

Goodbye, Mr Law

The June massacre highlighted the shallowness of legality in the 'new China' of the 1980s. It also highlighted the tragic naivety of the reform movement. Michael Dutton and Steve Reglar argue that the obstacles to reform are now greater than ever.

In December 1988 two of China's leading dissident intellectuals, Yan Jiaqi and Wen Yuankai, were invited by the magazine *Economics Weekly* to express their views about the future prospects of the reform process in China. Both were extraordinarily pessimistic. China's reform process, they suggested, had sunk into a 'quagmire' and the future of reform was, as a result, not bright. China lacked the necessary constitutional guarantees which would ensure basic citizen rights.

Certainly there was a constitution and, within this, a series of legal guarantees were offered. The problem was that these guarantees were expressed in such abstract terms as to render them next to useless. Worse still, the abstract nature of the constitution meant that its clauses were easily manipulated for political purposes and thus the guarantees themselves could become a cover for a series of actions which could, ultimately lead to the deprivation of rights. Hence, despite the fact that the reform regime of Deng Xiaoping had done much to put 'rule by law' on the reform agenda, much still needed to be done so as to ensure that law could be made effective. No longer were the legendary demands of the May 4 Movement in China enough.

The demands of the student radicals in the 1919 May 4 movement for a regime which would organise around the twin poles of 'Mr Science' and 'Mr Democracy' was inadequate in the 1980s, they suggested. Wen Yuankai in particular went on to suggest that a new 'gentleman' was now needed to supplement the other two. This 'gentleman', he said, was the much neglected 'Mr Law'. Wen claimed that, without the presence of 'Mr Law', reformists could easily become the victims of 'illogical political actions' carried out by the authorities. Such actions, he suggested, could even result in the government "wielding the big stick" against reformist elements and entail the "wholesale and illogical criticisms" of such elements by the government. The massacres and lies which have followed the savage repression of the Tiananmen demonstrators vindicate Wen's pessimism.

Indeed, this article itself became the subject of "wholesale and unwarranted criticism" when the mayor of Beijing, Chen Xitong, picked it out for special criticism in his address on the subject of the June massacre to the National People's Congress on 30 June 1989. Chen suggested that the publication of this interview with Wen Yuankai and Yan Jiaqi was designed to "whip up public opinion" so that the program of bourgeois liberalisation could be pushed forward "with even less

restraint". Moreover, Chen suggested, this 'attack' upon socialism by Wen and Yan was done in collaboration with 'external forces' who were implacably hostile to Chinese socialism. Yan and Wen's discussion, far from being fair comment on the weaknesses of the reform program, was treated as reactionary criticism designed to undermine the socialist reform program itself.

Yet it is quite clear that discussions of the need to extend legal and constitutional rights and guarantees was not solely the preserve of supposed 'reactionaries' and 'dissidents' such as Wen and Yan. Indeed, the very leadership which so brutally suppressed the student movement in June this year had itself, in the late 'seventies, championed the issue of legally constituted rights. It was indeed one of the central tenets of the post-'Gang of Four' leadership in China that rule by law was needed to overcome the 'lawlessness' of the cultural revolution.

From the mid-seventies onwards, the party and state embarked on a massive program to reinstitute the rule of law and its legitimacy. The legal profession was revitalised, codification and ratification of substantial bodies of legislation in all fields was undertaken and a very real and serious attempt was made to spread and popularise legal knowledge. The early 'eighties also saw the beginnings of a whole series of institutional reforms which were

designed to democratise the government. The local elections of 1980, the relaxation of political constraints within intellectual circles and the attempts to implement some of the market socialist ideas of Hungarian and Yugoslav socialism all pointed to a limited and cautious expansion of rights at this time.

From the early days of reform discussions in 1978 to the demonstrations in Tiananmen Square, there has been a recognition that the fate of all reforms rests in finding a way of separating the work of party, state and the economy. Reformist political economists argued that control of the economy should be vested in economic managers, who would make decisions according to their understanding of how 'objective economic laws' operate. Political decisions would no longer override important economic considerations such as the level of pricing, investment and accumulation targets. And increased enterprise autonomy would allow managers to make rational decisions concerning production levels and future developments.

This world of decentralised economic management, however, would not be anarchic. The Chinese leaders may have feted Milton Friedman in Beijing, but they were not converts to *laissez-faire* capitalism. Reforms would be subject to what Deng Xiaoping termed the 'Four Cardinal Principles': "the socialist road, Mao Zedong thought (even though it was stated that the late 'Chairman' had personally deviated from the essence of his thought in his later years), People's Democratic Dictatorship, and the primacy of the Party". The problem was how to reform within these stipulations.

The answer rested in invoking economic laws backed up by constitutional law. Legally enforceable contracts, income taxation instead of profit resumption by the state and banking loans made on commercial criteria would provide the integrative mechanisms necessary.

Law and constitutionally defined rights were considered functionally necessary for the introduction of sound economic management as they would clearly establish the responsibilities of all parties concerned, and thereby prevent chaos. Law, in setting the rules of the game, would also define and delimit the boundaries of state and party in economic and political life.



Photo: Michel Lipchitz/AP

Tiananmen Square - just days before the massacre

Henceforth, the party and its officials would be subject to law. A clear division of labour would be instituted where the party would concern itself with the long-term goals of mapping a path from "underdeveloped socialism" to "developed socialism" and eventually to "communism". The party could also carry out campaigns designed to encourage a "socialist" consciousness in the masses. The campaign to promote a "socialist spiritual civilisation" conformed with this rubric.

Accordingly, the state would gain a degree of autonomy in determining immediate policies and representing the people. The state would formulate the laws which would control the economy and give enhanced rights to the people. The problem was that, given the nature of leninist organisation, the party had to have policy superiority over the state and the economy in the final instance. Predictably, this 'last instance' unlike

an Althusserian "last instance", did eventuate on many occasions.

The citizen and property rights guaranteed in this process of reform were far from being 'empty shells', but neither were they open-ended. From the very start of the reform process, however, it was clear that there were predetermined limits to these rights. When the criminal law could not accommodate the party's immediate goals there was little hesitation in resorting to extra-legal means. The trial of the so-called 'Gang of Four' was a case in point. It was little other than a show trial with little weight being given to defence pleas. The same can be said of most of the trials of the democracy wall dissidents of the late 'seventies and, in particular, the notorious trial of Wei Jingshen. This tendency to utilise extra-legal means when thought necessary was, however, not solely confined to the policing of political dissent.

In late 1983 a series of police sweeps was instituted as part of a general crack-down on street crime in China. To facilitate such police action, key sections of the Constitution were suspended. Emergency measures were invoked, increasing dramatically the type of sentences which could be meted out for those crimes targetted in this campaign. In addition, the procedures for dealing with these elements were 'speeded up'. Summonses were no longer necessary and details of the charges were no longer forwarded to the defendant's counsel. The right of appeal was severely limited. Arbitrary arrest and, in some cases, execution of criminal gangs and so-called 'hoodlum elements' followed. Reportedly, quotas were set for the arrest and execution of corrupt and criminal elements. It has been estimated that some 100,000 people were arrested in these nationwide sweeps. Legally defined rights were denied to the accused criminal and the convicted criminal in this campaign.

All this was fine as far as the general public was concerned, so long as the

erosion of rights was confined to marginal, criminal and generally undesirable elements in society. The problem is, however, that the erosion of rights which was actively supported by the general public when instituted against hoodlums in 1983 and against prisoners generally has now been turned against significant sections of the population at large.

Perhaps the best way of understanding the structural mechanisms which impel continued incursions of human and legal rights stems from the dissident party theoretician Su Shaozhi.

For Su, neo-authoritarianism arises from feudal remnants. Feudal remnants are a continually reproducing feature of contemporary Chinese society. Nor are corruption and official malevolence, as some party bureaucrats would have it, a result of the reforms or of the 'open door' and western decadence. While, arguably, western influence has its decadent effects, the primary cause lies in the continuing fusion of political and economic structures.

The fusion of state, party and economy creates a situation where all goals become subservient to the political. In a situation where the party maintains 'iron' laws of discipline, normal and non-threatening dissent becomes illegitimate. In fact, neo-authoritarianism becomes a continuing temptation. This becomes especially prevalent when the party is unable to lay down ground rules for freedom of expression. Part of this difficulty arises from 'orthodox marxism' subsuming politics to considerations of class. Many questions arise which are not amenable to a class reductionist framework. Political practice should recognise these and allow a degree of political pluralism where interest groups can express their concerns.

Su Shaozhi and other dissidents such as Wang Ruoshui have little advice as to how legitimate criticism can be distinguished from illegitimate. This, we might add, is not a simple problem and it does not only affect 'socialist' regimes. The boundaries of legitimate dissent are equally as obscure in

Two Myths of the Beijing Massacre

Some on the left seem beholden to two myths connected with the Beijing massacre in June.

The first is that the students' sole genuine demand was the elimination of corruption and, therefore, that the call for democracy was merely a genuflection to their naive view of the west.

Indeed, the argument goes, the fact that the students sang *The Internationale*, praised Gorbachev and did *not* call for the overthrow of the Chinese Communist Party showed they were not interested in widening Chinese democracy or human rights.

Wrong. While students, like workers and intellectuals, strongly opposed corrupt practices, such as the operation of foreign bank accounts by senior leaders, they also perceived the direct link between democracy and corruption.

The rigid, hierarchical structure of Chinese society encourages almost feudal-like networks of patronage, all leading towards the centre. The Chinese party-state has been described by one writer as "a stratified system of corruption". Critically, there is no democratic check on bureaucrats, senior party leaders or the party itself.

Our own parallel, albeit on a milder scale, is Queensland, where Commissioner Tony Fitzgerald QC has emphasised the link between the state's undemocratic electoral system and the entrenched networks of corruption.

The other, less believable, line peddled by some socialists is that somehow foreign capital was involved in the massacre, or that it would be a beneficiary. In this way, some seem to think, foreign business is implicated in the massacre and the crackdown.

Despite the iniquities, waste and untrammelled economic power usually associated with multinationals, the above argument misses the point, or several points.

Foreign businesses - not to mention foreign embassies - were fired upon by troops in the weeks following the massacre. Even the China International Trade and Investment Corp (CITIC) building, the skyscraper citadel of modern Chinese business and head office to many western companies, was strafed with gunfire. Over this and other similar incidents, no apologies have been issued.

Meanwhile, not only have many foreign businesses withdrawn, but the goodwill which led many of them to China in the first place has evaporated.

Holding the reins of power now in China are those such as Chen Yun, xenophobic old men who despise virtually all of the economic and social advances of 1987-89, including any involvement with foreign capital. As we now see, they are doing their best to turn the clock back.

Robert Clark.

'western democracies' as workers' movements and civil rights activists have long known to their cost. However, legitimate dissent in leninist regimes does represent a very special set of problems.

The failure of Chinese reformers to set out clear criteria for dissent is compounded by their failure to set out exactly what the rule of law and democracy might mean in practice. There was also, with only a few exceptions, a failure to link political and legal reforms to the actual practice of economic reform, or to consider what material basis there might be to underpin political and legal practice. Compounding these inadequacies has been the practice of dissident intellectuals of continuing the traditional Chinese intellectuals' long-practised disdain for workers and peasants.

The result is that intellectual dissent is relatively easily dismissed. Workers and peasants need political and economic programs which will work, and their interests have to be considered and addressed. The high-sounding phrases of intellectuals calling for democracy and law will fall on deaf ears if such interests are not dealt with.

The result was that, while a large number of workers were sympathetic and some were active in challenging the *ancien regime*, there were contradictions of considerable proportions evident: contradictions such as real wage decline for workers and spiralling production costs to peasants which would only have been exacerbated if further economic liberalisations, advocated by intellectuals, were implemented. Hence, an alliance between intellectuals, workers and peasants was always a limited, fragmentary one.

Considering the writings of intellectuals on law, and democracy as a whole, one is struck by the naivety which pervades much of it. This is not simply the naivety of students who reportedly admired the democratic nature of South Korea, Taiwan and the USA or of Fang Lizhi's views on western democracy and social theory. There is a child-like faith in constitutional law as the basis of freedom and willingness to consider only grand theoretical issues which in the main makes much of the writing untranslatable into action. Debates as to the class nature of law and the nature of humankind are important. But they can

signify that debate is being diverted into non-threatening forms.

It is peculiar that intelligent scholars who are well versed in Soviet history can still place their faith in constitutional legal provisions. Stalin was correct when he declared that the Soviet Constitution of 1936 was the most democratic in the contemporary world! As we all know, however, this constitution was not worth the paper it was written on. Flagrant and monstrous violations of human rights even claimed the reputed author of the constitution, Nicolai Bukharin.

Constitutional law and democracy require a social basis. The conviction that human beings should be treated as bearers of rights and possessors of legitimate interests needs to be sustained by an ongoing practice. The introduction of constitutional law in an essentially feudal political and economic system where state and economy are effectively fused and party officials have privileges conferred by their position is bound for failure.

Constitutionalism requires that each person is a separate autonomous subject who possesses inalienable rights. It states that such rights can only be surrendered after due process and it requires an economic practice which supports the treatment of others as subjects in their own right. Institutional arrangements must reflect this principle of autonomy. The dominance of the political over other fields of practice and other institutions tends to negate the ability of constitutional law to protect individuals. The rule of politics over economics and iron discipline over politics subverts the proper relationship of polity and state.

Su's analysis is perhaps explained more fully if we examine the ways in which an essentially feudal economic management can maintain an intransigent hierarchy. The political economist He Jianzhang stressed that the economic structure of China was inherently hierarchical. It was akin to an ancient system of patriarchy where production took place in semi-autarchic family units. Exchange of goods and the creation of an extensive division of labour threaten such a system and threaten the patriarch's power.

He claimed that concentrating on the question of centralisation versus decentralisation in the economy, or plan and market, is really misunderstanding

the nature of the problem. The problem of reform in the economy was to break up a system of hierarchies which linked centre, region, locality and enterprise into a chain of command with lateral co-ordination only attempted at the highest echelons. Reform was frustrated because there was a considerable community of vested interests in each chain. Hence, worker and bureaucrat alike would strive to maintain their common interests in the preservation of the *status quo*. For He, the main problem was economic reform. It meant separating state, party and economic management and creating a system of commodity exchange which would break up the vertical chains of vested interest by creating intermediary links through lateral exchanges of things, in part by extending the division of labour and by increasing enterprise autonomy.

The argument needs to go further than He Jianzhang takes it. Marx stated that, short of a fully developed communist society where real costs would be eliminated, if we took away the social power of things (commodities) we had to give it to individuals to exercise over others. Political power over the economy, if it took patriarchal forms, would be the enemy of freedom. While freedoms enshrined in bourgeois constitutions were limited, they were nonetheless a significant advance over feudal privilege, and they were an essential precondition for broader freedoms.

This point is critical for China. Constitutional law requires the introduction of an economic system and a political system which guarantees individual freedoms and allows the creation of reforms in state, party and economy. Resorting to persecution or to prior forms of organisation is essentially futile. In the long term, the reactionaries who ordered the repression of the Tiananmen protests will be recognised for what they are. The reform program must continue and must deal with political and legal reform. These are now more urgent than ever.

MICHAEL DUTTON and **STEVE REGLAR** both teach Chinese Politics at the University of Adelaide.

ERRATA: In ALR 111, the Briefing on the June 4 massacre mentions 'tens of thousands' of dead and injured. This should have read 'thousands'.