

Framing the Stability Imperative

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Introduction

The studies in this volume make apparent the activist disposition of China's legal institutions in the era of Harmonious Society and Stability Maintenance. This disposition has enabled the Party-state to legitimize important changes in the practices and policies of courts, governments and security organs on the basis of a certain political narrative about the imperative of social stability. Political narrative, expressed particularly through Harmonious Society and Stability Maintenance discourse, has enabled the Party-state to reframe and reformulate justice and security practices to accommodate its place in leading the country through uncertain times of social upheaval that accompanies rapid economic growth.

Harmonious Society and Stability Maintenance are programs which attempt to address the connection between three key ingredients of China's modernization drive. According to the Communist Party, stability, development and reform comprise the tripartite elements necessary for China's modernizing efforts (Lin 2004). In 2007, China's senior authorities at the 17th Party Congress declared that 'development is the priority task and stability the foremost responsibility' (Kelly 2011; He 2012). But, what is the connection between these three ingredients and why did the stability imperative develop at this particular juncture in PRC history?

In this chapter, we address these questions by tracing the journey toward stability preoccupation in the late 20th and early 21st century. First we briefly reflect on the re-politicisation of Party power after 1989. We follow this with an interrogation of how stability came to tie in with the two other key elements of China's modernization goals: institutional reform and economic development. How the Party-state perceived their interrelationship explains why the stability imperative became the central political

concern of the first decade of the 21st century in China, while reform has become the weakest link in this tripartite chain.

We find below that senior leaders have been unwilling or perhaps incapable of easing tensions between the demands of turbo capitalism, and the need for lasting structural reform which many developed countries have found to be the most effective way of managing social tensions. While leaders were prepared to accept some degree of social discord and disorder that they assumed would accompany rapid economic growth, high levels of social unrest would not be permitted to threaten China's prospects for a moderately prosperous society (*xiaokang shehui*). In the early 2000s, the new Hu Jintao leadership recognised that, long-term, they would need to take institutional reform, particularly legal reform, seriously as the ultimate mechanism required to 'govern the country according to the law', to curb corruption, to improve China's weak governmental and legal oversight mechanisms and to sustain the prospects for a moderately prosperous society. And while they recognised that a strong legal system able to apply and enforce the law across the nation would be the ultimate guarantee for long-term social stability, this would not be possible in the short-term. Law therefore became embroiled in securing stability for short-term political gain. The 'stability overrides everything else' imperative began to overtake plans for genuine systemic reform, further eroding public confidence in the law. We explore the journey to stability preoccupation in more detail below, ending the book on a cautionary note about the consequences of this imperative to public confidence in law's legitimacy in China today.

Bringing the Party back in

The journey towards stability preoccupation began in the late 1980s, even though threats such as crime to social stability had been a continuous concern to the Party-state since the early 1980s. Deng Xiaoping and his Party colleagues initiated a program of socialist rule of law reforms in the early 1980s to provide the broad scaffolding necessary for economic development to take hold and to protect society from the kind of political chaos experienced during the Cultural Revolution. Senior authorities sought to procure a gradual separation of powers between Party and state, freeing up the Party to focus on

policy issues and enabling administrators and legislators to deal with routine governance matters without constant Party interference. But with the 1989 Tiananmen incident and the collapse of the Soviet Union, the Party abandoned this aspiration of separation, instead reasserting direct control over legislative and governmental organs (Chen 2013; He 2012; Feng 2013). The first buds of stability obsession began appear in the early 1990s in the aftermath of the Tiananmen incident, with a change in political heart by the Communist Party.

Avoiding the kind of collapse experienced in the Soviet Union in the early 1990s called for a fundamental rethinking of governance, one that coupled more efficient political control over public officials with the continued commitment to economic development. This move toward re-imbedding Party presence in government and legislative affairs primarily involved strengthening political influence over justice and security organs. In practice, this was achieved through the reintroduction of the powerful Party politico-legal committee (*zhengfa weiyuanhui*) at each administrative level in all courts, procuratorates, police and other security organs in 1991, headed by the Party's Central Politico-legal Commission in Beijing (Willy Lam 2010; Fu 2013).¹ Conceptually, this did not entail a fundamental shift in jurisprudential orientation law in China: PRC law, socialist in nature, was still conceived as an instrument to implement Party policies. The presence of politico-legal committees in all justice and security organs allowed for the free flow of policy dissemination from Beijing to the provincial and on to the municipal and county levels.

Politico-legal orientations and priorities relating to crime control in the early 1990s found expression in the policies of 'Striking Hard' and 'Comprehensively Managing

¹ The Central Politico-legal Commission of the CCP (*Zhonggong Zhongyang Zhengfa Weiyuanhui*) in Beijing sets the policy agenda for the nation's courts and prosecution, as well as for the police apparatus. Its subnational committees at province, municipal and county level implement the Commission's policies. The authority of the Commission in Beijing is higher than the authority of other Central Committee departments because, while other such departments, as the Organization Department, the Propaganda Department, the United Front Department and so on have advisory and coordinating powers, the Commission enjoys the power to lead (*lingdao*) judicial and law enforcement organs. (Lin 2004: 23-4).

Public Order’ which were the focus of the Central Politico-legal Commission in Beijing. But towards the turn of the century it was becoming increasingly apparent that the volume of disputes and civil conflicts required a new and different approach to public order. Gradually in the early 2000s, China’s politico-legal committees were populated with police chiefs at the helm. Their dual roles as deputies majors across many jurisdictions around the nation enable the smooth implementation and enforcement of stability policy (Fu 2013).

In 2000, the Party established a ‘Central Leading Group on Maintaining Stability’ that was set up to operate within the auspices of Politico-legal Commission (Fu 2013). This completed the gradual shift in the attention of Central Politico-legal Commission from the exclusive focus on crime to social disputes, collective protests and petitioning. While the term Stability Maintenance (*weihu wending*) was used in internal circles in the late 1990s, it was in only late 2003 that the abbreviated catchy *weiwen* (short for *weihu wending*) fully entered the policing vernacular, officially becoming the new focus of politico-legal organs, which formulated and implemented related policies (Trevaskes 2013).

Stability, reform and development

Around the early 2000s, *weiwen* began to become integral to national policing discourse. At the time, the Central Politico-legal Commission set about realigning its stability-related work to address three main national tasks identified in the 16th Party Congress Report – stability, reform and economic development (Jiang 2003). The Party Congress Report in 2002 made it clear that to enable the tasks of reform and development in China, the Party would need to maintain a social environment free from conflicts and discord (Lin 2004). The Commission therefore began further realigning its justice and security policies to address how authorities would successfully integrate the three main national tasks of socialist modernisation: to enable institutional reform, to encourage development, and to maintain social stability (Lin 2004). The rhetorical glue linking this tripartite relationship was the Hu Jintao leadership’s Harmonious Society agenda in the mid-2000s, and, after 2007, the Stability Maintenance agenda, both of which were used to frame and rationalize

stability by emphasizing it as a precondition for reform and development.

Stability Maintenance and Harmonious Society provided the legitimizing context for action. The 2006 'Resolution of the CCP Central Committee on Major Issues Concerning the Building of a Socialist Harmonious Society' formally adopted Harmonious Society as the key Party line. The ideological goal of social harmony would inform the Party's state's response to the realities of inequality caused by the social and economic externalities of rapid economic development. This response was to be found by addressing development gaps between urban and rural areas and between various regions, by establishing a social security system and by improving public services, healthcare, social order, ideological and moral standards, and the scientific and cultural life of the country. Harmonious Society developed into the Party's dominant political ideology of the decade aimed at binding fractured relations between the people and elites.

The 2006 Resolution was the final result of a process that had been developing over a four-year period from 2002 to 2006. The close rhetorical connection of social harmony to the three elements of modernization—reform, development and stability—became apparent in a 2005 pronouncement by President Hu Jintao, where he argued that China had entered a critical juncture on the road to modernity. As is the case with all rapidly developing economies, it was assumed that some degree of social discord and disorder would accompany rapid economic growth; however, social discord should not be permitted to threaten development. Hu's 2005 speech further claimed that in this pivotal period in China's development, sustaining social order was essential to maintain the momentum of economic growth. Any failure to curb social unrest would cause 'economic stagnation and protracted social upheavals' (Hu cited in Tanner, 2012: 89).

According to Tanner (2012), three elements of Hu's strategy explain why the law became central to the stability imperative. The first is that continued economic growth—which Hu insisted, in the long-run, would need to be both socially and environmentally sustainable—was considered the ultimate guarantee of social peace. The second strategic

element was that economic growth itself would be insufficient to sustain Party legitimacy. Therefore, the Party would need to reform its institutions of power, to improve its capacity to govern by directly addressing the governance failures that caused public frustration and disquiet. This would require government and justice organs to work cooperatively and harmoniously, to develop more robust regulatory oversight and accountability mechanisms. The third, and for this book, the most important element of Hu's Harmonious Society strategy, was containing social unrest. Given the acute level of social contradictions during this pivotal period of economic transition, social instability would need to be decisively contained. So, while acknowledging that only rule-of-law building through institutional reform could lead to an orderly and harmonious society in the long run, during the interim period of market transition, politico-legal intervention would be required to control the social fall-out of economic reform (Tanner 2012).

Unacknowledged in Hu Jintao's speeches, though, is the extent to which a key method of attaining high speed growth contributed to social unrest. The Party's insistence on maintaining the momentum of high-speed economic growth has produced in China a vicious cycle of unrest caused by pressure placed on local governments to continuously produce revenue by developing enterprises which require land acquisition and in many cases, produce environmental contamination. This pressure has led to abuse of power and corruption practices connected with shady land, labor and environmental deals that affect the livelihoods and health of millions of people. As constitutional scholar Zhang Qianfan has noted:

The main source of a variety of sources of instability in Chinese society at present is the uncontrolled abuse of state power. Up to this point, China's main mechanism for checking official corruption is top-down organizational control. However, China is so large and has so many localities and complex administrative hierarchy that it is difficult for the central government to keep an eye on all the provincial and ministerial-level officials, difficult for provincial government to keep an eye on officials in each of its cities, counties, townships, and towns, and so on. Since top-down organizational oversight is of limited effectiveness and bottom-up democratic oversight is, for many

reasons, unable to play a full role, corruption and abuse of power have become rampant (Zhang 2013).

Weak oversight and regulatory mechanisms have enabled high speed development to occur. But as He Qinglian argues, the processes of crony capitalism initiated by local government, and its resultant corruption are been revealed as the real culprit in disputes and protests. As she explains:

The main cause of China's social conflicts is excessive extraction of resources by government at all levels, creating a vicious cycle between stability maintenance and economic development. Local officials need GDP growth to demonstrate their effectiveness, and are compelled to undertake a large number of projects. The most profitable projects are real estate and polluting industries (because China has very lax oversight on environmental pollution, and one can pay very little, or even nothing, for polluting). However, real estate development involves land acquisition and property demolition, and industrial pollution triggers environmental rights defense actions by local residents. The more the economy develops, the more conflicts there are between government officials and the people, and the more stability maintenance is needed, requiring greater expenditures (He 2012).

He Qinglian compares the stability maintenance regime with an industrial chain, with the government at the top 'plundering through land requisition, property demolition, and industrial pollution' as a way of maintaining tax and financial revenues. She describes the government's activities in intercepting complaints and petitions as the middle of the chain and China's politico-legal organs including courts as the end of the chain. She claims that the key missing ingredient is structural reform replete with oversight mechanism which might be able to slow down turbo capitalism in the short term but to produce long-term confidence in the economy and state institutions in the long run (He 2012).

Reinstituting Maoist Mass-line JusticeIn the absence of structural reform, law and judicial activism would provide mechanisms to enforce a political morality premised on GDP growth which might ensure the continuity of the current political set-up. In a political context characterized by a chasm between long-term goals and short-term realities, politico-legal authorities resorted to Maoist rhetoric and practices—particularly mediation and campaigns—to regulate social conflict and contradiction. When political rhetoric went into overdrive, and when resources exceeding 600 billion yuan (approximately U.S \$100 billion) annually were poured into maintaining social stability, the stability imperative began to overtake plans for justice system reforms, further eroding public confidence in the law.

The Party-state once again ‘slipped into the grooves that Mao had carved’ (Chen 2013: 59) articulating social conflicts as the result of ‘contradictions among the people’. Two senior policing researchers working on an internal report commissioned by the Central Party Committee in the mid-2000s represented the state of unrest in China as an expression of social contradictions between six main groups in society: rich and poor; government officials and the masses; labour and capital; people from urban and from rural areas; Han and various ethnic minorities; and people from different regions within China (Tian and Ren 2005). They argued that the continuing presence of social contradictions in post-Mao Chinese society results from a clash between disparate interests (*liyi*), as manifest in the fundamental and deep conflict between all the six social groups. This disparity of interests—particularly between the masses and the state itself—generated the increasingly hostile atmosphere of ‘struggle’ (*douzheng*) evident in the antagonistic way that people seek to protect their own interests through protests and legal challenges to government decisions (Tian and Ren 2005: 73-4). Yet, rather than to tackle social contradictions through structural reform, a Stability Maintenance craze began in the mid-2000s, culminating in a rigid approach to justice and security over all areas of stability-relating dispute and dissent.

Politicising social contradictions

The number of collective protests at over 100,000 annually after the mid-2000s

propelled social stability to the status of number one socio-political imperative driving law and governance agendas. By this time, the term Stability Maintenance had become deeply embedded in politico-legal discourse. Unlike Harmonious Society, Stability Maintenance was never formally endorsed through a Party resolution as a national political goal. Nevertheless, this imperative developed as a major policy, particularly after the conservative turn at the 17th Party Congress in 2007.

Stability Maintenance gradually developed into an umbrella term for handling all things public order-related; a rhetorical mechanism for binding together a disparate array of legal levers that could be used to ‘harmonise’ disharmonious social relations, resolve disputes, control dissent and manage unrest. With the dramatic rise in mass incidents in the post-2007 period, the main political agenda gradually turned from one that purported to ‘build’ a certain type of society (a harmonious one) to one that required the protection of society from those who dissented against political or governmental authority. Hence, the stability agenda which first came to be justified under the banner of developing harmony, morphed into what scholar Yu Jianrong called a ‘rigid’ stability model (Yu, 2010). Society’s protection from the effects of instability took a two-sided approach: coercive tactics aimed at a minority of protest ringleaders, and ‘persuasion and education’ for the vast majority of people involved in disputes (Tanner 2007).

Even though by 2007 *weiwen* was ubiquitous in policing and, more generally, in political discourse, it did not emerge spontaneously as a mature and developed concept. As mentioned above, ‘protecting social stability’ (*baohu shehui wending*) had for decades been a leading rationale for policing crime, yet the catchword *weiwen* is relatively new to the policing repertoire. It appeared in late 2003 in the 20th National Public Security Work Conference—known in Chinese police jargon as the ‘20-*gong*’—a national policing conference, that Chinese policing circles now regard as ‘historic’ in nature (Trevaskes 2013). It was during the 20-*gong* that Minister of Public Security (MPS) Zhou Yongkang for the first time explicitly encouraged policymakers to adapt Maoist rhetoric to the policing of mass incidents, social protests and disputes. In his keynote speech, Zhou declared that all strength and effort would be given to the ‘political struggle’ for the

important 'strategic opportunity' that *weiwen* presented to the nation.

We must in a practical and realistic way, strengthen this work and make it a priority task for Party committees at each level. This is an important political task [*zhongyao zhengzhi renwu*] of the public security in China ... Maintaining stability is intimately connected to the entire plan of building a harmonious society (Liu, 2006: 227).

This rationalization illustrates how the Party saw Stability Maintenance as an intensely political project that incorporates a wide array of legal mechanisms, policing methods and justice practices. Mao-inspired discourse sought to bolster the political firepower for the policing of stability-threatening activities as well as to revive the mass-line identity of politico-legal organs.

After the 20-*gong*, the Party's propaganda machine was given the imprimatur to sell the idea of politico-legal organs as bastions of mass-line justice, promoting mediation rather than litigation of civil and administrative disputes with the aim of avoiding further exacerbation of social instability at the expense of institutional reform. Even though courts and other justice agencies may have been sympathetic to addressing blatant injustices incurred upon citizens in cases of forced evictions, land-taking and other civil and administrative disputes, they became reluctant to allow these cases to go to trial. Favouring out-of-court mediation over litigation allows local authorities to deal with the issue locally and prevents citizens from exercising their legal rights through court appeal or through petitioning to central authorities in Beijing. The Party's strategy to bring back Mao-style preemptive mechanisms such as mediation to prevent unrest was meant to give local governments and courts greater control over the outcomes of disputes and to ensure timely resolution. As Fu Hualing observes:

A key strategy of general intervention is the promotion of aggressive mediation and the imposition of a duty on all government departments to end disputes proactively as quickly as they occur. Courts in particular are encouraged to mobilize available resources to bring conflicts to an effective

end at any cost. The interventionalist and proactive style of dispute resolution aims at preventing conflicts from foaming, escalating and solidifying, regardless of their political orientations (Fu 2013).

While this form of dispute resolution may promote the short-term harmonising ethos favoured by the current political system, it can also disadvantage the weak and underprivileged in society and dilute the courts' power to monitor the legality of acts of administrative agencies. This reluctance to allow cases to be addressed inside the courtroom through litigation is related, among other things, to the issue of judges' professional performance ratings; judicial decisions can be measured unfavourably against stability-related performance criteria. If the aggrieved party takes the disputes further up the appellate chain, or petitions outside government or the court at a higher administrative level, or worse still, travels to Beijing to petition, judges can take the political fall. Judges and other justice and security personnel in post-Harmonious Society China remain hobbled by the stability imperative since the new 18th Party Congress leadership was installed in November 2012.

Post-2012, we find a number of subtle shifts in Party policy toward stability. The new Party leadership under Xi Jinping seems to oppose political liberalism. Yet, it recognises that the excesses of Stability Maintenance that encroached on the legal system, justice and state-sanctioned rights have damaged public trust in the law. After November 2012, the new Party leadership began realigning the politico-legal agenda by retreating from the hard stance on Stability Maintenance and emphasising return to building a 'rule of law'. However, this is unmistakably a socialist rather than a western-liberal oriented rule of law. Moreover, the new leadership is yet to articulate how or even if it will endeavour to better manage tensions between reform, development and stability.

Conclusion: Law's unstable legitimacy

Managing the tensions between reform, development and stability became integrated into the political rationale for legal reform in China in the late 20th and early 21st century,

guiding the direction and changes of politico-legal operations. This chapter has examined how judicial and security practices came to be framed within the political discourse around the imperative of protecting social stability. It has addressed why stability imperative came to be so prominent at this point in PRC history by examining the path of stability's rise to prominence through political programs and rhetoric linking stability to the national imperatives of economic development and institutional reform. It has also shown how law has become entangled with the revival of the mass-line in the political pursuit of social stability. Law in China lacks the teeth to enable an alternative to Maoist-style activism—the idea of governing the country (strictly) in accordance with the law—to thrive. While the Party-state had indeed developed laws to regulate and oversee economic development, their strict enforcement was not encouraged in sub-national jurisdictions where local governments had a vested interest in protecting state and privately owned capital development. Rather than to enforce rigorously regulation that could potentially slow down the momentum for economic growth, local governments allowed development to occur in a socially and environmentally unsustainable way. The imperative was to keep up the momentum of rapid market expansion, preferably without stringent enforcement of regulation and safeguards against the excesses of turbo capitalism. This situation enabled state and privately owned enterprises to prosper at the expense of citizens who lacked the capacity to protect themselves from deregulated market forces. Law's legitimacy was the price that Hu Jintao and colleagues were willing to pay to secure short-term stability. They recognised that embedding due process, legal consistency and fairness into all levels of the legal system would require a long-term commitment from all levels of government to the proper enforcement of regulatory laws and oversight structures, a task too difficult to achieve without genuine political reform.

'Localisation' of justice practices over the last 15 years or more has meant that local Party and government involvement in adjudication and dispute resolution has further entrenched existing local power relations. This has made judicial fairness difficult to attain in those areas where local governments have a vested financial interest in supporting the cause of local enterprises over the rights of local residents or transient workers, as is evident in cases of land, labour and environmental disputes. This

entrenchment of local power relations has had all the more impact on stability in politically sensitive disputes where citizens have limited legal knowledge and access to lawyers, and thus have nowhere to go but on to the streets to protest. The political rhetoric of Harmonious Society and Stability Maintenance has made it possible for local authorities to argue that any deviation from the ethics of consensus and harmony defined by the Party-state poses a challenge to a morally absolutist politics that demarcates rights and wrongs in society. The general experience for China's citizens is that conflicting values and worldviews are allowed as long as they are not acted upon through collective or individual protest that might deem to question this absolutism. Any legal or non-legal action arising out of a lack of consensus questions the moral foundations of governance, inducing the use of coercion.

Post-2012, with the ascension of the new Party leadership, 'rigid' Stability Maintenance rhetoric seems to have dissipated. Yet, intolerance of dissent remains; social stability continues to be the number one socio-political imperative driving law and justice agenda and the annual Stability Maintenance budget remains at over 700 billion yuan. Meng Jianzhu, the new head of the Central Politico-legal Commission has implored justice agencies to 'civilise' their practices, conduct their work 'on the basis of the rule of law', and 'standardise' justice practices across the nation to ensure that the law is enforced properly. Here, his insistence on standardizing practices is more a reaction to the rampant localisation of justice in the 2000s rather than a signal of commitment to dramatically reforming China's politico-legal institutions. In Xi Jinping's China, law remains an increasingly compelling force to meet citizens' demands for justice and protection of their rights. But law also remains capture to the stability imperative. Instability and the unrest that it brings is the product of 'unbalanced, uncoordinated and unsustainable' economic growth, according to Wen Jiabao (Fewsmith 2012: 2). Unbalanced, uncoordinated and unsustainable economic growth remains a hallmark of state-society relations in China today because the legal levers of enforcement, oversight and other mechanisms are still fairly undeveloped and so far, there is no sign that the new leadership is prepared to tackle genuine structural reform. While the Party-state

continues to recognise the importance of upholding law's legitimacy in the long-term, it still supports the adoption of *ad-hoc* mass line practices as a way of thwarting unrest.

This conflictive situation is not exceptional to China. But, as we have found in the studies in this book, in China, the political atmosphere that obsesses over stability and pathologises social disorder has intensified tensions between the agendas of social order and social justice. This has led to a wider societal antipathy towards the prospects for genuine systemic reform, since such commitment would require the Party-state to give procedural propriety due prominence over stability concerns. Such antipathy leads back to the wider issue of law's long-term prospects for delivering the kind of legitimacy that is essential for the future prospects of Party rule.

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