ Its basic principles include ‘Party leadership’, the ‘political power of the people’, ‘respect and protection of human rights’, ‘socialist rule of law’ and ‘democratic centralism’.¹⁸⁶ This description is chased with more boilerplate statements about the socialist political and economic systems, of course with ‘Chinese characteristics’, and a scant, somewhat disjointed description of political and judicial bodies in the Chinese system.¹⁸⁷

As mentioned previously, this is not an exhaustive description of the content of the textbook. These are selections that show a trend. The text presents students with a single Party-state grand narrative about what law means, its historical development and its features in China, including mentions of China’s own unique ‘rule of law’. The examples above show an emphasis on asserting principles with no concurrent critical analysis or alternative paradigms. This supports the argument that ideo-political education is a process of transmitting sanctioned Party-state positions to students. In this particular case, ideo-political education is used to promote the Party-state’s views on law, including its interpretation of rule of law.

The second theme emerging from the textbook is justification of the legal status quo. Description and justification overlap in this context, so some of the previous examples that showed faithful descriptions of Party-state orthodoxy also provide justifications for this arrangement. Some examples already covered above include the historical materialist description of the development of law, which establishes a teleology where ‘socialist’ law is naturally superior to all proceeding forms, and how the position of the Communist Party

¹⁸³ For an examination of the broadly negative Soviet appraisal of Deng-era reforms in China, see Marshall Goldman, ‘Soviet Perceptions of Chinese Economic Reforms and the Implications for Reform in the Soviet Union’ (1986) 39(2) *Journal of International Affairs* 41, 41–55.

¹⁸⁴ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 144–6.

¹⁸⁵ *Ibid* 147–9.

¹⁸⁶ *Ibid* 149–51.

¹⁸⁷ *Ibid* 151–3.

above the law is also justified since it ‘leads’ the masses and claims to serve the interests of the overwhelming majority of people.

The second half of the law chapter in the *Sixiu* textbook focuses on ‘China’s socialist rule of law’, rule of law consciousness and legal rights and responsibilities—topics that lend themselves to justifying the legal status quo. It begins by tautologically stating that the objective of *Yifa Zhiguo* is to build the ‘socialist rule of law system with Chinese characteristics’¹⁸⁸ and a socialist rule of law country.¹⁸⁹ To this end, the socialist rule of law system is viewed as an ‘important guarantee and requirement of Chinese socialism’ and an ‘important device for advancing the national governance system and governance ability’ and is ‘the key to comprehensively ruling the country in accordance with the law’.¹⁹⁰

In other words, the text attempts to justify China’s particular ‘rule of law’ by emphasising its value for public administration. This particular justification fits well with the description of *Yifa Zhiguo* in Chapters Two through Four as a tool for achieving Party-state interests. Once again, the leadership of the Party is presented as essential, and the ‘most fundamental guarantee of socialist rule of law’ and the position of the masses as masters of society is the ‘fundamental principle of *Yifa Zhiguo*’.¹⁹¹ Under the heading ‘Cultivate a rule of law consciousness’, the textbook makes the case that respect for the law and maintaining the authority of law is important not only for state goals and governance capacity but also for protecting individual rights and popular interests.¹⁹² The textbook also attempts to justify the negation of rights by linking the granting of rights to the performance of duties.¹⁹³ This will be explored in more detail when discussing the third theme: expectations of students and how they should engage with law.

The third theme this analysis of the textbook discovered is how students should engage with law. The message emerging from the textbook is that students, as citizens, should be aware of what the law is and obey it. The subtle point running throughout the text is that law is something for citizens to obey, not utilise to pursue their interests or protect their rights. This position sits comfortably within the ‘rule of law’ Chinese authorities promote, as described in Chapters Two through Four of this thesis.

This theme is apparent in Section V of the chapter, which focuses on rule of law consciousness. According to the text, rule of law consciousness comprises four elements: the ‘supremacy of law’ over citizens, social organisations and other normative systems; supervision and lawful exercise of state power by functionaries; ‘equality before the law’; and the protection of lawful rights.¹⁹⁴ To this end, the question of encouraging citizens to believe in the law and obey the law is a major focus. The textbook claims that students are expected to learn both legal principles and knowledge of specific laws to ‘know what you can and cannot do’ to cultivate their knowledge of these elements through consuming different forms

¹⁸⁸ ‘With Chinese characteristics’ will be omitted from future references in the interests of brevity.

¹⁸⁹ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowen] (n 162) 160–1.

¹⁹⁰ Ibid 161.

¹⁹¹ Ibid 167–8.

¹⁹² Ibid 178–9.

¹⁹³ Ibid 185, 191–4.

¹⁹⁴ Ibid 174–7.

of law-related media and then apply lawful methods to resolve any problems they may face, instead of traditional methods such as relying on relationships.¹⁹⁵

This last line might seem to contradict the point made earlier about law as something to be obeyed rather than utilised, but what is striking is that the text does not tell students how to use law to resolve problems. Despite claiming that students should learn legal principles and knowledge of specific laws, the textbook fails to contribute to this aim. There is no description of specific laws that students can use to protect their interests or how to bring lawsuits against those who infringe on their legal rights. Instead, there is line after line exhorting students to obey the law, respect the law and do their duty to the state. Surely, if the drafters of the text were at all interested in promoting student use of law to resolve problems, they would offer some practical advice.

The extended focus of later portions of the textbook on believing in, obeying and using the law can be viewed, as Peerenboom put it when describing the 4th Plenum reforms, as the ‘software’ of Chinese legal reform (i.e., about nurturing certain beliefs about law that are necessary for a rule of law system to exist).¹⁹⁶ Even though the CPC is clearly not pursuing a liberal rule of law, the focus on promoting a ‘rule of law’ consciousness may prove helpful in addressing the principal–agent problem.

Another way the text attempts to shape student engagement with law is through its treatment of rights. As mentioned on page 13, some scholars may object to discussions of rights in the Chinese context as foreign concepts, however, this chapter has shown the influence of foreign ideas in China, such as Soviet *vospitanie*, and discussions of rights are part of engaging with Chinese claims of rule of law. The textbook teaches students that they have certain legal rights and responsibilities that must be exercised according to law.¹⁹⁷ It further asserts that Chinese citizens equally enjoy rights and responsibilities and that no one enjoys extra-judicial privilege,¹⁹⁸ despite the analysis in Part I of this thesis casting doubt on that claim. The text attempts to make a point about the historical and non-universal character of rights and duties by quoting Marx as saying, ‘Rights can never be higher than the economic structure of society and its cultural development conditioned thereby’.¹⁹⁹ This choice of quote is ironic, considering Marx was actually addressing the inequality of rights, even under socialism,²⁰⁰ somewhat negating the textbook’s preceding paragraph. The textbook describes rights and responsibilities as ‘two faces of the same coin’ and claims that ‘in a rule of law country, there is no one who enjoys rights without responsibilities’.²⁰¹

In discussing rights, the book emphasises that rights should be exercised according to the law and divides them into five categories: political, personal, property, socio-economic, and

¹⁹⁵ Ibid 181.

¹⁹⁶ Randall Peerenboom, ‘Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!: What Does the 4th Plenum Decision Mean for Legal Reforms in China?’ (2015) 7(1) *Hague Journal on the Rule of Law* 49, 49.

¹⁹⁷ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 183.

¹⁹⁸ Ibid.

¹⁹⁹ Karl Marx, ‘Critique of the Gotha Programme’, *Marxists.org* (Web Page, 1999)

<<https://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>>.

²⁰⁰ Ibid.

²⁰¹ 姚郁卉 [Yao Yuhui] and 张博婉 [Zhang Bowan] (n 162) 185.

religious and cultural.²⁰² However, it also states that the exercise of rights cannot infringe upon the rights of others or the interests of the state.²⁰³ Further, individuals have legal duties they must perform under pain of legal sanction, including, ‘maintaining the unity of the country and its ethnicities’, ‘observing the constitution and the law’, ‘maintaining the motherland’s safety, honour and interests’, ‘performing military service’ and ‘paying taxes’.²⁰⁴

This section of the textbook provides examples of describing, justifying and instructing students on how to engage with law. The description of rights as determined by social, economic and historical factors can be seen as presenting to students a rationale for why Western ‘universal human rights’ are not applicable in China. The strong emphasis on defining and limiting the exercise of rights is also interesting. In its description of the character of rights, the textbook mentions that legal rights must be exercised legally. This may seem like a pointless tautology, but the significance here is twofold. First, citizens should not work beyond officially approved channels to protect their lawful rights (i.e., they should not protest or collectively organise to seek justice); second, rights may be lawfully restricted where the state feels this is warranted. As if to ensure there is no confusion about the character of rights in China, the textbook states that rights should not harm state interests.²⁰⁵ The implication is stark: citizens do not, in fact, enjoy rights; they enjoy privileges that the state may rescind at its convenience, mirroring how the Party-state uses law when it is convenient but discards it when party interests are better served via extra-legal means.

The legal content of ideo-political education at the undergraduate level focuses on presenting and justifying the Party-state’s official narratives on law and ensuring students know what is expected of them. This presentation includes official interpretations of rule of law in the Chinese context that complement the description provided in Part I of this thesis. The course emphasises official principles and concepts that justify the legal status quo rather than procedures and structures. It lacks meaningful descriptions of the interactions between different state bodies or the procedures by which they lawfully function. There is no discussion of how a proposal becomes law in the NPC system or how to sue when one’s lawful rights have been infringed. Despite the exhortations to think in legal ways and use law to solve problems, the textbook contributes little to helping students achieve this. Instead, it presents the principles and ideals of China’s legal order in a largely formulaic way. This gives the impression that the course was not designed to equip young people with knowledge of the procedural workings of the legal system, which may encourage their participation or their criticism of its function, but rather the point is to impart a worldview to justify the current legal status quo. Ultimately, this is to be expected since, as this chapter has shown, ideo-political education is a tool for cultivating the official worldview in the minds of young people.

The analysis above shows that ideo-political education should be viewed as a topic of study for legal scholars because it plays a role in propagating and justifying the Chinese Party-state’s approach to law, including ‘rule of law’ through the *Yifa Zhiguo* paradigm. Three out

²⁰² Ibid 184, 187–9.

²⁰³ Ibid 190.

²⁰⁴ Ibid 191–4.

²⁰⁵ Ibid 190.

of the four textbooks undergraduate students study in compulsory ideo-political subjects cover legal topics, and one of these books focuses on legal questions. The examples provided above show that ideo-political subjects describe and justify the hegemonic position on law and tell students how the Party-state wishes them to engage with law. Law scholars interested in how the Party-state attempts to teach and justify *Yifa Zhiguo* to young people should pay attention to ideo-political education.

VI. Conclusion

This chapter advances the argument that ideo-political education should be regarded as a subject of inquiry for legal scholars because it is part of the Party-state's efforts to promote and justify its official legal paradigm. For that reason, it tells us something important about Chinese law and the way in which the rule of law is understood. The chapter began by describing ideo-political education as a 'system for disseminating official Party-state narratives to students in China'. It is a system akin to moral or civic education in other countries but is also steeped in a Marxist–Leninist legacy that combines moral and political messaging. The chapter's discussion of how Chinese ideo-political education emerged from Soviet *vospitanie* helped contextualise and explain its modern function. Next, engaging with scholarly discussions supported the argument that ideo-political education is part of Party-state attempts to shape student beliefs and thinking. Finally, this chapter analysed the official, state-sanctioned textbooks for ideo-political subject classes to uncover their legal content.

The analysis in Section V categorised the content of the textbooks into three categories: description, justification and direction on how students should engage with law. The *Sixiu* textbook described and justified the Party-state's orthodoxy regarding law in detail. The content consisted of uncritical explanations of the Party-state's position on the concepts and principles of Chinese law, especially official accounts of rule of law in the Chinese context, rather than presentations of competing theories of law. The textbook is a set of justifications for why the Chinese system is, and must, be the way it is. It is also a set of guidelines on how citizens should interact with the law, priming them to be obedient, law-abiding subjects rather than trouble-making litigators using the law to protect their interests. This attitude reflects the official reduction of 'rule of law' to a tool at the Party-state's disposal, as advanced in Part I of this thesis.

Ideo-political education should be treated by legal scholars as a subject of legal study. Examining the content of ideo-political education at the undergraduate level shows what the Party-state attempts to teach young Chinese citizens about the law. It shows what the Party-state wants people to believe about law in China and how it wishes its citizens to engage with the legal status quo. The following chapter will further engage with ideo-political education as a subject of legal inquiry by examining the role that normative documents play in guiding ideo-political education at the undergraduate level, hence providing insight into the regulatory framework surrounding Party-state attempts to teach official interpretations of rule of law.

Chapter Six: The Role of Normative Documents in Guiding Ideo-Political Education

The previous chapter introduced ideo-political education and its role in promoting and justifying the Party-state's interpretation of rule of law. The chapter argued that, since ideo-political education performs this role, it should be treated as a subject of interest to legal scholars. Engaging with ideo-political education in this way reveals not only what students are taught about official rule of law narratives such as *Yifa Zhiguo*, but it also allows scholars to explore how this process operates.

Where Chapter Five discussed the 'what' of ideo-political education's messaging on law, this chapter explores the 'how' of its operation. More specifically, this chapter investigates a category of quasi-legal documents that guide the implementation of ideo-political education called 'normative documents'. The analysis in this chapter will focus on how normative documents guide teaching methods in ideo-political subject classes at the undergraduate level, providing insight into how the Party-state organises the promotion of its official position on rule of law to undergraduates. In doing so, Chapter Six treats ideo-political education as a subject of legal inquiry and uncovers further details of official efforts to inculcate the youth with the approved version of rule of law discussed in Part I of this thesis.

The chapter begins by introducing the category of Chinese Government regulations called 'normative documents'. At the highest level, the Party-state exercises leadership over ideo-political education through these instruments. These are broad, programmatic documents that provide the foundation for ideo-political education despite having vague legal authority. Next, the investigation focuses on the core normative documents that guided ideo-political education since 2004. These emphasised standardisation of undergraduate ideo-political education, supported the development of centrally approved textbooks for national use and demanded teachers apply innovative teaching methods. The following section then shifts to the normative documents of the Xi era and their renewed focus on ensuring the political purity and loyalty of subject teachers, potentially at the expense of teaching efficacy. However, attempting to link this to changes in the relationship between the party and the state in the Xi-era is beyond the scope of this thesis.

This chapter examines the basic normative documents that guide the conduct of ideo-political education at the university level in China at the time of writing. Although there are numerous tangentially related normative documents, the focus remains on those that represent the most significant reforms and are most directly relevant to ideo-political theory classes at universities. It omits normative documents that only discuss extracurricular ideological activities, such as student 'social practice', and documents that are only tangentially related to theory classes or that largely repeated previous official slogans without contributing relevant changes.

In summary, this chapter focuses on two main elements: the nature of 'normative documents' as the quasi-laws governing ideo-political education and an analysis of specific normative documents guiding undergraduate ideo-political theory classes since the major reforms of 2004–2005. This analysis reveals two main points: it uncovers the key normative documents

relating to teaching methodology and their requirements in this regard. This is necessary for Chapter Seven, where teacher interpretation and implementation of the teaching methods in these documents will be investigated through a case study. It also demonstrates the novel focus on teaching methods present in two normative documents as well as a key speech by Xi Jinping in 2019. The other main insight emerging from the analysis is the apparent focus in the most recent ideo-political education documents on guaranteeing the political loyalty of subject teachers and a lack of interest in developing innovative teaching methods. For legal scholars, the significance of this second point is it implies central authorities are deeply concerned with ensuring subject teachers accurately and reliably communicate the Party-state's interpretation of rule of law.

I. Normative Documents and Ideo-Political Education Post-2005

Discussing the conduct of ideo-political education in China requires an understanding of 'normative documents' since these are the class of official documents that guide the implementation of this aspect of Party-state efforts to popularise *Yifa Zhiguo*. Just as Australia has legislation and regulations, China, too, has a defined system of laws with varying levels of authority and applicability. The constitution is the fundamental law and is, at least in theory, above all other laws and actors. Laws represent the next rung on the legal ladder and may only be created by the SCPNC.¹ Beneath laws are various forms of regulations that government bodies at different levels may pass.² Below these are 'normative documents'. The legality of normative documents is uncertain as even though some government bodies do have the legal right to issue them, their relationship to other legal documents is unclear.³ Despite their similarity to policy documents, normative documents can have binding legal effects, making them something more than just policies. High-level ideo-political education policy is expressed and realised in China through normative documents. At the highest level, the State Council and the Central Committee of the CPC jointly issue 'opinions', which, according to the State Council's *Measures for Processing Public Documents of State Administrative Organs*, are 'intended to provide insights and solutions to important issues'.⁴ An opinion is, in effect, a programmatic policy document that guides lower levels of the Party and government in their activity. Relevant agencies, in the case of ideo-political education this is the Propaganda Department of the Central Committee of the CPC and the Ministry of Education, often release their own opinions that echo the higher level opinion and publish 'implementation plans'.

For observers unfamiliar with Chinese conditions, it may seem peculiar that Party bodies and state organs jointly release normative documents.⁵ In countries such as Australia, political parties may publicly announce policies they intend to pursue and then, when in power, use the state machinery to implement those policies as legally binding regulations. Yet it would seem bizarre for a leading body of the Liberal or Labor Party to jointly issue a document with a government department announcing that all Australian schools should 'study the important

¹ See Daniel Chow, *The Legal System of the People's Republic of China in a Nutshell* (West, 2nd ed, 2009) 149.

² Ibid 150–9.

³ Jianfu Chen, *Chinese Law: Context and Transformation* (Martinus Nijhoff Publishers, 2008) 191–2.

⁴ 《国家行政机关公文处理办法》 [Measures for Processing Public Documents of State Administrative Organs] (People's Republic of China) State Council, 24 August 2000, art 11.

⁵ See Chow (n 1) 194.

speeches of the prime minister' and setting forth principles to be implemented in national curricula. This is a feature of a political system that 'continues to give non-legal policy norms issued by the CPC some binding legal effect'.⁶

The current form of ideo-political education at the university level was largely established by three normative documents, the first of which, the *CPC Central Committee and State Council Opinions on Further Strengthening and Improving the Ideo-political Education of University Students* ('2004 Opinions') was issued in 2004.⁷ The document, consisting of nine parts and 30 paragraphs, outlines the principles, tasks and particular points of importance that the Party-state leadership believed should be emphasised regarding ideo-political education in universities.

The *2004 Opinions* echos earlier policy and implementation in many ways and fits neatly within the long-standing Chinese tradition of ideo-political education, taking Marxism–Leninism with 'Chinese characteristics' as the claimed foundation for both education methodology and content. However, without deviating from the aforementioned foundation and basic content, the 2004 document emphasised a new need to link the content of ideo-political education with the reality of students' situations.⁸

Although the *2004 Opinions* comprehensively describes the emphasis of ideo-political education and the desired forms of student development and provides for a comprehensive ideo-political work system encompassing many potential vectors of learning beyond the classroom, very little is directly mentioned about classroom teaching methodology, such as whether teachers should lecture, use more multimedia or engage students in discussions. Instead, the document merely mentions that teaching methods should be 'improved and perfected'.⁹ It does not mention what counts as an 'improved' method and how it should be 'perfected'. The document also mentions the need to link theory with the reality of students' lives, which could be understood in terms of teaching methodology but could equally be understood as a curriculum content issue.

Beyond any formal legal authority as a normative document, the *2004 Opinions* carries weight as it was jointly issued by the CPC Central Committee and the State Council. One organisation is a leading body of the ruling party, while the other is the de facto chief day-to-day lawmaker in China. In a country filled with constant official exhortations to follow the Party, and where the paramount leader has clearly stated that the Party should lead everything, a quasi-legal document issued by a top Party body will command a certain level of obedience from officials. As will be seen while examining later opinions and their subsequent implementation plan, later documents call upon readers to 'adhere to', 'implement' or 'study

⁶ Ibid 193.

⁷ 《中共中央国务院关于进一步加强和改进大学生思想政治教育的意见》 [*CPC Central Committee and State Council Opinions on Further Strengthening and Improving the Ideo-Political Education of University Students*] (People's Republic of China) State Council and CPC Central Committee, Order No. 16, 26 August 2004 ('2004 Opinions').

⁸ *2004 Opinions* sub-ss 5, 11.

⁹ *2004 Opinions* sub-s 11.

the spirit’ of the *2004 Opinions*.¹⁰ While this bears little resemblance to rule of law, it certainly demonstrates ‘Chinese characteristics’.

Following the *2004 Opinions*, the next key normative document is the *2005 Propaganda Department of the CPC Central Committee and Ministry of Education Opinions on Further Strengthening and Improving Higher Education Ideo-political Theory Classes (2005 Opinions)*.¹¹ According to its own preamble, the *2005 Opinions* were issued ‘in accordance with the spirit’¹² of the *2004 Opinions* and with the agreement of the CPC Central Committee, demonstrating a principle that normative documents issued by lower organs should not contradict those of higher organs and that the *2005 Opinions* should be viewed within the context of the *2004 Opinions*.

As its official name suggests, the *2005 Opinions* offers the positions of the Propaganda Department and the Ministry of Education in regard to ideo-political education theory classes at the university level. Theory classes, according to the *2004 Opinions* and *2005 Opinions*, are the ‘main channel’ of ideo-political education.¹³ While focusing on theory classes and extracurricular education, the 2005 document also reiterates the main themes and content of the *2004 Opinions*. Like the 2004 document, the *2005 Opinions* directly calls for better teaching methodology, stating, ‘Party committees, governments and colleges and universities at all levels must attach great importance to taking effective measures to improve the teaching of ideological and political theory courses to a new level’.¹⁴ The *2005 Opinions* repeats the *2004 Opinions* emphasis on linking education with the ‘reality’ of students; however, this time, it specifically states that teaching methods must adhere to this rule.¹⁵

Unlike its predecessor, which barely mentions classroom teaching methods, the *2005 Opinions* explicitly identify specific pedagogies and classroom methods that teachers should apply. For example, a section about ‘practical ways and methods of improving teaching’ asks teachers to stimulate the enthusiasm and initiative of students.¹⁶ The expectation is on teachers to achieve this by applying ‘heuristic, participatory styles and research-style teaching’.¹⁷ Research-style teaching is a form of active, participatory teaching where students are encouraged to investigate specific phenomena, formulate hypotheses and then analyse their validity, with the teacher in a supporting role.¹⁸

¹⁰ See, eg, 《中共中央宣传部，教育部关于进一步加强和改进高等学校思想政治理论课的意见》 [Propaganda Department of the CPC Central Committee and Ministry of Education, Opinions on Further Strengthening and Improving Higher Education Ideo-Political Theory Classes] (People’s Republic of China) Propaganda Department of the CPC Central Committee and Ministry of Education, Order No 5, 7 February 2005 (‘*2005 Opinions*’).

¹¹ Ibid.

¹² Ibid.

¹³ Ibid s 1; *2004 Opinions* (n 7) sub-s 11.

¹⁴ *2005 Opinions* (n 10) s 1.

¹⁵ Ibid s 6.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ See, eg, 胡新峰 [Hu Xinfeng] and 李威娜 [Li Weina], ‘以研究式教学加强大学生对社会主义核心价值观体系的认同’ [Using Research-Style Teaching to Strengthen University Student Identification with the System of Core Socialist Values] [2012] (3) 《思想理论教育导刊》 *Guide to Ideological and Theoretical Teaching* 95, 97–8.

The ‘heuristic, participatory and research based’ teaching styles mentioned by the *2005 Opinions* are, in fact, different forms of inductive teaching that share a lot in common. According to Prince and Felder, different forms of inductive learning are variations on a similar theme where more responsibility is imposed on students for their own learning compared with deductive teaching methods, and teaching begins with specific phenomena for students to analyse before any theories or explanations are offered.¹⁹ These different forms typically involve student discussions, problem-solving and group work, within or outside the classroom.²⁰ Inductive teaching methods are one way of implementing the principle of linking education with the ‘reality’ of students as it can ground class content, and the value of this content, in ‘real’ problems for students to solve.²¹

Section Six of the *2005 Opinions* provides further detail suggesting specific techniques teachers should apply in their theory classes. The document calls for the ‘study and analysis of topical social issues’; the ‘use of accessible, common language’; ‘vivid and fresh examples’; ‘novel and lively forms of teaching’; an ‘active teaching atmosphere’ and; ‘students to be inspired to think’.²² It also considered multimedia and internet technology an important element of the desired form of classroom teaching.²³ Aside from techniques and specific classroom methodology, the *2005 Opinions* call for specific forms of class ranging from lectures by specialists or celebrities in a field to what the document described as ‘small group counselling’.²⁴

A reading of the opening paragraphs of the *2004 Opinions* and the *2005 Opinions* reveals that the documents’ writers understood existing problems with ideo-political education. The *2004 Opinions* stressed that in the face of the new situation, ideo-political education work among university students was not adaptable enough and suffered from many ‘weak links’, including ideo-political education subject classes that lacked effectiveness.²⁵ The document levels charges against ‘some schools’, stating that they failed to prioritise ideo-political education or link it with ‘student’s reality’ and that ‘some teachers’ failed in their role.²⁶

Since the *2005 Opinions* more directly focuses on ideo-political education subject classes and teaching, it provides a more comprehensive list of existing problems in this area. It also uses language that implies problems are more widespread than the *2004 Opinions* admit. Among other issues, the *2005 Opinions* lists the quality of teachers, their management by universities, lack of resources, poor teaching materials and issues with the organisation of teaching content.²⁷ The opening section of the *2005 Opinions* also specifically identifies pedagogical

¹⁹ Michael Prince and Richard Felder, ‘Inductive Teaching and Learning Methods: Definitions, Comparisons, and Research Bases’ (2006) 95(2) *Journal of Engineering Education* 123, 123 (‘Research’); Michael Prince and Richard Felder, ‘The Many Faces of Inductive Teaching and Learning’ (2007) 36(5) *Journal of College Science Teaching* 14, 14 (‘Faces’).

²⁰ Prince and Felder, ‘Research’ (n 19) 123.

²¹ An example is problem-based learning; see Prince and Felder, ‘Faces’ (n 19) 15.

²² *2005 Opinions* (n 10) s 6.

²³ *Ibid* s 6.

²⁴ *Ibid*.

²⁵ *2004 Opinions* (n 7) sub-s 4.

²⁶ *Ibid*.

²⁷ *2005 Opinions* (n 10) s 1.

failings, including the ineffectiveness of teaching, limited pedagogical forms and issues with targeted teaching.²⁸

Shortly after the release of the *2005 Opinions*, the *CPC Central Committee Propaganda Department and Ministry of Education Opinions on Further Strengthening and Improving Higher Education Ideo-Political Theory Classes Implementation Plan* ('*Plan 05*') was published.²⁹ *Plan 05* is a short, three-page document comprising five sections that outline elements of how the *2004 Opinions* and *2005 Opinions* should be implemented. The first three sections of the document focus on the content of ideo-political education by identifying the four main compulsory subjects to be taught to all higher education students, providing sentence long descriptions of what these classes should cover and highlighting practical issues such as how many course credits each subject should represent.³⁰

Section Four of *Plan 05* is the most relevant to the question of teaching methods. *Plan 05* calls for the improvement of teaching techniques, yet rather than having a subheading about teaching methods, it instead focuses on strengthening research into teaching methodologies and the training of ideo-political education subject teachers.³¹ The plan states that teaching methods need to be improved but fails to mention specific teaching methodologies.³² In the process of describing how research into teaching methods should be strengthened, the plan mentions the creation of multimedia course materials as a requirement, suggesting that multimedia is considered an important part of effective ideo-political teaching.³³ In a subsection relating to subject teacher training, raising the 'professional level and teaching ability' of teachers alongside their 'political quality' is cast as a 'basic requirement' of fulfilling the teaching curriculum, but again the implementation plan does not provide any useful guidance for judging these requirements.³⁴

For a plan designed to guide the implementation of the *2004 Opinions* and *2005 Opinions*, *Plan 05* is light on detail. In terms of teaching methods, it provides so little guidance as to be useless. It exhorts lower levels to conduct research into teaching methods and, admittedly, suggests some potentially useful methodologies for doing so, but it fails to identify useful or desired teaching methods as the *2005 Opinions* did. It could be argued that this is not an issue since the final paragraph of the plan demands teachers 'seriously study' the *Opinions*, so there is no need to restate what was already mentioned.³⁵ Conversely, this could be seen as a mistake since the *Opinions* explicitly identified perceived pedagogical errors as shortcomings in previous ideo-political efforts. So why haven't corrections been proposed and disseminated to lower levels? If textbooks and content are being standardised, why did the drafters of *Plan*

²⁸ Ibid.

²⁹ 《(中共中央宣传部，教育部关于进一步加强和改进高等学校思想政治理论课的意见)实施方案》 [Propaganda Department of the CPC Central Committee and Ministry of Education Opinions on Further Strengthening and Improving Higher Education Ideo-Political Theory Classes Implementation Plan] (People's Republic of China) CPC Central Committee Propaganda Department and Ministry of Education, 9 March 2005.

³⁰ Ibid ss 1–3.

³¹ Ibid s 4(2–3).

³² Ibid s 4.

³³ See Ibid s 4(2).

³⁴ Ibid s 4(3).

³⁵ Ibid s 5.

05 fail to distil and standardise the fruits of national research into pedagogy as well? Unfortunately, the answers to these questions remain unclear and open to speculation.

Although the purpose and general content of ideo-political education remained the same in the pre- and post-*Plan 05* eras, some changes are worth considering, especially in the *2005 Opinions*. The *Opinions* and *Plan 05*, taken together, began the standardisation of ideo-political education textbook use across China. Before the introduction of *Plan 05*, although universities nominally taught the same compulsory ideo-political subjects, they did not use the same textbooks.³⁶ *Plan 05* called for the production of a new series of textbooks under the ‘Marxist Theory Research and Construction’ project, a central-level initiative.³⁷ Over the course of six months, experts produced drafts of the soon-to-be national textbooks, and by early 2006, they were approved and ready for use in the September semester.³⁸ Meanwhile, the Propaganda Department and the Ministry of Education jointly released two notices that banned the production of any ideo-political education textbooks for university use aside from the four core textbooks just mentioned and required that all universities nationally use the approved books.³⁹

Plan 05 also consolidated the number of compulsory ideo-political classes from the original seven down to four without, according to Wang Xiaobing, reducing the content.⁴⁰ An example of this is how before *Plan 05* was implemented, Chinese undergraduates took separate classes on ‘Principles of Marxist Philosophy’ and ‘Principles of Marxist Political Economy’. *Plan 05* consolidated these and other courses. So to continue the example, the two Marxist philosophy classes were condensed into a single subject called ‘Outline of the Basic Principles of Marxism’. The *Plan 05* curriculum also included ‘Contemporary Chinese History’ as a new subject, likely to ensure that students become familiar with the CPC’s version of China’s recent history.

The *2005 Opinions* stands out among similar kinds of ideo-political policy documents in that it identifies the need to improve teaching methods in ideo-political subject classes and explicitly calls for specific ways of teaching to be introduced to classrooms. Although even the relatively specific recommendations on teaching methods included in the *2005 Opinions* were still open to interpretation, the policy made officials and teachers alike aware that central authorities expected new, more dynamic methods to be applied. This relative emphasis on classroom teaching methodology was novel, yet it was not repeated in *Plan 05* or to any significant extent in later central-level normative documents related to university-level ideo-political theory classes, with the sole exception of a 2015 plan, which will be discussed in more detail below.

Plan 05 and the *2004 Opinions* and *2005 Opinions* that preceded it were normative documents issued by leading national Party-state bodies that standardised university-level ideo-political education across China with a consolidated curriculum of common textbooks

³⁶ 王小兵 [Wang Xiaobing], ‘高校思政课“05 方案”与“98 方案”比较’ [Comparison of Ideo-Political Classes in Plan 05 and Plan 98] [2006] (S1) 《重庆科技学院学报（社会科学版）》 *Chongqing School of Technology School Journal (Social Sciences Edition)* 25, 28.

³⁷ Ibid 26.

³⁸ Ibid 27.

³⁹ Ibid 28.

⁴⁰ Ibid 27.

and central recommendations on how classroom teaching should be carried out. These changes at least partially match deficiencies identified in earlier ideo-political education efforts in the wake of changing student values and ideological crisis. The *2005 Opinions* were also novel for their unusual emphasis on improving pedagogy and direct recommendations of teaching methodologies.

Treating ideo-political education as a topic of legal study, by analysing elements of the regulatory framework guiding this education, shows Party-state efforts to standardise the teaching of official rule of law narratives to university students. Central authorities sought a uniform expression of *Yifa Zhiguo* through standardised national textbooks and a more professional presentation of the Party-state interpretation of rule of law, as described in Part I of this thesis, by promoting updated teaching methods.

The three normative documents examined in this section—the *2004 Opinions*, the *2005 Opinions* and *Plan 05*—would remain the key guiding documents in this area for 15 years, marking significant continuity in undergraduate ideo-political education. Xi Jinping’s tenure also saw the creation of new normative documents to amend and guide the implementation of ideo-political education. The following section discusses these documents, noting that minor reforms took place until Xi’s ‘important speech’ of 2019, which heralded a new round of opinions and a new implementation plan.

II. Ideo-Political Education at the University Level with Xi Characteristics

Until 2019, the Xi era saw only relatively minor supplements to the Hu-era normative documents at the core of undergraduate ideo-political education. Xi’s ‘important speech’⁴¹ on 18 March 2019 paved the way for central authorities to release an updated set of guiding normative documents, including ‘opinions’ and an implementation plan, regarding ideo-political education work in the ‘new era’. This set of three works (one speech and two normative documents) introduced a new subject and represented the largest change to university-level ideo-political theory classes since *Plan 05*. Analysing these works shows that despite the significant attention Xi paid to pedagogy in his 18 March speech, the following normative documents largely ignored the topic of pedagogy in favour of emphasising the political loyalty of teachers and ensuring their teaching strictly conforms to political orthodoxy. The implication then is that the Party-state wishes to ensure that its hegemonic position on rule of law, as presented in the official textbooks, should be faithfully transmitted by teachers to students without challenge or critical commentary.

A variety of early Xi-era normative documents made slight adjustments to university-level ideo-political education, yet overall their influence was minor. They did not introduce new subjects or significantly rearrange the ideo-political education system. Most of the documents either failed to mention teaching methodology or merely called for it to be improved without providing guidance. Overall, the contribution of these documents remained largely confined to updating and adjusting content to include new Party slogans and concepts as they emerged.

⁴¹ The speeches of paramount leaders in China are often labelled ‘important’ and referred to in the media and official documents as such. Xi’s 18 March speech is thus referred to as the ‘3.18 important speech’, with the number following the Chinese date convention of placing months before days.

In terms of teaching methods, most of the documents are insubstantial. For example, the *Opinion on Strengthening and Improving Ideo-Political Work at Universities under New Conditions* called for innovation in teaching methods to make them more ‘attractive, persuasive and infectious’.⁴² This three-word slogan offers little in the way of guidance to teachers and administrators. Between *Plan 05* and *Plan 20*, which will be discussed later in this chapter, the most impressive normative document in terms of teaching methods regarding ideo-political theory classes at the university level was released in 2015.

The 2015 *Plan for Innovating the University Level Ideo-Political Theory Class Construction System* (*Plan 15*), released jointly by the CPC’s Propaganda Department and the Ministry of Education, also calls for teaching methods to be improved and for the promotion of ‘rich, persuasive, infectious and varied teaching methods’.⁴³ However, while these appear to be throwaway lines in the previously quoted document, in *Plan 15*, teaching methods receive further attention. *Plan 15* asks schools to ‘persist with the unity of teachers lecturing and students participating’ and to ‘fully mobilize student’s study initiative’.⁴⁴ This reflects the methods mentioned in the 2005 *Opinions* that focus on engaging students and allowing them to take an active part in the education process. The plan also calls for the popularisation of good teaching methods, the establishment of ‘experimental teaching reform bases’ and the implementation of a reform plan where, over five years, new methods should be discovered and popularised.⁴⁵ The plan sees online databases as an important part of sharing effective teaching resources, and online classes and online platforms were considered a supplement to classroom teaching.⁴⁶

On 18 March 2019, Xi Jinping delivered a speech at the Ideo-Political Education Theory Class Teacher’s Symposium.⁴⁷ This speech is also referred to as the ‘3.18 speech’, following the Chinese convention of writing months before days. The website of the CPC’s theoretical journal *Qiushi* published the ‘main part’ of the speech over a year later, in August 2020.⁴⁸ Xi’s speech focused on teachers and their role in the ideo-political education process, stating, ‘Teachers are the key to the success of ideological and political education’.⁴⁹ Unlike many speeches and documents that focus only on the content of classes, textbooks or other issues, Xi’s speech identified qualities he believed subject teachers needed to embody, teaching

⁴² 新华社 [Xinhua News], ‘中共中央 国务院印发《关于加强和改进新形势下高校思想政治工作的意见》’ [‘CPC Central Committee and State Council Opinions on Strengthening and Improving Ideo-Political Work under New Conditions’], *gov.cn* (News, 27 February 2017) <http://www.gov.cn/xinwen/2017-02/27/content_5182502.htm>.

⁴³ 《中央宣传部教育部关于印发《普通高校思想政治理论课建设体系创新计划》的通知》 [CPC Propaganda Department and Ministry of Education Notice on Plan for Innovation of the Construction System of Ideo-Political Theory Classes at Ordinary Universities] (People’s Republic of China) CPC Propaganda Department and Ministry of Education, 30 July 2015, s 2.

⁴⁴ Ibid s 2.

⁴⁵ Ibid s 3(3).

⁴⁶ Ibid s 3(1).

⁴⁷ 新华社 [Xinhua News], ‘习近平主持召开学校思想政治理论课教师座谈会’ [Xi Jinping Hosts the School Ideo-Political Theory Class Teacher’s Forum], *gov.cn* (News, 18 March 2019) <http://www.gov.cn/xinwen/2019-03/18/content_5374831.htm>.

⁴⁸ See 习近平 [Xi Jinping], ‘思政课是落实立德与树人根本任务的关键课程’ [Ideo-Political Classes are the Essential Course for Carrying out the Fundamental Task of Promoting Morality and Cultivating People], *qstheory.cn* (Journal, 31 August 2020) <http://www.qstheory.cn/dukan/qs/2020-08/31/c_1126430247.htm>. All references to the speech and all quotes come from this Chinese version of the speech. All translations are my own.

⁴⁹ Ibid.

methodologies they should apply and the rationale behind some of these techniques. The speech implies that Xi believes effective teaching does not consist simply of directly reciting the content of the textbook to students. He stated, ‘It needs a lot of creative work to make different types of students love listening and learning’ and that many different methods should be discovered and applied to ‘achieve the teaching objectives’.⁵⁰

Xi identified teaching methodologies and techniques that some schools already apply. During the speech, he stated: ‘Many schools actively use case teaching, inquiry teaching, experiential teaching, interactive teaching, thematic teaching, focus teaching and so on’.⁵¹ He also noted that in some cases, multimedia and information technology (IT) could ‘build a smart classroom’.⁵² Xi praised these schools, claiming, ‘All these [methods] are worthy of affirmation and encouragement’ and that they ‘achieved positive results’.⁵³

Working against the grain of the classic Chinese habit of teachers simply lecturing from a book, Xi recommended a ‘unity’ of teachers guiding the class and ‘student-centered learning’.⁵⁴ He listed a range of activities that fit this mould, including student research projects, classroom debates, role-plays and ‘other teaching methods to let students speak’.⁵⁵ In all of these cases, students actively engage with the material, leaving teachers to facilitate the learning process instead of dominating it. Xi also emphasised that the study of Marxism cannot be learned by rote or through ‘hard indoctrination’ and called for what he referred to as ‘heuristic education’.⁵⁶ He wrote that teachers should guide students to think through and analyse problems and organise them to ‘tell stories’ rather than for teachers alone to tell stories.⁵⁷

However, it should also be recognised that teaching methods, though an important part of Xi’s speech, were not the main focus. Xi’s speech addressed teaching methodology where it was relevant to four topics that he raised: ‘The great significance of conducting ideo-political theory classes well’; ‘Conducting ideo-political theory classes relies on teachers, and the key is to give play to teacher’s enthusiasm, initiative and creativity’; ‘Promote the reform and innovation of ideo-political theory classes and constantly enhance their ideological and theoretical character and their pertinence and affinity’; and ‘Strengthen the Party’s leadership over the construction of ideo-political theory classes’.⁵⁸ The greater part of the speech is about ensuring that theory classes continue to faithfully present the Party’s line and that teachers cleave strictly to this line.

The first section of the speech can be described as the ‘why’ of ideo-political education and pointing out the significance Xi places on the issue, its role in raising socialist successors and some ongoing shortcomings necessitating reform. In this section, Xi stated, ‘There are many problems that must be resolved to conduct ideo-political theory classes well, but the most

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

important to solve is the question of self-confidence'.⁵⁹ Without context, this seems innocuous. It is something one could imagine a motivational speaker telling an audience. Yet Xi's usage means faith in the belief system, slogans and directions issued by the Party centre rather than teachers' belief in their own ability to teach well.

In the second section, Xi presents six basic qualities teachers should embody, four of which are overtly political or ideological in character. The first is political orthodoxy. Xi stated, 'Let people who believe teach belief', and argued that teachers can only teach well if they deeply believe and agree with what they are teaching.⁶⁰ In the next point, he argued that teachers need to emotionally move students and can only do this through true feelings born of true faith in what they are teaching.⁶¹ He gave an example from his youth of a teacher moved to tears while presenting the life of a model Party cadre.⁶² Xi further required that teachers observe strict discipline by ensuring they do not contradict the political line, either inside the class or in their private lives.⁶³ Even private online conduct is subject to these requirements,⁶⁴ with teachers expected to spread 'positive energy', a term meaning uplifting and motivational propaganda. Finally, he called for teachers to attract students to learn from them and believe in them through a scholarly charisma derived from being deeply knowledgeable and morally impeccable.⁶⁵ The other two qualities Xi mentioned are omitted here as they are fairly innocuous and do not directly relate to political motives. All of the qualities discussed above give the impression that what Xi is looking for are impeccable preachers filled with conviction first and professional teachers second.

The '3.18 speech' is not a normative document and by itself does not formally have the power to determine how ideo-political education is carried out. However, it is an 'important speech' by the paramount leader, so it is, in practice, extremely important. An indication of its influence is the fact that later normative documents refer to the speech and the need to 'study' and 'faithfully implement' the 'spirit' of the speech.⁶⁶

Just like the *2005 Opinions*, the speech is special because of its strong emphasis on teaching methodology. As noted above, Xi gave multiple examples at separate stages of the speech of various teaching methods being applied in some Chinese universities. Not only did he mention them, but he also praised them and stated that they should be encouraged.⁶⁷ This is a strong message from the absolute peak of the power structure that this is what the Party Centre wants in terms of teaching methods. This should boost the implementation of the methods mentioned in the speech and encourage schools to develop more innovative classroom teaching methods. An interesting future research project could test this assertion by comparing how thoroughly, if at all, the methods Xi raised in the 3.18 speech were implemented. Another important question to consider is to what extent the demand for

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ See, eg, 《关于深化新时代学校思想政治理论课改革创新的若干意见》 [Several Opinions on Deepening the Reform and Innovation of Ideo-Political Theory Classes in the New Era] (People's Republic of China), General Offices of the Central Committee and State Council, August 2019 ('*2019 Opinions*').

⁶⁷ 习近平[Xi Jinping] (n 48).

complete ideological purity and the lack of discretion allowed to subject teachers undermine or support teaching objectives.

In August 2019, the General Offices of the CPC Central Committee and the State Council jointly released their *Several Opinions on Deepening the Reform and Innovation of Ideo-political Theory Classes in the New Era* ('2019 Opinions').⁶⁸ The eight-page document, arranged under five subheadings and 20 numbered points, announces in its preamble that it seeks to 'faithfully implement' the 'spirit' of the 19th CPC Congress, Xi Jinping Thought, Xi's 'important' speeches and the Party's education strategy.⁶⁹ While claiming that great achievements had been made since the 18th CPC Congress, the *2019 Opinions* identified 11 ongoing problems in 'some schools and locations'.⁷⁰ Many of these problems were systemic in nature, such as the need to better rationalise ideo-political courses in primary, secondary and tertiary education into a single, coherent stream and shortcomings in the evaluation and support systems relating to ideo-political subject teachers.⁷¹ Most relevant to this research, though, the *2019 Opinions* also claimed inadequacies in the effectiveness of classroom teaching and the need for improvement.⁷²

The second section of the *2019 Opinions* focuses on 'perfecting' the curriculum and textbook systems. Great emphasis is placed on values and beliefs that should be taught to students and on the need to update the textbooks to include 'the newest accomplishments of the Sinification of Marxism', 'the newest experiences of persisting with and developing Socialism with Chinese Characteristics' and other 'innovations' of Marxism.⁷³ Of course, this refers to Xi Jinping Thought and the various slogans developed under his leadership since previous editions of ideo-political textbooks were released. The biggest development arising from the *2019 Opinions* is the plan to release a brand new subject: 'Xi Jinping Thought on Socialism with Chinese Characteristics in the New Era'⁷⁴. This represents the first new subject added to university-level ideo-political education since Contemporary Chinese History joined the curriculum during the 2005 consolidation.

The next part of the *2019 Opinions* focuses on the development of teachers. This can be divided roughly into two parts, one about cultivating the qualities that teachers should embody, in line with the 3.18 speech, and the other about the system that teachers work within. In terms of qualities, the *2019 Opinions* directly references the six qualities raised in the 3.18 speech.⁷⁵ Emphasis is placed on providing ample and varied forms of training to ensure that teachers internalise the paramount leader's latest concepts. For example, the document tasks Party schools at the central and local levels with running courses on Xi Thought for subject teachers and recommends weekend lecture series.⁷⁶ The document also

⁶⁸ *2019 Opinions* (n 66).

⁶⁹ *Ibid.*

⁷⁰ *Ibid* s 1(1).

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid* s 2(7).

⁷⁴ *Ibid* s 2(5).

⁷⁵ *Ibid* s 3.

⁷⁶ *Ibid* s 3(9).

discusses teacher support systems, with attention paid to finding evaluation criteria that address the circumstances of ideo-political subject teachers.⁷⁷

The fourth section of the *2019 Opinions* approaches the question of teaching methodologies in a single sentence, stating, ‘Greatly promote the reform of ideo-political education class teaching methods’.⁷⁸ It does not recommend or mention any teaching methods. Just as Xi did during the 3.18 speech, the *Opinions* promotes the use of artificial intelligence capabilities and IT in the course of ideo-political course teaching and recommends the cultivation of teachers’ ability to use IT, but that is the sum of the policy’s direction on teaching.⁷⁹

The *2019 Opinions*, for all its insistence on faithfully implementing the spirit of the 3.18 speech, fails to place a strong emphasis on teaching methodology. Not a single teaching method is recommended in the document, although it does mention the use of IT, and very little space is dedicated to how teachers will learn the methods Xi advocated. This is a glaring omission given the attention dedicated to teaching methods in the 3.18 speech and is even more apparent when Xi’s key points on the qualities a teacher needs have been quoted and used as the heading of a section in the *Opinions*. It is true that Xi emphasised the importance of ensuring the political loyalty and reliability of teachers, but to focus on this while effectively ignoring his commentary on teaching methods is striking. This lopsided focus on one element of the 3.18 speech could indicate that the Party-state leadership as a whole is far more interested in ensuring the political loyalty and ideological purity of teachers than on their actual teaching abilities. This, in turn, suggests such an anxiety about the political reliability of grassroots agents that the Party is willing to sacrifice the efficacy of its ‘thought work’ among students on the off chance that teachers may stray even slightly from the proscribed political line. Whatever the case may be, this focus shows that the Party-state wants its official line, as presented in the textbooks, on subjects such as the meaning of *Yifa Zhiguo* to be transmitted faithfully and accurately by teachers.

Just as *Plan 05* followed the *2004 Opinions* and *2005 Opinions*, so too did the Implementation Plan for Reforming and Innovating School Ideo-political Theory Classes in the New Era (‘Plan 20’) emerge after the *2019 Opinions*.⁸⁰ Plan 20, published jointly by the CPC’s Propaganda Department and the Ministry of Education, is an eight-page document divided into six overall sections stating in relatively simple and broad terms how ideo-political education should be conducted from the primary school level up to the university level. The document mainly focuses on describing what students should learn at each level, the courses that should be taught and the curriculum and textbooks for each course. The plan also states enforceable specifics for lower levels to implement. For example, Plan 20 sets the number of course credits each subject is worth.⁸¹ Conspicuously absent is a discussion of effective teaching methods.

⁷⁷ Ibid s 3(10).

⁷⁸ Ibid s 4(14).

⁷⁹ Ibid.

⁸⁰ 《新时代学校思想政治理论课改革创新实施方案》 [Implementation Plan for Reforming and Innovating School Ideo-Political Theory Classes in the New Era] (People’s Republic of China) CPC Propaganda Department and Ministry of Education, December 2020 (‘Plan 20’).

⁸¹ Ibid s 3(3).

As mentioned above, *Plan 20* focuses on the curriculum. It began this task by describing what students at different levels in the education system should internalise, which for university students means, among other things, understanding and applying Marxist principles, especially the ‘theoretical achievements in sinicizing Marxism’, ‘unswervingly follow the Party’ and ‘respect and obey the constitution and laws’.⁸² These points represent the results the implementation plan expects from ideo-political education.

The plan states which subjects must be taught and the number of teaching hours or course credits each should represent.⁸³ At the university level, it identifies five, including the ‘Situation and Policy’ course, which was treated separately under *Plan 05*.⁸⁴ These courses are assigned course credits ranging from two, for Situation and Policy, to five for the ‘Outline of Mao Zedong Thought and the Theoretical System of Socialism with Chinese Characteristics’.⁸⁵ The biggest change from *Plan 05* is the introduction of ‘Outline of Xi Jinping Thought for Socialism with Chinese Characteristics in the New Era’ as a new compulsory course for university students.⁸⁶ At the time of writing this thesis, the course was being trialled at selected universities that hosted ‘key Marxism schools’.⁸⁷ Once trials are complete, a new normative document will likely announce that all higher education institutions will begin teaching Xi Thought as an independent, compulsory subject.

After describing which ideo-political courses must be taught, *Plan 20* then describes the basic content of each subject, with the conspicuous absence of the new Xi Thought class.⁸⁸ Next, *Plan 20* focuses on the curriculum and textbook system, describing how each subject should be represented by a single textbook, that textbooks must be centrally edited and that all schools should use the centrally prepared and approved textbook.⁸⁹ This is no different from the Hu Jintao-era opinions and implementation plans, which began the trend of centrally approved standardised textbooks. The final line of *Plan 20* states that the requirements of the plan must be implemented for incoming students in the 2021 autumn semester.⁹⁰

Plan 20 does not mention teaching methods. In fact, despite 15 years of experience to learn from, the drafters of *Plan 20* managed to say less about teaching methods than the *Plan 05* authors. Tucked away at the very end of the document, as the second to last item, *Plan 20* calls for teachers to be trained well.⁹¹ It recommends that all teachers should receive training, prepare classes collectively at least once a year and take part in exchange and communication activities to share experiences.⁹² The focus of training appears to be on how to handle ‘key and difficult points’ in the textbook (i.e., sections that are believed to be especially vital for students to internalise and sections that students are more likely to push back against).⁹³ *Plan 20* appears to be directing training towards ensuring that teachers are familiar with the content

⁸² Ibid s 2(4).

⁸³ Ibid s 3(3).

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid s 4(4).

⁸⁹ Ibid s 5(1).

⁹⁰ Ibid s 6(4).

⁹¹ Ibid s 6(3).

⁹² Ibid.

⁹³ Ibid s 6(4).

of the textbooks and on the use of the textbook and ensuring political orthodoxy, or in other words, preparing teachers to faithfully and accurately transmit the Party-state's position.

Analysis of the contents of the *2019 Opinions* and *Plan 20* shows that the most recent central-level core normative documents regarding ideo-political education focus on ensuring the freshest CPC political concepts and slogans are enshrined in the curriculum and that ideo-political subject teachers are politically loyal and ideologically pure, so that they may be relied upon to advocate for the Party-state's line in the classroom. Despite the 3.18 speech's mentions of teaching methods that should be applied, the normative documents that followed in its wake largely ignored the question of teaching methods aside from references to the need for teacher training. Yet even these references, when placed in context, show that the focus of training is achieving accurate dissemination of the hegemonic ideology. As mentioned earlier, this suggests that central authorities are far more concerned with ensuring that teachers cleave to the Party line than promoting more effective teaching methodologies. In terms of rule of law, this means authorities prioritise ensuring students are only exposed to the sanctioned, Party-state interpretation of rule of law.

It should not come as a surprise that authorities emphasise the role of ideo-political education in disseminating the 'correct' line. After all, ideo-political education exists to teach and justify the state's approved worldview to students. What is noteworthy is the extent to which the Party-state appears willing to sacrifice the efficacy of its own 'thought work' among the youth in the name of ensuring teachers do not teach off script.

III. Conclusion

This chapter explored the role of normative documents in guiding the implementation of undergraduate ideo-political education. Consulting these documents provides law scholars with insights into how the Party-state presents its interpretation of rule of law to students. It is normative documents that organise what subjects students are taught, which textbooks must be used and the way teachers should act as conduits for official ideology on topics such as rule of law.

The analysis in this chapter showed that normative documents from 2004 to 2005 emphasise standardisation of textbooks, rationalisation of subjects and improvements in pedagogy, while the recent Xi-era versions emphasise political loyalty and faithful transmission of official narratives. This Xi-era emphasis supports the argument in Chapter Five regarding the purpose of ideo-political education as presenting and justifying the Party-state's worldview to students. This analysis then suggests that Chinese undergraduates are indeed presented with faithful accounts of the Party-state's interpretation of rule of law.

Key normative documents jointly released by top Party-state bodies between 2004 and 2005, culminating in *Plan 05*, formed the basis for undergraduate ideo-political education until much later in the Xi era. *Plan 05* standardised ideo-political theory classes and textbooks, consolidated the subjects into four core courses, plus 'Situation and Policy', and centralised control over content and teaching materials. Subsequent normative documents supplemented *Plan 05* and adjusted content to include new slogans as they emerged.

Xi Jinping's 18 March speech marked the beginning of the most significant update to ideological theory classes at the university level since 2005. The central-level normative documents that followed, the *2019 Opinions* and *Plan 20*, not only added the newest elements of 'Xi Jinping Thought' to textbooks; they laid the foundation for Xi Thought as its own ideological theory subject, distinct from the original four. The 2019–2020 normative documents show a strong emphasis on ensuring that teachers are politically reliable agents who can be entrusted with faithfully and accurately presenting the hegemonic position on topics such as rule of law.

While close attention was paid to textbook and other systemic reforms, central-level authorities did not prioritise improving or standardising classroom teaching. Few central-level normative documents related to university-level ideological education raise the issue of classroom teaching methodology, and when they do, it is often a simple exhortation to improve without any indication of what counts as an improvement. The analysis in this chapter identified three central-level documents that represent exceptions to this rule: the *2005 Opinions*, *Plan 15* and the 3.18 Speech. All three either identified ideal teaching methods or described their outcomes. They all provide recommendations on how to improve methods too. If high-level normative documents influence ideological subject teachers, then these are the key documents that may affect their teaching methods.

The following chapter explores the relationship between high-level normative documents and teachers of ideological theory classes, with a specific focus on teaching methodology. It does this through an exploratory, qualitative study conducted among subject teachers at universities in three different, economically diverse regions of China. The chapter begins by describing the research methodology, including its justification. It then summarises and presents the results of the study and analyses this data to produce two conclusions regarding how normative documents influence ideological theory class teachers in their choice of teaching methods. It then closes by suggesting that teachers are influenced more by their peers and role models than by normative documents when it comes to teaching methods, at least in terms of adopting specified recommendations from normative documents. However, in a context of growing central attention and political demands on teachers, normative documents may influence the choice of teaching methods by discouraging innovation rather than by offering positive recommendations.

Chapter Seven: Case Study of Teacher Interaction with Normative Documents

Chapter Six continued the theme of treating ideo-political education as a subject of legal study and investigated the ‘how’ of Party-state efforts to inculcate students with official rule of law narratives by focusing on the role of normative documents in guiding the implementation of undergraduate-level ideo-political education. It pursued this aim in two parts: exploring key normative documents that guide undergraduate ideo-political education and analysing the most recent set of normative documents that built on the core mid-2000s policies. The analysis showed that where the mid-2000s documents emphasised standardisation, late Xi-era documents emphasised the political loyalty of teachers and ensured that official narratives were faithfully and accurately transmitted to students. The analysis in Chapter Five shows that these narratives, to be faithfully transmitted, include the Party-state’s interpretation of rule of law.

This chapter, using qualitative research, seeks to further explore ideo-political education as a subject of legal study by uncovering and analysing the experiences of ideo-political subject teachers as they engage with the ambiguous requirements of top-level normative documents in regard to teaching methodologies. In other words, it is a contribution to understanding a specific element of how this process of instructing the youth of China on the Party-state’s interpretation of rule of law functions. In this sense, it both reinforces one of the main arguments of this thesis and applies this argument to analysing the real practice of ideo-political education in China.

Through semi-structured interviews with current ideo-political theory class teachers in Chinese cities with differing levels of prosperity, a snapshot of how teachers engage with guidelines and their actual teaching practice emerges, providing valuable insights. The chapter concludes by analysing the results of the study and drawing two main conclusions.

The first conclusion is that calls for specific teaching methods present in normative documents have little influence on teacher choice of classroom pedagogy. Instead, teachers learn from their peers, role model teachers and their own experiences and personality. However, it remains worthwhile for legal scholars interested in how the official interpretation of rule of law is being taught in ideo-political classrooms to pay attention to recommended pedagogy in normative documents. This is because the recommended methods may be a synthesis of methods that are already widely used within Chinese universities and because the wording of these recommendations can be used to justify methods that teachers already apply. In other words, the content of normative documents still provides insights into how rule of law in China, as described in Part I of this thesis, is taught in ideo-political subject classrooms.

The second conclusion is that normative documents influence teacher behaviour in the classroom. More attention from central authorities and stricter political requirements on teachers combine to mean ideo-political subject teachers are under greater pressure to faithfully and accurately present the Party-state’s positions in the classroom. This may mean that there is less scope for innovative teaching methods, critiques of official narratives, and providing nuance on ‘difficult topics’. This supports the arguments about the character of

ideo-political education made in Chapter Five and the stronger emphasis on the political loyalty of teachers and accurate dissemination of Party-state narratives in the Xi-era normative documents analysed in Chapter Six.

This chapter contains four sections. This first introduces the aims of the study as well as the limitations of existing related studies. The second details the methodology applied in the study, including its theoretical framework, sampling techniques and other elements of study design. The third section is a question-by-question presentation of the results produced by the semi-structured interviews. These results are grouped and generalised to show a composite picture of the lived experiences of ideo-political subject teachers. The fourth analyses the collected data to draw insights, resulting in two major conclusions about the relationship between teachers and the normative documents that guide their work.

When reviewing research, recognising limitations helps to properly contextualise results and supports the identification of potential avenues for fruitful research. The limitations of this study emerge from the chosen methodology, namely its qualitative approach, the sampling method, the sample size and, as an issue separate from methodology, the inherent difficulty of conducting ‘sensitive’ research in China.

The study described in this chapter is qualitative; it sought to provide information about the lived experiences of selected respondents as the basis of observations related to the interaction between ideo-political subject teaching and normative documents. The study described in this chapter could provide a foundation for future qualitative studies, allowing them to build from the observations made about the specific understanding, practice and environment of these teachers.

Care was taken to sample respondents from a range of Chinese universities, representing institutions at different levels of the higher education hierarchy and in regions with differing levels of development. Teachers from higher-status institutions in major Eastern and Central cities were compared with those at lower-status institutions in an underdeveloped Western region. The small sample size was sufficient for an exploratory, qualitative study into a field that is poorly understood in the West; however, future studies with larger sample sizes and quantitative methods could be developed to further test the observations emerging from this chapter’s study.

The spectre of political intimidation is a major limitation for many studies involving human respondents in China, including this study. A quarter of the original study participants withdrew after they received transcripts of their interviews. Personally identifying information such as personal names, official titles, names of institutions and locations had already been removed, and participants were given the option to review transcripts and remove any other details they felt could potentially identify them, such as idiosyncratic language or mentions of specific programs. Despite these options, a robust ethics committee-approved procedure for anonymising and storing data and a commitment not to quote respondents, these individuals still opted to withdraw from the study. When asked about their reasons for withdrawal, they identified their fear of retribution. This is an indication of the level of fear that some Chinese respondents feel when participating in research.

Despite these limitations, the study achieved what it set out to do: generate data from which conclusions about the relationship between classroom teaching and normative documents for ideo-political theory subjects could be drawn. It also provides background for research that seeks to delve deeper into the relationships between normative documents and subject teaching, such as the system for instructing teachers about normative documents. These are all questions that legal scholars interested in how ideo-political education serves the Party-state's project of inculcating young people with a sanctioned interpretation of rule of law, should be interested in pursuing. By doing so, they will open an exciting new area of legal research.

I. Study Design

This study aims to expand our understanding of a specific aspect of ideo-political education, namely how 'frontline' agents interpret normative documents and their requirements in relation to teaching methodologies and apply these interpretations to the classroom. In doing so, this study presents the first stages of an exploration of a practical element in the process through which the Party-state popularises its views on law among students.

This study applies a phenomenological approach and focuses on the lived experiences of ideo-political subject teachers. According to Liamputtong, 'Phenomenology is a theoretical perspective that attempts to generate knowledge about how individuals experience things'.¹ In Creswell and Poth's definition of phenomenological research, they mentioned the role of the researcher in compiling respondent data into 'a composite description of the essence of the experience for all of the individuals'.² The topic of interest here is how teachers engage with normative documents and how they apply these interpretations in practice. As such, their 'lived experience' of interpretation and application is the focus. This approach recognises that regardless of what officials in Beijing may intend, their agents, from intermediate officials down to classroom teachers, still need to interpret and apply central directives. This is especially true of the vague requirements in top-level normative documents.

This section addresses three points. First, it will cover the limitations of existing studies, noting that investigations uncovered very little English-language literature related to the role of ideo-political education in presenting the Party-state's view on law and how it is taught. A greater body of Chinese literature on the subject exists, but the quality of many sources is questionable. Subsection B presents the methodology of the case study, while Subsection C focuses on the sampling method applied.

A. Limitations of Existing Studies

While there has been a range of research regarding the meaning of the Chinese concept of rule of law and there is research about how mass legal education is conducted among adults, there is little English-language research regarding the role of ideo-political education in forming the legal consciousness of young adults. Database searches indicate that only one English-language research project explored the question of teaching methodology and its relation to ideo-political education policy in Mainland China. Studies on Hong Kong and Macao have

¹ Pranee Liamputtong, *Qualitative Research Methods* (Oxford University Press, 4th ed, 2012) 8.

² John Creswell and Cheryl Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches* (Sage, 4th ed, 2018) 121.

been excluded as their situation is special; the education conducted there cannot be considered analogous to that in Mainland China.

Exploration of the available literature found that the relationship between normative documents and teaching methods for undergraduate ideo-political subject classes only attracted the attention of one significant English-language study. Lei's 2010 doctoral thesis focused on the question of 'citizenship education', what it means in the Chinese context and how differences between the 1998 and 2005 ideo-political education policies affected the curriculum and teaching methods.³ Lei interviewed subject teachers and administrators at five universities in Shanghai to explore how they understood the differences between the 1998 and 2005 policies. This included a discussion of what kind of teaching methods these policies required.

Lei's study is impressive in its scope and ground-breaking in its focus on this much-ignored subject. However, Lei identified some limitations of the study, which are worth mentioning here, both because of how the current study addresses them and how the problems Lei faced are problems future research projects in this field need to engage with.

The study encountered sampling issues when local university officials undermined plans to employ 'extreme case' methods by assigning respondents rather than allowing the research to choose participants.⁴ Lei identified this as a limitation because respondents may have been coached on what they could and could not say.⁵ This suspicion was reinforced when Lei noted that the teachers gave 'very similar' replies 'compared to the responses provided by the administrative officials and policy experts', with Lei later further calling teacher answers 'extremely identical'.⁶ Lei also noted that respondents might have been afraid to report anything contrary to official narratives 'out of fear for possible retribution in the future'.⁷ How to gather accurate information in a field considered 'sensitive',⁸ especially when foreign researchers are involved, is a serious question that will only grow in difficulty as the Party-state demands ever-greater conformity and wields increasingly sophisticated tools for ensuring it.

Another limitation Lei recognised was the focus on a single city.⁹ Lei's study involved staff at five universities in Shanghai, a highly developed coastal metropolis ranked among China's 'tier-one' cities. Focusing on one city allows for a more comprehensive picture of ideo-political education in that city's context, but it leaves open the question of whether respondents in less developed Western regions, or in lower tier cities, would respond in the same way. Recognising limitations does not detract from the value of Lei's study but instead properly contextualises the results and allows for future studies to build upon the existing work in the most useful way.

³ Lei Yu, 'The Transformation of Citizenship Education at Universities in the People's Republic of China from 1998–2006' (PhD Thesis, Columbia University, 2010).

⁴ Ibid 131, 164. Lei interpreted the university's behaviour as a sign of the 'sensitivity' of the topic. See *ibid* 164.

⁵ Ibid 131.

⁶ Ibid 175, 177.

⁷ Ibid 137.

⁸ See *Ibid* 164.

⁹ Ibid 136.

Searches of CNKI, China's main academic database, revealed a far greater wealth of articles regarding teaching methods in ideo-political theory subjects at Chinese universities compared with the available English sources. Unfortunately, the Chinese-language literature is largely comprised of works of questionable use. These articles are often between two and four pages long; feature two to four citations, one of which is often a quote from a paramount leader; and are filled with stock political phrases. Although some insights may potentially be gleaned, the lack of robust data and citations raises questions about the quality of their conclusions and gives the impression that they are expressions of author anecdotes. The reality of academic publishing under the strict control of the CPC should also be considered when assessing the reliability of articles.

B. Methodology

The research methodology for this project is qualitative. The project consists of semi-structured, one-to-one interviews. The interviews involved a series of open-ended questions that allowed participants to express their experiences in their own words and to emphasise what they felt was important. This method facilitates the purpose of interviews, which according to Polkinghorne is 'to gain a full and detailed account from an informant of the experience under study'.¹⁰ Interviews allow the capture of an 'insider perspective' through 'participants own words, their thoughts, perceptions, feelings and experiences'.¹¹ Semi-structured interviews, in particular, 'can make better use of the knowledge-producing potentials of dialogues by allowing more leeway for following up on whatever angles are deemed important by the interviewee'.¹² In the context of an exploratory study into a field with limited pre-existing literature to guide questioning, a flexible semi-structured format combined with greater leeway for expert interviewees may help to mitigate deficiencies in the original list of questions.

During interviews, participants were asked 13 pre-prepared questions divided into four categories—teaching style and concepts; influences on teaching style; understanding of policy and the perceived influence of policy—and finally, respondents were asked if they felt their experience was typical for an ideo-political subject teacher, providing an opportunity for identifying potential outliers. All these questions are available in Appendix 1. Additional spontaneous clarification or probing questions followed where it felt appropriate.

The intent of the first category of questions is to elicit from respondents their thoughts and beliefs about how to teach. These questions ask about general teaching beliefs as well as more practical questions, such as what teachers consider when preparing a lesson plan. The participating teachers were also asked to list methods they used and any methods they had personally developed. The second category of questions relate to the influences on respondent teaching methods. Participants were asked to identify how they developed their teaching style; what influenced their style, whether it was certain individuals, books or policies; and

¹⁰ Donald Polkinghorne, 'Language and Meaning: Data Collection in Qualitative Research' (2005) 52(2) *Journal of Counselling Psychology* 137, 142.

¹¹ Claire Taylor, 'Interviewing' in Immy Holloway (ed), *Qualitative Research in Health Care* (Open University Press, 2005) 39, 39.

¹² Svend Brinkmann, 'The Interview' in Norman Denzin and Yvonna Lincoln (eds), *Sage Handbook of Qualitative Research* (Sage, 5th ed, 2018) 997, 1002.

what official guidance they received in regard to teaching methodology, such as training from their university.

The value of these questions is the evidence they provide for how ideo-political education classes are taught in practice, the influences on those teaching methods and the role of normative documents. Since the key point here is the extent to which teachers are guided by normative documents, the questions in the first category can be cross-checked against the content of normative documents to draw conclusions about how well they match.

The second category allows teachers to identify in their own words whether normative documents played a role in shaping the teaching methods applied in their classes or whether they arrived at their chosen methods independently. If teachers only mention, for example, inspiring teachers from their youth or academic texts on pedagogy but fail to mention normative documents, it is a sign that they do not see normative documents as an important influence on their teaching style in ideo-political subjects.

The third category of questions directly queries respondent understanding and interpretation of normative documents. These questions asked respondents about their awareness of sections related to teaching methods in normative documents and how they interpret and apply those sections. They were also asked if they received training or instructions relating to the documents. This section provides direct answers to the questions this study is about: how teachers interpret normative document guidance on teaching methods and apply the interpretation to their classroom teaching. However, it also acts as a check on earlier answers and helps to extract a more nuanced approach to the questions.

At the time the interviews in Chapter Seven were planned, ideo-political education policy for higher education was based on the *2004 Opinions*, *2005 Opinions* and *Plan 05*, discussed in Chapter Six. The trio of normative documents outlined the principles, content and methods that should be applied, including a major subject reshuffle and standardisation that remained the core of university-level ideo-political education for 15 years. Although other documents were released, these were relatively minor updates compared to the major standardisation that *Plan 05* represented.

Ironically, after 15 years of relative policy stability, Xi's 3.18 speech heralded a new series of top-level normative documents relating to ideo-political education. A CPC Central Committee and State Council '*Opinion*' was released only a few months before interviews were conducted, and an implementation plan akin to *Plan 05* was released after the interviews. As a result, updated policy directives and changes to ideo-political education were discussed in Chapter Six; however, the collected interview data in the following chapter necessarily only focuses on teachers' experiences with the documents available to them at the time. This includes the 3.18 speech and the *2019 Opinion* but not the 2020 implementation plan.

C. Sampling

As a qualitative, exploratory study, rich accounts from a small number of individuals mattered, rather than a large, representative sample, as would be the case with a quantitative

study.¹³ This study combined purposive and snowball sampling methods and the use of well-placed gatekeepers to provide a pool of respondents possessing the experience necessary to offer the required rich accounts. According to Patton, ‘the logic and power of purposeful sampling lies in selecting *information-rich cases* for in-depth study’.¹⁴ Additionally, the choice of gatekeepers and respondents is, at least in part, influenced by convenience, namely the limits of the researcher’s access to potential gatekeepers and respondents.

Gatekeepers were an essential part of sourcing participants for the study. Given official suspicion of foreign researchers, and the general sensitivity surrounding topics such as ideological education, it was especially important for participants to feel the researcher was trustworthy. Gatekeepers, through their shared relations between the researcher and the potential participants, bridged this trust gap in a way that made this study possible. The gatekeepers for this study were chosen because of their networks of contacts within the Chinese Academy of Social Sciences and the Marxism departments of Chinese universities. Their access to respondents allowed the sourcing of participants capable of providing rich accounts of teaching undergraduate-level ideological theory classes following the release of *Plan 05*.

Gatekeepers were asked to recommend current ideological subject teachers or those who had recently retired. Three separate gatekeepers, who were contacted independently of each other, provided access to three small pools of respondents in different geographic locations. The respondents for this study are all current teachers of ideological subjects with differing levels of experience and positions within their relative departments. One set taught in a major economically advanced coastal city, another taught in a relatively well-developed non-coastal city, while the third group taught in a less developed western province. Purposely sampling from cities with different levels of economic development may provide insight into how ideological theory classes are conducted at universities with differing access to resources.

Aside from the initial sources provided by gatekeepers, snowball sampling delivered additional sources. Snowball sampling is a sampling methodology where researchers invite study participants to recommend further participants.¹⁵ This method can be useful for sourcing participants who may otherwise be reticent to participate without referral from a trusted colleague.¹⁶ At the conclusion of the interviews, respondents were informed that the study would benefit from additional respondents and that any recommendations of further respondents would be welcomed. Roughly half of the participants in this study joined through snowball sampling.

Lei’s comments about ‘extremely identical’ responses and accuracy problems emerging from potential official intimidation informed the design of this study.¹⁷ This study’s participants joined following gatekeeper recommendation rather than university assignment, reducing the opportunity for interference by university officials. Individual gatekeepers were not informed who other gatekeepers were, and participants did not know the identities of other participants except in cases of snowball sampling, in which case they knew who they recommended or

¹³ Michael Patton, *Qualitative Research & Evaluation Methods* (Sage, 4th ed, 2015) 401.

¹⁴ Ibid 401.

¹⁵ Ibid 451; Polkinghorne (n 10) 141.

¹⁶ Liamputtong (n 1) 17.

¹⁷ Lei Yu (n 3) 177.

were recommended by. This reduced the possibility of collusion between participants or official coaching on how to answer questions.

However, even with these precautions and the innocuous focus on teaching methods, the fear of Party-state reprisal still cast a shadow over the study. Despite this safer sampling method and strong provisions for protecting anonymity, such as the destruction of all non-anonymised data, respondents' rights to check transcripts for identifying information and the study's commitment to not directly quote any individual respondent, a quarter of participants elected to drop out of the study after reviewing the transcripts of their interviews. This is a serious question that researchers hoping to cover ideo-political education-related topics in the future must resolve if they hope to maintain useful sample sizes and collect accurate answers.

With a clear understanding of the methodology applied in this case study, it is now possible to consider the results. The following section offers an analysis of the data collected by this case study and categorises respondent answers to identify key themes that emerge.

II. Results

This section presents the common themes and interesting outliers discovered by analysing the interview transcripts. The presentation of this analysis below is divided into three sections based on the three categories of questions asked during the interviews: questions related to teaching style and concepts; influences on teaching style; and understanding of policy and the perceived influence of policy. After presenting the themes associated with each answer in the three categories of interview questions, the chapter discusses the significance of the data and what it means in the context of this thesis. Finally, this chapter draws two main conclusions from the results regarding the relationship between ideo-political normative documents and their implementation by subject teachers.

Before presenting the results of the interviews, it is important to restate that this study committed to not quoting respondents directly. Responses have been paraphrased and, at times, closely paraphrased, but an attempt has been made to provide a layer of linguistic obfuscation between the exact words of respondents and the text provided below. This approach helps to mask idiosyncratic language that might reveal the identity of respondents. Protecting the anonymity of respondents in the context of Chinese ideo-political education is extremely important, and respondents required strict anonymity in the final reporting of data as a necessary condition for their participation.

A. Teaching Style and Concepts

The first question in this category probes what teachers consider when they prepare lesson plans or choose specific teaching methods. The major theme that emerged is the need to consider the circumstances of students. Respondents independently, without being prompted, unanimously made this claim. Respondents noted that they were responsible for teaching students from a wide range of backgrounds who study different majors, so it is necessary to take this into account when designing classes for them. Respondents emphasised different reasons why students' backgrounds are an important consideration, with some focusing on different levels of theoretical and political knowledge, others mentioning the relative willingness to accept class content and others still emphasising that students of some majors

are more active in a classroom setting, so methods such as classroom discussions are more suitable.

A minor theme raised by some respondents was the need to consider the class content when designing classes. Two respondents, from two separate locations, made this claim as the first part of their answers; however, they did not elaborate on why this is the case. Additional answers raised by only one respondent included the need to remember one's teaching duty, finding ways to make classes entertaining and the use of specific methodologies, including storytelling, discussions and case studies.

The second question asked teachers to describe their 'education concept', or in other words, what they believe is the right way to teach people. This question was chosen as key normative documents have recommended teachers use specific teaching methods. It provides an opportunity to compare how closely teacher responses reflect those requirements. The clearest theme that emerges from respondent answers is the claim that there is no specific right way of teaching people. Two respondents from two separate locations used the same Chinese idiom to express this idea, while another respondent used a similar idiom to similar effect. However, the commentary offered by these teachers for why this is the case differed. One teacher emphasised that what really matters is that students can accept the message you are presenting—as long as the method works, then it is the right way. Another teacher stated that teaching should focus on expressing values instead of simply presenting knowledge. The third respondent expressing the 'no right method' theme did so because they believed that teachers needed to choose teaching styles and methods that suit their own personality. Extroverted teachers might be able to run their class like a comedy routine and maintain student interest that way, but introverted teachers attempting the same act are unlikely to see the same results. Having said this, the third respondent did also claim that using methods students can accept is important.

Aside from this point of agreement, teachers emphasised different themes. One teacher believed that it is important to treat students as subjects to converse with rather than empty receptacles of knowledge to be filled passively. To their mind, it is important to persuade students rather than lecture them. Another respondent instead focused on the political aspect of being an ideo-political subject teacher. This respondent expressed the view that it is necessary to hold officially sanctioned political views and remember the purpose of the classes, then find suitable methods to express textbook content effectively.

Respondents were next asked to describe teaching methods they have applied in their own classrooms. This question helps contrast the theoretical considerations of what is ideal from what is applied in practice. Although respondents' replies varied, some common points still emerged. Two respondents from the same city mentioned the use of case studies. One respondent described case studies as a way of presenting the theoretical knowledge within textbooks in a way that is easier to accept. Another common point is the use of classroom discussions and methods where students participate rather than passively receive knowledge. Respondents from three different regions mentioned the use of these kinds of methods, with one focusing on encouraging students to tell stories and following up on these stories, while others mentioned communicating with students and responding to their commentary in a more

general way. Use of multimedia and online learning were also mentioned, as one respondent identified movies as a teaching tool and another the use of online learning platforms.

The common theme here is the use of methods that create a more vivid learning experience that may assist students internalise what is otherwise dry theory lacking context. Only one respondent challenged this account, claiming that, in reality, teachers continue to lecture students and opportunities for genuine student engagement through the forms mentioned above are limited by the reality of huge class sizes.

When asked how they would like to improve their teaching, respondents raised three key themes. Two respondents raised the problem of relating theory and textbook content to the lives and experiences of students. This can be interpreted as a concern that students will reject, or at least show no interest in, a subject that has no connection to their own lives, so there is pressure for teachers to find ways to link the abstract theoretical knowledge and values found in textbooks in ways that students can effectively relate to. A related desire, expressed by two respondents from a less developed Western region, is the need for teachers to improve their IT skills. Both teachers described the increasing prevalence of IT use in education as a trend. The third theme was a perceived need or desire among respondents to improve their theoretical understanding. Two respondents from different regions stated that deep theoretical knowledge was important for effective teaching.

The next question posed in the interview sought to elicit from respondents any teaching techniques they personally developed or applied. In retrospect, this question should have been worded differently to focus solely on new innovations, as an earlier question already asked which methods teachers used previously. As a result of this broader wording, most respondents elaborated further on the methods they used rather than explicitly stating which methods they personally developed. Two respondents addressed the intended meaning of the question and stated that they did not specifically make any significant innovations.

Despite the drawbacks of the question, respondents nonetheless provided additional insights into their teaching methods. A specific instance of this was one respondent describing a situation where they responded to students presenting about a famous historical figure by providing a short emotional story that moved students. This example served to show how this respondent uses stories in a classroom context. It is an interesting example since it aligns well with Xi's call for teachers to emotionally move students. Three other respondents mentioned effective communication: one focused on how they pay special attention to communicating clearly to develop students' understanding of theory, while another mentioned how they use internet language that may appeal to younger people to overcome the generation gap; the third respondent raised a need for teachers to possess a knack for speaking well. Finally, one respondent mentioned that communication with students needs to be purposeful—it is not chatting for the sake of chatting.

B. Influences on Teaching Style

The second set of questions focus on what influences ideo-political subject teachers to adopt or develop the teaching methods they apply in their classrooms. Teachers were asked directly how they developed their teaching style in an open-ended way before being asked if there were particular individuals, books, policies or official guidance that influenced their teaching.

In this way, respondents could share their initial impressions before responding to later questions regarding which policy specifically played a role in forming their teaching style.

The first question of this set asks respondents to explain how they developed their current teaching style. Four main themes emerged, with at least two respondents identifying each of these themes independently. The most common theme, raised by 80 per cent of respondents, was the influence of other, usually more experienced teachers. Three respondents expressed the next most common theme: the role that practice plays in informing teachers' development. These teachers emphasised that years of experience help one to determine what methods work best in their own circumstances. This can also be seen as a natural growth from the previous theme, where, after a period of following a model, teachers gain enough experience to know which methods are suitable. The theme of self-development through experience relates to comments by two respondents who stated that one's teaching style relates to one's personality. Through understanding one's own personality and through one's own experience, a teacher can then choose the teaching methods that both suit their own personality and produce acceptable results.

Respondents were next asked a follow-up question: What sources, such as individuals, books, or policies, have influenced your teaching style? This question was intended to prompt respondents to answer the previous question more deeply and to reflect on whether there were additional influences on their teaching that they overlooked in their previous answer. However, contrary to expectations that respondents would begin describing additional influences or list specific books, such as those by Dewey or Makarenko, answers continued to reinforce earlier themes. One respondent, who previously did not mention former teachers as an influence, described the effect of an impressive teacher from their undergraduate days and how they learned from that experience. Another reinforced their earlier answers by mentioning the effects of other teachers, including model examples and colleagues. Only one respondent expanded beyond these themes. They described how books on traditional Chinese culture and classics of Marxism, especially the works of Mao Zedong, played a role in their own development. Again, this reinforces the argument that teachers are influenced by their peers, older role models and their own experience more than other sources.

The next question focused on the direction or guidance that ideo-political subject teachers receive in terms of teaching methodology. This question seeks, in part, to identify how much leeway teachers have when it comes to the methods they use, as well as whether they are receiving directives or training from higher levels of the school or state hierarchy. Only two respondents, both in the same city, mentioned official training in regard to teaching methods. These teachers both stated that there is guidance through a national-level system and guidance provided by universities. One respondent further identified a provincial-level system, indicating that different levels of the state are involved in the guiding and training of teachers.

Aside from these comments, respondents focused on the role that their peers or seniors play in guiding them. The responses from 80 per cent of interviewees highlighted the roles that retired teachers or their own peers played. One respondent described being moved by how retired teachers from their department, some as old as 80, continue to guide current teachers. These retirees often observed the classes of younger teachers and offered advice on how to improve, doing so in a continuous cycle of observation and advice. Peers and students also

played roles in guiding and advising respondents. One respondent noted that student participation in post-semester teacher evaluations provided a source of advice as students readily provided opinions on how teaching could better suit them.

C. Understanding of Policy and Its Perceived Influence

This section of questioning began with a general query regarding what comes to mind when respondents think of central-level normative documents. These are the form of quasi-legal policy documents issued by central-level authorities such as the CPC's Central Committee and the Ministry of Education, which, as explained in Chapter Six, guide ideo-political education work in general and ideo-political subject classes in particular. The initial question of this set is intended to elicit teachers' first thoughts when they consider these documents. Unlike earlier questions, respondent answers shared less in common, so it is necessary to present their answers in more individual terms here.

Respondents offered distinct initial impressions, but in general recognised either that there were many documents or that the documents say a lot. One respondent interpreted normative documents as allowing for a range of teaching outcomes. This recognises that not every student will emerge from the process in complete agreement with the Party-state's worldview. The respondent in question believed that different levels of outcome were acceptable to the Party-state, ranging from full agreement with, and understanding of, the Party-state's positions on issues such as law to simply supporting the Chinese ethnicity and Chinese culture without directly supporting the CPC.

This contrasts with another respondent whose impression of the normative documents is that teachers are subject to growing political requirements. Teachers are required to teach more politics, and their own stand on questions, and how they conduct themselves, is increasingly treated as an ideological question. So these two viewpoints: growing political demands on teachers and a tiered approach to teaching objectives, appear contradictory. Yet the same respondent also mentioned that normative documents are designed to be interpreted, with their spirit being transformed into teaching, instead of viewed as proscriptive documents laying down exactly what is to be done. Regardless of how permissive teachers may be of students, one respondent made it clear that teachers must have impeccable politics and never, even through ignorance, say anything that contradicts the Party-state's official position.

Two respondents from the same region claimed that top-level authorities have paid much greater attention to ideo-political education, especially theory classes, over the past few years. Teachers regularly study the many new normative documents released to apply them in their work. One of these respondents characterised the documents as focused on integrating ideo-political education conducted at different year levels into one standardised system. Another respondent, pre-empting the next question the researcher was about to ask, stated that normative documents focus on principles and justifications for ideo-political education instead of providing actionable advice on teaching methodology.

Respondents were then asked if they were aware of sections in central-level policy documents that recommend types of teaching methods. In response, participants unanimously referenced Xi Jinping's 3.18 speech. This supports the analysis in Chapter Six, which showed that although the speech is not a normative document in the traditional sense, it focuses on

teaching methodology to a much greater extent than other recent documents and is a source of guidance to later documents. In fact, respondents not only cited the 3.18 speech but also quoted official formulations from the speech, including the ‘eight unites’ and the ‘six requirements’.¹⁸ One respondent could not remember, on the spot, precisely how many ‘unites’ Xi mentioned, reflecting the difficulty some face in keeping up with the plethora of official numbered political slogans issued in China.

Although respondents unanimously commented on the 3.18 speech or used it to prove their points, the specific points they made based on it differed. They did not agree on how useful the speech and other normative documents were in providing teaching methodologies, with some claiming they were very useful and others stating they were not. One category of teachers identified specific teaching methods raised in normative documents. Some methods and principles mentioned include an ‘active style’, setting students as subjects, encouraging student initiative, inclusion of online teaching and IT, and the application of ‘social practice’ in combination with classroom teaching.

The praise of this group was tempered by the commentary of other respondents who claimed that normative documents have a different focus. One respondent emphasised the role of the 3.18 speech in setting the standard for how teachers should think and act with a political subtext. The respondent in question did not mention specific teaching methods to apply in the classroom and instead focused on these political requirements. Another respondent more directly stated that normative documents are about what we could call ‘big picture’ questions. They do not tell teachers how to teach; this is up to teachers to discover through experience and based on their own local situation.

While the previous question asked about respondent awareness of provisions in normative documents related to teaching methods, the next question asks how they interpret those provisions and apply them to their own classroom. This question again seeks to bridge the gap between the ideal world of policy and the messy world of practice. It also probes the difference between official wording and agent interpretation and action.

Respondents replied to this question by identifying the teaching methods they apply and the link to normative documents. In reply to previous questions, one respondent discussed at length how they use stories in a classroom setting as an effective way of engaging students. For this question, the same respondent noted that telling stories was one of the methods raised at the March 18th ideo-political theory class teacher’s symposium, the one where Xi made his ‘important’ speech on this topic. Other respondents listed methods, such as the case study method, topic method, practical teaching and online tools.

While acknowledging these methodologies and principles, some respondents still commented in line with earlier themes, namely that the documents do not provide details on how to implement these different teaching methods. One respondent further pointed out that methods such as topic education, an emphasis on student practice and the use of online platforms are

¹⁸ For the ‘six requirements’ and ‘eight unites’, see 习近平 [Xi Jinping], ‘思政课是落实立德与树人根本任务的关键课程’ [‘Ideo-Political Classes are the Essential Course for Carrying out the Fundamental Task of Promoting Morality and Cultivating People’], *qstheory.cn* (Journal, 31 August 2020) <http://www.qstheory.cn/dukan/qs/2020-08/31/c_1126430247.htm>.

not new and that teachers already applied these methods before normative documents recommended them. To this respondent, it was the practical experience of teachers that informed policy documents, rather than the other way round.

Just as with the last section, which considered the guidance participants receive in terms of teaching methods, respondents were also asked what guidance or direction they receive in regard to policies. Respondents mentioned receiving guidance related to ideo-political education policies and the need to study policies when they are released. Most teachers stated that they participated in meetings to either study the content of policies or discuss their implementation. Others mentioned that Ministry of Education officials and experts from other schools spoke to teachers. In terms of what specific guidance teachers received, respondents offered varying answers. Some merely mentioned that they received directions from above without identifying the content of those directions. Others stated that the directions helped with implementation, again without mentioning details. The most detailed answer described training on how to use online collective lesson preparation resources and on understanding the ‘spirit’ of normative documents. Aside from this official guidance, respondents also mentioned that they engage in active self-study to ensure they are aware of requirements.

The final pre-prepared question posed to participants was a triangulating question asking whether teachers felt their experience was typical among their colleagues. The value of this question lies in enlisting teachers in the process of evaluating their own data and helping to identify possible reasons why responses may be either typical or atypical.

While most respondents acknowledged that there are certain common points between teachers engaged in the same field, many also recognised some potential areas of difference, particularly in relation to different levels of university. China’s higher education system is comprised of schools with varying access to resources, and requirements on teachers and students at elite schools may differ from those in regional areas or lower-ranked institutions. Two separate respondents used Beijing University as an example of an elite university when discussing how the experience of teaching ideo-political subject classes differs based on what kind of university one is at. In one case, a respondent claimed that students at schools like Beijing University are highly knowledgeable, so there is extra pressure on teachers to be infallible experts in broad fields of knowledge. This pressure can be seen in the case of Chen Guo. Chen Guo became well known online as an ideo-political subject teacher for her engaging lessons.¹⁹ However, on one occasion, she incorrectly read a pair of obscure Chinese characters and was immediately shamed online for the lack of knowledge this represented. One simple and understandable mistake, unrelated to her teaching, was enough to turn public opinion against her and negate her achievements up to that point.²⁰ The online vitriol reached the point where netizens questioned her PhD qualifications and whether she should retain her professorship at Fudan University.²¹ Although her example could be dismissed as simply a

¹⁹ 滕王说剧[Tengwangshuoju], “‘复旦女神’陈果，从国民导师到跌落神坛，她到底做错了什么？” [“Goddess of Fudan” Chen Guo, From National Tutor to Falling from the Altar, What Did She Actually Do Wrong?], *baijiahao.baidu.com* (Blog, 12 August 2022)

<<https://baijiahao.baidu.com/s?id=1740944433129708589&wfr=spider&for=pc>>.

²⁰ Ibid.

²¹ Ibid.

case of netizens behaving badly, this explanation fails to account for why a teacher at an elite institution would become the target of vicious public shaming over such a simple mistake.

By contrast, respondents claimed that students at less prestigious institutions do not share the same studious habits as pupils at elite universities. They may be less inclined to pay attention in class, and the challenge becomes how to convey basic subject knowledge rather than how to keep ahead. One respondent also raised the question of students from minority regions where language barriers may present challenges to teaching that do not apply to major cities. According to respondents, regional differences may also present themselves in how quickly schools and teachers react to and incorporate guidance from central authorities. Schools in less developed areas may have fewer resources to respond to central directives and therefore lag behind in applying, for example, IT in classrooms.

The next section presents two main conclusions that emerge from the data collected in this case study and discusses their significance to legal scholars interested in ideo-political education as a subject of legal study.

III. Analysis of Results and Significance

Through their participation in this study, the selected ideo-political subject teachers offered a glimpse into how they developed their teaching methods; how they approach teaching their classes; and how they understand, interpret and apply ideo-political normative documents. Their individual accounts combine to offer insights into the functioning of ideo-political education at the undergraduate level and allow for the formation of observations. The following section will introduce two main observations and discuss their significance to legal scholars.

The first conclusion is that the recommendations contained within ideo-political education's guiding normative documents relating to teaching methods play little role in determining the methodologies teachers apply in the classroom or in shaping their teaching concepts and style. The documents do not appear to be a source of inspiration to young teachers, nor are experienced teachers turning to them for methodological guidance. Rather than seriously learning from documents, teachers may instead be using the wording of normative documents to justify the methodologies they already planned to apply.

The first two sections of the interviews focused on teachers' thoughts about education, how they developed the methods they use and the sources that influenced their adoption of these methods. Respondents emphasised the role of older peers, their own practice and personal characteristics in influencing how they teach. What was starkly missing from these responses was commentary on policy. Teachers typically answered the broad questions of these two sections about the influences on their teaching without quoting policy or mentioning how it influenced their work. If the sections of normative documents on teaching methods are a significant influence on teachers, then respondents would likely have mentioned them alongside the influence of retired teachers and practice. When asked specifically about policy, respondents mentioned policies and speeches; some identified specific teaching methods raised and others discussed the training they received from higher authorities. One respondent even directly stated that, on this question, they were not influenced much by policy. This suggests that most respondents are aware of the policies and policy points on teaching

methods and have received training on applying them. Yet, they did not feel they were a significant enough influence on their actual teaching methods to mention in the first two sections of the interview.

Numerous respondents identified specific methods mentioned in normative documents and suggested that they are applied in practice in their work. However, given the facts presented above, it seems more likely that teachers adapted to presenting the teaching methods they are accustomed to in terms of policy requirements. An example of this from a respondent was how they were inspired by their former undergraduate teacher to teach and interact with students in a certain way. They then mentioned how the particular way of teaching they were inspired by is also mentioned in normative documents. The teacher in question was inspired and began using this method long before the 3.18 speech or the *2019 Opinions*.

This observation begs the question: Why is it that the recommendations on teaching methods in normative documents do not seem to have a strong influence on teachers? One possible reason is that most normative documents provide no useful direction on teaching methods. As has been mentioned in Chapter Six, and as some respondents raised in different ways, even when normative documents do mention recommended teaching methods, they do not provide specific information on how to implement certain teaching methods. The claim by one respondent that normative documents do not provide information on teaching methods is not strictly true, however. The *2005 Opinions*, the 2015 Plan and the 3.18 speech provide relatively detailed accounts of which methods should be applied; however, it is true that they are not step-by-step implementation guides. However, a lack of a direct implementation guide from a central-level document should not be seen as a licence to ignore the general advice about the need to apply specific kinds of teaching methods.

Another possible reason is that normative documents do not provide novel instructions. Respondents highlighted the role of peers, especially experienced teachers, in guiding them and shaping the way they teach. Despite teaching at very different kinds of universities in very different parts of China, this theme remained consistent among study participants. If these mentors already encourage their charges to apply more student-centred, participatory teaching methods, then it is unlikely that teachers view normative documents expressing these concepts as an influence on their choice of teaching methods. This position is supported by the respondent comment that many schools likely already apply these methods and that the normative documents, instead of providing a vanguard position so to speak, collate the good experience of teachers nationally. This experience is then published in the normative documents for backward elements to follow.

This analysis suggests that legal scholars interested in how the Party-state attempts to inculcate young people with the official position on topics like *Yifa Zhiguo* can still turn to normative documents for clues on classroom pedagogy for these subjects. Although teachers may not be inspired by the specific recommendations in normative documents related to classroom teaching methods, the results of this case study suggest that these sections of normative documents may reflect a synthesis of methods already in use in ideo-political subject classrooms. Consulting normative documents with this context would allow legal scholars some insight into what methods teachers are using to present and justify the Party-state's legal theories and China's legal status quo.

The second conclusion focuses on the methodology used by a teacher; although that choice may not be significantly determined by the provisions of normative documents related to teaching methods, the behaviour of teachers may be influenced by normative documents. Greater state attention to ideo-political theory classes and teachers, combined with more stringent political demands on teachers themselves, may create growing pressure to cleave more closely to the Party line in classrooms and discourage innovative teaching methodology, addressing 'difficult' topics or providing critiques of official narratives on law.

Multiple respondents commented that they felt central authorities are now paying greater attention to ideo-political subject teachers and the work they do. This can be positive for teachers. Some respondents felt that their subject is more valued and see an improvement in their position as teachers of this subject. This sentiment confirms reforms in recent normative documents that, as mentioned in Chapter Six, provide improved benefits to these teachers, including a new evaluation system more suited to the unique academic context of ideo-political education.

It is the combination of closer attention with stricter political demands on teachers that proves threatening. Two respondents commented directly on the political requirements they are subject to, stating, respectively, that teachers must have a 'correct' political outlook and that their own political position is now an ideological question. These statements and the growing political requirements on teachers reflect major points of Xi's 3.18 speech and the following normative documents, which set political orthodoxy of teachers as the first of the 'six requirements'. One respondent's comment that teachers must be very careful to never, even through simple misunderstanding, make political mistakes in the classroom reflects these strict demands for adherence to the Party line.

For legal scholars interested in the 'how' of ideo-political education, this conclusion carries a significant implication: subject teachers are under pressure to be faithful preachers of the official interpretation of rule of law, not critical scholars presenting alternative points of view or offering critical analysis. As was argued in Chapter Five, ideo-political education exists to present and justify the Party-state's position on a wide range of questions, including rule of law. The case study in this chapter supports this position and shows teachers directly recognising the growing political requirements placed on them and the need to never make political mistakes while teaching. This means that in ideo-political classrooms, students are learning the carefully crafted narrative about rule of law described in Chapter Five. In terms of teaching methods, it may mean that teachers are under greater pressure to ensure only the orthodox view is allowed in the classroom, which may limit the kinds of teaching methods they choose to utilise.

As argued in Chapter Six, the analysis presented here shows that teachers are under greater pressure to accurately and reliably transmit and justify the Party-state's official interpretation of rule of law to students. This supports the argument in Chapter Five that ideo-political education is a Party-state project aimed at presenting and justifying the hegemonic position, including on questions of law, and the argument in Chapter Six that Xi-era normative documents especially emphasised the political loyalty of teachers and the accurate dissemination of official narratives.

IV. Conclusion

This chapter investigated the experiences of ideo-political subject teachers and their interaction with the normative documents that guide ideo-political education work at the undergraduate-level. More specifically, it focused on how these teachers interpreted and applied the content of these documents relating directly to teaching methodology. By exploring this relationship, this chapter allows legal scholars to better understand how this aspect of the Party-state's program inculcates young people with its official view of rule of law functions.

To uncover these relationships between teachers and normative documents, the thesis presents a qualitative study based on semi-structured interviews with ideo-political subject teachers. The literature reveals little extant scholarship on these questions, so these interviews acted as an exploratory study that sought to extract rich personal accounts. These accounts provided insights into how teachers understand and interact with the normative documents related to their subjects and allowed for the development of conclusions that could be tested by larger, quantitative studies in the future.

Gatekeepers helped source participants for the study in three different regions of China with the aim of finding participants with diverse experiences of teaching ideo-political theory classes. As a qualitative study, the ability of respondents to provide rich accounts relevant to the study's aims was more important than the overall quantity of participants. Snowball sampling also proved a fruitful source of respondents given the sensitivity of potential participants to involvement in foreign research.

The data collected from these interviews painted a picture of teachers eagerly deploying more interactive and engaging ways of teaching their subjects. However, these more engaging, student-centred methods, although consistent with methods recommended by normative documents, especially key documents from 2005, 2015 and the 3.18 speech, do not appear to be sourced from normative documents. Teacher accounts suggest that inspiring former teachers and older mentors play the most influential role in shaping the ways that teachers choose to teach. Instead of informing the practice of ideo-political subject teachers, normative documents may instead be used as retroactive justification for the methods teachers have already decided are the most suitable based on their own practice and the influence of mentors. The teaching methods presented in normative documents may also represent popular methods already in use, meaning these documents still provide insight for legal scholars into the methods teachers use to teach the Party-state's official interpretation of rule of law.

The other major observation drawn from this study is that although the provisions of normative documents relating to desired teaching methods may not influence teachers, other elements of the documents, combined with the overall political environment, may still influence and constrain the classroom behaviour of teachers. Growing attention to ideo-political education combined with greater political demands on subject teachers may create additional pressure on subject teachers to exercise ideological discipline and teach precisely what the Party-state wants, precisely how it wants it. A side effect of this approach may be that teachers will lack the flexibility to respond to 'difficult' topics in conciliatory ways that

coax students onto the desired political path and instead will be forced to give unsatisfying official answers.

The results of this case study hold implications for legal scholars interested in ideo-political education for its role in teaching young Chinese people about rule of law. Respondent answers, and the conclusions drawn from them, support the argument that ideo-political education is one means that the Chinese Party-state uses to present and justify its official position, including on rule of law, to young citizens. The results also suggest that the sections of normative documents that recommend specific teaching methods offer insights into how students are taught official rule of law narratives. In other words, the case study contributes, just as this thesis does, to our understanding of what young Chinese people are taught about rule of law and how they are taught. It supports the arguments advanced in this thesis concerning the role of ideo-political education in teaching legal topics from the Party-state's perspective, the role of normative documents in organising this process and how this education is conducted in the classroom.

The final chapter of this thesis, the conclusion, will bring together the arguments made in each chapter and summarise the supporting evidence.

Chapter Eight: Conclusion

China in 2022 continues to draw the world's attention. Whether one seeks greater collaboration or is preparing for confrontation, there is a growing need to properly understand the country. This thesis contributes to a better understanding of China by defining China's 'rule of law' as a paradigm where law is viewed as a tool for facilitating Party-state policy and by advancing the novel position that ideo-political education should be treated as a subject of legal study in its own right. Analysed this way, ideo-political education is a means by which the Party-state describes and rationalises its interpretation of rule of law in the form of *Yifa Zhiguo*.

Rule of law, as an 'essentially contested concept', naturally stimulates debate. This is especially true when concepts that are taken for granted are then applied to analyse a country in a radically different context. When Chinese officials use terms like *Yifa Zhiguo*, which has been translated as 'rule of law' and 'ruling the country according to law',¹ it naturally sparks interest from legal scholars. Part I of this thesis engaged with the contentious debate about the meaning of rule of law in the Chinese context. By synthesising scholarly sources, comparing with a consensus liberal rule of law model and analysing legal reform in the PRC, this thesis demonstrated that China's 'rule of law' amounts to the Party-state viewing law as a tool. This tool is applied when it facilitates policy goals and is discarded when it clashes with Party-state interests. This thesis also showed that Party supremacy over law, instrumentalism and a 'reform-repression dualism' are ongoing features of China's law reform. This is how the Party-state interprets rule of law in the Chinese context and what is meant when they use the term *Yifa Zhiguo*.

Part II built on Part I's description of rule of law in China by examining ideo-political education as a means by which the Party-state presents and justifies its rule of law narrative to citizens. Ideo-political education is a kindergarten to postgraduate process where the Party-state attempts to shape ideal citizens primed with an official worldview. This thesis argued that ideo-political education should be treated as a subject of legal study since it plays a role in portraying and justifying the official version of rule of law. Analysis of the historical roots of ideo-political education's mission, and the content of the official textbooks used in ideo-political theory classes, demonstrated that ideo-political education does, in fact, perform this role.

This thesis goes beyond merely describing the 'what' of ideo-political education's legal content to delve into the 'how' of its implementation. Part II of this thesis explored the role of 'normative documents', quasi-legal policy documents, in guiding the implementation of ideo-political education, with a focus on teaching methodology, through analysis of key policies in the Hu and Xi eras. The data produced by a case study of ideo-political subject teachers led to two main conclusions about the role of these documents in shaping teacher choice of classroom methodology. Although teachers may not take inspiration from the recommended teaching methods in the documents, the methods presented are a synthesis of already popular

¹ Elisa Nesossi et al, 'Interpreting the Rule of Law in China' (2016) 1(2) *Made in China* 26, 26.

methods in China. Teachers may also be under greater pressure now to conform to political and ideological requirements, which may then affect their choice of teaching methods. These insights support scholarly efforts to understand how Chinese citizens are taught the Chinese Government's interpretation of rule of law.

Overall, this thesis focuses on what Chinese officials mean when they speak of 'rule of law' in China and uncovers what young Chinese people are taught about that concept, how they are taught and the role of normative documents in guiding that process. With China taking centre stage, either as an indispensable economic partner or an implacable strategic threat, it is more vital than ever to accurately understand the role of *Yifa Zhiguo* in China and official efforts to shape ordinary people's interpretation of rule of law. The historical analysis in Part I identified the features of *Yifa Zhiguo*, while Part II uncovered how this paradigm is taught to students, forming a cohesive analysis of this element of the Chinese political and legal system.

I. China's 'Rule of Law': A Tool for Facilitating Party-State Policy

Rule of law, an 'essentially contested' concept, is especially contentious in the Chinese context as scholars grapple with what it means in China's unique conditions. This thesis contributes to the ongoing scholarly debate by drawing together the context of legal reform since the founding of the PRC and presenting an account of the legality of state responses to the COVID-19 pandemic in Wuhan as a means of supporting the argument advanced here concerning the meaning of rule of law in China.

When official Chinese sources speak of rule of law in China, they are not talking about a system where the law stands supreme above all individuals and organisations. They are not describing a system of predictable rules enforced by A. V. Dicey's independent courts that decide matters solely on their legal merits. What they are describing is a situation where law is a tool for achieving Party-state policies. The Party-state takes an instrumentalist approach to law, viewing it as a tool for implementing Party policy rather than an intrinsic good in itself. Where the tool of law is useful instrumentally, it is applied. When it impedes Party-state goals, it is ignored in favour of extra-legal means. This is what officials mean by *Yifa Zhiguo*.

This claim should not be taken to mean that legal reforms failed to improve procedural justice or tangibly improve people's lives. Analysis of legal reform in the PRC demonstrates a 'reform-repression dualism', where genuine improvements to procedural justice coexist with developments that strengthen the state's legal options to curb popular political expression. Improvements in areas such as administrative law allow the public to seek justice in cases of official malfeasance, but they also play a role in helping higher authorities control local officials. However, law is not intended to allow ordinary people to hold high officials to account or challenge the political status quo. This can be seen in the suppression of rights lawyers in the Xi era. In these circumstances, law serves as a weapon for crushing dissent and keeping the population in its place.

China's 'rule of law', then, is best described as an instrument wielded by the state, not a fetter on its power. Although other scholars have advanced similar positions previously, this thesis presented a well-documented account to support its claim using the legal reform history of the PRC and contemporary state actions, including an analysis of the legality of the early COVID-19 response in Wuhan.

Confirming the specific meaning and features of China's 'rule of law' is significant, not least because it provides a common point of comprehension in East–West legal dialogue. Without a common lexicon, legal scholars from China and the West will merely talk past one another without ever effectively addressing each other. Understanding what the terms mean in the Chinese context, and therefore how Chinese colleagues use the terms, allows scholars to properly engage with Chinese arguments and provide the basis for meaningful communication.

Outside the 'ivory tower', understanding the reality of law in China is important for policymakers and the public, who may jump to incorrect conclusions due to the use of terms like 'rule of law' in the Chinese context. Rule of law rhetoric may be used by Chinese propagandists to improve international perceptions of the country in a misleading way since the common understanding in the West of what rule of law entails differs greatly from the Party-state's interpretation expressed as *Yifa Zhiguo* and as described in this thesis. A better understanding of the nature of law in China could potentially help inoculate Western publics from some forms of Chinese influence operations. Emphasising the reform side of the reform–repression dualism may promote greater cooperation and person-to-person diplomacy, as it supports a more balanced and nuanced understanding of China and undermines Cold War-style views of the country.

After describing what rule of law means in China, this thesis explored the role of ideological education in inculcating young Chinese people with official narratives on law, including the Chinese Government's interpretation of rule of law, the *Yifa Zhiguo* paradigm. By treating ideological education as a subject of legal scholarship, researchers learn not only what young citizens are taught about rule of law but also how this process is conducted and the regulatory scaffold that facilitates learning about *Yifa Zhiguo*.

II. Ideo-Political Education as a Legitimate Subject of Inquiry for Legal Scholarship

This thesis argued that ideological education is relevant to the study of law in China and should be treated as a subject of inquiry by legal scholars because of the role that ideological education plays in presenting and justifying the Party-state's position on law. It is one way that the official position on rule of law, as discussed in Part I of this thesis, is presented to young Chinese citizens.

Ideological education is a process of formal classes and extracurricular activities that runs from kindergarten to higher education with the aim of teaching students a Party-state-sanctioned worldview and values. The end result is that students are exposed to, and depending on how effective ideological education is, internalise the official ideology

alongside official slogans, leader speeches and other elements guiding how the state expects citizens to think, act and live.

Focusing on ideo-political education at the undergraduate level, this research showed that ideo-political theory subjects, especially ‘Cultivation of Ideo-morality and Foundations of Law’, introduce students to a relatively comprehensive official Party-state worldview on law. Among other aspects, this worldview includes the basic principles of law in China, a historical materialist approach to the development of law, justifications for the official worldview and instructions on how students should conduct themselves in accordance with law. The Party-state’s version of rule of law, *Yifa Zhiguo*, is one aspect of these accounts.

The focus on principles, their justification and how citizens should obey the law and the relative lack of content on how the Chinese legal system mechanically operates or how citizens can secure their rights through legal processes indicates what kind of legal consciousness the Party-state wishes students to internalise: uncritical obedience to the law as interpreted by officials, rather than a self-interested application of legal knowledge to defend one’s lawful rights. This interpretation complements the definition of rule of law in China advanced by Part I of this thesis: law is a tool of the Party-state, not the people.

By understanding what young Chinese citizens are taught about law, and more specifically, the Party-state’s interpretation of rule of law, we may better understand their behaviour, both political and mundane, and the rationale for it. This holds implications for studies of Chinese society extending beyond the legal sphere. To take just one example, it may help human rights researchers understand how and why Chinese citizens seek, or refuse to seek, protection for specific kinds of rights and why they choose certain methods of struggle. Answers to these questions and more may stem from the further investigation of ideo-political education as a subject of inquiry for legal scholars and a greater focus on its presentation of *Yifa Zhiguo*.

This thesis approached ideo-political education as a subject of legal study by investigating not only what legal content is presented to students but also how ‘normative documents’ guide the implementation of this education. It explored the relationship between high-level ‘normative documents’ that direct ideo-political education and the way that ideo-political subject teachers interpret and apply the documents in their classroom teaching. In other words, it explores the role of the regulatory scaffold that facilitates the transmission of official rule of law narratives.

Rather than analysing the normative documents released under each successive leadership of the CPC and comparing with legal reforms of the time, this thesis focused on the contemporary situation, and uncovered how the Party-state’s official position is presently taught in the classroom. This study focused on normative documents governing undergraduate-level ideo-political education and their provisions regarding teaching methods. After textual analysis to uncover these documents and their provisions, a series of semi-structured interviews were conducted with undergraduate-level ideo-political education teachers in different regions of China to investigate how these teachers interpret and

implement the provisions in question. As this field is relatively under-researched, this study mined the rich lived experiences of respondents to provide data from which conclusions could be drawn.

Two major conclusions emerged from the study. The first is that normative documents play little role in influencing or inspiring teachers to apply specific teaching methodologies in the classroom. Instead, teachers are most influenced by their own former teachers and by older mentors, as well as by their own practice and personality. The second conclusion is that although the teaching methods listed in normative documents may not directly influence teacher pedagogical choices, the combination of the increased attention from central authorities to ideo-political education and the growing political demands on teachers may influence teachers to become more risk-averse and hence to be less innovative in their adoption of teaching methods. Teachers may be less willing to apply student-centred teaching methods as they may allow students greater scope to question official narratives, potentially leading to reprimands from officials for failure to adequately control the situation.

This study and the resulting conclusions advance our knowledge of how normative documents guide ideo-political education. To legal scholars, this is a further step towards understanding how the Party-state explains and justifies its version of rule of law to young Chinese citizens. The study of ideo-political education as a subject of legal study is in its infancy, so there is an exciting array of topics and directions in which research may progress. When asked what the potential avenues of future research are, it is tempting to reply 'Everything'. The dearth of knowledge regarding ideo-political education in the West, especially its connection to law, combined with the ever-shifting political and policy landscape in China, means that interested scholars are spoiled for choice when it comes to research options. In the interests of brevity, only a few general options with select specific examples are presented below.

While normative documents are ubiquitous in the Chinese system, their status remains debatable. There is room for further research both into the nature of normative documents and how various stakeholders interact with them. Even within the narrower field of ideo-political education, and narrower still, ideo-political education as a topic of legal study, there remain details to discover about the creation, interpretation and implementation of normative documents. Taking the topic of interpretation as an example, this study focused on teaching methods, but future research could query the extent to which lower-level officials and teachers are free to interpret other elements of ideo-political normative documents. Do agents have more or less leeway when it comes to questions of content, such as *Yifa Zhiguo*, than for the choice of teaching methods?

Comparing older normative documents to newer ones, and seeking relationships between contemporary political developments and the content of documents, could help scholars uncover new trends. For example, does tightening political control expressed as a theme in leader speeches, legislation and implementing regulations translate to increasingly rigid standards on teacher conduct and presentation of the content of ideo-political education? Discovering a causal relationship between these developments would allow scholars to

accurately predict developments in ideo-political education or upcoming normative documents.

Debates continue to rage regarding the meaning of rule of law in modern China. Studying the content of ideo-political education is one way to gain a clearer understanding of the Party-state's official position on this question and what citizens are expected to believe. Many of the specifics of how this official position is taught are still not clear, so further research is needed.

Although ideo-political subject classes are the 'main channel', ideo-political education extends beyond the classroom. This dissertation ignored the role of extracurricular efforts to shape students' thinking, leaving the task to future researchers. These researchers could explore how campus spaces are used for legal education, including as venues for law-related extracurricular activities and as locations for audio-visual propaganda in the form of posters, banners and broadcasts. According to normative documents, extracurricular education involves 'social practice'. Researchers may choose to focus on what this social practice entails and how it helps to reinforce, or even undermine, official law narratives. Case studies on 'ideo-political education bases', or broader quantitative studies comparing student cohort experiences, offer to expand our knowledge of the extracurricular component of ideo-political education.

This thesis focused solely on undergraduate-level ideo-political education; however, the ideo-political education process begins with kindergarten students and persists to graduate school. This study could be replicated and repeated for kindergartens and primary, secondary and graduate schools to discover if the observed trends also emerge at these levels. An important task would be to identify the legal content, if any, of ideo-political education at these levels and their role in laying the foundation for later, more complex ideas. An interesting point to pursue would be how important these early stages are for the success of worldview formation at later stages. Does influencing young children before they can exercise critical thinking improve their susceptibility to the official ideology later in life? Parents suspicious of state motives would likely wish to know the answer.

Out of all these practical questions of function, content and implementation arises a bigger question: How successful is this process? Measuring precisely how successful ideo-political education in China is was beyond the scope of this thesis, which focused instead on demonstrating that ideo-political education is one means the Party-state uses to present its official views on law to young citizens. However, this question is an intriguing direction to pursue for future research. Ideo-political education is only one channel through which young people develop their worldview on law. Interactions with family and friends, exposure to official media and engagement with social media, combined with personal experiences with law/illegality and the legal apparatus, likely shape the way young people think about law.

So a key direction for future research involves placing ideo-political education within this web of connections. Is ideo-political education more effective at expressing government-approved rule of law narratives than other official channels of official law ideology, such as

the legal popularisation campaigns of the 1990s? How competitive is *Yifa Zhiguo*, and its presentation in a classroom setting, with a more organic and eclectic outlook built through the consumption of social media and personal experience?

Application of a historical perspective is also possible by asking if current efforts are any more successful than the ideo-political education of the late 1980s, which, as mentioned earlier, Deng Xiaoping considered to be a major weakness in the Party's work. Survey data presented in Chapter Six demonstrated that, despite some success, a portion of students either rejected ideo-political education or failed to correctly recall the content. Future research could attempt to replicate these studies to compare how successful Xi-era ideo-political education is at inculcating *Yifa Zhiguo* compared with earlier forms.

III. Concluding Reflections

There remain unresolved questions awaiting dedicated comparative law researchers when approaching ideo-political education in China as a topic of legal study. Whether the focus is education, public administration, politics, legal theory or legal practice, there exists scope for valuable research involving both qualitative and quantitative methods. The contribution of this thesis is to expose to a Western audience this field of inquiry, opening it up for future and further rigorous investigation.

In the process, this thesis also contributes to ongoing debates surrounding rule of law in China by using the context of legal reform since the founding of the PRC and analysis of COVID-19 control measures to advance an understanding of Chinese law as an instrumentalist tool for achieving Party-state policy. This is the 'rule of law' Chinese officials mean when they use the term *Yifa Zhiguo*.

Ideo-political education is a process focused on, but not implemented exclusively through, classroom subjects that seek to inculcate young Chinese people from their very first day of school with an officially sanctioned worldview. This worldview includes the Party-state's interpretation of rule of law, as discussed in Part I of this thesis, in the form of *Yifa Zhiguo*. This study showed that ideo-political education at the undergraduate level presents students with state-sanctioned legal theories, principles and values, including *Yifa Zhiguo*, and explicitly states how students should engage with the law.

Normative documents issued by central Party-state bodies guide this process of legal worldview formation. This thesis analysed key normative documents released since 2004 with a view to understanding their role in guiding the implementation of teaching methods in ideo-political theory classes. Out of this analysis, a theory emerged that the drafters of these documents are more concerned with ensuring teachers do not deviate even slightly from political orthodoxy than they are with promoting advanced teaching methods.

To bolster its claims, the thesis presents a qualitative study of the lived experiences of ideo-political theory subject teachers in diverse regions of China. Analysis of the results led to the conclusion that normative documents may influence teacher selection of teaching methods through increasing political demands, but the sections that recommend specific teaching

methods fail to have an effect. In this context, normative documents may continue to provide legal scholars with insights into ideo-political education's role in presenting official rule of law narratives to students.

As tensions between China and the West sharpen, it is vital for scholars, lawmakers and the general public to abandon simplistic notions of China and begin pursuing a nuanced understanding of the country. This understanding should include an accurate appreciation for the character of law in China. This thesis presents the required, nuanced understanding of China's 'rule of law' from a historical perspective of legal reform in the PRC. Armed with this knowledge, stakeholders may effectively engage with China without falling prey to assumptions about the country's legal system.

Effective engagement also requires an understanding of how Chinese people think about rule of law. This thesis places ideo-political education in its rightful place as a subject of legal study, opening this understudied area to analysis. By understanding what the Party-state teaches its citizens about the official *Yifa Zhiguo* paradigm, how it teaches this knowledge and how effective this process is, we gain important insight into the behaviour and thinking of 1.4 billion people.

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Appendix 1: Interview Questions

Question 1: Can you tell me what you consider when preparing a lesson plan or choosing which teaching methods to use?

Question 2: Please describe for me your education concept. Or in other words, what do you think is the right way to teach people?

Question 3: Please describe the methods you have used while teaching ideo-political education subjects

Question 4: How would you like to improve your teaching?

Question 5: Could you describe for me any teaching techniques you have personally developed and applied?

Question 6: Please tell me about how you developed your current teaching style

Question 7: What sources, such as individuals, books or policies, have influenced your teaching style?

Question 8: What kinds of guidance or direction, if any, do you receive regarding teaching methodology?

Question 9: What comes to mind when you think of the core, top-level policies regarding Ideo-political education?

Question 10: Are you aware of any sections of these policies that advocate for certain kinds of teaching methods / methodologies?

Question 11: How do you interpret what the policy says about teaching methodology and apply it in your classroom?

Question 12: What kinds of guidance or direction, if any, have you received in regard to those sorts of policies?

Question 13: Do you think your colleagues, both at your university and in other universities, have had similar experiences?